

A Compendium of Questions & Answers Relating to Wild & Scenic Rivers

*A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council
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May 1997

Revised: June 2006, May 2011, May 2014, January 2017, August 2018



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A Living Draft

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Acronyms & Abbreviations

ACOE	Army Corps of Engineers
Act	Wild and Scenic Rivers Act
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
Council	Interagency Wild and Scenic Rivers Coordinating Council
DOT	Department of Transportation
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FR	Federal Register
FWS	United States Fish and Wildlife Service
Interagency Guidelines	<i>Department of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas</i> published in the <i>Federal Register</i> (Vol. 47, No. 173; September 7, 1982, pp. 39454-39461) providing direction to agencies in the study and administration of wild and scenic rivers.
LEIS	Legislative Environmental Impact Statement
National System	National Wild and Scenic Rivers System
NEPA	National Environmental Policy Act
NPS	National Park Service
NRI	Nationwide Rivers Inventory
OMB	Office of Management and Budget
ORV	Outstandingly Remarkable Value
P.L.	Public Law
Q&A	Question and Answer
Reference Guide	<i>Interagency Wild & Scenic River Coordinating Council Reference Guide</i>
SCORP	State Comprehensive Outdoor Recreation Plan
Secretary	Secretary of the Interior or Agriculture, generally specified in the text
USC	United States Code
USFS	United States Forest Service
WSR	Wild and Scenic River

Interagency Wild & Scenic Rivers Coordinating Council

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FOREWORD

The Wild and Scenic Rivers Act (Act), as amended, is one of the most important pieces of conservation law; however, the Act has complex provisions influencing the management of resources as varied as water quantity and quality, minerals, agriculture, livestock grazing, fisheries and recreation. Implementation and interpretation of the Act is further compounded by the range and diversity of administering jurisdictions and ownerships.

This compendium of questions and answers (Q&As) has been compiled by the Interagency Wild and Scenic Rivers Coordinating Council (Council). It is designed to be of assistance to you in the accurate interpretation and application of the Act and in the management of the over 200 designated rivers in the National Wild and Scenic Rivers System (National System). If it does not provide all the information you need, please contact a Council member or the agency that administers a particular river.

The purpose of this collection of Q&As is to both inform and educate all those involved with the inventory, study, and management of wild and scenic rivers (WSRs). *It is intended to be a flexible, living document constantly improved through use and application.* The primary focus is on solutions (consistent and correct answers) to questions and issues; however, this document cannot possibly deal with the limitless number of possible scenarios which might occur. The document is formatted so as to facilitate the addition of new questions, as well as to expand or supplement the existing answers through a variety of mechanisms, e.g., experience, interpretation, case law, and site-specific examples and illustrations. The examples provided may or may not be analogous to your situation and may require additional administrative and/or judicial review.

Some of the Q&As, such as those dealing with study procedures and management approaches, apply only to congressionally authorized studies or designations. Private and state lands along rivers managed by state and/or local governments, and designated pursuant to Section 2(a)(ii) of the Act, are managed under state/local authorities and plans. The federal government is not responsible for developing a protected management scheme for state or private lands and has no authority to acquire them under Section 2(a)(ii). In other words, not all of the Q&As presented here apply to Section 2(a)(ii) rivers, and, unless the Q&A specifically addresses Section 2(a)(ii), you should not assume

it applies. The Council encourages you to check with the National Park Service (NPS) to ensure that specific Q&As apply to Section 2(a)(ii) rivers.

These Q&As provide a generic framework in the context of the Act and do not supersede any adopted agency policy or guidelines. Agencies may use or adopt the principles or concepts stated herein. In addition, nothing precludes agencies from supplementing these Q&As with information or illustrations that are unique to field or site-specific situations.

Providing edits, comments and/or additional questions with the proposed answer is encouraged. Please send Q&As needing change or correction, or new Q&As, to the address listed below. If you send a electronic file, please use Word.

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SYNOPSIS OF THE WILD & SCENIC RIVERS ACT

Section 1 – Establishes the National System. States its purpose, lists eligibility criteria, identifies outstandingly remarkable values (ORVs)—scenic, recreation, geologic, fish and wildlife, historic, cultural, or other similar values—and the need to protect the free-flowing condition and water quality of rivers.

Declares a national policy to:

- Preserve certain rivers and their immediate environments.
- Maintain free-flowing condition (See Section 16 definitions).
- Protect water quality (Section 12).
- Fulfill other vital national conservation purposes.

Complements the national policy of dams and other natural resource development projects.

Section 2 – Specifies two methods by which a river can be designated.

(a)(i) By Act of Congress, or

(a)(ii) By the Secretary of the Interior upon application of the governor(s) of a state(s). To be administered by an agency or political subdivision of a state at no expense to the federal government.

(b) Eligibility requirements:

- Free-flowing.
- Possess one or more ORV(s).

Defines criteria for classification, according to the level of development at the time of designation of the shoreline, watercourse and access as:

- Wild,
- Scenic, and/or
- Recreational.

Section 3 – Guidance on designated rivers.

- (a) Lists congressionally designated rivers in the National System.
- (b) Provides guidance on the establishment of boundaries for designated rivers, i.e., boundaries are limited to an average of no more than 320 acres per river mile, except on certain other rivers as specified by Congress and in Alaska, which is 640 acres for rivers located outside national parks.
- (c) Requires public notice of availability for river boundaries and classifications.
- (d)(1) For rivers designated on or after January 1, 1986, requires preparation of a comprehensive management plan within three full fiscal years of designation. Notice of availability and completion of plans to be published in the *Federal Register*.

Plans shall address:

- Resource protection.
- Development of lands and facilities.
- User capacities.
- Other management practices necessary to achieve purposes of the Act.

Coordination:

- With land management plans for affected adjacent federal lands (typically incorporated).
- With state, local government and interested publics.

(d)(2) For rivers designated prior to January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity with Section 3 within ten years (i.e., prior to January 1, 1996) through regular agency planning processes.

Section 4 – Provides directions for conducting studies, including study report requirements and processes; requires Secretarial and Presidential recommendations as to suitability; no time frame, but generally there is a three-year limit.

- (a) Each study report shall include:
- The area included in the report (map and illustrations).
 - The characteristics which do or do not make the area a worthy addition.
 - Current status of land ownership and use.
 - The reasonably foreseeable potential uses of land and water which would be enhanced, foreclosed, or curtailed if designated.
 - Proposed federal administering agency.
 - Potential to share cost of administration with state and local agencies.
 - Estimated cost to the government of acquisition and administration.
- (b) Requires consultation with other affected federal agencies.
- (c) Requires consultation with federal agencies before the Secretary of the Interior designates a state-administered river to the National System.
- (d) Minimum of one-quarter mile study boundary.

Section 5 – Study provisions.

- (a) List of congressionally authorized studies.
- (b) Study period usually three full fiscal years.
- (c) Additional study requirements – coordination with states and political subdivisions.
- (d)(1) Directs federal agencies to consider other potential WSRs in their land and water resource planning process.
- (d)(2) Specific language for the upper Klamath River study, Oregon.

Section 6 – Land acquisition procedures and limitations.

(a) The federal government may acquire land, and interests in lands, for rivers designated via Congress with certain restrictions:

- No more than an average of 100 acres per mile may be acquired in fee.
- State lands may be acquired by donation/exchange only.
- Tribal or land in a political subdivision can be acquired by consent only, so long as it is being protected for purposes of WSR status.

(b) Limitations on land condemnation.

- “50 percent rule” – If over 50 percent of lands within a WSR boundary are in public ownership (federal/state/local government), no condemnation for fee title is allowed.
- The 50 percent rule does not apply when used to clear title, or to acquire conservation or use easements reasonably necessary to provide public access or resource protection.

(c) Authority to use land condemnation in incorporated city, village, or borough is preempted when local governments have in force zoning ordinances which protect river resources.

(d) Exchange authority with private interests.

(e) Transfer authority with other federal agencies.

(f) Authority to accept donations.

(g) Use and occupancy authorization.

Section 7 – Restrictions on hydroelectric and water resource development projects on congressionally designated rivers, rivers added under Section 2(a)(ii) of the Act, and congressionally authorized study rivers.

(a) Prohibits the Federal Energy Regulatory Commission (FERC) licensing of new construction for hydropower projects on designated rivers; prohibits assistance for water resources projects by other federal agencies if the project would have:

- A direct or adverse effect, or

- Would invade or unreasonably diminish scenic, recreational, and fish and wildlife values present at the date of designation.

(b) Similar restrictions for Section 5(a) congressionally authorized study rivers.

Section 8 – Land disposition.

(a) Designated rivers: Withdraws federal lands from entry, sale, or other disposition under public land laws.

(b) Congressionally authorized study rivers under Section 5(a): Withdraws federal lands from entry, sale, or other disposition under public land laws during the study period, which includes three years after the President sends the agency’s report to Congress with a recommendation.

Section 9 – Mining and mineral leasing laws; valid existing rights and reasonable access to working claims recognized.

(a) On designated rivers, exceptions subject to valid existing rights:

- Mining/leasing activities subject to regulations determined by a Secretary necessary to effectuate purposes of the Act.
- Patent to mineral deposits and rights to surface and surface resources.
- Withdrawal of bed/bank and one-quarter mile of any **wild** river from mining and mineral leasing laws (see also Section 15(2) for Alaska).

“Regulations” shall provide safeguards against:

- Pollution.
- Unnecessary impairment of the scenery.

(b) For congressionally authorized study rivers under Section 5(a):

- Minerals within study area are withdrawn from appropriation under mining law for periods specified in Section 7(b).

- Prospecting and mineral leasing are allowed with appropriate conditions, except for rivers authorized for study under the Alaska National Interest Conservation Act, which are withdrawn from mineral leasing laws.

Section 10 – Directs federal agencies to administer WSRs to protect and enhance the values for which the river was designated and authorizes the federal government to enter into written agreements with state and local governments (municipalities) to jointly manage rivers, e.g., the Great Egg Harbor River, New Jersey.

(a) Protect and enhance values for which the river was designated, i.e., ORVs, free-flowing condition, and water quality.

Primary emphasis on:

- Aesthetic.
- Scenic.
- Historic.
- Archaeological.
- Scientific features.

Management plans may establish varying degrees of intensity for protection and development based on special attributes.

(b) For rivers in designated wilderness, where there is conflict between the Wilderness Act and the WSR Act, the more restrictive provisions would apply.

(c) Rivers administered by the NPS are part of the National Park System, unless otherwise specified by Congress, and rivers administered by the U.S. Fish and Wildlife Service (FWS) are part of the National Wildlife Refuge System.

(d) The Secretary of Agriculture is authorized to use general statutory authorities relating to national forests when managing a WSR.

(e) Encourages state and local participation in protecting congressionally designated rivers. Authorizes federal administering agencies to enter into cooperative agreements for this purpose.

Section 11 – Cooperation/Partnership.

Authorizes the Secretary of the Interior to encourage states to consider opportunities for state and local WSRs in formulation of the State Comprehensive Outdoor Recreation Plan (SCORP) and to assist, advise, and cooperate with landowners, organizations, and governments in the management of WSRs; agencies can look outside administrative boundaries.

(b)(1) Federal assistance. The Secretary of the Interior, the Secretary of Agriculture, or the head of any other federal agency “shall assist, advise and cooperate with states or their political subdivisions, landowners, private organizations or individuals to plan, protect and manage river resources.” Authority is within and outside a federally administered area and applies to rivers in the National System and other rivers.

Agreement may include limited financial or other technical assistance to encourage participation in acquisition, protection and management of river resources.

Section 12 – Activities on federal lands.

Directs federal agencies to protect rivers in light of other policies which may be contrary to the Act and confirms that existing rights are not abrogated; directs river-administering agencies to cooperate with the Environmental Protection Agency (EPA) and appropriate state water pollution control agencies to eliminate or diminish the pollution of waters.

(a) Other federal agencies are to take such actions to protect lands which are included, border upon, or are adjacent to, congressionally designated and authorized study rivers in accordance with the Act, paying particular attention to timber harvest, road construction, and similar activities which may be contrary to purposes of the Act.

(b) Existing rights, privileges, or contracts may not be revoked without private party consent.

(c) Water pollution: Cooperate with the EPA and appropriate state water pollution agencies.

Section 13 – Jurisdiction of the states.

Confirms that the jurisdiction of the state with regard to hunting and fishing is not affected; discusses water rights, navigable waters, and other easements and rights of way; state rights to access to the beds of navigable rivers is unaffected.

- (a) Fish and wildlife: Confirms state jurisdiction with regard to hunting and fishing except for no hunting zones for safety, administration, or public use.
- (b) Water rights determined by established principles of law.
- (c) Reservation of waters: Federal reserved water rights are reserved at the time of designation and retain enough water to protect the values for which the river was designated:
 - For purposes specified in the Act, and;
 - In quantities to accomplish those purposes.
- (d) Water use management: State jurisdiction unaffected to the “extent that such jurisdiction may be exercised without impairing purposes of this Act or its administration.”
- (e) Interstate compacts: Not affected.
- (f) Navigability: Shall not affect existing rights of states with respect to access to beds of navigable rivers.
- (g) Easements may be granted, and rights of way may be issued, as long as they are within the policy and purposes of the Act.

Section 14 – Easements and leases.

Allows for contributions, i.e., donations of easements and real property to non-profit groups and the federal government.

Authorizes leasing of federal land within the corridor subject to appropriate conditions.

(A)(a) Lease of federally acquired land.

(A)(b) Former owner has right of first refusal.

Section 15 – Exceptions for designated rivers in Alaska. (References the Alaska National Interest Lands Conservation Act.)

Doubles the amount of land permitted within the designated boundary for rivers in Alaska located outside of national parks, i.e., a maximum of 640 acres per mile. State lands and local government

lands may not be included within the boundary, nor can private lands be surrounded by the boundary, thereby restricting access. In addition, mineral withdrawals on federal lands in Alaska cover the bed and bank and lands within one-half mile of the river.

Section 16 – Definition of terms: river, free-flowing, scenic easement.

(a) River can be: river, stream, creek, run, kill, rill, small lake.

(b) Free-flowing is flowing in natural condition without structural modification of the waterway; existence of minor structures is not an automatic ban.

(c) Scenic easement is the right to control the use of land to protect river values.

Section 17 – Authorization of appropriations for land acquisition.

