

Hugo Neighborhood Association & Historical Society

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December 14, 2014 Email/Letter

Kai Allen, Outdoor Recreation Planner/Asst. River Manager/Scenic Easement Administrator
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Dear Kai:

On December 8, 2014 I finished my self assigned assessment task of researching and recording ORVs for the Hellgate Recreation Area. The reason for terminating the HRA ORVs research project was its lengthy history, topic complexity, and the massive amount of information in the form of policy and technical documents on wild and scenic rivers. At 240 pages the project was already huge and threatened to continue growing. Even though ceasing the task with the status of a preliminary paper, I feel an excellent beginning was made. The assessment also addressed the issue of the 1992 bibliographic ORV memorandum referenced in the 2003 Hellgate Recreation Area Management Plan (RAMP)/FEIS.

A secondary purpose of the assessment paper, "*Scoping Rogue River's Outstandingly Remarkable Values, Other Similar Values & Other River Values*" (Scoping ORVs Paper), was to web publish it as a public information resource (i.e., surrogate college introduction course to wild and scenic rivers' ORVs) by three non-profit co-sponsors: Hugo Neighborhood Association & Historical Society, Goal One Coalition, and Rogue Advocates. The full paper is available on the web, with an executive summary in Appendix A. The goal was to provide an educational opportunity to the public by providing research materials that can be checked in order for interested citizen to find their own truth. I feel this purpose was accomplished.

The Scoping ORVs paper is recognized as being incomplete with some significant gaps in the historical planning record. It also had not reached the phase of being systematically and comprehensively documented for verification and reliability of evidence (i.e., no peer review). Review and comments on this paper are welcomed.

Have a great day.

Sincerely,

Mike :)

Mike Walker, Education Chair
Hugo Neighborhood Association & Historical Society (HNAHS)

Mike Walker, Director
Goal One Coalition

Mike Walker, Director
Rogue Advocates

Web Links for the paper, “*Scoping Rogue River’s Outstandingly Remarkable Values, Other Similar Values & Other River Values*,” follow.

- Hugo Neighborhood Association & Historical Society
<http://hugoneighborhood.org/>
- Land Use
<http://hugoneighborhood.org/landuse.htm>
- Articles
<http://hugoneighborhood.org/articleslu.htm>
- Scoping ORVs Paper
http://hugoneighborhood.org/OutstandinglyRemarkableValues_DraftFINAL120814.pdf

Appendices:

Appendix A. Executive Summary for the Paper “*Scoping Rogue River’s Outstandingly Remarkable Values, Other Similar Values, & Other River Values*”

Email copies:

- . Becky Brown, Park Ranger, BLM Grants Pass Resource Area
- . Wayne McKy, Chair HNAHS (hard copy)
- . Nena Lovinger, President Goal One Coalition
- . Steve Rouse, President Rogue Advocates

**APPENDIX A. Executive Summary for the Paper “*Scoping Rogue River’s
Outstandingly Remarkable Values, Other Similar Values, & Other River Values*”
(Scoping ORVs Paper)**

The main objective of this paper is understanding how the Hellgate Recreation Area’s (HRA) section of the Wild and Scenic (W&S) Rogue River’s outstandingly remarkable values (ORVs) were developed for its 1990s planning/EIS process. The focus is the reminiscences and opinions of the author about ORVs of the 27-mile HRA, a segment of the 84-mile W&S Rogue River in Oregon. It is a set of armchair summaries and professional opinions based on the author’s planning career with the BLM. At the time the author was employed as the Team Leader and Outdoor Recreation Planner for the HRA’s recreation area management plan (RAMP) and environmental impact statement (EIS) processes to revise the plan during 1991 - 1998. This assessment is about eligibility studies and/or analysis supporting ORVs for the HRA.

