

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



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Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council

Interagency Wild & Scenic Rivers Coordinating Council

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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
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

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

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). The compilation is derived from a number of sources, e.g., concerned citizens, river conservation organizations, and federal, state and local agencies and employees. 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 150 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 which administers a particular river.

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, for example, 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 exercises no authority over 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 attempt to 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 which are unique to field or site-specific situations.

Providing marked-up copies, edits, comments, and/or additional questions with the proposed answer is encouraged. Please send legible marked-up pages, Q&As needing change or correction, separate page narratives, or new Q&As to the address listed below. If you send a 3.5" formatted diskette, please use WordPerfect version 7.0. Older versions are also acceptable.

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OVERVIEW 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 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 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, e.g., boundaries are limited to an average of no more than 320 acres per river mile, except double that in Alaska 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 nature, 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 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 – Q&As

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 which 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 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 enacted 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 . . . 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, archaeological, 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 September 30, 2004, some 163 river segments comprising 11,341 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 study value and scenic beauty. By contrast, approximately 600,000 miles of once free-flowing rivers have been inundated by about 60,000 dams.

Q. What are the primary effects of WSR designation?

A. WSR designation seeks to maintain 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 can be constructed, nor federally assisted water resource development projects allowed, which might adversely affect designated river values. Where private lands are involved, the federal managing agency will work with local governments and owners to develop protective measures, thereby avoiding land acquisition where possible. Mining and mineral leasing laws applicable to federal lands are affected in three major areas:

- Valid existing rights are not rescinded.
- Ongoing mining and mineral leasing are subject to regulations issued by the Secretaries of the Interior and/or Agriculture to protect water quality and scenic values.
- Subject to valid existing rights, patents are issued for the minerals and surface use only.
- Rivers classified "wild" are withdrawn from the mining and mineral leasing laws.

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 otherwise qualified, 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.* Rivers designated by Congress are listed in Section 3(a) of the Act.
- *By the Secretary of the Interior.* The Secretary may designate a river; however, it must first be designated into a valid state river protective system by or pursuant to state law(s), and the appropriate governor(s) must apply. The Secretary must find the segment eligible using the same eligibility criteria as for congressionally authorized rivers and must determine that the state(s) or political subdivisions are providing adequate protection and have the resources for management. Applications by the states are evaluated and processed by the NPS.

Q. What is involved in management and planning for federally designated WSRs?

A. There are a number of interrelated aspects or components which federal agencies use in the management of WSRs:

- Determining final classification, if not determined by Congress upon designation.
- Developing final boundaries and maps.
- Developing the comprehensive, interdisciplinary WSR management plan which may address a variety of issues, e.g., resource protection and user capacities.
- Implementing the management plan in conformance with land-use planning objectives.

Q. Do the agencies encourage citizen involvement in the WSR study process?

- 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 will address 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 appropriate 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, agencies, such as the NPS, assist 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 appropriate 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. Do the agencies encourage citizen involvement in the WSR management planning process?

- A. Yes. The agencies serve the public in formulating river management plans. The public and state, local and tribal governments are essential participants in developing an acceptable plan that both protects and enhances the values for which the river was added to the National System.

Q. Why should one support WSR designation?

- A. To protect and enhance the values for which a river may be designated. Many free-flowing rivers have been degraded, compromised by development, or require substantial restoration. The intent of the Act is to help focus management efforts to protect selected rivers and their associated values.

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 2,600 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. Probably at some point. 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 which were developed in 1970.

INVENTORY AND ELIGIBILITY

Q. What qualifies a river as a WSR for the National System?

A. To be eligible for designation, a river must be free-flowing (not to be confused with ‘naturally flowing’ which is explained later) 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 planning processes; or 3) by the NPS evaluation of a Section 2(a)(ii) application. River areas identified through the inventory phase are evaluated for their free-flowing nature 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 of small dams, diversion works, or other minor 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 regimes within the segment), and existing minor dams or diversion structures within the study area, do not necessarily render a river segment non-eligible. There are segments in the National System which 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 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.

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. Agency resource professionals develop and interpret criteria in evaluating river values (unique, rare, or exemplary) based on professional judgment on a regional, physiographic, or geographic comparative basis.

Q. What are possible “other similar” ORVs?

A. 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 be “boatable or floatable” in order to be eligible?

A. No.

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?

A. The NRI is a listing of 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 non-eligibility.

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

A. There are a number of aspects which federal agencies use in their planning or evaluation process:

- Assessment of free-flowing condition and ORVs.
- Determination or finding of eligibility or non-eligibility.
- 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 which may include a screening for potential WSRs. If there is a doubt, evaluate it according to the criteria in the Act, i.e., free-flowing nature and ORVs.

Q. When is a river formally determined eligible or non-eligible?

A. Eligibility findings are made as a part of a congressionally authorized study under Section 5(a), or pursuant to Section 5(d)(1). For Section 2(a)(ii) rivers, the NPS will make an eligibility determination following application by the governor(s) for federal designation.

Q. What documentation is needed for eligibility determinations?

A. Agency land use or resource management records, document inventories, evaluations, analysis, recommendations and decisions are needed. Agency field offices retain the administrative record and documents related to an assessment of the free-flowing character and identification of ORVs.

Q. Must federal agencies make evaluations through their land use planning process for potential WSR segments listed on the NRI which flow on or through public lands?

A. Yes. The 1982 NRI did not determine a river's eligibility and was only a potential list of selected rivers. Federal agencies must make an eligibility determination for NRI rivers. If an NRI segment exists within an agency's planning unit, determinations shall be made as to the river's eligibility and suitability.

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. When 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 degree of access and amount of development along the river area. If designated by Congress, the enabling legislation generally specifies the classification.

The following factors are generally used to assign classification of individual river segments: accessibility, primitive nature, number and type of land developments, structures, water resource developments, and water quality.

Q. What is the difference between a “Wild,” “Scenic” and “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, generally inaccessible except by trail (no roads), with watersheds or shorelines essentially primitive, and having unpolluted waters.

Scenic river areas: Those rivers, or sections of rivers, that are free of impoundments, having shorelines or watersheds largely primitive and shorelines largely undeveloped, but accessible in places by roads (i.e., roads may cross but generally not parallel the river). These rivers 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, may have some development along the shoreline, and may have had some impoundment or diversion in the past. This classification, however, does not imply that recreation is an ORV, nor 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 segments and river areas?