OVERVIEW OF THE WILD AND SCENIC RIVERS ACT

The Act and the National System

Q. What is the genesis of the Act?

A. Due to the dams, diversions and water resource development projects that occurred from the 1930's to the 1960's, the need for a national system of river protection was recognized by conservationists (notably Frank and John Craighead), congressional representatives, such as Frank Church and John Saylor, and federal agencies. The Act was an outgrowth of a national conservation agenda of the 1950's and 1960's, captured in the 1962 recommendations of the Outdoor Recreation Resources Review Commission. The Act concluded that selected rivers be preserved in a free-flowing condition and be protected for the benefit and enjoyment of present and future generations.

Q. When was the Act passed?

A. The Act (Public Law 90-542; 16 U.S.C. 1271-1287) was signed on October 2, 1968. It has been amended many times, primarily to designate additional rivers and authorize additional rivers for study for possible inclusion.

Q. What is the purpose of the Act and of designating rivers? How should these rivers be managed?

A. The Act provides a national policy and program to preserve and protect selected rivers, or segments of rivers, in their free-flowing condition in the National System. Section 1(b) of the Act states:

It is hereby declared 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.

Section 10(a) of the Act states:

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 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, archaeologic, and scientific features. Management plans for any

such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

Q. How many miles of river have been protected under the National System?

A. As of August 2018, some 209 river segments comprising 12,754 miles have been afforded protection in the National System. These nationally recognized rivers comprise some of the nation's greatest diversity of recreational, natural and cultural resources, offering great scientific value and scenic beauty. By comparison, more than 75,000 large dams across the country have modified at least 600,000 miles, or about 17% (possibly more than 20%; figures are best estimates), of American rivers.

Q. What are the primary effects of WSR designation?

A. WSR designation seeks to protect and enhance a river's current natural condition and provide for public use consistent with retaining those values. Designation affords certain legal protection from adverse development, e.g., no new dams may be constructed, nor federally assisted water resource development projects allowed that are judged to have an adverse effect on designated river values. Where private lands are involved, the federal managing agency will work with local governments and owners to develop voluntary protective measures.

Q. How can rivers associated with state wild and scenic river systems become part of the National System?

A. For state-designated rivers, a governor may submit an application to the Secretary of the Interior under Section 2(a)(ii) of the Act. If found eligible, and if sufficient protection is afforded by the state, the Secretary may make the designation. Rivers designated in this manner continue to be administered by the state (sometimes with assistance from local governments), except for any federal lands along the river. If there are federal lands located along the river, the state and federal river-administering agencies may enter into an agreement to outline federal/state management roles and responsibilities and/or provide for management and protection of river values.

The Study and Designation Process

Q. How are rivers designated?

A. There are two ways rivers are designated into the National System:

- *By Act of Congress.* This requires legislation to amend Section 3(a) of the Act. Rivers designated by Congress are listed in Section 3(a) of the Act.
- *By the Secretary of the Interior.* This requires a governor to submit an application to the Secretary of the Interior under Section 2(a)(ii) of the Act. If found eligible, and sufficient protection is afforded by the state (including designation in a state river system by the legislature of the state), the Secretary may designate a river. Applications by the states are evaluated and processed by the NPS. Rivers designated under Section 2(a)(ii) are listed in the Council's *River Mileage Classifications for Components of the National Wild and Scenic Rivers System* table.

Q. Is citizen involvement in the WSR study process encouraged?

- A. Yes. Under Section 5(a) of the Act, the public is involved in the study of rivers authorized by Congress. The report associated with a congressionally authorized study addresses subjects such as current status of land ownership and use in the area; reasonably foreseeable potential uses of land and water which would be affected by designation; the federal agency to administer the river if designated; and the ability of, and estimated costs to, state and local agencies to participate in the administration of such rivers. The public and state, local and tribal governments help assemble, evaluate data, and develop alternatives. With respect to studies under Section 5(a) of the Act, the responsible federal study agency assists local and state entities in the study process.

In response to Section 5(d)(1) of the Act, administering agencies also involve the public in the determination of potential WSRs through normal inventory and study processes. Starting with scoping meetings for agency planning documents, agencies discuss the inventory and study of rivers within their respective planning units. The public and state, local and tribal governments have the opportunity to discuss issues, concerns, river values, and associated impacts with agency personnel. As the process continues, similar discussions on the suitability of eligible rivers take place as determinations and environmental documents are prepared.

Q. Why should one support WSR designation?

- A. Many individuals and communities support designation to help focus management efforts on protecting and enhancing river values. The intent of the Act is to build partnerships among landowners, river users, tribal nations and all levels of governments in developing goals for river protection. Designation provides strong protection against construction of new dams and projects that alter the free-flowing condition, water quality and ORVs for which the river was designated.

Q. How many potential WSRs are there?

A. Through the various federal agencies' land management planning processes and initiatives by the public, a significant number of rivers have been identified for study as potential additions to the National System. For example, the Nationwide Rivers Inventory (NRI), maintained by the NPS, has identified over 3,400 river segments as potential candidates for study and/or inclusion into the National System.

Q. Have any designated WSRs ever been de-authorized?

A. No.

Q. Will the *Departments of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* (Interagency Guidelines; September 7, 1982, 47 FR 39454-39461) be revised, for example, to reflect the 1986 generic amendments to the Act?

A. The Interagency Guidelines may be revised. The Council periodically evaluates tasks to be undertaken.

Q. Why were the Interagency Guidelines for the WSRs program developed?

A. On September 7, 1982, the Departments of Agriculture and the Interior outlined in the *Federal Register* (47 FR 39454) eligibility and classification criteria, the evaluation process and content, and reporting requirements for potential WSRs and management guidelines for designated WSRs. These guidelines were formulated to provide a uniform evaluation and consistent management approach in the identification, evaluation, reporting and management of WSR segments. These replaced earlier guidelines developed in 1970.

WILD & SCENIC RIVER EVALUATION

Inventory and Eligibility

Q. What makes a river eligible for the National System?

A. To be eligible for designation, a river must be free-flowing and contain at least one ORV, i.e., scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar value.

Q. When is a river or river segment evaluated for eligibility for possible inclusion in the National System?

A. There are three instances when federal agencies assess eligibility: 1) at the request of Congress through specific authorized studies; 2) through their respective agency inventory and planning processes; or 3) during NPS evaluation of a Section 2(a)(ii) application by a state. River areas identified through the inventory phase are evaluated for their free-flowing condition and must possess at least one ORV.

Q. What is the definition of “free-flowing?”

A. Section 16(b) of the Act defines free-flowing as “existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures in components of the national wild and scenic rivers system.”

The existence of small dams, diversion works, or other minor in-channel structures shall not automatically disqualify a river as a potential addition to the National System. Congress did not intend all rivers to be “naturally flowing,” i.e., flowing without any manmade up- or downstream manipulation. The presence of impoundments above and/or below the segment (including those which may regulate flow within the segment), and existing minor dams or diversion structures within the study area, do not necessarily render a river segment ineligible. There are segments in the National System that are downstream from major dams or are located between dams.

Q. How can a river below a dam or impoundment be considered “free-flowing?”

A. Section 16 of the Act, defines a “river” as “a flowing body of water . . . or portion, section, or tributary thereof. . . .” “Free-flowing” is defined as “existing or flowing in natural condition

without impoundment. . . .” Therefore, any section of river with flowing water meets the technical definition of free flowing, even if impounded upstream.

Q. Can a river be considered free-flowing when the flow is dependent on releases from a dam?

A. Yes. Congress and the Secretary of the Interior have designated many river segments which are above or below dams that have regulated flows.

Q. What is the definition of “outstandingly remarkable value?”

A. In the Act, river values identified include scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The Act does not further define ORVs. However, agency resource professionals have developed interpretive criteria for evaluating river values (unique, rare, or exemplary) based on professional judgment on a regional, physiographic, or geographic comparative basis. (Refer to *The Wild & Scenic River Study Process* (1999).)

Q. What are possible “other similar” ORVs?

A. Some examples of other similar ORVs include botanical, hydrological, paleontological, scientific, or heritage values.

Q. What types of watercourses qualify for WSR designation?

A. Section 16(b) of the Act defines a river as “a flowing body of water or estuary, or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.”

Q. Must a river segment be of any particular length or have certain flows in order to be eligible?

A. No. The Interagency Guidelines state, “There are no specific requirements concerning the length or the flow of an eligible river segment. A river segment is of sufficient length if, when managed as a wild, scenic or recreational river area, the ORVs are protected. Flows are sufficient if they sustain or complement the ORVs for which the river was designated.

Q. Can intermittent rivers be considered eligible?

A. Yes. For purposes of eligibility evaluation, the volume of flow is sufficient if it is enough to sustain or complement the ORVs identified within the segment. Rivers with intermittent or non-perennial flows exist within the National System and may be representative of rivers within particular physiographic regions.

Q. What is the Nationwide Rivers Inventory (NRI)?

A. The NRI is a listing of some free-flowing rivers (or river segments), which, based on preliminary studies, are considered to meet eligibility criteria for the National System. From 1976 to 1980, the Bureau of Outdoor Recreation and the Heritage, Conservation, and Recreation Service compiled the initial NRI, which was subsequently updated, published, and first distributed by the NPS in January 1982. Additions have been made as a result of Bureau of Land Management (BLM) and U.S. Forest Service (USFS) inventories as a part of their land use planning process. The NRI is maintained and revised as necessary by the NPS. Listing on the NRI, or any other source list, does not represent an official determination of eligibility, and conversely, absence does not indicate a river's ineligibility. Information about use of the NRI is found at www.nps.gov/nri/.

Q. What are some of the steps federal agencies use in their evaluation of potential WSRs in their land management planning process?

- A. There are a number of steps that federal agencies use in their evaluation process:
- Assessment of free-flowing condition and resource values.
 - Finding of eligibility or ineligibility.
 - Inventoried or tentative classification based on the development of shoreline, watercourse, and access.
 - Establishment of tentative, preliminary, or proposed boundaries and/or river areas.
 - Establishment of protective management requirements for eligible rivers.

Q. What if one is not sure whether a particular river area should be evaluated pursuant to Section 5(d)(1) for possible eligibility determination?

A. It is important to develop and apply standardized criteria through a documented evaluation process that may include a screening for potential WSRs. If there doubt, evaluate the river according to the criteria in the Act, i.e., free-flowing condition and ORVs.

Q. When is a river formally determined eligible or ineligible?

A. Eligibility findings are made as a part of a congressionally authorized study under Section 5(a), or pursuant to agency inventory and planning under Section 5(d)(1). For Section 2(a)(ii) rivers,

the NPS will make an eligibility determination under authority delegated by the Secretary of the Interior following application by the governor(s) for federal designation.

Q. What documentation is needed for eligibility determinations?

- A. Agency land use or resource management plan records should include documentation of the eligibility criteria, inventory process, evaluation and outcome. Agency field offices retain the administrative record and documents related to an assessment of the free-flowing condition and identification of ORVs.

Q. Must federal agencies make evaluations through their land use planning processes of rivers listed on the NRI that flow on or through public lands?

- A. Yes. The NRI lists potentially eligible rivers. Federal agencies should make an eligibility determination for rivers on the NRI.

Q. Should federal agencies also consider the eligibility of other potential rivers not included in the NRI?

- A. Yes. The federal agency should consider a wide variety of internal and external sources from which to identify potentially eligible rivers. These sources may include: American Rivers' "Outstanding Rivers List," statewide river inventories/assessments, published guidebooks, etc. The important point is to develop and apply standardized criteria through a documented evaluation process for potential WSRs.

Classification

Q. What is a river's classification and how are rivers classified?

- A. Once determined eligible, river segments are tentatively classified for study as either wild, scenic, or recreational based on the level of development of the shoreline, watercourse and access at the time of river is found eligible. If designated by Congress, the river's enabling legislation generally specifies the classification.

Q. What is the difference between a "Wild," "Scenic" or "Recreational" river?

- A. Rivers designated under Section 3(a) of the Act, and most designated under Section 2(a)(ii), are classified in one of three categories depending on the extent of development and accessibility

along each section. Designated river segments are classified and administered under one of the following, as defined in Section 2(b) of the Act:

Wild river areas: Those rivers, or sections of rivers, that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

Scenic river areas: Those rivers, or sections of rivers, that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

Note: These segments are usually more developed than wild and less developed than recreational. This classification may or may not include scenery as an ORV.

Recreational river areas: Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shoreline and that may have undergone some impoundment or diversion in the past.

Note: This classification, however, does not imply that recreation is an ORV or that the segment must be managed or developed for recreational activities.

Q. What is the significance of a river’s tentative classification?

- A. River segments may be tentatively classified for protective management purposes prior to a final suitability determination and/or congressional action. This ensures that river values and characteristics are protected (subject to agency policies and standards) until the evaluation process and possible designation is completed.

Q. What is the difference between river areas and river segments?

- A. In agency parlance used for planning purposes, river “areas” include the entire length of a study or designated river and its adjacent lands, an average of 320 acres per river mile (except on certain other rivers as specified by Congress and in Alaska, which is 640 acres for rivers located outside national parks). A river “segment” is a portion of the river area which has been delineated for evaluation and planning purposes. Its subsequent classification is dependent upon the level of development of the shoreline, watercourse and access at the time of designation. Significantly different levels of development within the river area help define appropriate termini for river segments. (Refer to the Interagency Guidelines.)

Q. When is a river formally classified?

A. Congress may classify the river upon the date of designation or authorize classification by the managing agency. In the latter case, managing agencies have one year to finalize the boundary, identify the appropriate classification, and publish a notice in the *Federal Register*. The agency has three years to complete a management plan. For Section 2(a)(ii) rivers, classification would be established when the Secretary of the Interior designates the river.

Q. Can a WSR have more than one classification?

A. Yes. There are three classifications (wild, scenic and recreational) that may be applied to a particular river segment. Distinct segments along the designated reach may contain differing and non-overlapping classifications (wild, scenic, or recreational), e.g., a 100-mile WSR may be classified as wild for 50 miles, scenic for 30 miles, and recreational for 20 miles.

Q. What are the differences and limitations in WSR access opportunities under the three classifications?

A. River access is evaluated in the land use planning process. Specific access needs for public enjoyment, as well as any limitations, are determined in the river management plan. In keeping with the requirements of the Act, “wild” rivers are generally inaccessible, except by trail (no roads); “scenic” rivers are accessible by road, which generally don’t parallel the river; and “recreational” rivers may have parallel or crossing road and railroad access.

Suitability

Q. What does the term suitability mean?

A. Suitability is an assessment of factors to provide the basis for determining whether to recommend a river for addition to the National System. Suitability is designed to answer these questions:

- 1) Should the river’s free-flowing character, water quality, and ORVs be protected, or are one or more other uses important enough to warrant doing otherwise?
- 2) Will the river’s free-flowing character, water quality, and ORVs be protected through designation? Is it the best method for protecting the river corridor? In answering these questions, the benefits and impacts of WSR designation must be evaluated, and alternative protection methods considered.

