PUBLIC LAW 90-542 (as amended): THE WILD AND SCENIC RIVERS ACT

Frequently Asked Questions



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General Ouestions

- Q. What is a wild and scenic river?
- A. It is a free-flowing river or river segment with outstanding scenic, recreational, geologic. fish and wildlife, historic, archaeologic or other values which has been designated by act of Congress or the Secretary of the Interior as a part of the National Wild and Scenic Rivers System. (Public Law 90-542).
- Q. What is the purpose of wild and scenic river designation?
- A. The purpose of designation is to protect a river, or a segment of a river, which has outstanding natural, cultural or recreational values and its adjacent lands in a free-flowing condition for the benefit and enjoyment of present and future generations.
- Q. How does the Wild and Scenic Rivers Act work?
- A. Designation of a river under the Wild and Scenic Rivers Act affords the river certain legal protections from adverse development and provides a mechanism for management of river resources. The principal effect of the Act is to preclude the construction of dams and other water resources projects which would adversely affect the free-flowing nature of the river and its natural and cultural values. Designation also affects the management of Federal lands in the river corridor. Where private lands are involved, the Federal manager will work with local units of government to develop protective measures, thereby avoiding land acquisition whenever possible.
- Q. How does wild and scenic river designation compare to National Park or Wilderness designation?
- A. These designations are very different, however, they are often confused. The goal of a National Park is to preserve the natural physical and biological environment and cultural resources. Wilderness areas are established in undeveloped areas of 5,000 acres or more, predominantly on Federal lands, to preserve their primitive, undeveloped characteristics. People do not reside as a permanent part of a National Park or Wilderness Area, and a

long-term goal of the managing Federal agency is usually to purchase any private lands within their boundaries.

In contrast, Wild and Scenic Rivers are established to maintain the existing conditions-including the natural resource values, the scenery, the recreational uses, the historical values, the local communities and the existing land uses within the river corridor. People have a very important, active role as part of the river corridor environment. Some of them may be landowners who reside there on a year-round basis.

- Q. How can landowners, citizens, and local governments participate in wild and scenic river designation and management?
- A. Public interest and support is an important ingredient in the political process that leads to designation of a Wild and Scenic River. The most effective efforts are those that start with and are firmly based at the "grass roots" level. They become the source of information, the problem solvers, and the link with the Congressional delegations. There is no substitute for public involvement in this process.

Wild and Scenic River management is everybody's responsibility, not just the Federal agencies. Rivers do not follow ownership or administrative boundaries, therefore, they must be managed as a cooperative partnership.

Landowners, citizens and local governments are encouraged to get involved by contacting the local Forest Service. National Park Service or Bureau of Land Management offices. reviewing study reports and management plans, voicing opinions and suggestions, and participating in local interest group activities. Landowners can take the initiative to protect the river values on their lands and volunteer to help with protection programs on public lands. Local government officials can take the responsibility to assure that development and use of the river corridor within their jurisdiction is managed and controlled to minimize the impact on resource values. These are a few of the many opportunities that exist for participating in the Wild and Scenic Rivers program.

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Q. What is the difference between river designation and river classification?

- A. River designation is the action of actually putting a river into the National System. This can be done either by Act of Congress, or in special situations, by the Secretary of the Interior. Classification is the act of declaring a river or river segment either "wild," "scenic" or "recreational." The Act specifies that rivers must be classified in accordance with the following standards:
 - --WILD--rivers that are free of impoundments and generally inaccessible except by trail, with watershed or shorelines essentially primitive and water unpolluted. These represent vestiges of primitive America. Most wild river segments are located on public lands.
 - --SCENIC--rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.
 - --RECREATIONAL--rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

Classification may be done by Congress at the time of passage of legislation to designate a river or Congress may leave this responsibility with the administering agency following designation.

