

SCOPING ROGUE RIVER'S OUTSTANDINGLY REMARKABLE VALUES

Other Similar Values & Other River Values



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Outline

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A. LEGISLATIVE INTENT

- 1958 Public Land Order (PLO) 1726 dated Sept 3, 1958. Oregon;
- 1959 PLO 1855 dated May 14, 1959
- 1961 Senate Select Committee on National Water Resources
- 1962 Outdoor Recreation for America by Outdoor Recreation Resources Review Commission
- 1963 Wild Rivers Study initiated by U.S. Secretary of Agriculture and U.S. Secretary of the Interior
- 1963 PLO 3165. July 31, 1963. Oregon;
- 1964 Draft Study Report of the Rogue River, Oregon, Pacific Southwest Reginal Task Force for Consideration of Wild Rivers Study Team.
- 1964 Wild Rivers Study
- 1965 Senate Bill S. 1446 by Interior and Insular Affairs Committee
- 1967 Senate Bill S. 119 by Interior and Insular Affairs Committee
- 1968 United States Congress. House. 1968. Report No. 1623. Providing for a National Scenic Rivers System and for Other Purposes.
- 1968 United States Congress. House. 1968. Report No. 1917. National Wild and Scenic Rivers System: Conference Report

B. EARLY IMPLEMENTATION OF WILD & SCENIC RIVERS ACT

- 1968 The National Wild and Scenic Rivers System (Public Law 90-542; 16 U.S.C. 1271 et seq.)
- 1969 Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System October 1969. USDI, Office of the Secretary. Washington, D.C.
- 1972 Department of the Interior, Bureau of Land Management. Rogue National Wild and Scenic River, Oregon Notice of revised development and management plans; Federal Register, Friday, July 7, 1972, Washington, D.C.; Volume 37, Number 131, Part II)
- 1973 Rogue River Ranch listed on the National Register of Historic Places
- 1973 Whisky Creek Cabin listed on the National Register of Historic Places

- 1978 Rogue National Wild & Scenic River Activity Plan, Hellgate Recreation Section
- 1980 Rogue National Wild & Scenic River Wildlife Management Plan, Hellgate Recreation Section
- 1981 Designation of the Rogue River National Recreation Trail
- 1982 National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification, and Management of River Areas. Federal Register. September 7, 1982.
- 1988 Guidelines for Fulfilling Requirements of the Wild and Scenic Rivers Act
- 1989 Management of the Wild and Scenic Rogue River Needs and Opportunities BLM, MDO, April 28, 1989

C. REVISION OF HELLGATE RECREATION AREA MANAGEMENT PLAN:
1991 - 1998

- 1991 Summary of the Analysis of the Management Situation, Medford District Office Resource Management Plan
- 1991 Preplan Analysis for Revising the Recreational Area Management Plan (Activity Plan: Hellgate Recreation Section) Rogue River Recreation Section
- 1991 Speed's Place on the Rogue, National Register of Historic Places
- 1992 Compliance Background Paper for Revising the Hellgate Recreation Area Management Plan (HRA Background Paper)
- 1992 Management Guidance and Direction from the Prohibited Acts in Rogue National Wild and Scenic River Area of 1992 (Federal Register Vo. 57, No. 110, 24271-24274)
- 1992 Rogue River Studies Program HRA Background Paper
- 1992 Public Participation Plan for Revising the Hellgate Recreation Area Management Plan
- 1992 Medford District Proposed Resource Management Plan/Environmental Impact Statement [DEIS]
- 1993 Scoping Document HRA Background Paper
- 1993 Cultural Resources HRA Background Paper
- 1994 Agency Responsibility HRA Background Paper
- 1994 Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River
- 1994 Scenic Easements HRA Background Paper
- 1994 Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative
- 1994 Medford District Proposed Resource Management Plan/Environmental Impact Statement [FEIS]
- 1995 Record of Decision and Resource Management Plan [MDO RMP]
- 1995 Rogue River Studies Program Summary: 1992 - 1995

D. CURRENT HELLGATE RECREATION AREA MANAGEMENT PLAN: 2014

- 1999 Rand Ranger Station, National Register of Historic Places
- 1999 Sokol v. Kennedy (1999), Eighth Circuit Court of Appeals
- 1999 The Wild & Scenic River Study Process. Interagency Coordinating Council
- 2000 Rogue National Wild and Scenic River: Hellgate Recreation Area Management Plan/Draft Environmental Impact Statement. November 2000. USDI, BLM, MDO.
- 2002 Wild & Scenic River Management Responsibilities. Interagency Coordinating Council
- 2003 Rogue National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement. March 2003. USDI, BLM, MDO.
- 2003 Merced River ORVs Challenged
- 2004 Recreation Area Management Plan. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area
- 2004 Record of Decision. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area

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 - b) Study Report on the Rogue River, Oregon: 1964
 - c) BLM Master Plan For Wild & Scenic Rogue River: 1969
 - d) BLM & FS Comprehensive River Management Plan: 1972
 - e) BLM 1978 Hellgate Recreation Section Activity Plan
 - f) Rogue River's Outstandingly Remarkable Values (ORVs): 1992 Bibliographic Reference
 - g) Cultural Resources Background Paper: 1993
 - h) Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River: May 1994
 - i) Minutes of ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative: September 22, 1994
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ACRONYMS & ABBREVIATIONS

GLOSSARY

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http://hugoneighborhood.org/OutstandinglyRemarkableValues_DraftFINAL120814.pdf
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**SCOPING ROGUE RIVER'S
OUTSTANDINGLY REMARKABLE VALUES,
OTHER SIMILAR VALUES, & OTHER RIVER VALUES**

EXECUTIVE SUMMARY

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 the 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 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 acknowledge 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 research associated with this paper discovered about the ORVs for the Hellgate RAMP? 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 which requires 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 an 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 the 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 fun, 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).

INTRODUCTION

The current ten-year old Hellgate Recreation Area Management Plan (HRAMP) became effective July 2004. This 27-mile HRA is one river segment of the 84-mile National Wild and Scenic Rogue River. The Rogue was designated as part of the original 1968 National Wild and Scenic Rivers Act (Public Law 90-542; 16 U.S.C. 1271 et seq.). Under Section 1(c) of the Act it was one of the eight “instant rivers” or initial components designated, and did not have the later required eligibility and suitability studies, nor designated ORVs. Section 3(A)(5) follows.

“(5) ROGUE , OREGON. – The segment of the river extending from the mouth of the Applegate River downstream downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.”

The seemingly initial 1968 - 1990 blessing for BLM river managers of being able to protect ORVs without having to address studies for the Rogue’s ORVs (i.e., eligibility and suitability, including user capacity/carrying capacity) was viewed as the law and a bonus. This was because it was one of the eight “instant” rivers. This perception had turned into an irritating void and potential problem, that seems to enlarge in significance with the passing years.