A. In agency parlance used for planning purposes, river “areas” include the entire length of an eligible, study, or designated river and its adjacent lands, generally 320 acres per river mile (except for rivers located outside of national parks in Alaska at 640 acres per river mile). A river “segment” is a portion of the river area which has been delineated for evaluation and planning purposes. Segmentation is dependent upon the level of development of the shoreline, watercourse and access. 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 submit a management plan for approval. 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. Although rivers included in the National System are usually referred to as “Wild and Scenic Rivers,” there are three classifications (wild, scenic and recreational) which may exist on 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 designated WSR may be classified as wild for 50 miles, scenic for 30 miles, and recreational for 20 miles.

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

PROTECTIVE MANAGEMENT

Q. Once a river segment has been determined 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 (except for non-federal lands under Section 5(a) study rivers, in which case the provisions of Sections 7(b), 8(b) and 9(b) of the Act apply). The identified ORVs are afforded adequate protection, subject to valid existing rights. Affording adequate protection requires sound resource management decisions based on National Environmental Policy Act (NEPA) analysis. Protective management may 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 Values. The free-flowing characteristics of eligible river segments cannot be modified to allow stream impoundments, diversions, channelization and/or rip-rapping to the extent authorized under law.

River-related Values. Each segment shall be managed to protect ORVs (subject to valid existing rights) and, to the extent practicable, such values shall be enhanced.

Classification Impacts. Management and development of the eligible river and its corridor should not be modified, subject to valid existing rights, to the degree that its eligibility or tentative classification would be affected (i.e., its tentative river area classification cannot be changed from wild to scenic, or from scenic to recreational).

Q. Who protects rivers designated under Section 2(a)(ii) of the Act (designation by the Secretary of the Interior)?

A. The law 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 NPS does provide ongoing technical assistance and partnership efforts with local managers and stakeholders on many of these rivers. Primarily, protection remains the responsibility of the state and/or local governmental entity, except where federal lands are involved. The Secretary of the Interior (or Secretary of Agriculture if national forest lands are involved) would make determinations of effect on federal or federally assisted water resources projects pursuant to Section 7 of the Act.

- Q. Do rivers designated under Section 2(a)(ii) of the Act have to meet the same standards, and are they as well protected, as congressionally designated rivers?**
- A. State-administered components of the National System must meet the same standards of eligibility and resource protection as congressionally designated rivers. In no way should they be construed as “second class.”
- Q. If it is a state-administered river, can the state tell a federal land manager how to protect a part of the corridor if the river flows through federal lands?**
- A. No. However, the federal land administering agency must protect WSR values on federal lands.
- Q. What action(s) should be taken if a river is determined to be eligible under Section 5(d)(1) of the Act pending a suitability determination or recommendation for or against designation?**
- A. When a river has been determined eligible, protective management requirements (subject to valid existing rights and a site-specific environmental analysis) ensure the river and the surrounding area are protected as a potential WSR pending a suitability determination.
- Q. What action(s) should be taken once a river segment has been determined non-eligible pursuant to Section 5(d)(1) of the Act?**
- A. Once a river segment has been determined to be non-eligible, standard management practices (other than wild and scenic), as outlined by agency policy, may be applied as appropriate.
- Q. What action(s) should be taken for rivers evaluated pursuant to Section 5(a) of the Act pending suitability determination or congressional action?**
- A. River segments authorized for study under Section 5(a) of the Act are automatically withdrawn from mining and are subject to Sections 7(b), 8(b) and 9(b) for up to three years after the report is submitted to Congress (rivers identified under the Alaska National Interest Conservation Act are also withdrawn from mineral leasing). If Congress does not act within three years, the river segments (those determined non-suitable and those determined suitable and recommended for designation) are released from protective management requirements under the Act.

Q. How are rivers being studied under Section 5(a) of the Act protected and for how long?

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

The period of protection is the time required for 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 segments are no longer afforded protection by the Act.

Q. How are rivers being studied under Section 5(d)(1) of the Act protected and for how long?

- A. The protection afforded Section 5(d)(1) study rivers depends on whether the identified river segment has been determined eligible or non-eligible, suitable or non-suitable through the river-administering agency's resource management planning process.

1. River segments on federal lands determined non-eligible or non-suitable will be managed as determined through the river-administering agency's resource management plan.
2. River segments on federal lands determined eligible are managed at the discretion of the administering agency to protect free flow, ORVs, and tentative classification until such time as a suitability determination is made.
3. River segments on federal lands determined eligible and suitable are managed at the discretion of the administering agency to protect free flow, ORVs, and recommended classification pending congressional action or for the duration of the federal resource management plan.

SUITABILITY

Q. What does the term suitability mean?

- A. Suitability represents an assessment or determination as to whether or not eligible river segments should be recommended for inclusion in the National System by Congress. The Act requires the appropriate Secretary prepare a report on the suitability or non-suitability of the river.

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) of the Act, “In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas [on lands under their jurisdiction], and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.”

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

- A. Once river segments have been evaluated and determined eligible for further study, agencies conduct an evaluation to determine if the segments are “suitable” or “non-suitable” for WSR designation within their resource or land management planning processes (Section 5(d)(1)), or as a separate study for congressionally authorized studies (Section 5(a)). In each process, river values and their potential for designation are analyzed along with 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 or by federal agency initiative.

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

A. Factors to consider include, but are not limited to:

1. Status of landownership (jurisdiction or administrative role and/or presence); minerals (surface and subsurface); uses in the area, including the amount of non-federal land involved; and associated or incompatible uses.
2. Reasonably foreseeable, potential uses of the land and related waters which would be enhanced, foreclosed, or curtailed if the area were included in the National System, and the values which could be foreclosed or diminished if the area was not protected as part of the National System. Alternatives for protecting river values other than wild and scenic designation are also addressed.
3. Federal, state, local, tribal, public, or other interests in designation or non-designation of the river, including the extent to which the administration of the river, including the costs thereof, can be shared by state, local, or other agencies and individuals.

Controversy exists in WSR studies. The mere presence of controversy will not preclude a river segment from being studied. The final recommendation as to whether a particular segment should or should not be recommended suitable for designation is determined only after a complete evaluation, public review, and impact analysis.

4. Estimated cost of acquiring necessary lands, interests in lands, and administering the area if it is added to the National System. Refer to Section 6 of the Act for policies and limitations of acquiring lands or interests in land by donation, exchange, consent of owners, easement, transfer, assignment of rights, or condemnation within and outside established river boundaries.
5. Ability of the agency to manage and/or protect the river area or segment as a WSR, or other mechanisms (existing and potential) to protect identified values other than WSR designation.

Where there is limited public lands (shoreline and adjacent lands) administered by the study agency within an identified river study area, it may be difficult to ensure the ORVs can be protected. Where the agency is unable to protect or maintain the ORVs, river segments may not be suitable for designation without assistance from the state and local agencies with land-use planning responsibility in order to protect identified river values.