Q. What are the steps leading to Congressional designation of a river?

A. Most rivers have been designated by Congress, and in most instances only after lengthy study. Some studies are directed by Congress; others are initiated by a Federal land managing agency pursuant to its land and resource management planning responsibilities. In either case, draft reports receive public review and final reports are sent to Congress with a Presidential recommendation (may be pro or con).

Q. When can the Secretary of the Interior designate a river?

A. The Secretary of the Interior can designate a river only upon the request of the governor(s) of the State(s) involved. The river must have been designated a State Wild

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and Scenic River (some States use different terminology for rivers in their system), it must meet the same eligibility criteria as Federally managed rivers, and the State must agree to continue protecting the river (except for any Federal lands through which the river may flow) in perpetuity.

- Q. How many rivers and river miles are there in the National System?
- A. As of the end of 1996, 154 rivers involving almost 10,815 miles are included in the National System.
- Q. How many more rivers (potentially) could be designated?
- A. The National Park Service maintains a listing of potential additions in what it calls a "Nationwide Rivers Inventory." This is a list of rivers (or segments of rivers which have been identified through preliminary study as free-flowing and probably meeting other eligibility criteria. Currently this listing includes over 2,600 rivers or segments accounting for some 69,000 miles of river. This is about 2% of the Nation's river mileage. Additional, but undoubtedly a limited number of rivers, may still be located.
- Q. Have any Wild and Scenic Rivers ever been deauthorized?
- A. No
- Q. Can intermittent streams qualify for the National System?
- A. Yes. If intermittent streams are typical of that section of the country and flow is sufficient to maintain the outstandingly remarkable values associated with the river, the river is eligible.
- Q. How can rivers with dams or diversions be included in the System?

- A. "Free-flowing" does not necessarily mean naturally flowing from headwaters to mouth. The Act defines "free-flowing" as "...existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping or other modification of the waterway. The existence, however, of low dams, diversion works and other minor structures at the time any river is proposed...shall not automatically bar its consideration...." In fact, Congress has designated river segments with numerous and major structures above or below the designated segment. Hence, if the section of water under consideration "flows" and is riverine in appearance, it is considered "free-flowing."
- Q. What is an outstandingly remarkable value?
- A. In order to qualify as a wild and scenic river, a river must be free-flowing and possess at least one outstandingly remarkable value. As identified in the Act, such values include fish and wildlife, scenic, recreational, geologic, historic, cultural, or other similar values. Outstandingly remarkable is not defined and, therefore, is left to administrative discretion. It has been variously defined as possessing nationally or regionally significant values, or values well beyond those found elsewhere in the same geographic area, or unique values. In the final analysis, it comes down to the professional judgment of the study team. The basis for the judgment must be documented and fully explained in any study report.
- Q. Is any minimum length required for a river to be eligible?
- A. No, but obviously the shorter the length of river the less likely it is to possess outstandingly remarkable values.
- Q. What does the term "suitability" mean?
- A. In conducting wild and scenic river studies, the appropriate Secretary must report to Congress on the eligibility and suitability of the river for the National System. A finding of "suitable" is essentially a recommendation for designation.
- Q. What determines whether a river is considered suitable?

- A. Suitability is ultimately a judgment call as to whether the benefits of designation outweigh the losses. On the one hand are the benefits of river conservation (protection of the outstandingly remarkable values) and possible indirect economic benefits related to that, and on the other hand are costs for land acquisition, facility development and management, and foregoing or reducing other potential uses of these resources.
- Q. When are Wild and Scenic River Study Reports done?
- A. The National Park Service does study reports when directed to do so by Congress, or whenever a Governor applies to the Secretary for designation of a State river. The Bureau of Land Management and the U.S. Forest Service do studies when directed to do so by Congress, or when they have identified an eligible river on lands they administer.
- Q. What is included in a study report?
- A. Section 4(a)(ii) of the Wild and Scenic Rivers Act requires that reports "...show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed or curtailed if the area were included in the National Wild and Scenic Rivers System; the Federal Agency...by which it...should...be administered; the extent to which...administration...and costs...be shared by State and local agencies, and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area..." Reports also always contain a description of the resources, determinations as to eligibility, the appropriate classification(s) should the river be designated, an assessment of impacts of designation and the views of the Governor of the affected State and the heads of affected Federal agencies.
- Q. Where can I obtain more information about river study processes and management practices?
- A. Additional explanations are provided in "National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas."