The W&S Rogue was an instant river designated in 1968. It could be likened to the W&S Merced River (designated in 1987) if early management is compared. A big exception is that its river plan, unlike the Merced River’s plans, was not taken to court at least six times from 1999 - 2008. The similarities might be that both rivers started being managed during a time of limited policy direction for instant rivers and rivers designated prior to 1991 - 2002, and the acknowledged expertise and, therefore, authority of the Interagency Wild & Scenic Rivers Coordinating Council established in 1995. The Interagency Council’s technical papers and guidelines would eventually be accepted as part of the bundle of direction and guidance to federal agencies having management responsibilities for W&S rivers.

What has been discovered about the ORVs for the Hellgate RAMP from research associated with the Scoping ORVs Paper? What is available in the historic planning record supporting the 2004 Hellgate Recreation Area Management Plan? Is the record adequate to support the currently identified ORVs, revised, or new ORVs? Is adequate policy guidance available for the future?

Congress enacted the Wild and Scenic Rivers Act (Act) in 1968 to protect free-flowing rivers from dams and other development for present and future generations. The Act establishes designation procedures, management directives, and protection mandates for free-flowing rivers. To qualify for designation, a river or segment of a river must possess at least one ORV for “scenic, recreational, geologic, fish and wildlife, historic, and cultural” values, and other similar river values. WSRs require a comprehensive management plan (CMP) for the protection of the river values by addressing user capacities necessary or desirable to achieve the purposes of the Act, including the “protection and enhancement” of designated ORVs. Although the WSRA’s “protect and enhance” mandate places a primary emphasis on “esthetic, scenic, historic, archeologic, and scientific features,” the statute contemplates uses compatible with preservation. The 1982 Interagency Guidelines explain a managing agency’s duty to protect and enhance a river’s ORVs, “while providing for public recreation and resource uses which do not adversely impact or degrade those values.” Thus, the statute and its implementing guidelines establish a preservation mandate, but allow uses that do not adversely affect a river’s ORVs.

There is a strong correlation between the requirements of the W&S Rivers Act (WSRA) and the National Environmental Policy Act (NEPA) when it comes to NEPA's threshold determinations of whether the impacts of a major federal action significantly affects the quality of the human environment. Both acts have concepts of carrying capacity and thresholds performing the same task.

Section 3(d)(1) of the Act allows the comprehensive river management plan (CRMP) to be coordinated with, and incorporated into, a river administering agency's RMP. For rivers designated before January 1, 1986, Section 3(d)(2) requires review of the CRMP to determine if it conforms to Section 3(d)(1). Sections 7(a) and 10(a) make reference to the collective "values" for which rivers are added to the NWSRS. A river's ORVs are identified pre-designation through a study or, for an "instant river," post-designation during preparation of a CRMP. The federal WSR-administrator should periodically review monitoring information to determine if there is a need for change in existing direction to ensure values are protected and enhanced. What about the BLM's resource management plans (RMPs) for Western Oregon? The release of a draft RMP/EIS is scheduled for April 2015. What about a revision to the 10-year old Hellgate RAMP? What is the status of the plan's monitoring and evaluation program to ensure protection and enhancement of the ORVs, and provide a mechanism to address user capacities?

The historical records research found three documents, out of almost two dozen, persuasive in providing a partial understanding of the historical roots of the HRA's current ORVs: 1. 1958 Public Land Order 1726 Withdrawal Recreation Area, 2. 1964 draft *Study Report of the Rogue River, Oregon*, and 3. 1969 BLM *Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System*. Three unavailable documents of interest would probably shed some understanding of the originally designated ORVs: 1. the 1968 U.S. Congress House Report No. 1623, 2. the 1968 U. S. Congress House Report No. 1917, and a 1992 ORV memorandum to the files.

The Rogue was one of the original eight rivers that received "instant" designation under the W&S Rivers Act. In the Rogue's case this instant designation was not accompanied by identified ORVs in the Act. A later need to provide eligibility rationales of ORVs for the Hellgate RAMP led the BLM to rely on congressional records to determine what the legislation intended. According to the 2003 BLM proposed Hellgate RAMP/FEIS, a memorandum to the files outlined the legislative history of the Act, and included language from legislative discussions relative to the river and its ORVs. This simple statement is not adequate as the actual legislative history was not provided, in the RAMP/ROD/FEIS, to support the three current ORVs.