- 3) Is there a demonstrated commitment to protect the river by any non-federal entities who may be partially responsible for implementing protective management?

Q. What prompts various agencies to conduct WSR studies?

- A. Under Section 5(a), Congress directs that a study be conducted on identified river segments (usually within three years). The designated federal agency conducts a study and subsequently reports its findings through the appropriate Secretary. As a general rule, where joint agency jurisdictions are involved, the cooperating agencies coordinate their efforts prior to making recommendations or submitting reports.

Under Section 5(d)(1), federal agencies are directed to identify and evaluate potential additions to the National System through agency land or resource planning processes.

Q. What is the suitability determination process for Section 5 rivers?

- A. Once rivers have been evaluated and determined eligible for further study, agencies conduct an evaluation to determine if the rivers are “suitable” or “not suitable” for WSR designation within their resource or land management planning processes (Section 5(d)(1)), or usually as a separate study for congressionally authorized studies (Section 5(a)). In each process, the benefits of protecting river values are weighed against other resource values, issues and alternatives.

Either process is typically accompanied by an environmental document, normally an environmental impact statement (EIS), which describes the ORVs and identifies significant issues, public concerns, tentative boundaries and classifications, alternatives and impacts, and appropriate protective management prescriptions and mitigation measures.

Q. When are suitability determinations or analyses conducted?

- A. Upon congressional authorization for a study (Section 5(a)) or by federal agency initiative (Section 5(d)(1)).

Q. What factors are considered in the suitability evaluation and determination process?

- A. As provided in Sections 4(a) and 5(c) of the Act, the following factors should be considered and, as appropriate, documented as a basis for the suitability determination for each river.
 - 1) Characteristics which do or do not make the area a worthy addition to the National System. These characteristics are described in the Act (see factors 2 through 7) and may include additional suitability factors (8 through 13).

- 2) The current status of land ownership and use in the area.
- 3) The reasonably foreseeable potential uses of the land and water that would be enhanced, foreclosed or curtailed if the area were included in the National System.
- 4) The federal agency that will administer the area should it be added to the National System.
- 5) The extent to which the agency proposes that administration of the river, including the costs thereof, be shared by state and local agencies.
- 6) The estimated cost to the United States of acquiring necessary lands and interests in lands and of administering the area should it be added to the National System.
- 7) A determination of the degree to which the state or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the National System.

Additional suitability factors may also be considered by the interdisciplinary team. The following is not all inclusive; other factors may be developed for a particular river study. Possible considerations include:

- 8) An evaluation of the adequacy of local zoning and other land use controls in protecting the river's ORVs by preventing incompatible development. This evaluation may result in a formal finding that the local zoning fulfills Section 6(c)'s requirements, which in turn preempts the federal government's ability to acquire land through eminent domain if the river is designated.
- 9) The state/local government's ability to manage and protect the ORVs on non-federal lands. This factor requires an evaluation of the river protection mechanisms available through the authority of state and local governments. Such mechanisms may include, for example, statewide programs related to population growth management, vegetation management, water quantity or quality, or protection of river-related values such as open space and historic areas.
- 10) Support or opposition to designation. Assessment of this factor will define the political context. The interest in designation or non-designation by federal, state, local and tribal governments and national and local publics should be considered, as well as the state's political delegation.

- 11) The consistency of designation with other agency plans, programs or policies and in meeting regional objectives. Designation may help or impede the “goals” of other tribal, federal, state or local agencies. For example, designation of a river may contribute to state or regional protection objectives for fish and wildlife resources. Similarly, adding a river which includes a limited recreation activity or setting to the National System may help meet statewide recreation goals. Designation might, however, limit irrigation and/or flood control measures in a manner inconsistent with regional socioeconomic goals.
- 12) The contribution to river system or basin integrity. This factor reflects the benefits of a “systems” approach, i.e., expanding the designated portion of a river in the National System or developing a legislative proposal for an entire river system (headwaters to mouth) or watershed. Numerous benefits are likely to result from managing an entire river or watershed, including the ability to design a holistic protection strategy in partnership with other agencies and the public.
- 13) The potential for water resources development. The intent of the Act is to preserve selected rivers from the harmful effects of water resources projects. Designation will limit development of water resources projects as diverse as irrigation and flood control measures, hydropower facilities, dredging, diversion and channelization.

Q. Do joint studies occur?

- A. Agency officials are required to coordinate when their responsibilities relevant to WSRs overlap. Officials should determine the level of study to be conducted, who will lead the study, and, to the extent necessary and feasible, prepare a joint document for submission to Congress or congressional delegations.

Q. Under what circumstances should federal river-administering agencies consult with each other about suitable rivers?

- A. Circumstances where agencies should always seek information and advice from each other are:
 1. In agency inventory and planning processes, and environmental analysis processes for aquatic ecosystems and regional watersheds; and,
 2. When proposed actions have the potential of affecting other agency-administered portions of the river.

Q. What does the potential river-administering agency do when a river has been proposed for designation by Congress and its suitability has not been resolved?

- A. When Congress proposes a bill to designate an eligible river for which a suitability study has not been completed, the potential river-administering agency should endeavor to: 1) describe the resource and social factors typically evaluated in a study, 2) identify potential issues, and 3) assess its ability to manage the recommended component as a WSR. This information provides the basis for the Administration's decision to support or oppose the proposed designation.

Protective Management

Q. Once a river segment has been found eligible and given a tentative (inventoried) classification (wild, scenic and/or recreational), how are its values protected?

- A. Protective management of federal lands in the river area begins at the time the river segment(s) has been found eligible. The free-flowing condition, identified ORVs and classification are protected to the extent authorized under law and subject to valid existing rights. Affording adequate protection requires sound resource management decisions based on National Environmental Policy Act (NEPA) analysis. Protective management should be initiated by the administering agency as soon as eligibility is determined. Specific management prescriptions for eligible river segments provide protection in the following ways:

Free-flowing Condition. The free-flowing condition of eligible river segments cannot be modified by construction or development of stream impoundments, diversions, or other water resources projects.

Outstandingly Remarkable Values. Each segment shall be managed to protect ORVs and, to the extent practicable, such values shall be enhanced.

Classification. Classification should be maintained as inventoried for the protection period specified by Congress for a 5(a) study river, or until a suitability study (decision) is completed that recommends management at a less restrictive classification for a 5(d)(1) study.

Q. What is the responsibility of the federal study agency for a river authorized for study under Section 5(a) of the Act and found eligible, pending a suitability determination?

- A. Once such a river has been found eligible, the federal study agency should, to the extent it is authorized under the Act and subject to valid existing rights, ensure the river and the surrounding area are protected as a potential WSR pending a suitability determination.

Q. What is the responsibility of the federal study agency for a river identified for study under Section 5(d)(1) of the Act and found eligible, pending a suitability determination?

A. Once such a river has been found eligible, the federal study agency should, to the extent it is authorized under various laws and subject to valid existing rights, ensure the river and the surrounding area are protected as a potential WSR pending a suitability determination.

Q. What is the responsibility of the federal study agency for a river authorized for study under Section 5(a) of the Act and found ineligible?

A. Once such a river segment has been found to be ineligible, the agency will describe the basis for this finding in the study report and follow its internal procedures to transmit the report to the Congress in accordance with Section 7(b) of the Act.

Q. What is the responsibility of the federal study agency for a river identified for study under Section 5(d)(1) of the Act and found ineligible?

A. Once such a river segment has been found to be ineligible, the agency will manage the river and its corridor based on the underlying management direction in its programmatic plan and need no longer protect it as a potential WSR.

Q. What protections are afforded a river authorized for study under Section 5(a) of the Act and for how long?

A. A river authorized for study under Section 5(a) of the Act is subject to the conditions and restrictions specified in Sections 7(b), 8(b), 9(b) and 12(a) of the Act.

The river is protected for the duration of the study plus up to three years after the required report is submitted (along with the President's recommendation) to Congress. Should Congress not act within the three-year time frame, the river is no longer afforded protection by the Act. In cases where a study has not been submitted to Congress, the statutory protections remain in effect.

Q. What happens when a river authorized for study under Section 5(a) of the Act is determined not suitable for designation?

A. Regardless of the study agency's eligibility and suitability findings, a Section 5(a) study river is protected by the conditions and restrictions specified in Sections 7(b), 8(b), 9(b) and 12(a) of the Act during the period of the study plus up to three years after the required report is submitted to Congress. In other words, these protections are independent of the recommendation of the study, allowing for Congressional consideration.

Q. What protections are afforded a river identified for study under Section 5(d)(1) of the Act and for how long?

A. A river identified for study under Section 5(d)(1) is protected by each agency's policy; i.e., the Act provides no statutory protections. To the extent of each agency's authority, the river's free-flowing condition, water quality, ORVs and classification are protected. Prior to a suitability study, the inventoried classification is protected. If, as the result of a suitability study, a less restrictive classification is recommended for a river or portion thereof, the agency is obligated to protect this recommended classification.

Q: What happens when a river authorized for study under Section 5(d)(1) of the Act is determined not suitable for designation?

A. A Section 5(d)(1) study river is protected to the extent of each study agency's authority and not by Act. Each agency's policy is to protect eligible rivers and rivers determined suitable for designation for the life of the respective agency land use plan. A river determined not suitable for designation need no longer be protected as a potential addition to the National System once the study, with its related decision document, is completed.

WSR Study Report and the NEPA Process

Q. What triggers a WSR study report?

A. WSR study reports are prepared in three instances:

1. When Congress authorizes a study pursuant to Section 5(a) of the Act.
2. For eligible rivers that have also been determined suitable by a federal land management agency pursuant to Section 5(d)(1) of the Act, when the agency deems it appropriate to forward the recommendation.
3. For state-nominated Section 2(a)(ii) rivers, NPS prepares a report determining whether the candidate river meets the requirements of Section 2(a)(ii). Its contents differ from those of study reports prepared under Section 5 of the Act in that the 2(a)(ii) report only addresses the river's eligibility for designation. The report does not address suitability, beyond the requirement that the river be protected pursuant to an act of the state legislature and be administered by a state or local entity. This report is submitted to the Secretary of the Interior.

Q. What are the contents of a WSR study report?

- A. Section 4(a) of the Act and the Interagency Guidelines describe and discuss content requirements, specific topics to be addressed, and the way in which information should be presented in such a study report. The NEPA process can, and is, readily merged with the requirements of the WSR study report. A WSR study report resulting from a decision in a land management plan usually summarizes and incorporates relevant information from the plan and associated NEPA document. For example, the location and description of study area, eligibility finding, suitability alternatives and other elements may be included.

For a study conducted separately from the land management plan, the required contents (eligibility finding, suitability alternatives, impacts and other elements) is presented in the combined in the study report and NEPA document.

The contents of 2(a)(ii) evaluation prepared by NPS for the Secretary of the Interior differ from those of a study required under Section 4. Such evaluations document whether 2(a)(ii) candidate rivers meet the criteria established in the Act; i.e., whether they are free-flowing or possess one or more ORVs, are already protected pursuant to state law, and will be administered by the state or political subdivision. The evaluation process must comply with the NEPA.

Q. What is the timing for forwarding a WSR study report authorized under Section 5 to Congress?

- A. The study report for a congressionally authorized Section 5(a) study river is required to be forwarded by the study agency within the period specified in Section 5(b). This study report must be forwarded to the Congress no matter what the outcome of the study.

Unlike the firm deadlines established for Section 5(a) study reports, the act is silent in regard to Section 5(d)(1) rivers. Thus the river-administering agencies have considerable latitude in how and when to transmit the study report for rivers they have found suitable and are recommending to Congress for designation. The decision to forward such study reports may be delayed pending: 1) an appropriate aggregation of river recommendations into omnibus legislation; 2) the opportunity to add a single or multiple river bill to other agency federal legislation; or 3) development of a local/national constituency and/or congressional support.

Q. What is the process used by the managing agency to transmit proposed WSR legislation?

- A. For 5(a) studies, the study report, planning document and combined NEPA analysis are submitted to the agency head for review and subsequent transmittal to Congress, which decides the final disposition of the river.

For 5(d)(1) studies, the study report and combined NEPA analysis (if conducted as a separate study), or study report prepared from the underlying land management plan, are submitted through the study agency and its respective department for review. The final study report is transmitted by the appropriate Secretary to Congress, which decides the final disposition of the river.

Rivers nominated under Section 2(a)(ii) of the Act do not require legislation (i.e., action by Congress) to be designated. Final decisions on designation lie solely with the Secretary of the Interior, although special provisions for the review of proposed designations by other federal agencies are included in Section 4(d) of the Act, and the Secretary of the Interior must give any comments or recommendations “due weight.”

The transmittal process for 5(a) and 5(d)(1) studies varies by agency but generally involved the following steps:

1. The field office prepares and forwards to the respective headquarters office sufficient copies of a proposed legislative package consisting of a study report and combined NEPA analysis, including:
 - a. Summary information on the land management planning process (if it is a Section 5(d)(1) study), issues and specific provisions.
 - b. Draft transmittal letters (recommendations for legislation).
 - c. Public comments.
2. Internal departmental review is conducted. Specific requirements are outlined in Sections 4(a), 4(b) and 4(d) for a Section 5(a) study.
3. The legislative package is transmitted to a Departmental Legislative Affairs Office, which in turn forwards the package to the Office of Management and Budget (OMB) for review.
4. Final changes (as necessary) are made by the agency, and the package is returned to the Departmental Legislative Affairs Office for transmittal to the President, both Houses of Congress and respective members of Congress.

EFFECTS OF WSR DESIGNATION

Social and Economic Benefits and Impacts

Q. What are some of the social and economic benefits and impacts associated with WSR designation?

A. Benefits may include, but are not limited to, providing managers tools or mechanisms to protect free-flowing condition, i.e., protection of river values through the assessment of hydroelectric facilities or water resource development projects within the designated reach; protection and enhancement of water quality and ORVs; and, if a river's management plan objective, promotion of economic development, tourism, or recreational use. Based on current limited studies, indications are that property values remain stable or increase on designated rivers. This is often tied to the protection and enhancement of scenery, other aesthetic values and water quality.

Impacts may include, but are not limited to: initial or sustained attraction to the river because of designation, authority for federal agencies to purchase property, and changes in permissible land use through zoning adopted by local governments to protect river values.

Q. What consideration is given to the potential impacts of ecotourism on rural economies?

A. The economic impacts of implementing various alternatives should be addressed through the evaluation process to determine whether a river is a suitable addition to the National System or through the river management planning process, or a designated WSR. Economic issues, such as development and ecotourism, both inside and outside of potentially designated river corridors may be considered.