These are available from the Washington Offices of the Federal administering agencies, or their State or regional offices.

Management Ouestions

Q. What is the role of the Federal government on Wild and Scenic Rivers?

A. Rivers which are designated by act of Congress are administered by one of the following agencies:

Forest Service -- Department of Agriculture National Park Service -- Department of the Interior Bureau of Land Management -- Department of the Interior Fish and Wildlife Service -- Department of the Interior

It is the responsibility of the Federal agencies to assure that the values for which the river was designated are protected and made available for the public to enjoy. Some examples of this Federal role are to:

- --develop the river management plan, in consultation with State and local agencies and private interests.
- --manage the federally owned lands in the river corridor.
- -- assure that recreational use on the river does not damage other river qualities.
- --participate in legal proceedings or Congressional actions which pertain to activities and uses of the river corridor.
- Q. What is the role of the State government on federally administered Wild and Scenic Rivers?
- A. The State has a very important role. The State's responsibilities include
 - --regulation and enforcement for fishing and hunting activities.
 - --water rights and water appropriation.
 - --development and administration of water quality standards.

--administration of State land use regulations on non-Federal lands.
--managing State lands and State facilities (including State highways, parks, recreation areas, etc.) along the river.

Q. Can the Federal Government zone private lands?

- A. The Federal government has no power to zone private lands. Zoning is a power of State and local governments. There are provisions of the Act that call upon the Federal agencies to encourage local land use planning by issuing guidelines for local and State governments for consideration in protecting river corridors which include areas within incorporated cities, villages or boroughs. These guidelines are not binding on local governments nor can the Federal government force the local governments to adopt them.
- Q. Under what circumstances would private property be purchased by the Federal government?
- A. The Federal government would consider acquiring private lands if necessary to protect the values of the river corridor, or to provide public access. Acquisition may be by purchase, exchange or donation, and may be for fee title to all or part of the land or for easements. In almost all cases, this is accomplished on a willing seller willing buyer basis. With a scenic easement the landowner maintains ownership, but agrees to limit the type of use or development that can occur on his land. When an easement is acquired, the landowner retains title to the land and retains the right to sell it, rent it, or leave it to heirs or restrict public access. Scenic easements not only protect the river values, but can act to protect private properties from adverse development on adjacent private lands.

Q. Under what circumstances would condemnation be used?

A. Federal agencies only use condemnation as a last resort to prevent land use or developments from degrading the outstanding values of the river corridor.

Condemnation of lands has been very limited. For example, of the more than 100,000 acres of private land contained within the corridors of the rivers the Forest Service

manages in California, Oregon, and Washington, no land has been acquired in fee title through condemnation.

The Wild and Scenic Rivers Act places greater restrictions on the use of condemnation than exist for other areas of the National Forests, National Parks and other Federal areas. For example, in the National Forests or National Parks, condemnation is available to acquire fee title to any private lands needed for public purposes. This is not true for private lands within Wild and Scenic River boundaries because the Act includes specific restrictions on the use of condemnation. Fee title condemnation is prohibited if more than 50% of the corridor land is publicly owned. Most western rivers considered for designation are more than 50% publicly owned. On eastern rivers, Congress specifically directs that Federal acquisition is to be extremely limited or precludes its use entirely.