The first river plan for the 47-mile BLM-administered segment of the W&S Rogue River was the 1969 BLM *Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System*. The first river plan for the entire W&S Rogue River administered jointly by both the Forest Service (FS) and BLM was the 1972 Joint FS/BLM Plan: “*Rogue National Wild and Scenic River, Oreg., Notice of Revised Development and Management Plans.*” These plans identified a range of ORVs, other similar values, and other river values. It was not obvious that they identified specific ORVs as the term was later identified.

In 1978 the first river plan for the HRA segment was developed: “*Rogue National Wild & Scenic River Activity Plan, Hellgate Recreation Section.*” Except for its philosophical preface, the HRA activity plan did not provide significantly to the basic framework and objectives beyond the 1972 master plan. It did provide specific “recreational development” details for the HRA, and it did repackage the ORVs and similar river values in a similar yet different way. Significantly the HRA activity plan implied a broader policy for the values the river was to be managed with some more detailed guides to land use management policies. It did not have explicit ORVs identified and identified the necessity to assess what values were present.

The second and current river plan for the HRA segment was implemented in 2004: “*Rogue National Wild and Scenic River: Hellgate Recreation Area, Recreation Area Management Plan.*” It had three explicitly designated ORVs.

1. Natural Scenic Qualities
2. Fisheries Resource
3. Recreational Opportunities

Is the 2004 RAMP adequate? Does it satisfy the various procedure and substantial requirements of the Act as understood today.

PURPOSE

The purpose of this research paper was to provide an understanding of how the HRA's three ORVs were developed from the authority of the W&S Rivers Act's Section 1(b) range of possibilities: scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The method was to research the historical ORV record for the W&S Rogue River and share this record along with interpretations of the record in an assessment entitled, "*Scoping Rogue River's Outstandingly Remarkable Values, Other Similar Values & Other River Values*" (Scoping ORVs Paper).

A sub-purpose was understanding how the HRA's three ORVs were being developed during the HRAMP's planning process from 1991 - 1998. The final ORVs decision was made later during the HRAMP final phases from 1999 - 2004. A specific issue was understanding a 1992 bibliographic identified memorandum entitled, *Rogue River's Outstandingly Remarkable Values (ORVs)*, referenced in the 2003 HRAMP/Final Environmental Impact Statement (FEIS).

The Scoping ORVs Paper interpretations' in Section II.A. represent the author's ORV opinions for the time when he was employed as an Outdoor Recreation Planner and Team Leader for the HRA's planning/EIS processes from 1991 - 1998. They are arm chair summaries and professional opinions. It was a challenging and satisfying time for the author.

This paper focused on designated ORVs and the eligibility studies or other analysis that lead to those values being determined to be ORVs for the HRA. Some review of ORVs was for the whole 87-mile WSR as part of the context to identify the ORVs for the HRA.

The Scoping ORVs Paper's purpose also included it being a public resource (i.e., surrogate college introduction course to WSRs' ORVs) web published by three co-sponsors: Hugo Neighborhood Association & Historical Society, Goal One Coalition, and Rogue Advocates. The co-sponsors had a track record for jointly working on many joint history and land use projects, including BLM projects. For example, they web published a 2011 "*BLM Necessary Forest Lands Issue*" project at <http://hugoneighborhood.org/articleslu.htm>.

To provide a context for the ORVs discovered in the record and the challenge of addressing the river's user capacity, Chapter I of this paper chronicles the historical ORV record and its major sub-parts: legislative intent, early implementation of the Act for the Rogue River, revision of the Hellgate RAMP from 1991 - 1998, and the current RAMP: 2004 - 2014. Chapter II are the interpretations of the record, a methodology for determining ORVs, and based on those factors the consideration of potentially revising the HRAMP. From these two chapters the purpose evolved to create Chapter III, which was the notion of possible planning precedents for the future as a result of legal challenges from the NWS Merced River experience, including potential implications of these court cases for revising the HRAMP. The last part of Chapter III were potential lessons and implications for river managers. Finally, Chapter IV was a disclaimer of what the Scoping ORV Paper was and was not.

I. HISTORICAL CHRONOLOGICAL ORV RECORD

Chapter I chronicles the historical ORV record for the Hellgate Recreation Area of the National Wild and Scenic Rogue River and its major sub-parts.

1. Legislative Intent:
2. Early Implementation of the Act
3. Revision of the RAMP from 1991 - 1998
4. The Current RAMP: 2004 - 2014

This record is an account of important or historical ORV events in the order of their occurrence, and it is not complete. The availability of probable new records to be added to this Chapter I could change the interpretations identified in Chapter II.

A. LEGISLATIVE INTENT

1958 Public Land Order (PLO) 1726 Wdl. (Withdrawal) Rec. Area 9/3/1958-A

On September 3, 1958, Public Land Order 1726 withdrew from all forms of appropriation under the public land laws, including the mining laws, lands in section 17, T. 33 S., R. 9 W., Willamette Meridian, and other lands for the **protection and preservation of scenic and recreation areas adjacent to the Rogue River and its tributaries** (emphasis added). 23 F.R. 7002-03. A notation in the record indicates that the application for this withdrawal (Oregon 03791) was filed in the Oregon BLM Office on November 11, 1954. Regulations in effect at that time, 43 CFR 295.10 (1954), and still in effect, but renumbered, 43 CFR 2091.2-5(a), provide that the recording in the serial register and the noting on the official plats and tract books of the Bureau office for the area, indicating that an application for the withdrawal or reservation of lands has been received from a federal or state agency, shall:

* * * temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal.

1959 PLO 1855. dated May 14, 1959. See PLO 1726. (24 FR 4056).

1961 Senate Select Committee on National Water Resources

1962 *Outdoor Recreation for America* by Outdoor Recreation Resources Review Commission.

1963 Wild Rivers Study initiated by U.S. Secretary of Agriculture and U.S. Secretary of the Interior

1963 PLO 3165. July 31, 1963. Oregon; reserving lands in Rogue River area additional to those reserved by PLO of Sept. 3, 1958. Corrected by PLO No. 3259 (28 FR 11730) (28 FR 7987).

1964 Draft Study Report of the Rogue River, Oregon. Prepared by the Pacific Southwest Regional Task Group for consideration of the Wild Rivers Study Team, July 1, 1964 (214 pages).

Task Group representatives of USDI & USDA were from the Forest Service, National Park Service, Bureau of Sport Fisheries, Bureau of Land Management, Bureau of Commercial Fisheries, and Bureau of Outdoor Recreation.

D. Outstanding Features (p. 63)

It is recognized that the Rogue River and its environment possess many noteworthy natural features such as flora and fauna, geological formation, scenic tributary streams and other scenic qualities. . . . This section is not dedicated to the explanation of normal river make-up, it is dedicated to describing the **truly unique and outstanding features which make the Rogue a candidate for wild river status** (emphasis added) (p. 63).

