



Questions & Answers about the Wild & Scenic River Suitability Study of Blue River and KP Creek Apache-Sitgreaves National Forests

2009, v1

Q. What is the history of the Wild & Scenic Rivers 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, congressional representatives and federal agencies. The Act was an outgrowth of a national conservation movement of the 1950's and 1960's. 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. The Act 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." The Act also states "each component of the National Wild and Scenic Rivers System shall be administered in such manner as to protect and enhance its values, without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values."

Q. What are the primary effects of WSR designation?

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

Q. How are rivers designated?

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

1. *By Act of Congress.* Rivers designated by Congress are listed in Section 3(a) of the Act.
2. *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.

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

A. Yes. For an agency-identified study river such as the Blue River, administering agencies involve the public in the determination of potential wild and scenic rivers. Starting with scoping meetings, the public and state, local and tribal governments have the opportunity to discuss issues, concerns, river values, and associated impacts with agency staff. As the process continues the communities of interest are also encouraged to provide information and help develop and evaluate alternatives.

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

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

Q. When was the Blue River initially considered for eligibility as a Wild and Scenic River?

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 (does not apply to Blue River or KP Creek Study).

River areas identified through the inventory phase are evaluated for their free-flowing nature and must possess at least one ORV.

The Blue River and KP Creek were initially considered for eligibility and classification in the Resource Information Report; Potential Wild, Scenic, Recreational River Designation, National Forests of Arizona, prepared by the Forest Service, Southwestern Region in September 1993. In accordance with the 2008 Planning Rule, 36 CFR Part 219, a comprehensive review of this report is underway.

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

A. 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. What is the definition of “outstandingly remarkable value (ORV)?”

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. 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 level of development of the shoreline, watercourse and access. If designated by Congress, the river’s enabling legislation generally specifies the classification.

The following factors are generally used to assign classification of individual river segments: accessibility, primitive character, 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, 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 Outstandingly Remarkable Value (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. 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.

Q. Can a WSR have more than one classification?

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

Q. What does the term suitability mean?

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

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

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

- 1) Landownership and land uses
- 2) Existing and potential water resources development
- 3) Existing and potential transportation, facilities, and other developments
- 4) Existing and potential mineral and energy resource activities
- 5) Existing grazing activities
- 6) Existing and potential recreation activities
- 7) Other existing and potential resource activities (e.g.: farming activities, current or potential vegetation management projects, recreation facilities or trail projects)
- 8) Existing or potential special designations
- 9) Socio-economic environment
- 10) Current administration and funding needs if designated
- 11) The extent to which the State or its political subdivisions might participate in the shared preservation and administration of the river, including costs
- 12) The state/local government's ability to manage and protect the outstandingly remarkable values on non-federal lands
- 13) Support or opposition to designation
- 14) The consistency of designation with other agency plans, programs or policies and in meeting regional objectives
- 15) Contribution to river system or basin integrity
- 16) Demonstrated or potential commitment for public volunteers, partnerships, and/or stewardship commitments for management and/or funding of the river segment.

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

A. Benefits may include, but are not limited to: providing managers tools or mechanisms to 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 and enhancement of water quality and ORVs; and, if in a river's 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, authority for federal agencies to purchase property, and changes in permissible land use through zoning adopted by local governments to protect river values.

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

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

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

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

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

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.

Section 13(g) of the Act allows the granting of easements and rights-of-way on federal lands 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 the sale or other disposal of federal lands?

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

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

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

corridor may use their property as they had before designation.

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

A. No restrictions to private lands may be applied under the Act. River plans may establish goals for new construction consistent with classification. There is a wide range of uses compatible with these classifications so long as the overall values and character of the river corridor is maintained. Any affect on private lands would be through state and local zoning. 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. 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.

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.

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

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

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

A. Local government entities are encouraged by federal river management agencies to provide for the protection of WSR values in their land use plans, including the use of zoning and other land use measures. State land use requirements often require each local jurisdiction to address uses and activities within WSR areas in their planning updates. Such local planning may be carried out by comprehensive plan policies, zoning requirements, negotiations with landowners, or through other mechanisms.

Q. How does easement acquisition affect public access?

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

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

A. Designation may cause an increase in use along the river as new visitors seek it out. However, the WSR management requirements should ensure that any such increases will not damage resources on private property. If anything, there will be increased oversight with designation, discouraging littering, trespass and vandalism.

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 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.

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

A. Timber management activities on federal lands within WSR corridors must be designed to help achieve land-management objectives consistent with the protection and enhancement of the values 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.

Timber management activities on private lands within WSR corridors are not affected other than through state and local authorities. Under the Act, the only way the federal government can restrict private timber management is through purchase of timber rights (in easement or fee title). The river manager may provide technical assistance and/or work with state and local governments to protect river values.

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

A. Timber management activities outside the corridor on federal lands will be designed to protect 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. 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). The river manager may provide technical assistance and/or work with state and local governments to protect river values.

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.

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. 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 the administering Secretary has the discretion to continue the use of motorboats and airplane landings in wilderness where such uses are traditionally established.
- 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. Roads are generally prohibited in wilderness. However, trails, trail bridges and other accommodations to allow recreation use and protect wilderness character are allowed 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.

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. 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.

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. 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. 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.

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

A. On federally administered rivers a state’s responsibilities include:

- Regulating and enforcing fishing and hunting regulations.
- Adjudicating water rights and appropriation.
- Developing and administrating 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.

Information and documents about the Wild and Scenic Rivers Suitability Study are available online at the Apache-Sitgreaves National Forests website at: <http://www.fs.fed.us/r3/asnf/projects/>

Information on the Wild and Scenic Rivers System is available online at: <http://www.rivers.gov/index.html>