

Appendix 11

Management Objectives and Standards for Designated Wild and Scenic Rivers

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Appendix 11. Management Objectives and Standards for Designated Wild and Scenic Rivers

The information presented here is largely excerpted from a 2002 technical report titled *Wild & Scenic Rivers Management Responsibilities*, by Jackie Diedrich of the Interagency Wild and Scenic Rivers Coordinating Council.

A. Summary of Wild and Scenic River Management Guidelines

To assess the impacts of wild and scenic river designation in the Planning Area, provisions of the Wild and Scenic Rivers Act (WSRA) should be understood. An interagency interpretation of the WSRA completed in 1982--the Departments of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas--provided the basis for the wild and scenic rivers discussion in the previous *Northeast NPR-A IAP/EIS*. Since these guidelines were issued, several sections of the WSRA have been amended to clarify intent. In addition, and as a result of litigation, the courts have provided interpretation of various provisions of the WSRA.

This appendix examines the WSRA with the goal of describing management implications of designation. All Federal Agencies have a legal obligation to protect the free flow, water quality, and outstandingly remarkable values (these characteristics are referred to collectively as "river values") of designated wild and scenic rivers. The outstandingly remarkable values for the eligible rivers are listed in Section III.C.10 of this IAP/EIS. Free flow is defined in the WSRA, and on the last page of this appendix. Mineral leasing and development are allowable in scenic river segments if river values can be protected or if pre-existing rights are involved.

B. WSRA Section 1(b)

The purposes for which a Wild and Scenic River (WSR) is added to the National Wild and Scenic Rivers System (National System) are explicit in section 1(b) of the WSRA--specifically, to protect a river's free-flowing condition, water quality, and outstandingly remarkable values (ORV's). Sections 7(a) and 10(a) of the WSRA refer to these collective "values" for which rivers are added to the National System.

Management Implications

The ORV's for eligible rivers in the Planning Area are listed in Table III-38. If any of these rivers were to be determined to be suitable for recommendation for WSR designation, BLM would focus on protecting the river's

free-flowing condition and water quality in addition to its ORV's. The ORV's would be thoroughly refined in comprehensive river management plans, prepared after the Northwest NPR-A Record of Decision (ROD) to guide future management actions and to serve as the baseline for monitoring.

C. WSRA Section 2(b) - Classification

The three WSR classifications for designated rivers are:

- (1) Wild river areas. Rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with essentially primitive watersheds or shorelines and unpolluted waters. These areas represent vestiges of primitive America.
- (2) Scenic river areas. Rivers or sections of rivers that are free of impoundments, with shorelines or watersheds that are still largely primitive and undeveloped, though they are accessible in places by roads.
- (3) Recreational river areas. Rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

The classification system describes the type and intensity of development in existence at the date of the river's designation. To be "administered" in a class means defining the river's initial landscape character and establishing standards relative to future in-corridor land uses. For example, administering a wild river would require more restrictive decisions to protect the river's character than would a scenic or recreational river.

The intent of the WSRA to preserve each river's free-flowing condition and to protect and enhance the values for which it was designated applies equally to rivers in each of the three classifications. A river's classification does not represent the values for which it was added to the National System. In the alternatives discussed in this IAP/EIS, BLM has identified the appropriate classification as "scenic" because of the level of development (mainly subsistence cabins and camps), although this does not mean that scenery is an ORV. In fact, none of the eligible rivers in the Planning Area has scenery as an ORV.

Management Implications

On September 19, 2000, in *Wilderness Watch v. U.S. Forest Service* (D. MT 2000), the U.S. District Court for the District of Montana found "construction of permanent resort lodges in river corridors designated as wild is inconsistent with the Act." This opinion is responsive to a specific set of facts on the Salmon WSR, i.e., the decision of the U.S. Forest Service (USFS) to allow pre-designation hunting camps located on National Forest System lands and within a wild river corridor to be relocated and/or substantially modified under the agency's special-use authority. The new facilities include a complex of permanent structures. The judge remanded the matter to the USFS to determine a remedy consistent with his opinion.

This decision prompted BLM to identify scenic classification as the most appropriate, even though the rivers are generally not accessible in places by road, since existing subsistence uses require the addition, relocation and modification of subsistence camps and cabins.

- The BLM would use the scenic classification to provide a general framework for the type and intensity of land management activities that may take place in the future.
- The BLM would apply the protections under Sections 7 (water resources projects) and 10(a) (no degradation policy) independent of classification.