The Rogue River is nationally, and perhaps world renowned for its outstanding salmon and steelhead trout fisheries (emphasis added). It is a big fish river which produces salmon upwards of 40 pounds and steelhead trout exceeding 15 pounds (pps. 63 - 64).

Four individual **extremely unique and picturesque stretches** (emphasis added) totaling approximately 5 miles in total length were identified in the study area. These areas are characterized by near vertical cliffs, large moss cover boulders, a tight river channel (less than 20 feet at certain points) and churning white-water conditions (p. 64).

Some 66 river miles can be termed **outstanding insofar as white-water boating opportunity** (emphasis added) is concerned (emphasis added) (p. 65).

The natural features of the Rogue and its setting are complimented by the **historical significance of the area. Indian and white skirmishes, and Indian wars** (emphasis added) occurred throughout the study area in the 1850's (pps. 65 - 66).

IV. PRIMARY CONSIDERATIONS

A. Socio Economic

1. Recreation Use and Opportunities (p. 67)

Oregon is essentially an outdoor state with a few metropolitan areas, a great deal of open space and an **abundance of beautiful scenery – a truly magnificent combination that draws a continuously increasing flow of recreational travelers** (emphasis added) (p. 68).

Fishery and Fishing (p. 86)

The Rogue River is nationally famous for its excellent salmon and steelhead fisheries (emphasis added). It is considered one of the top streams in the nation for fly fishing for steelhead trout. In addition, there is a large sport fishery for both natural and planted trout which extends over the basin (p. 86).

In the study area, fishing is considered one of the chief recreational pursuits. Angling is pursued by various methods including fishing from anchored and floated boats, salmon “boards” and from the shore.

Boating (p. 97)

The **boating opportunities on the Rogue may be termed of an excellent quality** (emphasis added). First, it offers a very diversified type of boating opportunity in that rafts, kayaks, specially constructed “Rogue River boats”, and conventional outboards and even innertubes may be safely used on segments of the river (p. 97).

Floating the Rogue River is advertised to be nationally and world famous (emphasis added) and truly it offers an outstanding and unique experience (p. 97).

Statement of Bureau of Land Management Plans for Study Area (pps. 160 - 165).

Outstanding features of this segment [wild] of the Rogue River and adjacent lands include [1] excellent salmon and steelhead fishing, [2] unusual opportunities for boating in rapid water, and [3] dramatic scenery created by precipitous mountain slopes clothed with coniferous and hardwood timber (emphasis added) (p. 161).

The Rogue River Recreational Withdrawal (**PLO 1726** dated Sept 3, 1958 amended and revised by PLO 1855 dated May 14, 1959 (24 FR 4056) and PLO 3165 dated July 31, 1963) **reserved and set aside designated lands for the protection and preservation of the scenic and recreation areas adjacent to the Rogue River and its tributaries** (emphasis added). Under PLO 1726 all BLM administered lands within ½ mile of the river (approximately 100 miles of the river) were **withdrawn for recreation purposes** (emphasis added).

Recreation use of the area dominates all other uses, including mining and timber production (emphasis added). Hundreds of persons now use the Rogue River trail . . . (p. 162).

The Bureau of Land Management plans to maintain these lands adjacent to the Rogue [wild] in their natural state for enjoyment of recreationists who enjoy the solitude of primeval conditions (p. 162).

This lower portion of the Rogue River area will be maintained by the Bureau of Land Management in as near its pristine condition as possible for the enjoyment of those who wish to travel by foot, trail, or boat (p. 163).

VI. CONCLUSION AND RECOMMENDATIONS (pps. 184 - 195)

A. The Study Team Conclusions (p. 184)

1. Condition (p. 184)

There are no water resource development projects within the study area which impede the free flowing characteristics of the Rogue River (p. 184).

2. Quality (pps. 186 - 188)

Many of the features of the Rogue are of an outstanding quality . . . (emphasis added) (p. 186)

- [1] **The most significant feature of the Rogue is its outstanding salmon and steelhead trout fishery** (emphasis added) (p. 186)
- [2] Four individual stretches exist in the study area which have **outstanding scenic qualities** (emphasis added) (p. 187).
- [3] **Boating the Rogue River**, in addition to providing an excellent means of viewing the scenic features, **represents a recreation use of outstanding quality** (emphasis added) (p. 187).

The flora and fauna along the river are of an exceptional quality (emphasis added) (p. 188).

The manner in which the river and its setting may be observed is worthy of mention as a natural quality (p. 188).

3. Capacity (p. 188)
4. Highest Use (p. 190)
5. Present Status (p. 190)

B. A Recommended Plan of Action (p. 193)

1. The Boundaries and What They Mean (p. 193)
2. Administration (p. 195)

3. Management of the Setting (p. 198)

a. Recreation (p. 198)

Consideration should be given to maintaining and restoring a near-natural environment (p. 198)

Delineating boundaries based on visible area – is valid in this stretch as well as throughout the study area (p. 198)

1968 United States Congress. House. 1968. Report No. 1623. Providing for a National Scenic Rivers System and for Other Purposes. 90th Congress. 2d Session.

1968 United States Congress. House. 1968. Report No. 1917. National Wild and Scenic Rivers System: Conference Report. 90th Congress. 2d Session.

B. EARLY IMPLEMENTATION OF WILD & SCENIC RIVERS ACT

1968 The National Wild and Scenic Rivers System (Public Law 90-542; 16 U.S.C. 1271 et seq.) Sections interpreted to be applicable to the WSRS outstandingly remarkable values follow.

Wild and Scenic Rivers Act

An Act

To provide for a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

SECTION 1.

(a) This Act may be cited as the “**Wild and Scenic Rivers Act.**”

(b) 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** (emphasis added), 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 Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, **by designating the initial components of that system** (emphasis added), and by prescribing the methods by which [?] and standards according to which additional components may be added to the system from time to time.

SECTION 2.

(b) A wild, scenic or recreational river area **eligible** (emphasis added) to be included in the system is a free-flowing stream and the related adjacent land area that **possesses one or more of the values referred to in Section 1, subsection (b) of this Act** (emphasis added). Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be **considered eligible for inclusion** (emphasis added) in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following . . .

SECTION 3.

(A) the following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

[(1) - (4) List of designated rivers omitted]

(5) ROGUE , OREGON. – The segment of the river extending from the mouth of the Applegate River downstream downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President (emphasis added).

[List of designated rivers omitted]

(d)(1) For rivers **designated** (emphasis added) on or after January 1, 1986, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System **shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this Act** (emphasis added).

