

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

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Instruction Memorandum No. 2004-196
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To: AFOs

From: Director, National Landscape Conservation System

Subject: Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with Respect to Eligibility Criteria and Protective Management

Program Area: National Landscape Conservation System and Land Use Planning.

Purpose: This Instruction Memorandum (IM) clarifies policy contained in the BLM Manual Section 8351 with respect to the eligibility criteria for potential wild and scenic rivers (WSRs) and protective management of identified river segments.

Background: The Utah State Director requested and received guidance on five issues raised in developing a resource management plan. A summary of those issues are:

1. Interpretation of the Wild and Scenic Rivers Act with respect to whether intermittent or seasonal water courses qualify for designation as WSRs.
2. Incorporation of Washington Office Solicitor's memorandum (11/12/97) and IM 98-129 (6/28/98) into the BLM Manual Section 8351.
3. The dependency of outstanding remarkable values (ORVs) on water flows.
4. Evaluation of ORVs within a region of comparison substantiating why ORVs may be worthy of designation in the National WSR System.
5. Evaluation of the size or length of a segment on the determination of eligibility.

Policy Clarification/Action: This guidance clarifies policy contained in the BLM Manual 8351 and until incorporated into the Manual is applicable to all river segments determined eligible and/or suitable.

As to the first issue, judgment is required in determining eligibility of water courses that are free-flowing and have associated ORVs. As a general rule, the segment should contain regular and predictable flows (even though intermittent, seasonal, or interrupted). This flow should derive from naturally occurring circumstances, e.g., aquifer recharge, seasonal melting from snow or ice, normal precipitation, instream flow from spillways or upstream facilities. Caution is advised in applying the free-flow criterion to water courses which only flow during flash floods or unpredictable events. The segment should not be ephemeral (flow lasting only few days out of a year). Evaluation of flows should focus on normal water years, with consideration of drought or wet years during the inventory.

As to the second issue, the BLM's policy is to protect any ORVs identified in the eligibility determination process to assure a decision on suitability can be made. The Bureau has broad discretionary authority to not impact rivers values or make decisions which might lead to a determination of eligibility. It is the BLM's policy to manage and protect the free-flowing character, tentative classification, and identified ORVs of eligible rivers according to the decisions in the associated Resource Management Plan. This protection occurs at the point of eligibility determination, so as not to adversely constrain the suitability assessment or subsequent recommendation to Congress. The BLM may protect river values using both the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act. Wild and scenic river issues involving NEPA supplementation are the same as for other resource values. When the BLM considers a proposal that could constitute a major Federal action that significantly affects the quality of the human environment, the Council on Environmental Quality regulations requires NEPA compliance before the BLM can act on the proposal (40 CFR 1506.1). Eligible river segments determined to be nonsuitable through a land use plan decision are subject to the direction and management decisions contained in the land use plan.

As to the third issue, qualifying ORV's should be limited to those which are directly river-related. That is, they should be located in the river or on its immediate shorelands, contribute substantially to the functioning of the river ecosystem, and/or owe their location or existence to the presence of the river. Again, judgment is required in applying this criteria. Additional guidance on this issue is contained in a technical report of the Interagency WSR Council, at www.nps.gov/rivers/publications entitled, *The Wild and Scenic River Study Process*, December 1999.

As to the fourth issue, qualifying ORV's should be located in the river or on its immediate shorelands, contribute substantially to the functioning of the river ecosystem, and/or owe their location or existence to the presence of the river. The publication referenced above also provides additional information on page 12.

The fifth issue was addressed by the Director on December 3, 1993. Jurisdictional and management constraints are not a consideration in determination of a river's eligibility for designation as WSRs. These types of issues are addressed in the suitability phase of WSR studies (Manual Section 8351.24A and 8351.33A.1-8).

State Directors should review and update any existing State and Field Office policies and make necessary modifications to comply with the terms of this IM. In addition, due to experience with resolving protest, appeals, and litigation, any interagency agreements and memorandums of understanding which amend or supplement the BLM Manual Section 8351 need concurrence of the Director to assure consistent application of the criteria and process as outlined in this IM.

Time Frame: This policy is effective immediately.

Budget Impact: It is not anticipated that implementation of this policy would result in any significant increase in cost to Field Offices. Any costs will be covered within existing State Office base allocations.

Manual Section Affected: Bureau Manual 8351 - Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, and Management ; Releases 8-61 and 8-62, dtd 5/19/92 and 12/22/93; Sections 8351.06D; 8351.31B; 8351.32C; 8351.33A.

Coordination: This policy has been coordinated with the Interagency WSR Coordinating Council, Departmental Solicitor, BLM's Directorate, WO-200 and WO-300.

Contact: Please address any questions and concerns regarding this policy to Gary G. Marsh, National Rivers Coordinator, National Landscape Conservation System Office, Wilderness, Rivers, & National Trails Group, WO-172, (202) 452-7795.

Signed by:
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Director
National Landscape Conservation System

Authenticated by:
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