D. WSR Sections 3(b) and 3(c) - Establishment of Boundaries and Classification; Public Availability

Boundaries would be drawn during the development of comprehensive resource management plans for any designated river areas. These upland boundaries would contain a maximum of 640 acres per river mile (acre/mile). This follows the precedent set in ANILCA for Alaskan wild and scenic rivers, rather than the 320-acre/mile limit for rivers outside Alaska. The 640-acre/mile limitation represents an average, and not a mile-by-mile measure.

Management Implications

- A bank-to-bank boundary would not be adequate.
- BLM would use a river's ORV's as the basis for boundary establishment.
- The final WSR boundary is not required to be posted or otherwise located on the ground.

E. WSR Section 7(a)-Restrictions on Hydroelectric and Water Resources Projects on Designated Rivers

Water resources projects are defined as projects that would affect the free-flowing nature of a WSR and would include dams, diversions, and riprap.

Management Implications

1. Authority

The Secretary of Agriculture or the Secretary of the Interior (or his/her designee) is responsible for making determinations under Section 7. This authority has been delegated to the BLM Field Manager level in each state.

2. BLM Criteria

The BLM would evaluate a water resources project based on its effects on the values for which a river is added to

the National System, namely its free-flowing condition, water quality, and ORV's. The river's classification is not a factor in this evaluation.

3. Consideration of Projects

Federal Energy Regulatory Commission-licensed facilities are prohibited within the corridors of designated rivers. Other Federally-assisted water-resources projects proposed to be built within the corridors of a designated river would be evaluated for potential "direct and adverse effect" on the values for which the river was designated. Proposed water resources projects below, above, or on a stream tributary to a designated river are evaluated for their potential to invade the designated river area or unreasonably diminish the scenic, recreational, fish, or wildlife values of the designated river.

F. WSRA Section 9(a)-Limitations on Mineral Entry and Development on Public Lands on Designated Rivers

Management Implications

In areas where mineral activity is permissible, the Comprehensive River Management Plan (CRMP) should address "locatable," "leasable," and "salable" mineral materials. Locatable minerals are defined as "valuable mineral deposits" under the General Mining Law of 1872, as amended, and include, gold, silver, copper, and lead. Leasable minerals are defined by statute (e.g., oil, gas, coal, geothermal); a lease must be obtained from the Government for their extraction. Salable minerals are disposed of by permit and consist of common varieties of sand, stone and gravel. Leasable and salable mineral activities in the Planning Area are at the discretion of BLM.

The WSRA affects the development of minerals on Federal lands in several ways.

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

G. WSRA Section 10(a) - Management direction

The Interagency Guidelines interpret Section 10(a) as a "non-degradation and enhancement policy for all designated river areas, regardless of classification." Existing uses on Federal lands may continue where they do

not conflict with river protection. Adverse effects to the values made explicit in Section 1(b) of the WSRA on Federal and non-Federal lands must be identified in development of the CRMP, with appropriate strategies detailed for their resolution. To achieve a nondegradation standard, the river-administering agency must document baseline resource conditions and monitor changes to these conditions.

Management Implications

This section of the WSRA is interpreted as a nondegradation and enhancement policy for all wild and scenic rivers, regardless of classification. The river manager must seek to protect existing river-related values and, to the greatest extent possible, enhance those values.

- Provide for public recreation and resource uses that do not adversely impact or degrade the values for which the river was designated.
- Protect rivers by documenting and eliminating adverse impacts on values (freeflow, water quality, ORV's), including activities that were occurring on the date of designation. Enhance rivers by seeking opportunities to improve conditions.

H. Section 10(b) - Management of WSR's in Wilderness

Section 10(b) removes the potential for conflict regarding WSR's flowing in designated wilderness by applying the more restrictive provisions of the WSRA in any situation of conflict. Section 10(b) recognizes the importance of designating river systems by removing any potential for conflict in cases of dual designations.

I. WSRA Section 11(b)(1) - Federal Assistance to Others

This section authorizes the Secretary of the Interior, the Secretary of Agriculture, or the head of any Federal Agency to provide both technical (i.e., non-monetary) assistance and the use of Agency funds to States, their political subdivisions, private organizations, and individuals to "plan, protect, and manage river resources." This authority applies to projects/activities on non-Federal lands within and proximate to a WSR corridor. It provides a mechanism to effect partnerships for projects/activities outside designated WSR's, yet with the potential to affect designated WSR values.

Management Implications

During development of a CRMP for a designated river, BLM would identify opportunities for specific written cooperative agreements that could include provision of Federal assistance to other organizations to help in administration of a WSR.