(d)(2) For rivers designated before January 1, 1986, all boundaries, classifications, and **plans shall be reviewed for conformity** (emphasis added) within the requirements of this subsection within 10 years through regular agency planning processes.

SECTION 4.

(a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the **suitability or nonsuitability** (emphasis added) for addition to the national wild and scenic rivers system of rivers which are **designated herein or hereafter by the Congress as potential additions to such system** (emphasis added).

SECTION 5.

(a) The following rivers are hereby **designated for potential addition** (emphasis added) to the national wild and scenic rivers system:

(d)(1) 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** (emphasis added), 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** (emphasis added) to determine which additional wild, scenic and recreational river areas within the United States **shall be evaluated in planning reports** (emphasis added) by all Federal agencies as potential alternative uses of the water and related land resources involved.

(2) The Congress finds that the Secretary of the Interior, in preparing the **Nationwide Rivers Inventory** (emphasis added) as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to **complete a study of the eligibility and suitability of such segment for potential addition** (emphasis added) to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990.

SECTION 7.

(a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or **directly affecting any river which is designated in section 3 of this Act** (emphasis added) as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall

assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a **direct and adverse effect on the values for which such river was established** (emphasis added), as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto **which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation** (emphasis added) of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the **values for which such river was established** (emphasis added), as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in **conflict with the purposes of this Act** (emphasis added) and would effect the component and the values to be protected by it under this Act.

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the **values for which such river might be designated, as determined by the Secretary responsible for its study or approval** (emphasis added) –

(i) during the ten-year period following enactment of this Act or for a three complete fiscal year period following any Act of Congress designating **any river for potential addition** (emphasis added) to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and where national forest lands are involved, the Secretary of Agriculture, on the **basis of study, determine that such river should not be included** (emphasis added) in the national wild and scenic rivers system . .

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which **will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of designation of a river for study as provided in section 5 of this Act** (emphasis added). No department or agency of the United States shall, during the periods herein before specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or here after authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in **conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act** (emphasis added).

SECTION 10.

(a) Each component of the national wild and scenic rivers system shall be administered in such manner as to **protect and enhance the values** (emphasis added) which caused it to be included in said system without, insofar as is consistent therewith, 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 esthetic, scenic, historic, archaeologic, and scientific features** (emphasis added). 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.

SECTION 16.

(a) “**River**” means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) “**Free-flowing**,” as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.

(c) “**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.

Amendments Since passage of the Wild and Scenic Rivers Act (Act or WSRA) in 1968, Congress has enacted a number of substantive amendments to the enabling legislation. These amendments have resolved ambiguities in the Act and also allowed the Act to evolve to better reflect the growing art and science of river protection. A very recent paper by the Interagency Coordinating Council helps river managers and others understand the various amendments, including their legislative history (2014 Act’s Evolution, p. 1)

Interagency Wild and Scenic Rivers Coordinating Council. November 2014. *Council Evolution of the Wild and Scenic Rivers Act: A History of Substantive Amendments 1968-2013*. A Technical Report (2014 Act’s Evolution)

The number of amendments to the Act are way to numerous to address here. One example is provided on amendments to Section 3, boundary, classification, and plan requirements: the amendments to the Act from Public Law 99-590 (October 30, 1986) (2014 Act’s Evolution, pps. 5 -6).

- Revised subsection 3(b), eliminating the requirements for a “plan for necessary developments” and publication of the boundary (legal description), classification and plan in the *Federal Register*. The development plan was replaced by direction in **new subsection 3(d)(1) to prepare a “comprehensive management plan” (CRMP)** (emphasis added). The requirement for the actual boundary, classification and plan to be published in the *Federal Register* was replaced by a requirement to publish only a notice of the availability of the boundaries, classification and subsequent boundary amendments in the *Federal Register*.
- Added subsections 3(c) and 3(d).
- Subsection 3(c) required the boundary map, description of classifications and subsequent boundary amendments to be available for public inspection at the administering agency’s national and local offices.
- **Subsection 3(d)(1) directed the federal agency charged with administration of a WSR to prepare a CRMP, specifying its contents, relationship to the agency’s broader land or resource management plan** (emphasis added), and consultation and notice requirements.
- **Subsection 3(d)(2) provided 10 years from which to bring pre-1986 boundaries, classifications and plans into conformance with the direction in subsection 3(d)(1)** (emphasis added).

1969 *Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System* October 1969. USDI, Office of the Secretary. Washington, D.C. 91st Congress, 1st Session, House Document No. 91-175

The BLM 1969 Master Plan for the Rogue River Component Of The National Wild & Scenic Rivers System is in three sections: 1. Two cover letters from USDI, 2. Enclosure No. 1. The Plan, and 3. Enclosure No. 2. Supplemental Information (*Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System* October 1969 prepared by BLM). The report is not straight forward as much of the two enclosures duplicate information (i.e., some is significantly different, but most of the text is the same).

Sections applicable to understanding the 1969 BLM Master Plan's and the Wild and Scenic Rogue River's ORVs, other similar values, and other river values follow.

“A COPY OF THE RIVER PLAN FOR THAT PORTION OF THE ROGUE RIVER UNDER THE ADMINISTRATION OF THE BUREAU OF LAND MANAGEMENT IN OREGON, PURSUANT TO THE PROVISIONS OF SECTION 3(b) OF THE WILD AND SCENIC RIVERS ACT”

October 9, 1969 – Referred to the Committee on Interior and Insular Affairs and order to be printed with illustrations. U.S. Government Printing Office. Washington: 1969.

- October 1, 1969 Letter from USDI, Assistant Secretary, Public Land Management to Speaker of the U.S. House of Representatives.
- October 1, 1969 Letter from USDI, Assistant Secretary, Public Land Management on notice of boundaries, classification and development plans for the Rogue National Wild and Scenic River, Oregon.

ENCLOSURE NO. 1. [Enc. 1] THE PLAN (The Plan, 47 pages, including appendices A & B)

THE PLAN

I. INTRODUCTION

A. Purpose

Pubic Law 90-542, October 1968, the National Wild and Scenic Rivers Act, designates certain selected rives of the Nation possessing **outstanding scenic, recreational, natural and other similar values** (emphasis added) and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. Approximately, 84 miles of Oregon's Rogue River, from the mouth of the Applegate River downstream to Lobster Creek bridge, are included in the Act. (Enc. 1 The Plan, p. 1)

Administration of this segment of the river is the joint responsibility of the Secretaries of Interior and Agriculture through the Bureau of Land Management and the Forest Service. **The stretch of river from the mouth of the Applegate downstream to Marial, a distance of approximately 47 miles, will be administered by the Bureau of Land Management** (emphasis added) with the remaining 37 miles flowing through the Siskiyou National Forest, to be administered by the Forest Service. (Enc. 1 The Plan, p. 1)