1. Natural Scenic Qualities ORV. Recognized for its diversity of scenery due its geology, topography, and relatively undeveloped visual appearance.
2. Fisheries Resource ORV. Recognized for its outstanding salmon and steelhead fishing.
3. Recreational Opportunities ORV. Recognized primarily for its exciting white water float trips and its outstanding salmon and steelhead fishing. Other recreation activities recognized included hunting, swimming, hiking, boating, picnicking, camping, and sightseeing.

While the HRA's historical record for ORVs could be improved, it is quite good, especially when viewed from the unknowns of a new 1968 law for an instant river which did not legally require eligibility or suitability studies. The assumed management's perspective is empathized with - the view of moving forward when confronted with the realities of evolving priorities, including the challenges posed by funding and personnel constraints. What they were really doing was muddling along and trying things out along the way to see what worked. Today we call this adaptive management. It was not a pre-determined plan, but the hazy policy of the Act for instant rivers that guided those decisions. This approach provided river management for the HRA that appears to be working, perhaps not perfectly as envisioned by the every expanding set of regulations and guidelines, but working.

The historical planning documents reviewed did not identify any formal historical analyses using any standard ORV methodology for determining eligibility (e.g., river segment determined to be "free flowing" and possessing at least one ORV). To be considered as "outstandingly remarkable", a river related value must be a unique, rare, or an exemplary feature that is significant at a comparative regional or national scale. The historical planning record is not in compliance with the current interpretation of the Act by the Interagency Wild & Scenic Rivers Coordinating Council and BLM (i.e., BLM 2012 Manual 6400 for Wild and Scenic Rivers). It is also doubtful whether it would stand the scrutiny of the Ninth Circuit Appeals Court.

Historical ORV user capacities information for when the Rogue River was designated a WSR are absent from the available record. It is estimated there will be some difficulty, to some observing that the reconstruction of an accurate baseline for the designated ORVs' in 1968 a near impossibility.

Section 3(d)(1) of the WSRA requires a CRMP to address user capacities. User or visitor capacity is the maximum quantity of visitor use that a river corridor can sustain while still allowing for the protection of river values. Visitor capacities address the amount and type of use compatible with the desired conditions and other management direction in a CRMP and are established for both the entire river corridor as well as for individual sites, areas, and/or activities. Deriving a meaningful numerical capacity is a useful tool for visitor use management (e.g., monitoring changes in use patterns). However, managers recognize that the amount of visitor use is only one of many factors that influences impact, and may be less important than other variables, such as the behavior of users or how and where use is distributed.

In the early years guidance for agency development of ORVs was initially limited, but no longer, especially since 1999 - 2002 and two technical guidance documents: 1999 *The Wild & Scenic River Study Process* and 2002 *Wild & Scenic River Management Responsibilities*. The exception was the 1982 Interagency Guidelines which early on provided guidance for agency development of ORVs. Today identification methodologies for future ORVs part of any new or revised BLM river activity plans (e.g., Hellgate RAMP, Wild RAMP, etc.) are excellent. They continue to include the Interagency Guidelines, and many new technical policy publications by the Interagency W&S River Council. The BLM has noteworthy and useful policy guidance in its 2012 Manual 6400 for Wild and Scenic Rivers.

It is unknown whether the current “private user capacities” of the Hellgate RAMP are near, at, or even exceed capacity, to where current use is far from capacity and is unlikely to reach, much less exceed, capacity in the foreseeable future of the CRMP. This is because there are no private user capacity studies, assessments, or analysis to support the present no private limits allocation decision. The use limits for the motorized tour boats (MTBs) in the Hellgate RAMP section are the exception. However, it is unknown what user capacities were used for MTBs that would withstand the scrutiny of a court review.