Q. Will WSR designation lead to restrictions on recreational use of rivers?

A. No, not unless necessary to protect public safety, the river's water quality, or other resource values. Recreational use of our nation's rivers is increasing in both magnitude and extent, i.e., the types of recreational activities pursued and the technologies being used. Whether and how to restrict recreational use is a key issue in the planning process, which includes extensive local, regional and national public involvement.

Activities on Federal Lands Within the WSR Corridor

Q. How is it determined which uses or activities are “grandfathered” on federal lands and which are not?

A. Most current uses and activities on rivers and adjoining federal lands may continue. Of primary consideration in any river or land-use limitation is the protection and enhancement of the free-flowing condition, water quality and ORV(s) that resulted in the river’s designation. Those uses that clearly threaten these values will be addressed in the planning process, or through site-specific environmental analyses on a case-by-case basis where federal lands are involved.

Q. How does each classification (wild, scenic, recreational) of a designated river affect future development on federal lands in the river corridor?

A. WSR designation seeks to protect and enhance a river’s current condition. Generally, the classification of the river reflects the level of development at the time of designation, and future development levels must be compatible with such classification. Any proposed new developments on federal lands must be guided by land use and resource management objectives that are compatible with the river’s classification.

Q. What are the effects of WSR designation on future needs to develop or expand rights-of-way on federal lands in the river corridor?

A. Section 13(g) of the Act allows the granting of easements and rights-of-way within the boundaries of designated components in accordance with applicable laws, provided that the conditions attached to the grant are consistent with the purposes of the Act.

Any portion of a right-of-way project that includes federally assisted construction that may affect the river’s free-flowing condition—and is not automatically prohibited by the Act—is subject to an evaluation by the river-administering agency under Section 7(a). Those projects found to have an adverse effect on the values for which the river was added to the National System are typically prohibited through the authority of the proposing or assisting agency.

Q. What is the effect of designation on the sale or other disposal of federal lands?

A. Section 8(a) of the Act withdraws public (federal) lands within the authorized boundary of a designated component from entry, sale, or other disposition under the public land laws of the United States.

Q. What is Section 4(f) of the Department of Transportation Act of 1966?

- A. Section 4(f) refers to the original section within the United States Department of Transportation (DOT) Act of 1966 (49 U.S.C. Section 303(c); 23 U.S.C. Section 138). The DOT Act was enacted to ensure that transportation plans and programs include measures to maintain or enhance the natural beauty of publicly owned public parks, recreation areas, wildlife/waterfowl refuges and historic sites of local, state, or national significance transversed by highways.

Q. How does Section 4(f) of the DOT Act apply to WSRs?

- A. WSRs may qualify as a Section 4(f) property, but designation of a river under the Act does not invoke Section 4(f) in the absence of significant Section 4(f) attributes and qualities. The Federal Highway Administration (FHWA), in consultation with the river-administering agency, determines on a case-by-case basis whether Section 4(f) applies. For example, Section 4(f) may apply to reaches of designated WSRs that are publicly owned, open to the public and include recreation as a primary purpose, feature, attribute, or value. Possible application of Section 4(f) is based on potential impacts—either by the permanent or temporary incorporation of land into a transportation facility or by proximity effects (e.g., noise, visual, atmospheric, access)—that could substantially impair protected public parks, recreation areas, wildlife/waterfowl refuges, or historic sites.

An agency of the DOT (usually the FHWA) cannot approve a transportation project or program requiring the use of Section 4(f) properties unless the following conditions apply:

- 1) There is no prudent and feasible alternative to using that land, AND
- 2) The program or project includes all possible planning to minimize harm to the Section 4(f) property resulting from the use.

- OR -

- 1) The DOT agency has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features and attributes of the Section 4(f) property, AND
- 2) The finding of the DOT agency has received concurrence from the river-administering agency (officials with jurisdiction).

The DOT, in coordination with the river-administering agency, performs compliance reviews for qualifying properties. While Section 4(f) requires that the river-administering agency's recommendations for minimizing harm are considered during the planning process, the authority to administer and make Section 4(f) approvals ultimately resides with the DOT. The river-administering agency's concurrence on any DOT Section 4(f) compliance documents should

clearly state that its concurrence is contingent upon a favorable final Section 7 determination for the project.

Q. What are the roles of the DOT and the river-administering agency under Section 4(f) of the DOT Act?

- A. The DOT, in coordination with the river-administering agency, performs compliance reviews for qualifying properties. While Section 4(f) requires that the river-administering agency's recommendations for minimizing harm are considered during the planning process, the authority to administer and make Section 4(f) approvals ultimately resides with the DOT. The river-administering agency's concurrence on any DOT Section 4(f) compliance documents should clearly state that its concurrence is contingent upon a favorable final determination for the project under Section 7 of the Act.

Activities on Private Lands Within the WSR Corridor

Q. What are the effects of WSR designation on private landowners within the river corridor?

- A. Under the Act, designation neither gives nor implies government control of private lands within the river corridor. Although many rivers include private lands within the boundaries of the designated river area, management restrictions would apply only to federal lands. The federal government has no power to regulate or zone private lands under the Act; however, administering agencies may highlight the need for amendment to local zoning (where state and local zoning occurs). People living within a river corridor may use their property as they had before designation. (See Land Acquisition Section.)

Q. What if a proposed development on private land is clearly incompatible with WSR designation, classification, or management objectives?

- A. The government typically provides technical assistance to find ways to alleviate or mitigate the actual or potential threat(s). Purchasing a partial right (easement) or the property in fee title is usually the last resort. If an easement is purchased, the owner would sell certain development rights and receive a payment, yet retain title to the land.

Q. Can private lands be acquired by the federal government under the Act on Section 2(a)(ii) river corridors?

A. No. The Act specifically prohibits the federal government from expending funds on Section 2(a)(ii) rivers, except to manage federal lands or to provide technical assistance to local managers.

Q. What restrictions apply to private residences, farm buildings and other buildings? Will landowners lose any use or development rights?

A. No restrictions to private lands may be applied under the Act. CRMPs may establish goals for new construction consistent with classification. There is a wide range of uses compatible with these classifications so long as the overall values and character of the river corridor is maintained. Any effect on private lands would be through state or local zoning. Federal acquisition of lands or development rights would require landowner compensation.

Q. Can the private landowner sell land within the WSR corridor after designation?

A. Yes. The ability of the owner to buy, sell, donate or leave property to heirs is unaffected by the Act. Landowners who sell should inform the new owner of any easement transferred with the title.

Q. Is WSR designation likely to cause changes in property values?

A. WSR designations generally cause property values to remain stable or increase. For example, see *Economic Benefits of Conserved Rivers: An Annotated Bibliography* (Porter, B., Collier, S., Becerra, N., and Schultz, J. 2001. National Park Service – Rivers and Trails Conservation and Assistance Program, Washington, DC. 27pp.).

Q. Will landowners be reimbursed for vandalism to their property associated with trespass?

A. No. Federal agencies do not have the authority to reimburse landowners for damage to their lands as a result of public use. However, WSR designation is unlikely to increase or invite vandalism. Granting access remains the owner's responsibility and vandalism is handled by local law enforcement authorities. Federal river-administering agencies do, however, work closely with landowners to minimize problems through brochures and maps, signs, etc., and many landowners feel they are better off with the agency taking some responsibility.

Q. How will WSR designation impact landowners who have power or communication transmission lines on private lands within the river corridor?

A. Existing powerline or communication transmission rights-of-way may continue to be used and maintained. New proposals would be evaluated for impacts to river values based on state and local zoning.

Q. How will the federal government monitor and evaluate activities on private land?

A. WSR status does not provide federal authority to regulate private lands. The river-administering agency will cooperate with state and local agencies to appropriately monitor and evaluate activities on private land. If such activities (existing or potential) threaten or are incompatible with the values that contributed to the river's designation, then, to the extent necessary, mitigation will be accomplished in cooperation with landowners and federal, state and local agencies.

Q. Will designation affect the existing landowner's ability to control access to the riverbanks?

A. WSR designation does not change land ownership or grant new privileges to the public on private lands. If the riverbanks are in private ownership, the landowner continues to control their use after designation. Ownership of the bed and bank of a river may be affected by whether the river is determined navigable. (Refer to the Existing Authorities Section.)

Q. Can landowners continue to charge for fishing access?

A. Landowners can charge a fee for crossing private lands to fish, except where a public access easement exists. The designation of a WSR does not change landowner rights unless all, or a portion of those use rights, are acquired from the landowner.

Q. What restrictions and procedures apply to construction, improvement, or maintenance of *private* roads within WSR corridors?

A. Maintenance of roads generally would not be affected. In consultation with landowners involved through coordinated management planning, every effort would be made to eliminate or reduce adverse impacts from any proposals for road improvement, realignment and/or new construction. If a proposed new road would have a negative impact on river values, the administering agency will work with the landowner(s) to mitigate the proposal. Should mitigation and/or consultation fail to reduce adverse impacts to an acceptable level, the administering agency could negotiate with the landowner to purchase the specific development rights necessary to remove the threat to the river.

Zoning

Q. Can the federal government regulate or zone private lands under the Act?

- A. No. Under the Act, the federal government has no authority to regulate or zone private lands. Land use controls on private lands are solely a matter of state and local zoning. Although the Act includes provisions encouraging the protection of river values through state and local governmental land use planning, there are no binding provisions on local governments. In the absence of state or local river protection provisions, the federal government may seek to protect values by providing technical assistance, entering into agreements with landowners and/or through purchase of easements, exchanges, or acquisition of private lands.

Q. What is the relationship of WSR designation to local land use planning programs?

- A. Local government entities are encouraged by federal management agencies to provide for the protection of WSR values in their land use plans, including the use of zoning and other land use measures.

State land-use requirements often require each local jurisdiction to address uses and activities within WSR areas in their planning updates. Such local planning may be carried out by comprehensive plan policies, zoning requirements, negotiations with landowners, or through other mechanisms.

Q. What resource protection tools are being used by the federal agencies in lieu of Secretarial zoning guidelines as directed in Section 6(c)?

Section 6(c) of the Act states:

... the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (a) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (b) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

The Act mandates protection of ORVs (including adjacent land-based resource values such as recreational access, scenery, wildlife habitat, historic sites, etc.), but does not set standards for such protection, and, except for Section 6(c), implies that land acquisition is the primary tool for protecting adjacent land-based resources. Land acquisition is, however, slow, expensive, controversial, and not always an appropriate tool for protecting river resources located on private lands.

There is no cookbook solution for protecting river values on private lands within WSR corridors. The amount of protection needed varies depending on the resource and topography. There is a

wide variation in local zoning. Therefore, agency planners use a wide range of resource protection tools including:

- Incentives offered through a variety of federal, state and local programs.
- Technical and limited financial assistance as directed in Section 11(b)(1).
- Focusing on desired outcomes as opposed to strict protection formulas in developing management plan recommendations.
- Distinguishing between protection standards for the immediate riparian zone and the rest of the river's watershed or viewshed.

Access

Q. Will designation result in restricted boating access?

A. Generally, no. Restrictions on public boating access and the implementation of entry permit systems (rationing and/or allocation) are not usually related to designation. Limitations on boating usually relate to the amount of use and/or types of user. Those rivers with use levels or types of use beyond acceptable limits (i.e., resulting in impacts to the values) may necessitate restricted access regardless of designation.

Q. How does easement acquisition affect public access?

A. Easements on private lands acquired for the purposes of protecting wild and scenic rivers do not provide public access unless this right was specifically acquired from the private landowner. A trail or road easement by necessity would involve public use provisions. Any provisions for public use of private lands must be specifically purchased from the landowner.

Q. Will designation increase recreational use and unauthorized uses on private land?

A. Designation may cause an increase in use along the river as new visitors seek it out. However, the WSR management requirements should ensure that any such increase will not damage resources on private property. If anything, there will be increased oversight after designation, discouraging littering, trespass and vandalism. Private landowners may continue to post their property with "No Trespassing" signs or require users to obtain landowner permission.

Q. How will the federal government control unauthorized use (trespass) on private land within the river corridor?

- A. Administering agencies do not have any authority to control public use of private lands. Granting of access remains the owner's responsibility and trespass is handled by local law enforcement authorities. Federal river-administering agencies do, however, work closely with landowners to minimize problems through brochures and maps, signs, etc., and many landowners feel they are better off with the agency taking some responsibility.

Forestry, Agriculture and Livestock Grazing

Q. How does WSR designation affect timber management activities on federal lands inside the corridor?

- A. Timber management activities on federal lands within WSR corridors must be designed to help achieve land-management objectives consistent with the protection and enhancement of the values that caused the river to be added to the National System. Management direction needed to protect and enhance the river's values is developed through the river planning process. WSR designation is not likely to significantly affect timber management activities beyond existing measures to protect riparian zones, wetlands, and other resource values as guided by other federal requirements.

Q. How does WSR designation affect timber management activities on non-federal lands inside the corridor?

- A. Timber management activities on non-federal lands within WSR corridors are guided by state and local authorities. Under the Act, the only way the federal government can restrict private timber management is through purchase of timber rights (in easement or fee title). The river manager may provide technical assistance and/or work with state/local governments to protect river values.

Q. How does WSR designation affect timber management activities on federal lands outside the corridor?

- A. Timber management activities on federal lands outside the corridor are managed to protect and enhance the values that caused the river to be designated. Measures needed to protect and enhance the river's values are developed through the river planning process and include management direction as necessary for lands adjacent to the corridor.

Q. How does WSR designation affect timber management activities on non-federal lands outside the corridor?

A. Timber management activities on non-federal lands outside the corridor are guided by state and local authorities. The river manager may provide technical assistance and/or work with state/local governments to protect river values.

Q. How does WSR designation affect agriculture and livestock grazing practices on non-federal lands inside the corridor?

A. Generally, existing agricultural and grazing practices, and related structures are not affected by designation. The Act does not give federal agencies authority to regulate private land. Consequently, the only effect of designation is to authorize the purchase of easements within the river corridor, and to enable federal agency staff to provide technical assistance to private landowners interested in reducing impacts on the river's water quality and riparian integrity.

Q. How does WSR designation affect livestock grazing practices on federal lands inside the corridor?

A. Generally, existing livestock grazing practices and related structures are not affected by designation. The Interagency Guidelines state that agricultural practices should be similar in nature and intensity to those present in the area at the time of designation, and that grazing may be compatible with all river classifications (wild, scenic or recreational). Grazing and other public uses may occur in a WSR corridor as long as the uses do not adversely impact or otherwise degrade the values for which a river was designated.