J. WSRA Section 12(a) - Management Policies

Section 12(a). The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii). Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

Management Implications

- The BLM must consider actions on lands it administers adjacent to any designated WSR's and make certain such actions protect freeflow, water quality, and ORV's.
- Other Federal Agencies must protect these values in actions for which they are responsible within and adjacent to a WSR corridor.

K. WSRA Section 12(b) - Existing Rights

Section 12(b). Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.

Management Implications

- Existing rights are generally protected.

L. WSRA Section 12(c) - Water Pollution

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

Management Implications

- The BLM would seek enforcement of water-quality laws through the EPA and State water-quality agencies.
- The BLM would work in cooperation with the EPA and State-water quality agencies to establish baseline conditions, identify water-quality-related issues, and develop a strategy to improve/protect water quality.

M. WSRA Section 13(a) - Jurisdiction and Responsibilities of State with Respect to Fish and Wildlife

This section clarifies that while the role of the States in management of fish and wildlife is unaffected by the WSRA, the river-administering Agency remains responsible for evaluation of fish or wildlife restoration or enhancement projects that are also water resources projects subject to Section 7(a) of the WSRA. In most instances, such projects would have a beneficial effect on WSR values; however, they must be designed to avoid adverse effects on free flow and other river-related values.

Management Implications

- Develop an effective partnership with State fish and wildlife agencies and local and tribal governments to achieve mutual goals in river protection.

N. Section 13(c) - Federal Reservation of Water

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

1. Litigation

The United States entitlement to a Federal reserved water right for rivers designated under the WSRA has been addressed in two recent adjudications, with both finding that the WSRA creates an express reservation of water necessary to achieve the purposes of the WSRA (Memorandum Decision Granting, in Part, and Denying, In Part, the United States' Motion for Summary Judgment on Reserved Water Rights Claims; Idaho District Court, 1998, affirmed *Potlatch Corp. v. United States*; Idaho Supreme Court, 2000); (In the Matter of the Relative Rights of the Waters of the Klamath River, Order on Motions for Ruling on Legal Issues, and for Summary Disposition, State of Oregon Water Resources Department Hearings Officer Panel, 2001).

Both decisions recognize that preserving the values identified in Section 1(b) of the WSRA are among the purposes for which water was reserved. The decision in the Klamath Basin went on to explain that where Congress has not identified the values to be protected by designation, the task of identifying the designated rivers' ORV's is delegated to the administering agency. The two decisions diverge on the question of how much water to

which the United States is entitled. The Idaho courts found that the United States is entitled to the "minimum quantity necessary" to fulfill the purposes of the WSRA, while the Klamath decision held that the United States is entitled to the amount of water "reasonably necessary" to accomplish the purposes of the WSRA.

2. Management Implications

- The BLM would establish baseline conditions, identify water-quantity-related issues, and develop a strategy to protect flow-dependent ORV's for any designated river.
- The BLM would be unlikely to quantify the reservation of water absent significant threats or basin-wide adjudication. This might change if nationwide policy is developed after further legal clarification of the impact of this section.

O. WSRA Section 13(f) - Navigable Rivers

Section 13(f). Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

Section 13(f) clarifies that nothing in the WSRA affects a State's rights to navigable waterways.

State ownership of the underlying riverbed does not, however, preclude the river-administering Agency from regulating uses (e.g., private and commercial boating) on the water column as necessary to meet the purposes of the WSRA. The need to regulate on-water use includes providing a level of public safety, maintaining a desired recreation experience, and protecting biological and physical values. On-river limitations may include, for example, restrictions on the numbers of private and commercial boaters, timing of use, and type and size of craft.

1. Litigation

See *United States v. Lindsey* (9th Cir. 1979) and *United States v. Hells Canyon Guide Service* (9th Cir. 1981).

2. Management Implications

The BLM would work with the State to assure that the State's public trust interest in navigability and the purposes of the WSRA are met.

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

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

Management Implications

1. The BLM would evaluate any component of a project proposal requiring an easement or right-of-way that is a water resources project under Section 7(a) of the WSR before further consideration of the easement/right-of-way within a designated WSR area.
2. The BLM would grant an easement or right-of-way subject to the nondegradation policy of Section 10(a) and if it is in accordance with all laws applicable to the area.

Q. WSR Section 15 - Exceptions for Alaska (Under ANILCA)

Section 15 provides exceptions for rivers added to the National System under the ANILCA. Specifically, the allowable acreage within the boundary is increased and boundaries must exclude lands owned by the State of Alaska or its political subdivisions. The boundary may not surround or effectively surround private land.

R. WSR Section 16 - Definitions

Section 16. As used in this Act, the term -

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in 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 within components of the national wild and scenic rivers system.