State or local government, citizen initiated efforts under Section 2(a)(ii) of the Act, or joint studies under Section 5(c) of the Act are also factors.

6. Historical or existing rights which could be adversely affected. In determining suitability, consideration of any valid existing rights must be afforded under applicable laws (including the Act), regulations, and/or policies.
7. Other pertinent factors, e.g., alternative ways to protect rivers.

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?

- A. Two 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 creating an adverse impact on a river or land adjacent to the river which may affect other agency-administered portions of the river. In these cases, the agencies will be consulted to provide advice on ways to avoid or mitigate adverse effects. Consultation is incorporated into the environmental analysis process.

BOUNDARY IDENTIFICATION AND DETERMINATION

Q. How are river corridor boundaries determined?

- A. Corridors may not exceed an average of 320 acres per river mile (640 acres per river mile for rivers in Alaska located outside of national parks) over the designated portion of the river. 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 nature, 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 within the designated corridor do not count against the acreage limitation. Measurement is made from the ordinary high water mark (exclusive of islands). 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 (exclusive of islands within the designated reach). In the case of braided rivers, 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 (640 acres per mile for rivers in Alaska located outside of 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 the Council's *Reference Guide*, Technical Papers, "Establishment of Wild and Scenic River Boundaries.")

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.

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

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.

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 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.

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.

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).

WSR STUDY REPORT AND THE NEPA PROCESS

Q. When are WSR study reports done?

- 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 **only** those eligible rivers determined suitable by a federal land management agency pursuant to Section 5(d)(1) of the Act and recommended for designation.
 3. For state-initiated Section 2(a)(ii) rivers, a study report is prepared by the NPS and submitted to the Secretary of the Interior.

Q. What are the elements 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 elements of the WSR study report usually summarize and incorporate relevant river information such as contained in a land management plan and associated EIS (or legislative EIS (LEIS)). For example, the executive summary, record of decision, location and description of study areas, eligibility and suitability determinations, recommendations, alternatives, impacts, management and protection considerations, public involvement, and other elements, may be included. The NEPA process can, and is, readily merged with the requirements of the WSR study report.

The study report, planning document, and combined NEPA analysis (i.e., LEIS if required), are usually submitted to the agency head for review and subsequent transmittal to Congress (or the Secretary of the Interior if it is a Section 2(a)(ii) river). Final decisions are made by Congress, except for rivers nominated for designation under Section 2(a)(ii) where the Secretary of the Interior decides.

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

- A. It will vary from agency to agency, but generally involves the following steps to designate additions to the National System.

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. The agency headquarters finalizes proposed legislation and transmittal letters.
3. There is an internal agency review of the legislative package by affected program offices.
4. Agency/Departmental briefings are conducted.
5. 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.
6. 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 (positive and/or negative) from WSR designation?

A. Benefits may include, but are not limited to: providing managers tools or mechanisms to maintain 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 of water quality and ORVs; and, if a management plan objective, promotion of economic development, tourism, or recreational use.

There may be an increase in property values near the river. Impacts may include, but are not limited to: initial or sustained attraction to the river because of designation, ability of federal agencies to purchase property, and restrictions via zoning adopted by local governments to protect river values.

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

A. The economic impacts of implementing various alternatives should be addressed in the river management planning process. Ecotourism, as well as other economic issues, such as development and tourism both inside and outside of potentially designated river corridors, should be considered.

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

A. 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. Limitations on WSRs and other federally administered rivers are necessary in some cases to protect resource and social values. Importantly, whether and/or how to restrict recreational use is a key issue in the planning process which includes extensive local, regional and national public involvement.

Federal Lands and Land Uses

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

A. Most current uses and activities on rivers and adjoining lands may continue. The primary consideration in any river or land use limitation will be the protection and enhancement of the ORV(s) which 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) for a designated river affect future development on public lands in the area?

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 which are compatible with the river’s classification.

Q. What are the effects of WSR designation on future needs to develop or expand existing rights-of-way?

A. WSR designation seeks to protect and enhance a river’s current condition. Projects proposed (or assisted) by a federal agency that may affect the river’s free-flowing condition—and are not automatically prohibited by the Act—are subject to an evaluation by the river-administering agency. Those projects found to have a negative 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.

New mining claims are restricted, but those already established can be worked and must be afforded reasonable access. Existing farms, homes and cabins—with their associated rights-of-way—along the river can continue to be used as they were before. Whether or not new structures can be built, or existing rights-of-way expanded, depends on state and local regulations, easement agreements, NEPA assessments, and the river management plan. In general, classifications reflect the level of development at the time of designation and condition future development levels to that compatible with such classifications.

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.

Q. What is the effect of designation on land tenure?

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 are the consulting requirements with the Federal Highway Administration (FHWA) for proposed projects involving construction, modification, maintenance, or improvement of roads, bridges, or transportation corridor actions?

A. Federal WSR-administering agencies need to work with the FHWA pursuant to Section 4(f) of the Department of Transportation Act of 1966 in protecting the values for which the river was designated and in accordance with the river management plan. Any FHWA projects which may affect free flow (i.e., bridges, roadway improvements, etc.) are also subject to evaluation by the river-administering agency under Section 7 of the Act (or in the case of Section 2(a)(ii) rivers, the NPS will evaluate for non-federal lands).

Private Lands

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

A. Under the Act, designation neither gives nor implies government control of private lands within the river corridor. Although Congress (or the Secretary of the Interior for 2(a)(ii) rivers) could include private lands (inholdings) within the boundaries of the designated river area, management restrictions would apply only to public 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 would be able to use their property as they had before designation. (See Acquisitions Section.)

Q. What if there is a proposed development on private land which 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. Landowners can use their land as they have previously; rent it, donate it, sell it, or leave it to their heirs; and/or restrict public access. Landowners do not lose land under an easement purchase.

Q. Can 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.

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

A. Specific management goals for new construction are best addressed through individual river management plans. Federal guidelines allow different degrees of development along rivers classified as wild, scenic, or recreational. 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. River management plans prescribe land use or development limitations to protect ORVs. Federal acquisition of land use 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 or sell private property is not affected. Landowners who sell should inform the new owner that any easements sold are transferred with the title.

Q. Will WSR designation likely cause changes in property values?

A. WSR designations generally cause property values to remain stable or increase.

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

A. No. Federal agencies do not have the authority to reimburse landowners for damage to their lands as a result of public use. Access is up to the owner to grant, and vandalism is handled by local law enforcement authorities. However, federal agencies should 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 that cross rivers located on federal lands?

A. Existing powerline or communication transmission rights-of-way will continue to be used and maintained. New proposals would be evaluated for impacts to river values.

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 which 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 Questions & Answers on Navigability.)