Q. Is livestock grazing that occurred on federal lands prior to WSR designation subject to evaluation during a comprehensive river management planning process?

A. Yes. River-administering agencies have an affirmative duty to evaluate pre-existing uses on federal lands to determine whether such uses are protecting the values for which the WSR was designated. Grazing may continue when consistent with protecting river values. If grazing practices are determined to be inconsistent with WSR management objectives, then changes in grazing practices may be required.

Q. If livestock grazing on federal lands is found to degrade a WSR's water quality or ORVs, what steps must the river-administering agency take?

A. The river-administering agency must take the actions necessary to remedy adverse impacts and/or show measurable progress in addressing identified adverse effects. The Act gives river-

administering agencies authority to adjust or eliminate livestock grazing, or any other commercial use, if doing so is necessary to meet the protection and enhancement standard.

Mining and Mineral Leasing

Q. How does WSR designation affect mining operations on federal lands?

- A. Federal lands within the boundaries of designated river areas (one-quarter mile—one-half mile for rivers in Alaska located outside national parks—from the bank on each side of the river) classified as **wild** are withdrawn from appropriation under the mining and mineral leasing laws by Sections 9(a) and 15(2) of the Act. Federal lands within the boundaries of designated river areas classified as **scenic** or **recreational** are not withdrawn under the Act from the mining and mineral leasing laws.

Existing valid claims or leases within the river boundary remain in effect, and activities may be allowed subject to regulations that minimize surface disturbance, water sedimentation, pollution, and visual impairment. Reasonable access to mining claims and mineral leases will be permitted. Mining claims, subject to valid existing rights, can be patented only as to the mineral estate and not the surface estate, subject to proof of discovery prior to the effective date of designation.

For river segments classified as **wild**, no new mining claims or mineral leases can be granted; however, existing valid claims or leases within the river boundary remain in effect, and activities may be allowed subject to regulations that minimize surface disturbance, water sedimentation, pollution and visual impairment.

For river segments classified as **scenic** or **recreational**, filing of new mining claims or mineral leases is allowed but is subject to reasonable access and regulations that minimize surface disturbance, water sedimentation, pollution, and visual impairment.

Q. Are only designated river segments classified as “wild” automatically withdrawn under Section 9(a) of the Act?

- A. Yes. To withdraw a scenic or recreational river segment, the managing agency must submit a separate public land order or notice of realty action.

Q. How does WSR study status affect mining and mineral leasing on federal lands?

- A. Subject to valid existing rights, rivers authorized for study under Section 5(a) of the Act are withdrawn under the mining laws while in study status; this withdrawal covers the bed and bank and federal lands situated within one-quarter mile of the bank on each side of the river. River study areas are not withdrawn from mineral leasing but are subject to conditions determined by the appropriate Secretary necessary to safeguard the area during the study period. However, the bed and bank and federal lands within two miles of the bank of each side of the rivers authorized for study under the Alaska National Interest Land Conservation Act are withdrawn from both the mining laws and mineral leasing. Under Section 9(b) of the Act, the withdrawal impacts expire (unless the river is designated by Congress) three calendar years from the time the study report is received by Congress.

Rivers being studied under Section 5(d)(1) of the Act are not withdrawn from the mining or mineral leasing laws. Protective management requirements for eligible or suitable river areas are subject existing laws and agency guidance until Congress acts.

Recreation

Q. Will the public still have access to federal lands within WSR areas for hunting and fishing?

- A. Yes. Fishing and hunting are regulated under state laws. Where hunting and fishing were allowed prior to designation, they may continue. The river-administering Secretary may, however, designate no hunting zones or periods in which no hunting is allowed for public safety or other reasons. The Secretary must issue such regulation in consultation with the wildlife agency of the state(s).

Q. Will facilities, such as campsites, restrooms, or access ramps, be provided by federal or state agencies?

- A. These facilities will be provided if they are consistent with the management plan for each river and if funds are available.

Q. Will camping be allowed to continue in WSR corridors? Might it also be restricted and, if so, how would such restrictions be enforced?

- A. Camping is often important to the enjoyment of WSRs. As appropriate, and when private interests do not provide sufficient facilities, the federal managing agency attempts to provide them on federal lands. As a condition of use, consistent with river classification and the management objectives for the river area, the managing agency may specify that camping will be permitted only in designated locations. Enforcement of camping restrictions and limitations

can be through indirect means (brochures, maps, signs, etc.) and/or direct means (permits, enforcement personnel, etc.).

Q. Does WSR designation lead to increased river use and the need for a permit system?

- A. There are no known studies comparing river use levels before and after WSR designation with changes in use levels of similar non-WSRs. Factors other than WSR designation (i.e., river and water attributes, access to the river, and availability of facilities and commercial services) are considered to be the major influences on river use levels. For WSRs, as for other rivers managed by federal agencies, the implementation of permit systems or other limits of use are typically undertaken when use exceeds an acceptable level or carrying capacity as determined through an agency's planning process.

Q. Does WSR designation affect the public's right to float a river?

- A. No. The public's right to float a particular river does not change with designation. Neither does designation give river users the right to use, occupy, or cross private property without permission.

Q. Can individuals pan or suction dredge for gold in designated WSRs?

- A. It depends on whether the collecting activity is commercial or noncommercial in nature and subject to river-administering agency regulation. Mining under the 1872 mining law is a commercial and business activity tied to valid existing rights of claims and is regulated as such (36 CFR 228, 43 CFR 3809, 8365, et al).

Non-commercial mineral collecting for recreational purposes (e.g., hobby collecting, rock-hounding, gold panning, sluicing, or dredging) may be authorized by the BLM or the USFS depending on the amounts collected, size and scale of activity, resource values impacted, and river management objectives. This collecting is subject to state, local and other federal regulations.

The NPS and the FWS generally prohibit both commercial and non-commercial locatable mineral collecting (subject to valid existing rights). For refuges in Alaska, the FWS under 50 CFR 36.31(b) allows surface collection by hand of gold (including handheld gold pans) for recreational use only; however, collection involving surface disturbance (e.g., the use of shovels, pick axes, sluicing or dredging) is prohibited.

Use of Motors, Motorized Vehicles, and Overflights

Q. Are motorized vehicles allowed within designated WSR corridors?

- A. Yes. Motorized access allowed prior to designation will, generally, be allowed post designation, subject to congressional intent and river management objectives. However, if motorized use adversely impacts a river's water quality or ORVs, or if the use is not consistent with the river's classification the route may be closed or regulated.

The continued legality of motorized use on land or water is best determined through the river management planning process, which considers factors such as impacts on river values, user demand for such motorized recreation, health and safety to users, and acceptability with desired experiences and other values for which the river was designated.

Q. Are the use of jet skis, hovercraft, and other types of motorcraft allowed on WSRs?

- A. Yes, if they are consistent with management objectives for the river and do not degrade water quality or the ORVs for which the river was designated.

Q. Are there any restrictions on overflights above WSRs?

- A. No. There are no special provisions limiting overflights of components of the National System. Certain designated WSRs are located by coincidence within restricted overflight areas, but were not the cause of the restriction. Altitude restrictions for civil aircraft in the United States under Federal Aviation Administration (FAA) regulations (e.g, 14 CFR 91.119 and 91.515 which apply to U.S. airspace) and altitude guidelines in the *Airman's Information Manual* (Section 4, paragraph 7-4-6) apply to certain chartered areas. The FAA has entered into memorandums of understanding with specific federal agencies in identifying certain parks, monuments, recreation areas, riverways, refuges, wilderness, and other special areas where aircraft noise or safety is a concern. Some river-administering agencies have additional restrictions on aircraft operations, but these are promulgated under authorities other than the Act.

Overlapping or Dual Federal Designations

Q. Can areas already in another federal designation, such as wilderness or national conservation area, be designated as a WSR?

- A. Yes. Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges and designated wilderness. Each designation recognizes distinct values for protection, and management objectives generally designed to not conflict. In some cases, WSR designations extend beyond the boundaries of other administrative or congressional area

designations, thereby providing additional protection to the free-flowing condition and river values of the area. Section 10(b) of the Act addresses potential conflicts between the Wilderness Act and the Wild and Scenic Rivers Act and states, in cases where this occurs, the more restrictive provisions would apply.

Q. Why is it necessary to designate a river area as wild and scenic when it is already protected under another congressionally authorized designation?

A. In many cases, there may be no practical effect. However, laws like the Wilderness Act do allow certain activities in designated wilderness which may be incompatible on a WSR, e.g., water resource developments if authorized by the President. In addition, WSR designation prohibits federal participation in, or assistance to, water resource developments upstream or downstream of a designated river (potentially outside the wilderness area) which may adversely affect the designated river segment. Agencies are required by policy and law to evaluate potential additions to the National System located in wilderness.

Q. What are the differences, if any, between WSRs and wilderness?

A. Differences include, but are not limited to, the following areas:

1. Motorized boats and other motors may be allowed in WSRs classified as wild, whereas the administering Secretary has the discretion to continue the use of motorized boats and airplane landings in wilderness where such uses are traditionally established. In areas that are both a WSR and wilderness, the most restrictive provisions of the two acts apply, subject to any area-specific legislative language.
2. New dams are prohibited in WSRs. The President may authorize water resource and energy projects in wilderness.
3. Road, trail, recreational facilities (e.g., campgrounds) and other infrastructure on federal lands may be allowed in WSR corridors, consistent with classification and protection of river values. Roads and recreational facilities are generally prohibited in wilderness. However, trail, trail bridges and other accommodations to allow recreation use and protect wilderness resources may be allowed.
4. Only the mineral estate (not the land) may be patented in WSR corridors. In wilderness, mineral claims had to be in existence prior to December 31, 1983 to be considered for development and disposal.

References to Water Resources in the Wild and Scenic Rivers Act

Q. What does the Act say about management of water resources?

A. The following summarizes the sections of the Act related to water resources (quality and quantity):

Section 1(b) of the Act establishes that the national policy of dam and other construction be complemented by a policy that would preserve other selected rivers or sections thereof “in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.”

Section 10(a) states: “Each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system . . .” The values of each component are its free-flowing condition, water quality and specifically identified ORVs. On some rivers, a hydrologic value, such as a unique flow regime, or exceptional water quality may be ORVs.

Section 11(b)(1) authorizes the Secretary of the Interior or Agriculture, or the head of any federal agency to provide technical (i.e., non-monetary) assistance and the use of agency funds to states, local government, private organizations, and individuals “to plan, protect and manage river resources.” This section has been used by WSR-administering agencies to enter into cooperative agreements with various entities to protect water resources.

Section 12(c) directs the river-administering agency to cooperate with the EPA and state water quality agencies to address water quality concerns. Cooperation requires active participation by the river-administering agency in evaluating existing water quality, identifying issues (e.g., violation of temperature or turbidity standards), and developing the long-term strategies to address water quality-related issues.

Section 13(c) expressly reserves the quantity of water necessary to achieve the purposes of the Act. This federal reserved water right is generally adjudicated in a state court (e.g., basin-wide adjudication). The designation does not supersede existing, valid water rights and establishes a priority date coincident with the river’s date of designation into the National System.

Section 13(e) clarifies that interstate compacts are unaffected by the Act.

Water Quality

Q. What direction does the Act provide regarding water quality?

- A. Congress declared its intent to protect the water quality of rivers added to the National System in Section 1(b) of the Act. Congress further specified that the river-administering agencies cooperate with the EPA and state water pollution control agencies to eliminate or diminish water pollution (Section 12(c)).

Q. What are the obligations of the river-administering agency with regard to water quality?

- A. The river-administering agency is obligated to identify, monitor and report violations of water quality standards to the appropriate federal or state agency. In addition, the river-administering agency often develops and implements management actions to protect and enhance water quality through partnerships with local and state agencies, and water conservation districts. The Act, however, does not reassign EPA and/or state responsibility for implementation of the Clean Water Act to the river-administering agency.

Q. What are some of the approaches that may be used by a river-administering agency to help protect or enhance water quality?

- A. River-administering agencies use a variety of approaches to protect or enhance water quality including, but not limited to: developing a cooperative water quality plan with the EPA and state agencies; securing cooperative funding to assess or remediate problems; and providing technical assistance to landowners and communities, often through local conservation districts.

Water Quantity

Water law is a complex legal area, and water rights are a highly contentious issue. The following Q&As are not exhaustive. Whenever a water allocation issue arises, a river manager should consult with staff with water rights expertise and, as necessary, seek legal counsel.

Q. What direction does the Act provide regarding water quantity?

- A. Section 13(c) of the Act expressly reserves the quantity of water necessary to protect river values, including water quality and flow-dependent ORVs. This reservation of water is called a federal reserved water right and is generally adjudicated in a state court (e.g., basin-wide adjudication). River designation does not supersede existing, valid water rights.

Refer also to *CRS Report for Congress, The Wild and Scenic Rivers Act and Federal Water Rights*, by Cynthia Brouger (January 9, 2009).

Q. What is the priority date for the federal reserved water right secured to meet the purposes of the Act?

A. The priority date is the date the river was added to the National System.

Q. Does the federal reserved water right affect existing water rights?

A. No. The designation does not supersede existing, valid water rights.

Q. May the federal reserved water right affect future water rights?

A. Yes it may. Once water rights are adjudicated, the federal reserved water right may affect future water development projects, depending upon the impacts of the new proposal on the river's flow-dependent values. Adjudications have been completed or are in process on 15 designated wild and scenic rivers. To date, existing flows have been sufficient to protect current and future demands and to meet the purposes for which the river was designated. River-administering agencies can work with local and state agencies to negotiate solutions that accommodate future water needs and that protect WSR flows and ORVs.

Q. Does the government generally assert its federal reserved water right for WSR purposes through a state forum?

A. Yes, a federal reserved water right is generally adjudicated in state court (e.g., basin-wide adjudication) in the western United States. It is less clear how federal reserved water rights are adjudicated in the eastern United States. Contact a staff expert and/or legal counsel when trying to protect water quantity.

Q. How is the quantity of water necessary to protect WSR values determined?

A. A variety of methodologies are used to determine instream flows necessary to protect flow-dependent ORVs for a specific WSR. Methodologies can range from staff/expert opinions (e.g., flows necessary for boating) to complicated hydraulic models (e.g., Instream Flow Incremental Methodology and Physical Habitat Simulation Models) used to simulate fish habitat requirements.

Q. Does classification (wild, scenic, or recreational) have any affect on a federal reserved water right?

A. No. The United States determines the quantity necessary to protect flow-dependent ORVs.

Q. May alternative protection strategies be used to protect the instream flows for a WSR?

- A. Yes. Water may be secured through a variety of protection strategies, in the interim. Ultimately, the United States should secure a federal reserved water right in state court or the appropriate forum. Interim measures may include, but are not limited to: state instream flow programs, reservoir operation schedules, endangered species flow recommendations, conservation techniques, cooperative agreements, and water right purchases from willing sellers.