- 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 Rivers 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. No. Public access rights are not involved. In order to provide for public use on private lands, a use easement would need to be acquired. The price for a use easement probably would be higher than for a scenic easement.
- Q. What effect does the river's classification have on how it is administered?
- A. Rivers are managed to protect and, if possible, enhance the values present at the time of designation. This means that the less development present at the time of designation, the

more restrictive the management standards will be. It also has implication where Federal lands are involved. These are discussed under Impacts of Designation for such activities as grazing, timber harvesting and mining.

- Q. Why do many rivers have multiple classifications?
- A. Rivers are classified based on the amount of development along their shorelines. When there is a significant difference in the degree of development along discretely identifiable segments of river, often caused by physical characteristics of the river corridor, segmentation is employed.
- Q. When will river corridor boundaries be established?
- A. The Wild and Scenic Rivers Act calls for boundaries to be established within one year of designation. However, since boundaries are often formulated as part of the management planning process which generally is a 3 year process, in practice boundaries often take about 3 years to establish. Boundaries may be revised based on further analysis or changed conditions.

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.

- Q. How are river corridor boundaries determined?
- A. Corridor boundaries are established to protect the outstandingly remarkable values for which the river was designated. They may not exceed an average of 320 acres per mile (640 acres per river mile in Alaska) over the designated portion of the river. Agencies delineate boundaries based on natural or man-made features (canyon rims, roads and ridge tops, etc.) and legally identifiable property lines.
- Q. How can I find out where the boundaries are located?

- A. Section 3(c) of the WSRA 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 boundaries determined on stream channels which are braided?
- A. In the case of braided rivers, boundaries will be measured from the outermost braid unless Congress specifies otherwise.
- Q. Are tributary stream included in a river designation?
- A. Tributaries may be included but they must be specifically identified as such in the authorizing legislation.
- Q. How does wild and scenic river designation affect recreational use on and along the river?
- A. Fishing and Hunting

Fishing and hunting are regulated under State laws. Hunting, trapping 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 wildlife agencies.

Camping

Camping is often important to the enjoyment of wild and scenic rivers. 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.).

Floating

Generally there would be no effect, except to prevent future impoundments within the designated area. Research has shown that there is little or no increase in use directly as a result of designation. If use exceeds an acceptable level as determined through an agency's planning processes, a permit system or other techniques to limit or spread out use may be undertaken.

Use of Motorized Craft

The Wild and Scenic Rivers Act does not prohibit the use of motors. However, a management agency may determine through its planning that motorized use is impacting adversely the ORVs identified for the river area, and closures or limitations could be imposed. Similarly, motorized use on land would also be evaluated, and regulated on Federal lands as necessary.

- 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. Does the Wild and Scenic Rivers Act allow for the introduction of non-indigenous species such as game fish or vegetation which would improve wildlife habitat?
- A. The Wild and Scenic Rivers Act does not mention non-indigenous species. The Act does, however, require the protection and enhancement of the outstandingly remarkable values for which a river was designated. Unless it is contrary to another law, or policy of the managing agency, non-indigenous species may be introduced if this would not result in damage to either outstandingly remarkable values or other important values identified. Indirect impacts, such as those resulting from additional use of a river to utilize non-indigenous species by human or non-human factors, must be considered. Additional guidance for a specific river may be provided in the management plan for that river.
- Q. Will non-indigenous species present in the river area be removed if the river is designated?

- A. Unless non-indigenous species are damaging other important resource values, they generally will not be removed. This particularly will be true if they have been well established and/or are providing an important resource in their own right, such as 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. Can non-indigenous species present in the river be maintained if their stocks require replenishment, i.e., an artificial stocking program?
- A. Yes, if such programs do not jeopardize native populations.
- Q. Can fish structures be placed in wild and scenic rivers?
- A. Yes, if access is available, and if it can be done without adversely affecting the free-flow of the river or changing the character of the riverbank.

Impacts of Designation

- Q. What effect will designation have on the use of private property?
- A. Ongoing regular uses of private lands, particularly those existing at the time that the river is designated, are not directly affected. Most private land use such as homes and farms are compatible with Wild and Scenic River management. There is no intent to remove all use, developments or inhabitants from the river corridor. The management plan for the river should identify types of land uses and developments which are considered compatible or incompatible with protection of the river's values.
- Q. Will designation lead to people trespassing on my property?