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 for 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?

A. 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 assure compliance by 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 (in some states, e.g., Oregon, it is required by the state) 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 control limitations.

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 does the Act say about the use of zoning to allow uses which are consistent with protecting the values for which the river was designated? What are the tools being used by the federal agencies in lieu of Secretarial zoning guidelines?

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 the most efficient means of 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. No two state's zoning laws are alike. 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 cause restricted boating access?

A. Generally, no. Restrictions on 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. Depending upon the terms and conditions of each easement, access rights may or may not be involved. For example, an easement might only involve the protection of visual resource qualities with no provisions for public use. 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. Many of the nation's rivers have received increased use in recent years. River use may increase slightly or not at all as a result of designation. Unauthorized uses should not increase since the managing agency will provide maps and signs to direct use to publicly owned access sites. No use of private lands is allowed unless special arrangements are made with the landowner. Private landowners are still entitled 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 control public use of private lands. Unauthorized uses are discouraged by the managing agency, which often provides maps, signs and brochures to direct users to publicly owned access sites. Use of private lands is subject to the landowner's permission. Public access needs are determined through the river planning process, which involves full public participation. Should the majority of the public be denied access to the river, these needs would be documented, alternatives identified, and solutions found through management plans developed for the river.

Forestry, Agriculture, and Livestock Grazing

Q. How does WSR designation affect timber harvesting practices inside the corridor?

A. Harvesting practices on federal lands located within WSR corridors must be designed to help achieve land-management objectives consistent with the protection and enhancement of the values which caused the river to be added to the National System. WSR designation is not likely to significantly affect timber harvesting or logging practices beyond existing limitations to protect riparian zones and wetlands which are guided by other legal mandates and planning direction.

Once designated as "wild," "scenic," or "recreational," the river must be managed to maintain that classification within the established corridor. Wild river segments have no roads or railroads along them nor ongoing timber harvest. The degree of protection and enhancement is a management prerogative based on an appropriate level of analysis typically done through the river planning process. For example, if scenery is identified as an ORV, then visual resources must be protected by developing appropriate objectives to guide management activities both within and outside the river corridor.

Federal and state regulations which protect wildlife, visual values, water quality, etc., may prohibit timber harvesting from streamside areas regardless of whether or not a river is designated.

Q. How does WSR designation effect timber harvest practices outside the corridor?

- A. Federal timber management activities outside the corridor will be designed to not adversely affect the values which caused the river to be designated. Values such as water quality, scenery, and riparian-dependent resources would be considered. These types of resources are addressed in the river planning process to guide action both inside and outside the designated river corridor.

Private timber management practices are guided by state and local authorities, along with management agencies who may provide technical assistance to mitigate incompatible or inappropriate activities. Under the Act, the only way the federal government can restrict private timber harvesting is through purchase of timber rights (in easement or fee title) or under cooperative agreement.

Q. What effects does designation have on agriculture and livestock grazing practices?

- A. Generally, existing agricultural practices (e.g., livestock grazing activities) and related structures would not be affected by designation. Since the Act does not give federal agencies authority to regulate private land, any affect to agricultural practices would be through technical assistance or compensation by purchase of easements, unless otherwise regulated by local zoning ordinances.

Activities and practices inside the corridor are dependent on the type of classification (wild, scenic, and/or recreational), the values for which the river was designated, and land use management objectives. The level of protection should be commensurate with the identified river values.

Guidelines issued by the Secretary of Agriculture and the Secretary of the Interior indicate that livestock grazing and agricultural practices should be similar in nature and intensity to those present in the area at the time of designation. Grazing is permitted under wild, scenic, or recreational classification, but will be managed to maintain the values for which the river was designated.

Q. Is livestock grazing 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 and determine whether such uses are diminishing the values for which the WSR was designated. Livestock grazing and agricultural activities (except those grandfathered specifically by statute) do not necessarily continue at levels practiced at the time of river designation. Grazing and other uses can continue if and when consistent with protecting and enhancing river values. River-administering agencies must evaluate activities under the river management plan and the NEPA in order to determine whether such uses and activities are consistent with protecting and enhancing the ORVs. If these activities or uses are determined inconsistent, then changes in livestock and/or grazing practices may be required.

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

A. Rivers must be managed in accordance with their designation. ORVs are to be managed under the protection and enhancement standard. This standard requires the assessment of uses, activities and actions which may substantially degrade river values. Additionally, even though range condition is in a stable or upward trend, it still may not be acceptable if river values are being degraded.

Uses which are consistent with this standard and do not substantially interfere with public use and enjoyment should not be limited. Grazing does not have to be eliminated if current grazing is consistent with the protection and enhancement standard. Section 12(b) of the Act prevents the river-administering agency from abrogating an existing permit without the permittee’s consent. However, 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 river areas (one-quarter mile—one-half mile in Alaska—from the bank on each side of the river) designated and 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 river areas designated

and 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 rivers designated 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 rivers designated 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. 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. 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 recommendation, study report, and associated documents are 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 river areas determined suitable and recommended for designation are subject to existing laws and agency guidance until Congress acts. (See Protective Management Section.)

Q. When a WSR is designated, are only rivers designated and classified as “wild” withdrawn under Section 9 of the Act?

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

Recreation

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

A. Yes. Fishing and hunting are regulated under state laws. Hunting and fishing are allowed, except where agencies might establish no hunting zones for safety or for other reasons under Section 13(a) of the Act in consultation with state fish and wildlife agencies (e.g., national parks).

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 subject to the availability of funds.

Q. Will camping be restricted within the corridors? How is it to 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. As a condition of use, and in line with 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. 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. 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. However, river users do not have the right to use, occupy, or cross private property without permission, right-of-way, easement, etc.

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

A. It depends on whether the collecting activity is commercial or non-commercial 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 locatable 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. Motors are allowed on designated WSRs subject to congressional intent and river management objectives defined in legislation and through the river planning process. Generally, access routes within the river corridors would continue to be available for public use. However, if that type of use adversely impacted the ORVs identified for the river area, the route could be closed or regulated.

Acceptability may be determined by historical or valid rights involved, or subject to, specific legislative language, if provided, for motorized use (vehicles or watercraft

powered by motors). Motorized use on land or water is best determined by the river management planning process and considers factors such as impacts (positive or negative) 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 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 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 generally do 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 character 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 above or below 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. Motors may be allowed on WSRs, whereas in wilderness motorized use is prohibited.
2. Although dams could be authorized by the President in wilderness, on a WSR dams would be incompatible with designation.
3. Depending on the classification, new rights-of-way, roads, trails, bridges, and recreational facilities (e.g., campgrounds, and picnic areas) may be allowed inside WSR areas, whereas these are generally prohibited in wilderness.
4. Valid mining claims established prior to designation may be patented for both the surface and mineral estate in wilderness, but for WSRs only the mineral estate may be patented.
5. Acquisition of private inholdings by condemnation cannot be used in wilderness, whereas the Wild and Scenic Rivers Act allows for it, subject to limitations.