Hydroelectric Projects & Federally Assisted Water Resources Projects

Review of hydroelectric and federally water resources projects under Section 7 of the Act is complex. The following Q&As are not exhaustive. Please refer to Wild & Scenic Rivers Act: Section 7 (2004), a technical report of the Interagency Wild and Scenic Rivers Coordinating Council for a detailed discussion of this provision.

Q. Will designation restrict hydroelectric development?

- A. The Act expressly prohibits the FERC from licensing the construction of a hydroelectric project or project works (e.g., facilities such as the powerhouse, access roads, transmission lines) under Part 1 of the Federal Power Act “on or directly affecting” a designated WSR. However, on the few rivers with a FERC-licensed hydroelectric project/project works within the river’s boundaries at the time of designation, existing operations may continue. Relicensing of existing FERC-licensed hydroelectric projects located on, or below, above or on a stream tributary to a designated river’s boundaries, will be evaluated under the “direct and adverse” standard or the “invade or unreasonably diminish” standard, respectively.

Q. What effect does WSR designation have on federally assisted water resources projects?

- A. Section 7 of the Act prohibits any department or agency of the United States from assisting in the construction of any water resources project that would have a “direct and adverse” effect on the values for which the river segment was established, namely its free-flowing condition, water quality and outstandingly remarkable values (ORVs). It also precludes federal assistance to projects below or above a designated river that have been determined to “invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present . . . as of the date of designation.” The “direct and adverse” standard applies to water resources projects within the river corridor, and the “invade or unreasonably diminish” standard applies to water resources projects below, above or on a stream tributary of the designated river. Stronger protection under an “invade or diminish” standard (with the word “unreasonably” omitted) is

provided during a finite study period for: 1) congressional study rivers; and 2) proposed Section 2(a)(ii) rivers that were previously authorized for study under Section 5(a).

Q. What is a “water resources project?”

A. Any federally assisted construction project—by loan, grant, permit, license, or otherwise—which would affect the free-flowing condition of a WSR. This includes any hydroelectric project licensed by the FERC under Part 1 of the Federal Power Act (36 CFR 297).

Q. What types of projects may fall under the purview of Section 7 of the Act?

A. Examples include, but are not limited to, bank stabilization/revetments; bridges (e.g., abutments, piers, approaches); emergency repairs; 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 such as boat ramps and fishing piers; water diversions/wells; and activities that are authorized under Section 404 of the Clean Water Act by the United States Army Corps of Engineers (ACOE).

Q. Does Section 7 of the Act apply to rivers congressionally authorized for study under Section 5(a) of the Act?

A. Yes. Section 7(b) of the Act provides the same protection to study rivers authorized by Congress, except that the qualifying word “unreasonably” does not appear before “diminish” for projects located above, below, or on a stream tributary to the study segment’s boundaries. The intent and effect is to provide greater protection for study rivers from proposed hydroelectric facilities or other federally assisted water resource projects during the time-limited study process. Identical protection from water resource projects also applies to rivers that were previously authorized for study by Congress under Section 5(a) and are later recommended to the Secretary of the Interior for designation under Section 2(a)(ii) of the Act; this protection applies for one year from the date of recommendation.

Q. Are rivers which are determined eligible or suitable for the National System through agency planning processes (under Section 5(d)(1) of the Act) protected from proposed hydroelectric facilities or other federally assisted water resources projects?

A. No. The protection afforded by Section 7(b) of the Act does not apply to Section 5(d)(1) study rivers. However, the managing agency should, within its authorities, protect the values which make the river eligible or suitable (free-flowing condition, water quality and ORVs).

Q. What is required of river-administering agencies under Section 7 of the Act for proposed water resources projects?

- A. River-administering agencies must evaluate proposed water resources projects under the appropriate standard of Section 7. The evaluative standard for projects located within a WSR corridor, Section 5(a) study area, or qualifying Section 2(a)(ii) application area is whether the project would have a “direct and adverse effect.” The evaluative standard for projects located downstream, upstream, or on a tributary to a WSR corridor or Section 5(a) study area is whether the project would “invade the area or unreasonably diminish” for designated WSRs, and “invade the area or diminish” for Section 5(a) study rivers. The result of that evaluation is provided to the federal proponent or federal agency providing assistance. A Section 7 determination is typically conducted parallel to another federal agency’s permitting or environmental analysis process; it is not conducted as an independent NEPA analysis.

Habitat Restoration and Enhancement

Q. May aquatic and upland fish and wildlife habitat restoration and enhancement projects be constructed in WSRs, including the placement of in-channel structures?

- A. Yes. Such projects may be constructed to protect and enhance fish and wildlife. In-channel structures (e.g., placement of large wood to replicate natural stream conditions) and in-channel activities (e.g., dredging to protect listed species) are acceptable, provided they do not have a direct and adverse effect on the values of the river (its free-flowing condition, water quality and ORVs). Similarly, in-channel habitat projects may also be constructed below/above a designated river so long as they do not unreasonably diminish the scenic, recreational, and fish and wildlife values of the WSR.

When fish and wildlife species and/or habitat are an ORV, restoration and enhancement projects may be an important component in a protection strategy. The potential effect of such project proposals on other ORVs, such as recreation and boating, should be carefully considered in project design.

Upland (above the river’s ordinary high water mark) habitat restoration and enhancement projects may be constructed on federal or private lands. On federal lands such activities (e.g., a wildlife guzzler) must be judged to protect or enhance river values. Such proposals on private land may be subject to local zoning.

Q. What types of in-channel habitat restoration and enhancement projects may be permitted?

- A. A range of projects are allowable to restore natural channel processes and habitat, including placement of limited rock and wood, native plantings to stabilize streambanks, and the removal

or addition of fish barriers. Such projects are most likely to protect river values, including a river's free-flowing condition, provided they:

1. Mimic the effects of naturally occurring events such as trees falling in and across the river (including the formation of wood jams), boulders tumbling in or moving down the river course, exposure of bedrock outcrops, bank sloughing or undercutting, bar formation (including island building), and the opening or closing of secondary channels (including oxbow development).
2. Do not impede natural channel processes, such as bank erosion, bar formation/island building, bed aggradation/degradation, channel migration, or the transport of sediment, wood and ice.
3. Consider the project's effects on other ORVs, such as recreation and boating, and avoid creating unreasonable hazards or substantially interfere with existing recreation use.
4. Protect water quality during the construction period. Temporary increases in turbidity are allowable during construction provided that the increase does not permanently impair water quality or have an adverse effect on values (e.g., fish or mussels).

Q. What types of in-channel habitat restoration and enhancement projects are most harmonious with the river environment?

A. Projects with the following attributes are generally considered most harmonious with river ecosystems:

1. Those made of native materials, e.g., wood, rock, vegetation, and so forth that are similar in type, composition or species to those in the vicinity of the project.
2. Those using construction materials that are natural in appearance, e.g., logs with bark intact as opposed to being peeled and whole naturally weathered rocks as opposed to split or fractured (i.e., riprap).
3. Those with materials placed in locations, positions, and quantities mimicking natural conditions, form and processes.
4. Those avoiding the use of anchoring materials, such as cables and rebar, to the greatest extent practicable. If this is not possible, the materials should be installed in such a manner so as to be concealed or visually acceptable.

5. Those where the resulting channel width, depth, slope, and substrate matches that of upstream and downstream reaches or that of a nearby comparable and undisturbed river system.

Q. Does the Act allow for the introduction of aquatic or upland non-indigenous species?

- A. The Act does not specifically mention aquatic or upland non-indigenous species. While non-indigenous species may be introduced—provided that doing so is not contrary to another law or the policy of the managing agency, and would not result in the degradation to the river’s values—the use of native species is generally preferred. Indirect impacts of introducing non-indigenous species, e.g., increasing recreational fishing, should also be considered. Additional guidance for a specific river is usually included in its management plan.

Q. Must aquatic and upland non-indigenous species present in the river area be removed once the river is designated?

- A. No. Non-indigenous species need not be removed unless they are degrading other important resource values. Practical considerations, such as the effort or expense of eradicating a non-indigenous species and its importance (e.g. game species), should also be considered. This issue is generally addressed in the management plan.

Q. Are there limitations or treatment methods for aquatic and upland non-indigenous species?

- A. No. However, all treatments must protect river values. Treatment methods that also include in-channel activity (e.g. dredging) are subject to review under Section 7(a) as water resources project.

Q. Will existing riparian protection programs be improved, or new ones created, to protect rivers from increased public use?

- A. A primary objective of WSR designation is to protect and enhance riparian area function and other river-related natural values. Specific actions to meet the objective are typically set forth in the management plan required for each river.

BOUNDARY IDENTIFICATION & DETERMINATION

Q. How are river corridor boundaries determined?

- A. Corridors may not exceed an average of 320 acres per river mile over the designated portion of the river (except on certain other rivers as specified by Congress and in Alaska, which is 640 acres for rivers located outside national parks). Agencies delineate boundaries based on natural or manmade features (canyon rims, roads and ridge tops, etc.) and legally identifiable property lines.

Q. When will corridor boundaries be established?

- A. The Act requires that detailed boundaries portrayed on maps be established and submitted to Congress within one year of designation. Agencies may finalize boundaries through their respective land management planning process.

Pending the establishment of detailed river boundaries, the Act specifies that the interim boundary is one-quarter mile on each side of the river as measured from the ordinary high water mark.

Section 3(b) of the Act states:

The agency charged with the administration of each component of the national wild and scenic rivers system . . . shall, within one year from the date of designation of such component . . . (except where a different date is provided . . .), establish detailed boundaries (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in Section 2(b) best fit the river or its various segments. 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 3(c) of the Act requires maps of all boundaries and descriptions of the classifications of designated river segments, as well as any subsequent amended boundaries, be available for public inspection in the offices of the administering agency in the District of Columbia and in locations convenient to the designated river.

Q. How are river corridors established and what is the maximum corridor allowed?

- A. Corridor boundaries are established to protect the free-flowing condition, water quality, and ORVs for which the river was designated. Generally, the corridor width for designated rivers cannot exceed an average of 320 acres per mile which, if applied uniformly along the entire designated segment, is one-quarter of a mile (1,320 feet) on each side of the river. Boundaries may be wider or narrower, but are not to exceed the 320 acre average per mile per Section 3(b) of the Act without approval by Congress. The acreage of any islands located above the ordinary high water mark within the designated corridor count against the acreage limitation; lands below the ordinary high water mark do not count against the acreage limitation. In Alaska, the allowable boundary is 640 acres per mile for rivers located outside of national parks.

Corridor boundaries for federally designated and administered WSRs may vary based on a number of conditions, but are usually delineated by legally identifiable lines (survey or property lines) or some form of on-the-ground physical feature (i.e., topography, natural or manmade features such as canyon rims, roads, etc.), which provide the basis for protecting the river's identified values and practicality in managing those values.

In certain site-specific cases, including where acquisition of lands may be involved, a survey may be needed to monument the boundary of the designated WSR corridor.

Q. How are boundaries determined on stream channels that are braided?

- A. Boundaries are measured from the ordinary high water mark of the outermost stream channel. That is, boundaries will be measured from the outermost braid unless otherwise specified by Congress. This is typically considered during the suitability determination and in the development of the final river corridor boundary.

Q. Can tributary streams be included in a river designation?

- A. Sometimes tributaries are specifically included by language in the enabling legislation. In other cases, portions of tributaries may be included when boundaries are drawn, subject to the limitation that boundaries may not average more than 320 acres per mile of river identified in the legislation (except on certain other rivers as specified by Congress and in Alaska, which is 640 acres for rivers located outside national parks).

Q. May boundaries be drawn to accommodate specific features?

- A. Most rivers have flexible boundaries to accommodate specific features and river values. (Refer to *Establishment of Wild and Scenic River Boundaries* (1998).)

Q. Is congressional approval required to exceed the 320 or 640 acre average?

A. Yes, per Sections 3(b) and 15(1) for rivers designated by Congress under Section 3(a), but not for rivers designated by the Secretary of the Interior under Section 2(a)(ii). For 2(a)(ii) rivers, states and/or local government set the boundaries, if any, for rivers in their systems; these rivers are not subject to Section 3(b) or the 320/640-acre limitation.

Q. Where are some examples of rivers whose boundary corridors have exceeded the 320 acre average?

A. Rivers in Alaska outside of national parks and Elkhorn Creek in Oregon (640 acres per river mile) exceed the 320 acre average.

Q. May the lateral boundary (the legally established river corridor) of a WSR be amended?

A. Yes. The Act anticipates the need for occasional adjustment of the lateral (river corridor) boundary, directing that such amendment follow the same process as described for the initial boundary development in Sections 3(b) and (c) of the Act. The legally established river corridor might require amendment to better reflect protection of ORVs or as the result of identification of a new ORV.

Q. What is the process to amend the lateral boundary of a WSR?

A. Amending the lateral boundary of a designated river requires analysis and decision under the NEPA. The environmental analysis process need not be complicated and may only require the proposed action and a no-action alternative. Amendment of a WSR boundary may also be timed with revision of the CRMP and related decision under the NEPA. In either case, notice of the amended boundary should be published in the *Federal Register* and the legal description and maps forwarded to Congress and made available for public inspection in conformance with the Act. The 90-day review requirement in Section 3(b) provides a chance for the public and/or members of Congress to express concern, if any, about the boundary proposal.

Q. May the terminus (beginning or end point) of a WSR be clarified?

A. Yes. While Congress specifies the termini of a designated river, in some instances congressional language may require interpretation. For example, a terminus described as “from the dam” could be interpreted as including the dam and dam-related facilities. However, to allow for continued dam maintenance, it may be appropriate to establish the boundary a very short distance below the dam or, through specific language, to exclude appurtenant facilities.

The river administrator is well advised to consider on-the-ground practicalities at the initial boundary setting stage, to the extent congressional language allows for it. Qualifying the terminus to fit on-the-ground circumstances does not require amendment of the Act (i.e., it would not change the description of a river’s terminus in Section 3(a) of the Act). Clarifying a terminus must be carefully considered so as not to change the intent of Congress. Such consideration should include review of the legislative history, including any maps developed in the study process or as a part of the legislation, and full disclosure through a public process prior to clarifying a terminus.

Q. What is the process to clarify the terminus of a WSR?

- A. The need to clarify the terminus should be identified as a management concern/public issue during the planning process and considered in establishment of the initial boundary. The proposed clarification associated with establishment of initial boundaries must be undertaken with full public input and disclosure and is often completed during development of the CRMP.