- A. Designation does not open private lands to public access. Landowners can continue to post their property. Developed access points and recreation user facilities will usually help to reduce the trespass and impact on both private and public lands.
- Q. What effect will designation have on property values and the ability to sell private property?
- A. Wild and Scenic Rivers enjoy a measure of protection from future incompatible land uses and development; therefore, designation can have a positive impact on property values and marketability. Other factors such as location of the river, type and location of the property, and advertising can have a significant influence on property values.

In recent studies on two Wild and Scenic Rivers, the Upper Delaware and the Rogue, property values in the designated river corridors were shown to increase at a higher rate than those for other nearby lands. Realtors on the Upper Delaware frequently cite the designation in sales listings. The legal right to buy and sell property will not be affected by designation.

- Q. What effect will Wild and Scenic River designation have on water rights and water development?
- A. Designation has no effect on existing water rights. The managing agency will determine the instream flow that is sufficient to maintain the river values--water quality, river recreation, fisheries, etc. Existing water rights may be purchased by the Federal government if necessary to meet the instream flow requirements, or a negotiated agreement with the water users may be prepared to provide for instream flows.

Existing irrigation systems and other water development facilities are not disturbed. Alterations to existing systems and new water projects which require Federal permits may be allowed as long as they do not have an adverse effect on the values of the river corridor.

Q. What effect does Wild and Scenic River designation have on timber harvest and agriculture?

- A. For privately owned lands, timber harvest and agricultural uses are generally unaffected. For Federally owned timber and grazing lands, the Act requires that management of these resources be done in a manner to protect river values. This could lead to reduced levels of grazing and timber harvesting, particularly for rivers classified as wild.
- Q. What effect does Wild and Scenic River designation have on mining on <u>Federal</u> lands?
- A. For rivers designated as wild, no new mining claims or mineral leases can be filed; however, existing valid claims or leases within the river boundary remain in effect and activities may be allowed subject to regulations in a manner that minimizes 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 in a manner that minimizes surface disturbance, water sedimentation, pollution and visual impairment.

Existing valid claims or leases within the river boundary remain in effect and activities may be allowed subject to regulations in a manner that minimizes surface disturbance, water sedimentation, pollution or visual impairment. Reasonable mining claim and mineral lease access 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 date of designation.

- Q. How does wild and scenic river study status affect mining?
- A. Rivers authorized for congressional study under Section 5(a) of the Act are withdrawn from mining and mineral leasing while under study and until Congress acts on the agency's suitability recommendation. The timeframe is generally three years, but may be longer. In addition, congressional study rivers containing mining claims filed prior to 1986 are withdrawn from mining entry, but not mineral leasing from approximately one-quarter mile from the original high water mark on both sides of the river.
- Q. How does designation affect mining on private lands?
- A. Mining activities can adversely affect Wild and Scenic River values. In cases of serious adverse effects, a governmental agency may purchase the mineral rights. It may also be

possible to alter extraction methods if Federal permits are required for the conduct of mining, such as water discharge permits.

- Q. What impact does Wild and Scenic River designation have on water quality?
- A. Water quality standards for designated rivers are subject to State regulation [Sections 1 and 12(c) of the Act] in cooperation and coordination with the Environmental Protection Agency. Designation could lead a State to upgrade the standards for a river.
- Q. What is the Federal agency's obligation to water quality regarding Wild and Scenic River management?
- A. Generally, 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. Who is responsible for river management (recreation use, water quality protection, law enforcement, etc.) on rivers where the State owns the bed and banks of the river?
- A. Both the Federal and State governments have management authorities and responsibilities. Ideally a management plan can be developed which both the State and Federal governments can adopt and which identifies the responsibilities of each.