References to Water Issues in the Wild and Scenic Rivers Act

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

A. The following provides a summary of the sections of the Act related to water resources:

Section 1 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 “in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.”

Sections 4(a) and 5(d) refer to the requirements for coordinating and assessing water resources planning in study reports and eligibility assessments.

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. . . .” This would require that, in addition to protecting free flow and water quality, certain rivers having been found to have outstandingly remarkable hydrologic values (i.e., exceptional water quality, unique flow regimes, critical hydrological related values, etc.) should be managed in such a way as to insure adequate protection of specifically recognized water resource values.

Section 11(b)(1) allows the agencies to assist, advise and cooperate with states “to plan, protect and manage river resources.” This section provides the managing federal agencies the incentive to work in coordination with the states in forming water protection strategies. Individual agencies have entered into cooperative agreements and memorandums of understanding with various states regarding water management issues.

Section 13 is the most critical section of the Act related to water resources management. This section provides reservation authority and is clear in its intent to reserve water only in the amounts necessary to accomplish purposes of the Act. Section 13(b) stipulates that jurisdiction over waters of any designated stream shall be determined by established principles of law. It further requires the United States (through the administering agency) to compensate owners for any taking of “vested” water rights. However, designation in and of itself does not create an exemption from state water law: “Nothing in this act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.”

Sections 13(c) and (d) further address water resources jurisdictional issues. These subsections recognize the jurisdiction of the states over water management and also declare an overriding federal interest in, and authority over, designated rivers. Designation in and of itself does not necessarily imply a reservation of waters, nor does it affect the jurisdiction of the states over water resources of designated streams. However, Section 13(c) qualifies recognition of state jurisdiction by stating that designation “shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.” Section 13(d) further limits states’ rights and recognizes

federal interest by stating: “The jurisdiction of the States over waters of any stream . . . shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.”

The Act, through Section 13(e), also declares that designation will not affect interstate compacts made by the states.

Water Quality

Q. What impact does WSR designation have on 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)). Certain states (Arkansas, Florida, North Carolina, Oregon, et al) have used alternative forms of designations, e.g., “outstanding or exceptional resource waters,” as an opportunity to provide the highest water quality standard for designated rivers.

Q. What is the federal agency’s obligation to protect water quality in WSRs?

A. The water quality standard requires compliance with the Clean Water Act or non-degradation of existing quality, whichever is more protective. The obligation is to develop and implement management actions that protect and enhance water quality. Such actions may include partnerships with local and state agencies and water conservation districts. Further, the administering agencies should develop an appropriate level of water quality monitoring.

Q. What protective management requirements can administering federal agencies use to protect free flow or ORVs on WSRs which may be navigable, contain private or state lands, or contain submerged mineral holdings?

A. For designated rivers which are determined navigable, the federal and state governments collaborate on matters affecting instream flow and other in river resources.

Water Rights

Water law is a complex legal area, and water rights are a highly contentious issue. The following water rights and instream flow Q&As are not comprehensive, and there may be

differences of opinion as to how best to answer these questions. Whenever a water rights issue arises, a river manager should work with appropriate staff and, as necessary, seek legal counsel.

Q. What does the Act specifically say about water rights?

- A. The Act requires the protection of water flows and water quality in designated rivers. Section 13 (c) states: “Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.”

Q. How does WSR designation affect existing or future water rights?

- A. Section 13 (b) of the Act states that jurisdiction over waters is determined by established principles of law. Existing, valid water rights are not affected by designation. Few cases for water rights established under the Act have been determined.

Interstate compacts (Section 13(e)) are protected and not affected by designation. In prior appropriation states, any water rights claimed under state law would have a priority date as of the river’s date of designation by Congress and would be considered junior to existing water rights.

Alterations to existing irrigation or water withdrawal facilities may be approved under Section 7 of the Act as long as there is no direct and adverse effect to the values for which the river was designated. The valid and existing rights of present land owners to use water and shorelines are not affected.

The federal government may acquire water rights under state law. In some instances, the federal government can purchase water from private citizens who have vested rights.

Q. Does the Act provide the authority for a federal reserved water right?

- A. Yes, the Act provides authority in Section 13. Also, specific amendments (adding rivers to the National System) may have special language addressing site- or river-specific situations. The Act states that any reservation or instream flow water right shall only be for the minimum amount necessary to preserve the free-flowing condition of the river and to preserve the values for which the river was designated.

A more complete discussion about the relationship between the Act and federal authority over water (including federal reserved and non-reserved water rights) is found in the *CRS Report for Congress, Water Rights and the Wild and Scenic Rivers Act*, by Pamela

Baldwin (March 30, 1990). The author notes “the Act is likely to be interpreted as giving rise to federal water rights. The Act does not specify the quantity of the right. The amount of the federal right is likely to vary from river to river depending on the river’s flows, the then unappropriated quantities in the river, and the values for which the river is being protected.”

Water rights for a WSR would have a priority date as of the date of designation. However, reserved rights associated with a particular WSR may be related to other federal reservation rights not associated with designation. Such reserved rights could be associated with federal reservations created for the area or lands where the river is located.

Q. In asserting a federal reserve water right on a WSR, does the government have to file through the state appropriative system?

A. Yes. Even if the agency has reserved rights, it is essential to coordinate and cooperate with the appropriate state agencies regarding filing, quantification, uses, etc.

Q. How does each classification (wild, scenic, or recreational) affect water rights?

A. It does not affect the status or amounts of water rights. How the river is classified is independent of water quantity. Water rights claimed or asserted are based on the amount of water required to protect the ORVs identified for the particular river segment.

Instream Flow

Q. Can the federal government utilize state law to ensure instream flows for a WSR?

A. Yes. Federal agencies’ policies encourage the use of state law to protect instream flows for WSRs. However, federal agency application for instream flow water rights for WSRs is not always possible under prior appropriation water law.

A number of prior appropriation doctrine states have passed legislation that specifically allows protection and maintenance of water in the channel as instream flow or non-consumptive water rights. Approximately a dozen western states have some sort of legislation recognizing beneficial uses for recreation, esthetics, fish or wildlife, and, in some cases, water quality needs. Usually state offices dealing with fish, wildlife, recreation, or environmental protection may apply for and hold instream flow water rights. In some states, federal agencies, individuals and organizations may also seek instream flow rights. Few WSRs have secured instream flows under state water law.