Each agency charged with the administration of a component of the national wild and scenic rivers system must, within on year of the date of the Act, establish detailed boundaries, classify the river for its various segments as wild, scenic, or recreational in nature, and prepare a development plan in accordance with that classification. (Enc. 1 The Plan, p. 1)

In compliance with that directive, **this report delineates proposed boundaries, establishes river classification, and presents a general plan of development for the segment of the Rogue River administered by the Bureau of Land Management.** (emphasis added) (Enc. 1 The Plan, p. 1)

B. Objectives

Development of a **rationale for protecting and preserving the outstanding scenic, recreational, historic, cultural, and other values** (emphasis added) of the designated rivers and their immediate environments for the benefit of present and future generations is implicit within the Act. (Enc. 1 The Plan, p. 2)

It is the **objective of this report to present such a rationale** for the portion of the Rogue River included within the national wild and scenic rivers system **under administration of the Bureau of Land Management**. (emphasis added) (Enc. 1 The Plan, p. 2)

C. Summary

This report is an analysis of the 84 miles of lower Rogue River included in the national wild and scenic rivers system. The upper 47 miles are to be administered by the Bureau of Land Management. (emphasis added) (Enc. 1 The Plan, p. 3)

The recreational river area will be managed to provide or restore a wide range of public outdoor recreation opportunities on the river in its free-flowing condition. (Enc. 1 The Plan, p. 3)

II. GENERAL INFORMATION

A. The Region

B. The River

C. Primary Considerations (Enc. 1 The Plan, pps. 10 - 14)

Fisheries (Enc. 1 The Plan, p. 10)

Wildlife Resources (Enc. 1 The Plan, p. 10)

Natural Features (Enc. 1 The Plan, p. 10)

Historical Significance (Enc. 1 The Plan, pps. 10 - 11)

Black-tailed Deer (Enc. 1 The Plan, p. 11)

Black Bear (Enc. 1 The Plan, p. 11)

Upland Game Species (Enc. 1 The Plan, p. 11)

American Mergansers, Mallards, & Wood Ducks (Enc. 1 The Plan, p. 11)

Rare & endangered Osprey and Bald Eagle (Enc. 1 The Plan, p. 11)

White-water Boating (Enc. 1 The Plan, pps. 11 - 12)

Commercial Jet Boat (Enc. 1 The Plan, p. 12)

Private Boating (Enc. 1 The Plan, p. 12)

Boat Launching Sites (Enc. 1 The Plan, p. 12)

Rogue River Trail (Enc. 1 The Plan, p. 12)

Camping & Picnicking Facilities (Enc. 1 The Plan, p. 12)

III. River Classes (Enc. 1 The Plan, p. 19)

A. Management Objectives (Enc. 1 The Plan, p. 19)

B. Management Criteria (Rogue River) (Enc. 1 The Plan, p. 22)

1. General Criteria (Enc. 1 The Plan, p. 22)

Soil and Watershed (Enc. 1 The Plan, p. 22)

Timber (Enc. 1 The Plan, p. 24)

Fish and Wildlife (Enc. 1 The Plan, p. 25)

Protection (Enc. 1 The Plan, p. 26)

Utilities (Enc. 1 The Plan, p. 26)

Minerals (Enc. 1 The Plan, p. 27)
Information (Enc. 1 The Plan, p. 28)

2. Recreational River [Hellgate Recreation Area (HRA)] (Enc. 1 The Plan, p. 28)

The following sections discuss the **primary resources and activities** (emphasis added) associated with the recreational river area. Necessary **management criteria and constraints** (emphasis added) to meet objective for management of the recreational river [HRA] are presented. (Enc. 1 The Plan, p. 29)

These criteria apply only to those lands contained within the recreational river boundary. To understand the total management constraints will have on the recreational river [HRA] , the general management criteria presented in Section IIIB must be considered with the **following more specific criteria for the recreational river area [HRA]**. (Enc. 1 The Plan, p. 29)

Recreation (Enc. 1 The Plan, p. 29)

Management objectives for the recreational river area [HRA] will be to provide opportunities for engaging in a wide range of recreation activities which are enhanced by its free-flowing nature. Other resource uses and activities will be permitted so long as they do not lower the quality of the recreation experience, degrade the setting, or damage the fishery and wildlife habitat. (emphasis added) (Enc. 1 The Plan, pps. 29 - 30)

Emphasis will be on the development of water-oriented recreation facilities that will provide a wide range of compatible recreation activities. (Enc. 1 The Plan, p. 30)

Generally, the use of motorboats will be permitted to continue, subject to normal state and local regulation. (Enc. 1 The Plan, p. 31)

Timber (Enc. 1 The Plan, p. 31)

Structures & Facilities Timber (Enc. 1 The Plan, p. 32)

Transportation Timber (Enc. 1 The Plan, p. 34)

3. Wild River (Enc. 1 The Plan, p. 35)

IV. **River Boundaries** (Enc. 1 The Plan, p. 41)

V. **Development and Administration** (Enc. 1 The Plan, p. 43)

Enclosure No. 2. Supplemental Information. *Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System* October 1969. (38 pages, including appendix)

“This Report Is Based on a Five Month Study by Bureau of Land Management Personnel from the Medford District and Oregon State Office. Information and Advice Was Obtained from the Bureau of Outdoor Recreation, U.s. Forest Service, State of Oregon, Josephine County, and Others, as Noted.” (Enc. 2 Master Plan - Introduction)

PART ONE - INTRODUCTION

PART TWO - GENERAL INFORMATION

PART THREE - DESCRIPTION

OUTSTANDING FEATURES [applicable to the entire 84 miles of the Wild & Scenic Rogue River]
(Enc. 2 Master Plan. pps. 10 - 11)

The Rogue River is **nationally, and perhaps world renowned** for the **outstanding salmon and steelhead trout fisheries**. It is a “big fish” river which produces salmon upwards of 40 pounds and steelhead exceeding 15 pounds. In excess of 100,000 salmon and steelhead spawn in the Rogue River basin annually. The character of the Rogue River, its setting, and the characteristics of the anadromous salmon and steelhead provide the fisherman with a diverse fishing opportunity. Angling may be accomplished by wading, trolling, floating, or shore fishing with bait, hardware, or flies (Enc. 2 Master Plan. p. 10)

White-water boating, the ultimate experience for many river users, is available in a 55-mile stretch from Finley to Agness. Around every bend in this stretch a new challenge is encountered. Large rapids, submerged boulders, and shallow water tax the most skilled boatmen in this segment. Rainie Falls, with a vertical drop of some ten feet, is the only spot where it is necessary to portage or rope the boat around the rapids. (Enc. 2 Master Plan. p. 11)

Commercial jet boat operations are on a daily scheduled basis from the coast to Agness or Paradise Bar providing a taste of both white-water and natural grandeur for many people. (Enc. 2 Master Plan. p. 11)