Future revised RAMPs will not be hampered by vague policy direction. They can be in compliance with the Act as interpreted by the Interagency Wild & Scenic Rivers Coordinating Council’s technical paper guidelines, and BLM with its new 2012 Manual 6400 for wild and scenic rivers. The issue would probably not be the adequacy of guidelines, the challenges would be the evolving priorities and budget issues posed by funding and personnel constraints.

The weaklings of the budget process are usually inventories and monitoring. The Rogue River Hellgate RAMP’s inventories of the 1990s were an exception and approximately \$800,000 was allocated for contracting resource descriptions and impact studies. However, the importance of using ORVs as monitoring standards was not understood in detail and ORV user capacity types of studies were not funded.

Regardless of this history, inventories and monitoring are usually at the bottom of the funding schedule in tight budget years. This is because a career river manager probably averages from two to eight years per career location. It is very difficult for a current manager to allocate tight funds for projects (e.g., inventories, monitoring, etc.) that, if they do not occur, will not reflect adversely on the manager’s career or his supervisors. If the funds are allocated the manager that made the funding available is usually not the beneficiary because he had moved on to a new location. The usual experience is minimal inventories and monitoring over a planning period until their deficiencies becomes dangerous to the public perception of the agency. This is about the time that a new planning process is initiated to address new issues and to correct the inventories and monitoring problems.

There were several written statements in the 2003 Hellgate Proposed RAMP/FEIS that were misleading for the three identified ORVs. Again and again the following misleading bald opinion statement, or one of its versions, was provided to the reader.

In 1968, the Rogue River was one of the original eight rivers that received “instant” designation under the Wild and Scenic Rivers Act. The outstandingly remarkable values for the Rogue River, as identified by Congress (HR 1917 September 24, 1968 and HR 1623 July 3, 1968); and as described in the *Master Plan for the Rogue River Component of the National Wild and Scenic Rivers System* (USDI 1969); and as described in the 1972 Plan, the *Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan* (*Federal Register* Vol. 37, No. 13, 13408-134116) include the natural scenic qualities, fish, and recreation.

The impression the statement leaves the reader is that the ORVs were identified by Congress, implying the law. However, the Act has no identification of the ORVs for the Rogue River in it, and the two referenced House bills were not provided for the public’s own interpretations. Two other referenced documents were purported to have the three ORVs identified in them (i.e., 1969

Master Plan and 1972 Interagency Plan) were anything, but clear on designated ORVs. The author's extensive review of these two documents arrived at a different conclusion, and he challenges the BLM's opinion with his own that these documents do not identify any explicitly designated ORVs. They recorded a broad range of potential ORVs, similar values, or other river values. It is also interesting that the BLM RMP (i.e., 1994 BLM MDO Proposed RMP/FEIS; Appendix J) that the CRMP was tiered to, identified five ORVs (i.e., recreation, fish, wildlife, scenic, and historical), not three ORVs (i.e., natural scenic qualities, fish, and recreation).

The power to achieve is to recognize that river planning and management are messy. A characterization of the enthused W&S river public "being reflective of *messy*" is a cantankerous, eccentric, passionate, irrational, idealistic, quarrelsome, impossible crowds of people. Part of the difficulty of the river manager's focus in reacting to expectations is sometimes far ahead of what is feasible. Success is not necessarily perfection; it might be going from failure to failure, accepting what is working with enthusiasm. BLM managers have had the relatively new 2012 BLM Manual 6400 for only a couple of years. There is the normal hesitancy to slowly implement new guidance in the form of instruction memorandums and manuals, and wait for others to test the water (i.e., inventory and planning issues can fester for years before they become management issues), or be forced to address the issue(s) through legal challenges.