Q. Can the federal government obtain appropriated instream flows to protect ORVs?

- A. Yes. Federal agencies may initiate efforts to secure water rights for unreserved waters for purposes of supplying adequate instream flows. They can also develop cooperative or voluntary water flow management strategies with other water users and the state. Water management strategies and agreements can be negotiated between interested parties, or water rights that can be converted to instream flows can be acquired from willing sellers in states that allow such transfers.

For non-consumptive, non-reserved water rights (instream flows), federal agencies may utilize existing state procedures. Options for state agencies include securing an instream water right recognized under state law which is able to hold instream rights for certain beneficial uses or resources (i.e., Departments of Fish and Wildlife, Environmental Quality, or Parks and Recreation). In addition, necessary flows might be secured through statewide basin planning processes. In the basin planning process, waters of the state may be closed from appropriation (withdrawn) by legislative action or restricted by an administrative order.

In some cases, other federal laws (e.g., the USFS under the Multiple Use Sustained Yield Act) provide a reservation of water; therefore, there is possibly less need for that agency to acquire water rights.

Federal agencies also have other options to protect water rights or instream flow needs by participating in water rights adjudication proceedings, such as protesting an application for water rights if such rights would affect federal resources or United States water rights, or filing for water rights under state law.

Other administrative methods to assure instream flows include special use authorizations for water developments, easements, memorandums of understanding, and FERC hydropower licensing. Purchase and exchange of water rights is an option to acquire rights when waters are fully appropriated and federal reserve rights are not applicable.

In addition, some states may have already established minimum stream flows and approved instream water rights for fish protection, to minimize the effects of pollution, or for maintaining recreational uses for a particular river. Minimum stream flows and instream water rights usually have a priority date and are regulated in the same way as other water rights.

Q. How does the federal government determine instream flow requirements?

A. Through a wide variety of scientific methods, applications and techniques. It is most appropriate, where time and funding are available, to utilize an interdisciplinary approach and value-driven assessment methodologies. Selected methods must be appropriate for the specific resource, e.g., recreation and fisheries.

Q. What will WSR designation do to guarantee continuous and adequate flows?

A. WSR designation alone does not guarantee a continuous instream flow, or protect natural flow conditions, as it does not confer any new ownership of water. In areas where quantity of instream flows is at issue, only secured water management agreements, instream flow reservations, or water rights can help ensure minimum flows related to those values for which the river was designated.

WSR designation implies the existence of a federal reserved water right only in quantities necessary to fulfill purposes of the Act. Asserting reserved or claiming non-reserved (appropriative) water rights can establish federal interest in instream flows. However, asserting rights under the Act has been applied very infrequently and is limited in priority to the date of designation. Such an assertion can be considered in river basin adjudications as a basis for claims to water. Once amounts are quantified by the managing agency, the agency can submit its claims for water to the state water court system or a federal court of jurisdiction for adjudication. If found to be a valid claim, such a right entitles the managing agency to the stream conditions as of the time the water right was awarded.

Navigability

Q. Does WSR designation have any effect on the determination of navigability of a river?

A. No. WSR status has nothing to do with the determination of navigability and the ownership of submerged lands.

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

A. Yes, although WSR status has nothing to do with the determination of navigability and ownership of submerged lands. If a waterway was determined navigable, or could have been (susceptible) at the time of statehood, title (under that test) to the underlying lands automatically passed to the state, unless Congress specifically reserved them or specified

otherwise. The “**equal footing**” principle of the Constitution and Submerged Lands Act of 1953 afforded each state rights and privileges, including self-government, judicial powers, taxation, and bonding, as well as the ownership of lands and natural resources (e.g., minerals underlying navigable waters within state boundaries). 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 (lakes and rivers). These special responsibilities are contained in the various state constitutions arising from the principle known as the **Public Trust Doctrine**. The Public Trust Doctrine requires states to exercise regulatory authority over navigable riverbeds to insure 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 regulate use on adjacent state lands if that use affects WSR values?

A. Yes. The Constitution gives the federal government certain limited powers to control uses on state-owned lands. These powers may be exercised through the **Property Clause, Navigational Servitude**, and/or **Commerce Clause**. Specifically, the Property Clause 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.” Navigational Servitude and the Commerce Clause further provide Congress the authority to regulate navigation and water quality.

Q. Can the federal government control or regulate the use and/or activities occurring on the surface waters or on adjacent non-federal lands of WSRs?

A. Yes, conditioned by the purposes of protection and statutory limitations, regardless of whether the river is designated as a WSR. This 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. This authority will extend in those situations in which there is a demonstrated link or 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)

Refer to: <http://lp.findlaw.com>, or <http://www.loc.gov/law/guide/usjudic.html> to search for the above circuit court cases and related U.S. District Court cases.

Q. If federal regulations become necessary, what factors would a WSR-administering agency consider in regulating activities on adjacent state lands?

A. Whether a federal agency has authority to manage uses or activities occurring on non-federal land depends upon:

1. Statutory and legal precedence.
2. Whether such authority has been properly delegated to federal agency officials (or delegated to some federal agency).
3. The extent to which it can be demonstrated a sufficient conflict exists between the use, activity, or intended purpose of adjacent federal lands or federal law(s).
4. Whether the federal agency's existing regulations adequately control or manage the use or activity.

Q. Are there other federal agencies that have 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 assure 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 dams, water conduits, powerhouses, transmission lines, and other projects under the Federal Power Act.

Hydroelectric and/or Water Resources Projects

Q. Will designation mean there will be restrictions on hydroelectric development?

- A. The Act expressly prohibits the FERC from licensing new construction of hydroelectric facilities under the Federal Power Act “on or directly affecting” a designated WSR.

Existing FERC-licensed hydroelectric facilities located on or below/above a designated river segment 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 other 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 was established. It also precludes federal assistance to projects below/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 projects within the river corridor, while the “invade or unreasonably diminish” standard applies to projects outside the corridor.

Q. What is the definition of a water resources project?

- A. Any hydroelectric facilities licensed under the Federal Power Act, or other federally assisted (constructed, licensed, permitted, funded) projects, which would affect the free-flowing characteristics of a WSR.

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

- A. Examples include, but are not limited to: any dam, water conduit, reservoir, powerhouse, transmission line, or other project works licensed under the Federal Power Act; other federally assisted projects such as dams, water diversion projects, fisheries habitat and watershed restoration/enhancement projects, bridges, roadway construction/reconstruction projects, bank stabilization projects, channelization projects, levee construction, recreation facilities (e.g., boat ramps, fishing piers), and activities that require a Section 404 permit from the ACOE.