Natural features, including towering cliffs and large moss-covered boulders, are spellbinding in some of the canyons and chutes. Outstanding, in an area where each succeeding vista is noteworthy, are sights in Hellgate Canyon, Howard Creek Chute, Kelsey Canyon, and Mule Creek Canyon. In the latter two instances the river winds its way through narrow canyons which rise abruptly from the water. Water boils, swirls, and churns as it gushes through these narrow passages, providing the boating enthusiast and unforgettable white-water experience. (Enc. 2 Master Plan. p. 11)

The natural features of the Rogue and its surroundings are complimented by the **historical significance of the area**. Indian and white skirmishes, and Indian wars occurred throughout the area in the 1850s. Zane Grey patented a mining claim at Winkle Bar. One of his cabins still remains as a memento of his world, and the past glory of the West. (Enc. 2 Master Plan. p. 11)

PART FOUR - PRIMARY CONSIDERATIONS

RECREATION USE OF THE RIVER [applicable to the entire 84 miles of the Wild & Scenic Rogue River]

(Enc. 2 Master Plan. pps. 12 - 15)

[1] FISHERY AND FISHING

The Rogue River is famed for its steelhead and salmon fishing. (Enc. 2 Master Plan. p. 12)

[2] BOATING (Enc. 2 Master Plan. pps. 12 - 13)

Boating experience available include **commercial jet boats** on upper and lower portions, **professionally-guided float trips** in the white-water sections and **private boating** in many areas. (Enc. 2 Master Plan. p. 12)

Jet boat excursion trips from Gold Beach annually carry about 40,000 persons to the Agness or Paradise Bar area. These daily scheduled trips provide the only participation in Rogue River recreation for many people. **A similar jet boat operation runs from Grants Pass downstream to Hellgate Canyon** during the summer months. (Enc. 2 Master Plan. p. 12)

Guided float trips are generally associated with fishing. Of the approximately 2,000 people drifting the river annually with professional river guides, over 50% are non-resident. They may pay \$200 or more for the 102-mile trip from Grants Pass to the ocean. (Enc. 2 Master Plan. p. 12)

A recent innovation in river floating, **summer raft floats**, is receiving considerable favor. These **guided tours** are offered by several commercial operators and provide five to eight day trips. Camping and primitive conditions are stressed to provide an almost wilderness experience (Enc. 2 Master Plan. pps. 12 - 13)

Private boating is enjoyed to some extent on all portions of the river. Although specially-built Rogue River boats, kayaks, and rafts are the major types of craft employed, conventional outboards and jet boats can be safely used in some portions.

[3] HIKING (Enc. 2 Master Plan. p. 13)

[4] WILDLIFE (Enc. 2 Master Plan. pps. 13 - 14)

Wildlife resources contribute greatly to the recreational values of the Rogue River. In addition to their harvest value, these animals are easily observable in their natural habitat and have substantial aesthetic value.

[5] CAMPING AND PICNICKING (Enc. 2 Master Plan. p. 14)

[6] RECREATION USER ORIGIN & USE (Enc. 2 Master Plan. pps. 14 - 15)

PART - FIVE RIVER CLASSES

MANAGEMENT OBJECTIVES

WILD RIVER (Enc. 2 Master Plan. p. 18)

RECREATIONAL RIVER (Enc. 2 Master Plan. p. 18)

GENERAL CRITERIA (Enc. 2 Master Plan. p. 19)

Soil and Watershed (Enc. 2 Master Plan. p. 19)

Timber (Enc. 2 Master Plan. p. 21)
Fish and Wildlife (Enc. 2 Master Plan. p. 21)
Protection (Enc. 2 Master Plan. p. 21)
Utilities (Enc. 2 Master Plan. p. 22)
Minerals (Enc. 2 Master Plan. p. 22)
Information (Enc. 2 Master Plan. p. 23)

RECREATION RIVER (Enc. 2 Master Plan. pps. 23 - 27)

Recreation (Enc. 2 Master Plan. p. 24)
Timber (Enc. 2 Master Plan. p. 25)
Structures & Facilities (Enc. 2 Master Plan. p. 26)
Transportation (Enc. 2 Master Plan. p. 27)

WILD RIVER (Enc. 2 Master Plan. pps. 27 - 30)

Recreation (Enc. 2 Master Plan. p. 28)
Timber (Enc. 2 Master Plan. p. 29)
Structures & Facilities (Enc. 2 Master Plan. p. 29)
Transportation (Enc. 2 Master Plan. p. 30)
Utilities (Enc. 2 Master Plan. p. 30)

PART SIX - RIVER BOUNDARIES

PRIMARY ZONE (Enc. 2 Master Plan. p. 31)

PART SEVEN - DEVELOPMENT & ADMINISTRATION

DEVELOPMENT (Enc. 2 Master Plan. p. 33)

RECREATION RIVER (Enc. 2 Master Plan. p. 33)

WILD RIVER (Enc. 2 Master Plan. p. 35)

COSTS (Enc. 2 Master Plan. p. 36)

ADMINISTRATION (Enc. 2 Master Plan. p. 37)

1972 Department of the Interior, Bureau of Land Management. Rogue National Wild and Scenic River, Oregon (Notice of revised development and management plans; Federal Register, Friday, July 7, 1972, Washington, D.C.; Volume 37, Number 131, Part II).

The following is a proposed combined plan for development, operation and management of the Rogue National Wild and Scenic River administered by the Bureau of Land Management (BLM) and the U.S. Forest Service (FS) in accordance with Public Law 90-542. That portion of the Rogue River under the administration of the Bureau of Land Management extends from the mouth of the Applegate River downstream approximately 47 miles to the Siskiyou National Forest boundary near Marial. The Forest Service has administrative responsibilities for that portion of the Rogue River from the Siskiyou National Forest boundary downstream approximately 37 miles to the Lobster Creek Bridge. (p. 13408)

This single plan revises and combines the BLM and the FS Master Plans for the Rogue River component of the National Wild and Scenic Rivers system published in the FEDERAL REGISTER October 24 and October 7, 1969, and as "House Document No. 91-175" and "House Document No. 91-170" respectively (emphasis added) (p. 13408)

Although the original BLM and FS Master Plans were closely coordinated, there was some difference in language which caused public confusion. Therefore, the BLM and FS cooperatively developed this combined Rogue River Plan. This plan will guide both agencies in their development and management of the Rogue Wild and Scenic River. (p. 13408)

The boundaries of the Rogue Wild and Scenic River and areas of responsibility for BLM and FS remain unaltered. Appendices and supplemental information remain unchanged. The only substantial revision pertains to expansion of existing lodges on the stretch of river classified as Wild River. Under the original BLM Master Plan, lodge expansion was permitted provided approval of construction and site plans was obtained from BLM. The original FS Plan did not allow expansion of lodges. The new combined plan prohibits lodge expansion. (p. 13408)