In rare instances where the agency did not define the terminus to fit on-the-ground practicalities (e.g., a terminus described in legislation as “from the dam” included a dam and dam-related facilities), there may be a need to amend the boundary after it was submitted to Congress. This situation may be addressed during revision of the CRMP, or if there is a need to clarify the terminus outside of the CRMP planning process, the agency must comply with its NEPA procedures. Any boundary amendment must follow the procedures outlined in the Act—specifically, its availability be noticed in the *Federal Register* and forwarded to Congress for the requisite 90-day review period.

Q. May the segment division (description between differently classified segments) of a WSR be clarified when such description is included in Section 3(a)?

- A. Yes. While Congress specifies the segment divisions of a designated river, in some instances congressional language may require interpretation.¹ For example, a segment division between a wild and scenic classification described as “from the bridge” may inappropriately include the bridge in the wild river segment. Consistent with a wild classification, the boundary may be established a very short distance below the bridge to exclude its inclusion in a wild river segment.

¹ For certain rivers, Congress directed the river-administering agency in Section 3(b) to determine which classes “best fit the river or its various segments.” These administratively segmented rivers should reflect on-the-ground practicalities and, therefore, are unlikely to require subsequent amendment.

The river administrator is well advised to consider on-the-ground practicalities at the initial boundary setting stage, to the extent congressional language allows for it. Qualifying the segment divisions to fit on-the-ground circumstances does not require amendment of the Act (i.e., it would not change the description of a river's segment divisions in Section 3(a) of the Act). Clarifying a segment division must be carefully considered so as not to change the intent of Congress. Such consideration should include review of the legislative history, including any maps developed in the study process or as a part of the legislation, and full disclosure through a public process prior to clarifying a segment division.

Clarification of a segment division should **not** be used to change classification of a segment(s).

Q. What is the process to clarify a segment division of a WSR?

The need to clarify a segment division should be identified as a management concern/public issue during the planning process and considered in establishment of the initial boundary. The proposed clarification associated with establishment of initial boundaries must be undertaken with full public input and disclosure and is often completed during development of the CRMP.

In rare instances where the agency did not define the segment division to fit on-the-ground practicalities (e.g., a terminus described in legislation as “from the bridge” included the bridge in a wild river corridor), there may be a need to amend the boundary after it was submitted to Congress. This situation may be addressed during revision of the CRMP, or if there is a need to clarify the segment division outside of the CRMP planning process, the agency must comply with its NEPA procedures. Any boundary amendment must follow the procedures outlined in the Act—specifically, its availability be noticed in the *Federal Register* and forwarded to Congress for the requisite 90-day review period.

Q. May the segment division (description between differently classified segments) of a WSR be amended when such description is included in Section 3(a)?²

- A. Yes. In a **very few** cases, the legislation designating a river erroneously describes a segment division and needs to be amended to fit on-the-ground circumstances. For example, the designating language for the Upper Rogue WSR unintentionally included a road and bridge crossing in a wild river corridor. In actuality, the classification division should have been above the bridge, affecting the length of the wild section by two-tenths of a mile. This situation requires the river administrator, through its respective department, to recommend an amendment

² For some rivers, Congress has directed the river-administering agency in Section 3(b) to determine which classes “best fit the river or its various segments.” These administratively segmented rivers should reflect on-the-ground circumstances and, therefore, are unlikely to require subsequent amendment.

of the Act (i.e., to recommend changing the description of a river's segment division in Section 3(a) of the Act).

A proposal to amend a segment division must be carefully considered so as not to change the intent of Congress. Such consideration should include review of the legislative history, including any maps developed in the study process or as a part of the legislation, and full disclosure through a public process prior to recommending the amendment to Congress.

Q. What is the process to amend a segment division of a WSR?

- A. The need to amend a segment division should be identified as a management concern/public issue during the planning process and considered in establishment of the initial boundary. The proposed amendment associated with establishment of initial boundaries must be undertaken with full public input and disclosure and is often completed during development of the CRMP as a basis to make a recommendation to Congress to amend the Act.

The river-administering agency can only recommend such a change to Congress. A subsequent amendment to the Act would be drafted by the agency after notice of the initial boundary or amended boundary is published in the *Federal Register* and the 90-day congressional review period has concluded.

Q. Is a map available showing river segments and their legal descriptions?

- A. Yes. Legal descriptions along with a map are submitted to Congress in accordance with Sections 3(b) and (c) of the Act and are retained by the administering agency. Requests for maps should be made to the agency field offices which administer the specific study or designated river(s).

LAND ACQUISITION

Acquisitions

Q. Why does the Act contain a land acquisition provision?

- A. Land acquisition is one tool for protecting and enhancing river values. It may also be an important means of providing public access to a WSR. Notwithstanding Section 6 of the Act, however, Congress has pre-empted some or all of the Act's federal land acquisition authorities in the enabling acts for certain WSRs where the river study demonstrated that protective zoning or other conservation practices provided adequate safeguards for river values.

Q. How much land can be purchased for a WSR?

- A. Section 6(a)(1) of the Act states:

The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in Section 3 of this act . . . but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the rivers.

The Act authorizes fee title acquisition to the equivalent of about a 400 foot wide strip of land along both sides of a WSR. In practice, however, the acreage allowance can be applied anywhere within the river's boundaries. Nothing in the Act precludes the acquisition of lands using other federal authorities or laws, e.g., the authority of the NPS to acquire land within the boundary of a national park or that of the USFS to acquire land within the boundaries of a national forest, if the river is located within these boundaries.

If 50 percent or more of the river corridor acreage is in public ownership (federal, state, local), this acquisition can only be on a willing seller-willing buyer basis. (See Condemnation Section.)

Q. Does the 100 acre per mile limitation apply to all WSR fee title acquisition methods, including exchanges and donations?

- A. Yes. There is no acreage limitation for less than fee title (e.g., easements), however.

Q. Does the 100 acre per mile limitation apply to the purchase of easements?

- A. No. The Act does not limit the amount of land that may be acquired through purchase of easements, i.e., acquisition of partial rights, such as development rights.

Easements

Q. What is a scenic easement and what is its purpose?

A. Section 16(c) of the Act defines a scenic easement as follows:

“Scenic easement” means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic river system, for the purpose of protecting the natural qualities of a designated wild, scenic, or recreational river area, but such control shall not affect, without the owner’s consent, any regular use exercised prior to the acquisition of the easement.

While the Act uses the term “scenic easement,” this definition makes it clear that such less-than-fee acquisition can be used to help protect other WSR values, including other ORVs, water quality and riparian areas.

Q. Does a scenic easement give the public any right to access, enter on, or use such lands?

A. Generally, no. Any provisions for public use of private lands must be specifically included in the terms of the easement. Depending upon the terms and conditions of each easement, public access rights may or may not be involved. For example, a scenic easement may only involve the protection of narrowly defined visual qualities with no provisions for public use. A trail or road easement by necessity may involve public use provisions.

Condemnation

Q. If the purchase of land becomes necessary within a designated WSR corridor, why would condemnation be used?

A. Should the purchase of land become necessary, condemnation is typically a last resort and only used when:

1. Land is clearly needed to protect resource values, or provide necessary access for public recreational use, and a purchase price cannot be agreed upon.
2. Clear title to a property is needed, in which case condemnation is merely a legal procedure that has nothing to do with government/landowner differences.

Q. Can the government acquire or “take” private land within the river corridor?

A. Yes, but with many restrictions. It is important to note that condemnation is a tool that has been used only rarely on WSRs. The objective of WSR designation is to protect and, as possible, enhance the values which caused the river to be designated. Should some proposed or actual use clearly threaten the values the river was designated to protect, the river managing agency would work with a landowner to explore ways to avert the threat through local zoning, state provisions, land exchanges, or purchases on a willing-seller/willing-buyer basis. Condemnation would be a last resort, would only be feasible if funding were available, and is prohibited on some WSRs by their enabling legislation.

Q. Are there limitations on the federal government’s ability to acquire lands through condemnation under the Act?

A. Yes. Section 6(b) of the Act specifically prohibits the use of condemnation for fee title purchase of private lands if 50 percent or more of the acreage within the boundaries on both sides of the designated river is in public ownership (i.e., owned by the federal, state, or local government). In addition, Section 6(a)(1) of the Act prohibits acquiring more than 100 acres per river mile within the corridor, which equates to a strip of land about 400-feet wide along both sides of the river. Fee title condemnation is allowed to clear title or to acquire conservation, scenic, or other types of easements reasonably necessary for public access.

Section 6(c) of the Act specifically prohibits condemnation for fee title acquisition of lands located within any incorporated city, village, or borough if suitable local zoning ordinances are in place and applicable. Although this section authorizes the appropriate Secretary to issue zoning guidelines, this has not been done due to the many other tools and incentives available, great differences among river settings, and variable local government conditions.

Q. Why has condemnation been so rarely used by the federal government on WSRs?

A. There are more appropriate and cost-effective ways to ensure resource conservation along WSRs than using the Act’s condemnation authority. (Refer to *Protecting Resource Values on Non-federal Lands* (1996).)

Agencies may acquire properties using appropriated funds under the Land and Water Conservation Fund Act or other authorities. Owners are contacted in order to see if an exchange or voluntary purchase can be negotiated.

Q. Can state lands within WSR corridors be condemned by the federal government?

A. No. Lands owned by a state may be acquired only by donation or exchange per Section 6(a)(1) of the Act.

Q. Can the federal government force landowners to move from their land because of WSR designation?

A. No. The river study, enabling legislation, and subsequent management planning process will consider how best to protect river values while recognizing private property rights.

Q. What is the federal government's policy and past record on using condemnation authority involving WSRs?

A. The federal government has rarely exercised its eminent domain powers with respect to WSRs. Of the 203 rivers in the National System as of May 2011, condemnation for fee title has been used on only four rivers. Nearly all of the federal government's use of condemnation occurred in the early years of the Act's implementation when the attitudinal climate was one of federal acquisition. Similarly, the use of scenic easement condemnation has also been used very rarely, and then only on seven rivers, all designated prior to 1976. (Refer to *Wild and Scenic Rivers and the Use of Eminent Domain* (1998).)

RIVER MANAGEMENT PLANNING

Q. What is the planning requirement for a river designated by Congress (under Section 3(a) of the Act)?

A. Prior to 1986, Section 3(b) of the Act required the river-administering agency to “prepare a plan for necessary developments in connection with its administration in accordance with such classification.” Through a generic amendment of the Act in 1986, Section 3 was amended with a new subsection requiring a “comprehensive management plan . . . to provide for protection of the river values” (Section 3(d)(1)). The CRMP must address:

1. Resource protection;
2. Development of lands and facilities;
3. User capacities; and
4. Other management practices necessary or desirable to achieve the purposes of the Act.

Please refer to the Council’s *Wild and Scenic River Management Responsibilities* (2002) technical report for a detailed description of the contents and key elements of a CRMP.

Q. What is the time period for developing a CRMP for a river designated by Congress?

A. The CRMP for rivers designated on or after January 1, 1986, is to be completed within three full-fiscal years after the date of designation or as otherwise specified, with a notice of completion and availability published in the *Federal Register*. For rivers designated before this date, Section 3(d)(2) requires review of the CRMP to determine if it conforms to Section 3(d)(1). This provision allowed ten years to update pre-1986 plans through the planning processes of river-administering agencies. Note: This 10-year period expired January 1, 1996.

Q. Is a CRMP developed in compliance with the NEPA for a river designated by Congress?

A. Yes, a CRMP is developed in compliance with the NEPA. The purpose and need for the proposed action is to protect and enhance the values for which the river was designated (free-flowing condition, water quality, and ORVs), within its classification(s). The proposed action establishes appropriate goals, objectives, and/or desired conditions to meet those purposes. Alternative courses of actions are developed and analyzed relative to achieving overall goals and desired conditions within the WSR corridor. A “no action” alternative, representing the existing situation, is described as the basis for comparison of the action alternatives. Management

direction and actions typically vary by alternative. The resultant CRMP describes the management direction (goals, objectives, desired conditions, allowable uses, and standards under which the activities can be conducted), and probable actions of the selected alternative at a programmatic level. Identified management actions generally require a site-specific NEPA analysis prior to implementation.

Q. For WSRs flowing through federal lands, how does the CRMP relate to the WSR administering agency's unit-wide management plan (e.g., BLM Resource Management Plan, NPS General Management Plan, FWS Comprehensive Conservation Plan, USFS Land and Resource Management Plan)?

A. The requirements specified for a CRMP in Section 3(d)(1) are most often developed through a separate-in-time planning process. This can result in either an amendment to the direction in the agency's unit-wide plan or a stand-alone plan, depending on agency practices. For designated rivers that are separate NPS units, the CRMP is the General Management Plan (e.g., St. Croix National Scenic Riverway).

Q. Is there a requirement for periodic updates to a CRMP for a river designated by Congress?

A. No, there is no statutory requirement that a CRMP be revisited in a specified timeframe. However, the federal WSR-administrator should periodically review monitoring information to determine if there is a need for change in existing direction to ensure values are protected and enhanced. Agency unit-wide plans that are revised following a CRMP-specific plan amendment will follow individual agency practices for plan revision. In some cases, this may include updating the CRMP during the agency unit-plan revision cycle.

Q. How are the values of rivers designated by Congress protected prior to completion of the CRMP?

A. Prior to completion of the CRMP, proposed projects and new decisions (e.g., issuance of a special-use permit) on federal lands are evaluated by the WSR-administering agency to ensure they protect and, to the extent possible, enhance river values (free-flowing condition, water quality and ORVs). The necessary evaluation framework is a detailed description of the existing conditions of these values at the time of designation. Absent this information it may not be possible to evaluate the effects of an activity relative to the non-degradation and enhancement policy of Section 10(a) of the Act.

This resource description is not a decision; rather, it is the first step in developing the CRMP. Previous eligibility findings and other pre-designation studies may partially or completely provide adequate detail.

Prior to completion of the CRMP, federally assisted water resources projects are evaluated based on the detailed description of the existing conditions of river values (free-flowing condition, water quality and ORVs). Refer to *Wild and Scenic Rivers Act: Section 7* (2004), a technical report of the Council for additional definition, standards and evaluation procedures.

Q. How are landowners, river users, tribal nations, and all levels of government involved in development of a CRMP for a river designated by Congress?

A. The communities of interest are key players in the development of a CRMP. They help with data collection and establishing baseline conditions, identifying issues and opportunities to be addressed in the planning process and, increasingly, in monitoring and implementation of aspects of the CRMP. Sections 10(e) and 11(b)(1) of the Act anticipate the participation of federal, state or local governments, landowners, private organizations and/or individuals in planning, protecting and administering WSRs.