Q. Are congressionally authorized study rivers (Section 5(a) of the Act) protected from activities that would affect their free-flowing characteristics?

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 below/above the study segment. The effect is to provide greater protection for study rivers during the shorter-term study process.

Q. Are rivers which are determined eligible or suitable for the National System through agency planning processes (Section 5(d)(1) study rivers) 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.

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

A. Administering agencies must evaluate proposed water resources projects under the appropriate standard of Section 7. The result of that evaluation should be provided to the federal proponent or federal agency providing assistance.

A Section 7 determination is not conducted as a NEPA analysis. It is, however, typically conducted in response to another federal agency’s permitting or environmental analysis process.

Habitat Enhancement

Q. Can fish and wildlife habitat structures be constructed and placed in WSRs?

A. Generally, yes. Construction and maintenance of minor structures for the protection, conservation, rehabilitation, or enhancement of fish and wildlife habitat is acceptable, provided they do not have a direct and adverse effect on the values of the river, including its free-flowing nature. Structures should be compatible with the river’s classification, allow the area to remain natural in appearance, and harmonize with the surrounding environment. An analysis should be conducted to assess the effect on river values.

The following types of structures may be permitted, even though they may affect the free-flowing nature of the river, if:

1. They mimic normal, naturally occurring events (as opposed to catastrophic) such as trees falling in and across the river, boulders falling in or moving down the river course, minor bank sloughing or undercutting, island building, and the opening or closing of existing secondary channels.
2. They do not create unusual hazards or substantially interfere with existing or reasonably anticipated recreation use of the river such as fishing, kayaking, canoeing, rafting, tubing and swimming.
3. They do not prevent naturally occurring events such as bank erosion, channel shifting, island building, and bed load or debris movement.

In addition, the following types of structures may be considered to harmonize with the river environment if:

1. They are made of native materials, e.g., logs, boulders, rocks (not rip-rapping), vegetation, and so forth.
2. Construction materials are kept natural in appearance, e.g., logs with bark as opposed to being peeled.
3. Materials are placed in locations, positions, and quantities which mimic natural conditions.
4. Anchoring materials, cables, rebar, etc., are installed in such a manner as to be visually acceptable.

Q. Does the Act allow for the introduction of non-indigenous species (i.e., game fish or vegetation) which would improve wildlife habitat?

- A. The Act does not mention non-indigenous species; however, it does require the protection and enhancement (if possible) of the ORVs for which a river was designated. Unless it is contrary to another law, or the policy of the managing agency, non-indigenous species may be introduced if this would not result in the degradation to either ORVs or other important resource values identified. Indirect impacts on non-indigenous species—such as those resulting from additional uses of rivers—by human or non-human factors must also be considered. Additional guidance for a specific river is usually included in the specific management plan for that river.

Q. Will non-indigenous species present in the river area be removed once the river is designated?

A. Unless non-indigenous species are degrading other important resource values, they generally will not be removed. This is usually the case, especially if the species have been well established and/or are providing an important resource, e.g., introduced species of game fish. Practical considerations, such as the effort or expense of eradicating a non-indigenous species, must also be considered. This issue should be addressed in the management plan.

Q. Will 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 maintain and enhance riparian and other river-related natural values. Specific actions to meet the objective will be determined through the management plan required for each river.

ACQUISITIONS

Acquisitions

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

A. Land acquisition is one of the ways to protect 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.

This section of the Act authorizes acquisition of fee title to not more than an average of 100 acres per river mile within the corridor, i.e., approximately 50 acres (400-foot strip) from either side of the river bank. If the river is within the boundaries of a national park, wildlife refuge or national forest, nothing in the Act precludes the acquisition of lands via other federal agency authorities or laws within the boundaries of that administering unit.

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 land acquisition methods, including exchanges and donations?

A. Yes. There is no acreage limitation for 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., acquiring partial 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.

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

A. Generally, no. 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. Any provisions for public use of private lands must be specifically purchased from the landowner.

Condemnation

Q. If the purchase of land becomes necessary within a designated WSR corridor, under what conditions is condemnation 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 selling price cannot be agreed upon.
2. Needed to clear title to a property as a legal procedure and has nothing to do with government/landowner differences.

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

A. 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 ORVs which resulted in the river's designation, negotiated efforts will be pursued to remove the threat through local zoning, state provisions, land exchanges, purchases on a willing-seller/willing-buyer basis, and other actions short of condemnation. 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. (See Private Lands Section.)

Where an exchange, scenic easement, or voluntary purchase cannot be negotiated and an activity (actual or proposed) threatens or significantly degrades river values or the associated area, the government could pursue condemnation so as to protect the river values which led to designation. Condemnation is rarely used by the federal government and is the last option in protecting the values for which the river was designated.

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

- A. 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 are in public ownership (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 is approximately 50 acres on either side of the river bank. 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 in WSR administration?

- A. It is not the government's role or desire (see Management Authority Section) to interfere with, or regulate activities on, private lands in order to meet the intent of the Act. Through the respective agency's land management planning process, landowners' concerns are considered and evaluated as to their compatibility with the river values for which the river was designated. Should development of private lands be incompatible with protecting the river, or public access be required (no alternative exists), the government may negotiate with the landowner.

Agencies may acquire properties using appropriated funds under the Land and Water Conservation Fund Act or other authorities. In acquiring scenic easements, no use of private lands would be allowed unless the landowner grants permission. Owners are contacted in order to see if an exchange or voluntary purchase can be negotiated. Scenic easements are usually negotiated by a cadre of personnel who have formal training on techniques to acquire lands.

Q. Will there be condemnation of state lands that are within WSR corridors?

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

Q. Is the term “just compensation” based on the value of the land (referring to condemnation), or is it based on off-site values that are dependent on that land?

A. Just compensation is based on the fair-market value or appraised value.

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 four agencies who administer WSRs, 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.

MANAGEMENT AUTHORITY

Role of the Federal Government

Q. Who manages a WSR? Who administers the various laws? When agency jurisdictions overlap, which agency has the lead? How will procedures under state/federal legislation be coordinated?

A. Designated rivers are administered by one of four federal agencies (BLM, NPS, USFS, FWS) or the states (for rivers designated under Section 2(a)(ii)). Generally, the specific legislation will indicate an agency to administer each river area or segment in order to minimize overlapping federal agency jurisdictional issues.

For congressionally designated rivers, the administering federal 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. On some rivers, including those with overlapping state designations, joint federal/state management plans may be developed. The management plan developed for each river will specifically address the roles of federal, state, local, county and tribal governments.