INTRODUCTION (p. 13408)

Public Law 90-542, October 2, 1968, the "Wild and Scenic Rivers Act" hereinafter referred to as "The Act", designates certain selected rivers of the Nation possessing **outstanding scenic recreational, natural, and other similar values** (emphasis added) and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. (p. 13408)

RIVER BOUNDARIES (p. 13408)

Of primary importance was the nature and condition of the land area seen from the river or river bank. Protection of this primary view area is one of the principal management objectives. (p. 13409)

RECREATIONAL

Description. There are three separate sections of the river which have been classified as **recreational river areas** (emphasis added). They are (a) **Hellgate** (emphasis added), (b) Agness, and (c) Skookumhouse. (pps. 13409)

Recreational use centers on water oriented activities, including fishing, boating and swimming. Sightseeing, rockhounding, and camping are also popular. (p. 13409)

BACKGROUND INFORMATION - PHYSIOGRAPHY (pps. 13410 - 13411)

- . General
- . Natural Features
- . Vegetation
- . Important Hardwoods
- . Understory Shrubs
- . *Fish and Wildlife.* Wildlife resources contribute greatly to the recreational values of the Rogue River. In addition to their harvest value, these animals are easily viewed in their natural habitat and have substantial aesthetic value. (p. 13411)
- . Black-tailed Deer
- . Black Bear
- . It has been stated that the Rogue River is an anadromous fish highway.
- . Small Animal Species
- . American Mergansers
- . Listed Rare or Endangered: Osprey & Bald Eagle

BACKGROUND INFORMATION - CULTURAL FACTORS (p. 13411)

History. The Rogue River region has an exciting history. Exploration, fur trapping, settlement by immigrants, a gold rush. Indian wars, irrigation and lumbering have all helped shape the area into what it is today. Most of these activities have taken place within the past 125 years. Gold was discovered on the Rogue in 1849, and in the ensuing years every area every area along the river with gold in sufficient concentrations was mined. Most of the mining activity on the river is at a standstill, the trails which the miners built provided access to the area and speeded its development. In 1932, Zane Grey patented a mining claim at Winkle Bar. One of his cabins still remains as a memento of his world and the glory of the past. (p. 13411)

Rogue River Trail from Marial to Illahe. (p. 13411)

RIVER USES (p. 13411)

Boating

- Unique jet boats
- Commercially guided float trips
- Private boating

Fishing

Camping

Lodging

MANAGEMENT OBJECTIVES ENTIRE RIVER

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 in said System without, insofar as is consistent therewith, 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, archeologic, and scientific features** (emphasis added). Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on the **wildlife habitat, river fishery, scenic attractions or recreational value** (emphasis added). 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.

Special efforts will be made to (1) maintain or improve the quality of water which empties in the river, (2) **Improve the fish and wildlife habitat** (emphasis added), and (3) maintain its free-flowing condition. (p. 13412)

RECREATIONAL AREA

The recreational river area will be **managed to provide or restore a wide range of public outdoor recreation opportunities and water-oriented recreational facilities** (emphasis added). (p. 13412)

RECREATION

Entire area. **One of the key reasons for including the Rogue River in the National Wild and Scenic Rivers System was to protect and enhance the recreational values which the river possesses** (emphasis added). These values are realized in a great variety of activities. They range from an individual pitting only his knowledge and skill against the sometimes hostile forces of nature to recreation uses where the facilities and equipment are so sophisticated that the river can be enjoyed with no special knowledge or skill. (p. 13413)

Consistent with the objective of the individual river area, sufficient recreation facilities, on both private and Federal land, will be developed to meet the needs of the recreationists. **Care will be taken that use levels do not reach the point where the quality of recreation experience or quality of the stream environment deteriorates** (emphasis added). Recreationists using the river in groups of larger than 10 people may be required to camp in developed camping sites. (p. 13413)

Since boating, fishing and sightseeing are the main recreational uses on the river, top priority for recreation development will be given to improving the quality of these activities. (emphasis added) (p. 13413)

Although current levels of all types of boating activity create few problems, uncontrolled future use would probably result in safety hazards and a lowering of the quality of the recreational experience. When the need warrants, this will be prevented by the establishment of regulations limiting size, number, type, speed, etc. to provide optimum boat use. (emphasis added) These regulations will be developed in cooperation with the State and other agencies. (p. 13413)

Recreation area. Recreation facilities may be developed to provide a wide range of opportunities for river-oriented recreation consistent with management objectives and protection of the river environment. (p. 13413)

1973 Rogue River Ranch listed on the National Register of Historic Places

1973 Whisky Creek Cabin listed on the National Register of Historic Places

1978 Rogue National Wild & Scenic River, Activity Plan Hellgate Recreation Section

[Preface] The Rogue River is nationally recognized as a river of outstanding beauty and recreational opportunity. World renowned for its runs of steelhead trout and salmon, the Rogue was favored by the notable author and outdoorsman, Zane Grey, who fished, boated, camped, and wrote of her enchanting beauty and charm. Chair Riffle, Rocky Riffle, and Skull Bar near Galice were favorite fishing haunts frequented by this ardent fly fisherman.

[Preface] The character of the Rogue in this Recreation Section is varied. Her rugged beauty is exposed in the steep-walled rock of Hellgate Canyon. Her pastoral charm is reflected in the farm lands and cabins of the rural countryside below the Applegate. Her temper is manifested in the whitewater of Dunn Riffle and her peaceful nature in the slow moving stretch through Taylor Creek Gorge. The osprey and the stately great blue heron fish in the Rogue as they have for centuries, while visitors drive along the paved road that parallels the river.

[Preface] The Rogue is a national symbol, a river preserved in its natural setting to provide experiences that are become rare in urbanized America.

Background. Congress recognized the “extraordinarily remarkable qualities” of the Rogue River in 1968 by designating it as one of eight rivers in the nation to form the initial National Wild and Scenic River System. In 1970, the people of Oregon approved an initiative petition which created the Oregon State Scenic Waterways System. The Rogue was one of six rivers to be designated a scenic waterway. (p .1)

The river is divided into section which are classified as wild, scenic, or recreational, based on the amount of development and accessibility. This Activity Plan concerns only the BLM Hellgate Recreation Area, a 27 mile segment from the Applegate River to Grave Creek. In 1972, the U.S. Forest Service and the BLM revised and combined their 1969 Master Plans for the Rogue River component of the National Wild and Scenic Rivers System. This combined Master Plan, together with the directives of the National Wild & Scenic Rivers Act, provided the basic framework of policies and objectives within which the river is to be managed. In addition, the Management Framework Plan for the Josephine Sustained Yield Unit detailed more specific guidelines governing management programs within the corridor. These documents received widespread review and comment by the public and appropriate government agencies through the Bureau’s Land Use Planning System. (p. 1)

This Activity Plan will establish more detailed guides to land use management policies and **recreational development** (emphasis added) for the BLM Hellgate Recreation Section of the river. It will provide a ten year guide for BLM, owners of interspersed private lands, and the general public. It is not intended at this time to consider recreation development and use of the BLM Wild River Section. A separate plan for this area will be prepared at a later date. (p. 3)

OBJECTIVES (p. 4)

The specific objectives of the Activity Plan for the BLM administered Recreation Section of the Rogue National Wild & Scenic River are as follows: [Objectives A - E] (p. 4)

A. Protect, enhance, and maintain the natural beauty and character of the river corridor through effective visitor and land use management. (p. 4)

B. Identify recreation needs and resource capabilities, and determine necessary development of facilities consistent with the intent of the National Wild & Scenic Rivers Act, (as well as other laws and regulations concerning water quality, threatened or endangered species, and cultural resources).