Q. How is a CRMP developed for a river designated by Congress with adjoining segments administered by two or more federal managers?

A. Ideally one coordinated CRMP is developed with each WSR-administering agency documenting its respective decisions. In a few cases, separate plans may be required. However, even in this case, the planning process is conducted jointly to the greatest extent possible to ensure consistency of ORVs, classification, standards, and monitoring.

Q. Is a CRMP ever developed during the study?

A. Yes. In some river study authorizations Congress has required the study agency to work with state and local governments and the public to develop a CRMP in concert with the study process to assist in determination of the river's suitability. Such pre-designation CRMPs have, in some cases, been adopted in the legislation adding the river to the National System. In cases where Congress has not authorized a pre-designation CRMP, agencies have taken the initiative to develop elements of the CRMP in the study report (pre-designation).

Q. What is the planning requirement for a river designated by Secretary of the Interior (under Section 2(a)(ii) of the Act)?

A. The requirement for a CRMP, does not apply to state-administered, federally designated rivers. Federal land managers are responsible for protecting river values in all agency planning and management actions for any portion of a 2(a)(ii) river that flows on federal lands. In some cases, the petitioning state has a requirement for a plan. The existence of a state or local plan to protect river values is one of the factors considered by the NPS in its review of the 2(a)(ii) nomination for the Secretary.

MANAGEMENT OF LAND AND WATER

Existing Authorities

Q. Does a river’s WSR status affect its navigability for title purposes?

A. No. Navigability determinations are based on factors other than WSR designation. Because of this, designation does not affect ownership of the submerged lands [or minerals lying] under the river.

Q. Do states own the bed and banks of WSRs that have been determined navigable?

A. Yes. The “**equal footing**” principle of the Constitution and the Submerged Lands Act of 1953 afford each state the ownership of lands and natural resources under navigable rivers. These submerged lands generally extend from bank-to-bank or to the mean or ordinary high water mark.

Q. Do states have any special responsibilities or constraints on their management of beds and banks of navigable rivers?

A. Yes. Regardless of whether a river is designated as a WSR, states have special responsibilities and management constraints with respect to state-owned lands underlying navigable waters. These special responsibilities arise from the **Public Trust Doctrine**, which requires states to exercise regulatory authority over navigable riverbeds to ensure that the paramount right of public use of the rivers and riverbeds for navigation, commerce, recreation and related purposes is not substantially impaired. As a matter of common law, the states hold lands underlying navigable waters in trust for the benefit of the public. State responsibility may be delegated by the state to local governments.

Q. Can the federal government seek to control use on adjacent state lands if that use affects WSR values, or regulate the use and/or activities occurring on the surface waters of WSRs?

A. Yes, the federal government may seek to control use on adjacent lands under very limited circumstances. The Constitution gives the federal government certain limited powers to control uses on state-owned lands that affect adjacent federal property. These powers may be exercised through the **Property Clause**, which provides that, “Congress shall have the power to make all needful rules and regulations respecting the territory or the property belonging to the United States.”

The federal government may also regulate use and/or activities occurring on the surface waters of WSRs, conditioned by the purposes of the Act and statutory limitations.

Such authority has been upheld through numerous federal court cases regulating activities occurring on or off federal lands as necessary to protect federal land or related waters. While laws and regulations encourage cooperation in the planning, protection and management of rivers, exercise of federal statutes may be used in those situations where necessary to protect lands and related waters. Exercise of federal authority requires a demonstrated connection between regulated conduct and designated purpose.

Key cases include:

U.S. v. Arbo, 691 F. 2d 865 (9th Cir. 1982)

U.S. v. Hells Canyon Guide Service, Inc., 660 F. 2d 735, 737 (9th Cir. 1981)

Minnesota v. Block, 660 F.2d 1240, 1249 (8th Cir. 1981)

U.S. v. Lindsey, 595 F.2d 5, 6 (9th Cir. 1979)

U.S. v. Brown, 552 F.2d 817 (8th Cir. 1977)

Kleppe v. New Mexico, 426 US. 529 (1976)

Q. Have other federal agencies been delegated authority to regulate activities on WSRs?

- A. Yes. There are four other principal agencies with authority on rivers, including WSRs, in the United States: the EPA has authority to protect water quality; the Army Corps of Engineers (ACOE) has jurisdiction for water resources projects; the U.S. Coast Guard (USCG) has jurisdiction on inland navigable waters, vessel inspecting and licensing, safety and boating enforcement, aids to navigation, and permitting of bridges; and the FERC has authority to license the construction of hydroelectric projects.

Responsibilities

WSR-Administering Agency

Q. Who is responsible to administer a river included in the National System?

- A. Rivers included in the National System by act of Congress (under Section 3(a) of the Act) are administered by one of four federal agencies: BLM, NPS, USFS, and/or FWS as specified in the legislation. Rivers included in the National System at the request of a governor and designated by the Secretary of the Interior (under Section 2(a)(ii) of the Act) are administered by the respective state(s).

Rivers that flow entirely or largely through non-federal lands require an enduring partnership with state and local government to protect values. This collaborative approach is well-evidenced on several “Partnership” rivers administered by the NPS. On these rivers, NPS staff help communities manage their river-related resources locally by bringing together state, county, and community representatives to preserve the ORVs for which the rivers were designated. This is community-based conservation provides the framework to ensure these rivers will be protected into the future.

Q. What are the responsibilities of the federal WSR-administering agency (for rivers designated by Congress)?

- A. The federal WSR-administering agency is responsible for implementing the Act’s requirements, including the development of a comprehensive management plan for each river within three full fiscal years from the date of designation. It is also responsible to protect and enhance a river’s values, through its authorities on federal lands and through voluntary, cooperative strategies developed with other governments, tribal nations and landowners on non-federal lands, and to evaluate water resources projects under Section 7(a).

Q. What is meant by the terms “protect” and “enhance” from Section 10(a) of the Act?

- A. Section 10(a) of the Wild and Scenic Rivers Act directs that:

*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 its technical report on managing wild and scenic rivers (*Wild and Scenic River Management Responsibilities* (2002)) the Council interprets Section 10(a) as: “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.”

While the term “protect” is interpreted by the Council above as “eliminating adverse impacts,” it is not interpreted as an *absence* of impacts. Rather, each WSR-administering agency must, based on best available scientific information and reasoned professional judgment, ensure that existing values are protected and, to the extent practical, enhanced. The river-administering agency must also establish a positive trajectory for any value that was in a degraded condition on or after the date of the river’s designation.

This direction by Congress, which has been affirmed in several court cases,³ is why defining baseline conditions of the values for which the river was designated (free-flow, water quality and ORVs) is critically important. This baseline serves as the basis from which the degree/intensity of existing and future impacts can be measured. All future activities are to be measured from this baseline to ensure continued high quality conditions and to eliminate adverse impacts (*protect*) or improve conditions (*enhance*) within the river corridor. If a thorough resource assessment that includes a baseline description of the ORVs is not completed at the time of designation, this assessment should be included in the river management plan. The river management plan then establishes the baseline conditions at the time of designation—including a description of any degradation—and proposes management actions that will be taken to improve conditions until they meet the requirement to protect and enhance the river’s values, including free flowing condition, water quality and ORVs.

Q. What is meant by the term “non-degradation” in the Interagency Guidelines?

- A. The Interagency Guidelines interpret Section 10(a) of Act (the protect and enhance mandate) as “a non-degradation and enhancement policy for all designated river areas, regardless of classification. . . . Specific management strategies will vary according to classification but will always be designed to protect and enhance the values of the river area.” The overarching goal articulated in Section 10(a) is to protect existing high-quality conditions while improving conditions when unacceptable impacts are documented, thus leaving each river to future generations in better condition than when it was designated.

Non-degradation within the Act’s context is not synonymous with no *impact*. *Non-degradation* in the context of a wild and scenic river is assurance that there is no downward trend in conditions that affect ORVs. As stated in the Council’s technical report (Wild and Scenic River Management Responsibilities (March): “To achieve a non-degradation standard, the river administering agency must document baseline resource conditions and monitor changes to these conditions.”

Therefore, it is imperative to document baseline conditions, develop management objectives, and establish a monitoring program to ensure that conditions are being met and identify when management action is needed to protect values. The comprehensive river management plan is the appropriate place to articulate the terms and conditions specific to the local

³ The following cases are discussed further in the Council’s March 2002 technical paper *Wild and Scenic River Management Responsibilities*:

Oregon Natural Desert Association v. Green (D. OR 1997)

Oregon Natural Desert Association v. Singleton (D. OR 1999)

Hells Canyon Alliance and Hells Canyon Preservation Council v. U.S. Forest Service (9th Cir. 2000)

Northwoods Wilderness Recovery v. U.S. Forest Service (W.D. MI 2001)

conditions/resource values identified for a given river, as well as the solutions needed to mitigate known impacts.

Other Federal Agencies

Q. Are other federal agencies responsible to protect values of rivers included in the National System?

- A. Yes. The Act directs other federal agencies to protect river values. It explicitly recognizes the regulatory roles of the FERC and EPA in protecting WSRs, and directs other federal departments and agencies that permit or assist in the construction of water resources projects to do likewise. The role of such federal agencies in water resources project construction may be through regulation, direct funding, or indirectly funding by providing federal assistance to others.

All federal agencies that manage lands within or along WSRs and congressionally authorized study rivers are directed to “take such action . . . as may be necessary to protect such rivers in accordance with the purposes of this Act (Section 12(a)). Please refer to the Council’s, *Authorities and Roles of Key Federal Agencies* (1999) for a detailed description of the authorities and roles of key federal agencies.

Tribal Nations

Q. Does the Act affect tribal lands?

- A. No. Where tribal lands are involved, sovereign tribes retain authority over the lands; however, the river-administering agencies seek opportunities to collaborate in protecting values of joint concern.

State and Local Agencies

Q. What is the role of a state in managing a river designated under Section 2(a)(ii)?

- A. The Act states that rivers designated under Section 2(a)(ii) “shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands.” The state is responsible for providing protection, except on federally administered lands and with respect to Section 7(a) determinations and securing a federal reserved water right under Section 13(c), both of which are made by a federal

agency. The NPS provides ongoing technical assistance and partnership efforts with local managers and stakeholders on many of these rivers.

Q. For a river designated under Section 2(a)(ii), can the state tell a federal land manager how to protect the part of the corridor where the river flows through federal lands?

A. No. However, the federal land administering agency must protect WSR values on federal lands.

Q. What is the role of a state in managing congressionally designated WSRs?

For rivers designated under Section 3(a) of the Act, a state's responsibilities include:

- Regulating and enforcing fishing and hunting regulations.
- Adjudicating water rights and appropriation.
- Developing and administering water quality standards.
- Administering state land use regulations on non-federal lands.
- Managing state lands and facilities along the river (e.g., state highways, parks, forests).

Q. What is the role of local government in managing WSRs?

A. Local government entities are encouraged by federal WSR-administering agencies to provide for the protection of WSR values in their land use plans, including the use of zoning and other land use measures. Their participation in development of the CRMP in areas of mixed ownership is essential to ensure an enduring planning strategy that protects river values and respects the rights of landowners. In some cases, local governments have chosen to strengthen land-use requirements during a WSR study, in order to demonstrate the adequacy of local river protection prior to requesting Congressional designation.

Citizens

Q. What is the role of citizens in protecting WSR values?

A. Citizen stewards are increasingly important in protecting WSR values, often through river-specific or regional stewardship organizations. Individually, or through nonprofit entities, citizens help survey and monitor resource conditions, provide interpretive and education opportunities, contribute to restoration efforts, and support many other protection activities.

Glossary

- C -

Classification: The process whereby designated rivers are classified as wild, scenic and/or recreational according to criteria established in Section 2(b) of the Wild and Scenic Rivers Act.

- D -

Designation: The process whereby rivers are added to the National Wild and Scenic Rivers System by an act of Congress or by administrative action of the Secretary of the Interior with regard to state-designated rivers under Section 2(a)(ii) of the Wild and Scenic Rivers Act.

- E -

Eligibility: Qualification of a river for inclusion into the National Wild and Scenic Rivers System through the determination (professional judgment) that it is free-flowing and, with its adjacent land area, possesses at least one river-related value considered to be outstandingly remarkable.

- F -

Free-flowing: Existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. (Section 16(b) of the Wild and Scenic Rivers Act)

- L -

Land Management Plan: Throughout this document, this refers to the federal agencies' landscape-scale plans (i.e., the Bureau of Land Management's Resource Management Plan, the National Park Service's General Management Plan, the U.S. Fish and Wildlife Service's Comprehensive Conservation Plan, and U.S. Forest Service's Land and Resource Management Plan).

- N -

Nationwide Rivers Inventory (NRI): A source list of rivers which have been determined by the National Park Service and other federal land managing agencies as being potentially eligible for the National Wild and Scenic Rivers System.

- O -

Outstandingly Remarkable Values: Values among those listed in Section 1(b) of the Wild and Scenic Rivers Act are "scenic, recreational, geological, fish and wildlife, historical, cultural, or other

similar values. . . .” Other similar values which may be considered include botanical, hydrological, paleontological, or scientific. Professional judgment is used to determine whether values exist to an outstandingly remarkable degree.

- P -

Public Lands and Related Waters: Lands, or interest in lands, administered by the federal agencies. Related waters are waters which lie directly over or adjacent to public lands and require some management control to protect federally administered resources, or to provide for enhanced visitor safety.

- R -

River: A flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes (Section 16(a) of the Wild and Scenic Rivers Act).

River Area: For study rivers, that portion of a river (segment or corridor) and its immediate environment comprising a minimum area extending at least one-quarter mile from the ordinary high water mark. For designated rivers, the river and adjacent land within the authorized boundaries.

- S -

Study Report: The report on the eligibility and suitability of a study river for the inclusion in the National Wild and Scenic Rivers System. Section 4(a) of the Wild and Scenic Rivers Act requires the Secretary of the Interior, or the Secretary of Agriculture—or both—to prepare and submit the report to the President. The President transmits the report with his recommendation(s) to the Congress.

- W -

Wild and Scenic Rivers Act: National Wild and Scenic Rivers Act (“the Act”) of 1968, as amended, Public Law 90-542 (16 U.S.C. 1271-87, et seq.).

Wild and Scenic Study River: Rivers identified in Section 5 of the Wild and Scenic Rivers Act for study as potential additions to the National Wild and Scenic Rivers System. The rivers shall be studied under the provisions of Section 4 of the Wild and Scenic Rivers Act.