Q. How will WSR management plans be developed? When? What are the interim rules? How and when will citizens be involved?

A. The process varies from river to river. When multiple rivers are added through an amendment of the Act, a number of entities (e.g., federal, state and local governments) typically coordinate the development of river management plans on a statewide or regional basis. These entities ensure the overall direction for development of plans, boundaries, interim management, public involvement, and coordination. Some river management plans are jointly developed by federal and state agencies, while other plans may be developed by one agency with input from others. Advisory committees are often formed locally and will help agencies prepare management plans during river studies.

River management plans should be completed within three full fiscal years of designation. Existing federal, state and local laws remain in effect during the interim, except the federal government will not approve hydroelectric developments on or directly affecting a designated river. Minerals within one-quarter mile—one-half mile in Alaska—of each side of wild river segments are withdrawn from all forms of appropriation under the mining and mineral leasing laws.

Opportunities for citizen input are provided as management plans are developed at the local level. Citizen input by landowners and river user groups is a very important part of the planning process.

Q. Who established the policies under which the land is administered?

- A. After Congress designates river areas, the federal agency will develop management plans. Approval of these management plans will include full public participation and review in compliance with the NEPA.

Role of State and Local Governments

Q. What is the state's role in managing WSRs?

- A. For rivers designated using Section 2(a)(ii) of the Wild and Scenic Rivers Act, the state is responsible for providing protection except on federally administered lands. On federally administered rivers 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 (state highways, parks, forests, etc.).

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

- A. The role of local government depends on ownership along the WSR. Where a WSR flows entirely through federally administered land, the role of local government will be minor to none. Where the WSR flows through private lands, local government can assist by using their regulatory powers, e.g., zoning authority, to control land uses inimical to protecting river values. They can also participate in comprehensive river management planning processes to determine the most effective ways to protect river values and provide for recreational use on the river and minimize the effect or impact on landowners along the river.

Budgeting/Funding

Q. What is the cost of managing designated WSRs?

A. Costs vary according to the complexity of issues and resulting management plan adopted to protect river values. Plan implementation is dependent on the congressional appropriations process and may require that only portions of river management plans be implemented. Reports and information are on file in appropriate federal agency offices.

Q. Will local governments bear any costs of the designation, such as informational services, enforcement, recreation facilities, zoning or planning revisions, and special studies?

A. The costs of administering WSRs, including the provisions of public information and recreation development—although primarily a federal responsibility—should not preclude viable partnerships with local governments and others in developing (where appropriate) information, facilities and programs which foster resource protection. Depending upon the specific river situation, local governments could bear some additional costs for such things as search and rescue, enforcement, and revisions to local land use plans and zoning. Local governments may also choose to provide public recreation access and recreation facilities on county and other governmental lands.

Appendix A: Glossary

- C -

Coordinated or Concurrent Studies: Wild and scenic river studies conducted by more than one agency or entity.

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 15(b) of the Wild and Scenic Rivers Act)

- L -

Limits of Acceptable Change (LAC) System: A framework for establishing acceptable and appropriate resource and social conditions in recreation settings. A system of management planning. Refer to United States Department of Agriculture Forest Service General Technical Report INT-176, January 1985, Intermountain Forest and Range Experiment Station, Ogden, Utah.

- N -

Nationwide Rivers Inventory (NRI): A source list of rivers which have been tentatively determined by the National Park Service and other federal land managing agencies as 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 -

Recreation Opportunity Spectrum (ROS): A continuum used to characterize recreation opportunities in terms of setting, activity and experience opportunities. The spectrum covers a range of recreation opportunities from primitive to urban. With respect to river management planning, the ROS represents one possible method for delineating management units or zones. (See Bureau of Land Management Manual Section 8320 for a more detailed discussion.)

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, Scenic and/or Recreational: The three classes of what is traditionally referred to as a “Wild and Scenic River.” Designated river segments are classified as wild, scenic and/or recreational, but the segments cannot overlap.

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.

Appendix B: Major References

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Appendix C: Selected Associated Statutes, Regulations and Guidelines

Alaska National Interest Lands Conservation Act of 1980; P.L. 96-487; (16 U.S.C. 3101, et seq.)

Archaeological Resources Protection Act of 1979; P.L. 96-95; (16 U.S.C. 470as, et seq., as amended; 43 CFR 7)

Clean Air Act of 1970; P.L. 91-604, as amended; (42 U.S.C. 1857-1857i; 7401-7671q, et seq., as amended; 40 CFR 50-58)

Department of Transportation Act of 1966; (Section 4)

Endangered Species Act of 1973, as amended; P.L. 93-205; (16 U.S.C. 1531-1544, et seq., as amended)

Federal Water Pollution Control Act of 1977 (Clean Water Act); P.L. 95-217; (33 U.S.C. 1251-1387, et seq., as amended; 33 CFR 320 ff; 40 CFR 15, 100-400, 220-233, 400-471)

Federal Land Policy and Management Act of 1976, as amended; P.L. 94-579 (43 U.S.C. 1701 et seq.)

National Historic Preservation Act of 1966; P.L. 89-665; (16 U.S.C. 470, as amended; 36 CFR 800)

Land and Water Conservation Fund Act of 1965; P.L. 88-578, as amended; (16 U.S.C. 4601 (1-6) et seq.)

McCarran Amendment of July 10, 1952; (43 U.S.C. 666)

Marine Protection, Research and Sanctuaries Act of 1972; P.L. 92-532, Section 103; (Titles 1 & 2 - 33 U.S.C. 1401-1445; Title 3 - 16 U.S.C. 1431-1445)

National Environmental Policy Act of 1969; P.L. 91-190, as amended; (42 U.S.C. 4321, et seq.)

Oregon and California Grant Lands Act of 1937; P.L. 75-876; (43 U.S.C. 1181a, et seq.)

Water and Resources Development Act of 1990; P.L. 101-640; (33 U.S.C. 2201)

Water Resources Planning Act of 1965, as amended; P.L. 89-90; (42 U.S.C. 1962a-(a)(4)(e))

Wild and Scenic Rivers Act of 1968; P.L. 90-542, as amended; (16 U.S.C. 1271-1287, et seq.)

Wilderness Act of 1964; P.L. 88-577; (16 U.S.C. 1131)

Title 36 CFR, Subpart 297 - Wild and Scenic Rivers

Title 43 CFR, Part 39 - Wild and Scenic Rivers, Subpart A - Water Resources Projects
(Proposed U.S. Department of the Interior rulemaking, *Federal Register*, Volume 63, Number 236, December 9, 1998, pages 67834-67837.)

Title 43 CFR, Subpart 8350 - Management Areas

U.S. Department of the Interior - U.S. Department of Agriculture Final Revised Guidelines for Eligibility, Classification, and Management of River Areas. *Federal Register*, Volume 47, Number 173, September 7, 1982, pages 39454-39459.