Does BLM have the will to implement any needed limits to private visitor use when user capacities are exceeded, and/or it is discovered they are already exceeded? This is another political and public cauldron of controversy. Where the potential for resource degradation is significant or there is a high likelihood of the decision being challenged, a more involved, lengthy, collaborative, and precise RAMP planning approach is warranted. The keys to success are (1) employing the best available information; (2) basing user capacity estimates on clear management objectives, logical thinking, sound science, and professional judgment; and (3) refining capacity estimates over time as new information becomes available. It is also important to think about implementation while developing capacities. There is little value to developing capacities if there is no will to implement the actions needed to avoid exceeding capacity.

The risks concerning any inadequacy of the HRA's ORVs, or their rationale, are slight, but potentially significant if brought before the courts. The wild cards are the evolving BLM and judiciary's interpretation of the Act's "user capacity" mandate. The Ninth Circuit's rulings on the inadequacy of the W&S Merced River's CMPs has potential ripple effects on river managers nationwide. Since the Hellgate RAMP is not being revised in the publicly scheduled future, there appears to be little risk at this time for public access to the courts through the CRMP process. However, a potential specific issue that might be accessible is the Hellgate RAMP's proactive monitoring absolutes identified in the HRA's July 2004 ROD and RAMP.

The Hellgate RAMP's monitoring and evaluation absolutes "to ensure protection and enhancement of the ORVs, and provide a mechanism to address user capacities" are identified in the HRA's July 2004 ROD and RAMP (CRMP). The legal issue of mandating these monitoring actions in the Hellgate CRMP could provide a citizen plaintiff with judicial review of the BLM inaction (i.e., monitoring and evaluation implementation deficiencies).

The original two ORV questions and the decision to research and publish a record were not as straight forward as first perceived.

- Question/Issue 1. Knowledge of a 1992 bibliographic identified ORV memorandum to the files referenced in the 2003 HRAMP/FEIS.
- Question/Issue 2. Understanding how the Hellgate RA section of the W&S Rogue River's ORVs were developed for the HRAMP 1990s planning process.

Question/Issue 1 was simple. The 1992 bibliographic identified ORV memorandum in the 2003 HRAMP/FEIS was the easiest question to answer as the author does not have a recollection of the 1992 memo on ORVs which was identified to outline the legislative history of the Act, and included language from legislative discussions relative to the Rogue River and its ORVs. However, the significant problem is that the memo, or its pertinent text, was not provided in either the 2000 HRAMP/DEIS or the 2003 HRAMP/FEIS and, therefore, the rationale for the eligibility of the Hellgate RAMP area is unknown in the sense of a rationale for its ORVs. Stated in another way, there is no known application of the 1982 Interagency Guidelines, or the technical guidance from the Interagency Council's technical guidance papers (i.e., 1991 W&S River Study Process paper and 2002 W&S River Management Responsibilities paper).

The author terminated this preliminary research and writing project on the two ORV questions December 8, 2014. As he had already proven to himself, it was much too easy to attempt to address each successive set of research conclusions about Question/Issue 2, and their hanging additional questions generated, along with the next set ad infinitum. The present research document represents much more than the time and energy originally expected to be invested in some curiosity questions and the challenge of an interesting river planning process. The project was challenging and rewarding, and he would contemplate revising this paper after some other on-going history and land use projects are completed.

This scoping ORVs paper is recognized as being incomplete. It was not systematically and comprehensively documented for verification and reliability of evidence. Verifiability means other researchers and the public reader can check where the information comes from and make their own determination if the references or sources are reliable. The goal is to empower other researchers and the public through educational materials that can be checked in order for them to find their own truth.

This paper has had no peer review. Peer review is the evaluation of work by one or more people of similar competence to the producers of the work (peers). It constitutes a form of self-regulation by qualified members of a profession within the relevant field. Peer review methods are employed to maintain standards of quality, improve performance, and provide credibility. The paper was developed in a near vacuum by the author. Review and comments on this paper are welcomed.

The information in this paper has an official disclaimer which implies situations that involve some level of uncertainty, waiver, or risk. The disclaimer is a defensive measure, used for the purpose of protection from unwanted claims or liability (see Chapter IV).