The BLM is trying to preserve the special qualities of the Rogue through long-range planning of land and water resources. Toward this goal, the BLM is responsible for managing the Rogue River corridor to

protect our fish and wildlife habitat, preserve the environment and cultural values, and provide for the enjoyment of life through outdoor recreation opportunities (emphasis added). (p. 5)

DETERMINING QUALITY RECREATION EXPERIENCES (p. 7)

As stated in the Wild and Scenic Rivers Act, rivers which possess **outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic and cultural values** (emphasis added), shall be preserved in a free-flowing condition, and they and their environments shall be protected for the benefit and enjoyment of present and future generations. In order to carry out the directives of this federal law, it is necessary to assess what values are present in the Rogue River corridor, and to what extent they may be utilized. (p. 7)

DEVELOPMENT OBJECTIVES (p. 21)

A major management goal for this section of the river is to provide opportunities for engaging in a wide range of river-orientated recreation activities dependent on or enhanced by the free flowing nature of the river. Developed recreational facilities have a necessary and important role in supporting some of these recreational activities, and, therefore, are essential in order to fulfill the objectives for which this area was designed. Except for launching ramps, facilities will not be built immediately adjacent to the river. Special consideration will be given to develop facilities to accommodate the elderly and the handicapped. (p. 21)

1980 Rogue National Wild & Scenic River Wildlife Management Plan, Hellgate Recreation Section

Montgomery, David D. & Culbertson, Ralph, USDI, BLM, MDO 1980. *Rogue National Wild & Scenic River Wildlife Management Plan, Hellgate Recreation Section*. Medford, OR.

The BLM published the Rogue River Activity Plan in 1978 [*Rogue National Wild & Scenic River Activity Plan, Hellgate Recreation Section*] which outlined the development of the Recreational Section of the Rogue River Corridor and called for a Wildlife Management Plan (USDI BLM 1978). (p. 1).

Management of the fisheries resource is covered by the Oregon State Game Commission's Fish and Wildlife Plan, Rogue River (1971). To maintain the existing relatively undeveloped nature of the corridor and to help mitigate the effects of man's increasing activity in the area, the BLM has purchased scenic easements or directly purchased parcels of land. The goal of this Management Plan is to detail what management actions could be take to maintain or increase habitat for all species of wildlife in the corridor so that they may remain a part of our wildlife heritage (p. 1).

1981 Designation of the Rogue River National Recreation Trail

1982 National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification, and Management of River Areas [Interagency Guidelines]

Guidelines published by the Interior and Agriculture departments in 1982 for wild and scenic river management refer to carrying capacity. *Final Revised Guidelines for Eligibility, Classification and Management of River Areas*, 47 Fed. Reg. 39,454, 39,455 (Sept. 7, 1982). From Federal Register. (1982). (<http://www.rivers.gov/publications.php>)

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 developed in 1970.

Section 1 – Definitions. The following [selected] definitions are provided for the purpose of these guidelines only.
Act: The Wild and Scenic Rivers At. (FR p. 39455)

Carrying capacity: The quality of recreation use which an area can sustain without adverse impact on the outstandingly remarkable values and free-flowing character of the river areas, the quality of recreation experience, and public health and safety. (FR p. 39455)

Eligibility: Qualification of a river for inclusion in the national system through determination that it is free-flowing and with its adjacent land area possesses at least one outstandingly remarkable value. (FR p. 39456)

Management Plan: The detailed development plan required under section 3(b) of the Act which states the boundaries and classification of the river area and presents a plan for its public use, development and administration. (FR p. 39456)

Description of the River Area (FR p. 39456)

For the purposes of study and determining eligibility and classification, the river area may be divided into segments. (FR p. 39456)

The description of the river area will identify the outstandingly remarkable values and the extent of man's activity in the river environment to provide a clear basis for findings of eligibility and classification. While only one outstandingly remarkable value is necessary for eligibility, the study report should carefully document all values of the river area. (FR pps. 39456 - 39457)

Determination of Eligibility.

Each report will contain a **determination as to the eligibility** (emphasis added) of all portions of the authorized study area. (FR p. 39457)

Section 2(b) of the Act states that “a * * * river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act.” The terms “river” and “free-flowing” are defined in section 16 of the act. (FR p. 39457)

In reading and applying the **criteria of eligibility** (emphasis added), the following points are relevant: (FR p. 39457)

- The fact that a river segment may flow between large impoundments will not necessarily preclude its designation. Such segments may qualify if conditions within the segment meet the criteria. (FR p. 39457)

- Rivers or river segments in or near urban areas that possess outstandingly remarkable values may qualify. Only one outstandingly remarkable value is needed for eligibility. (FR p. 39457)
- In addition to the specific values listed in Section 1(b) of the Act, other similar values, such as ecological, if outstandingly remarkable, can justify inclusion of a river in the national system. (FR p. 39457)
- The determination of whether a river area contains “outstandingly remarkable” values is a professional judgment on the part of the study team. The basis for the judgement will be documented in the study report. (FR p. 39457)
- There are no specific requirements concerning the length or the flow of an eligible river segment. A river segment is of sufficient length if, when managed as a wild, scenic, or recreational river area, the outstandingly remarkable values are protected. Flows are sufficient if they sustain or complement the outstandingly remarkable values for which the river would be designated. (FR p. 39457)

Analysis of the Alternatives (FR p. 39458)

If the study team finds a segment ineligible for designation as a component of the National Wild and Scenic Rivers System, but still worthy of protection, alternatives for State, local or private preservation may be presented, as well as protection under other Federal programs. (FR p. 39458)

If areas adjacent to the study area have been studied and found eligible, the report may present alternatives which incorporate such areas into the river area proposed for designation. Such expansion of the original study area either in length or in width may be desirable to preserve and facilitate management of river ecosystems, historic or archeological areas or other special areas. (FR p. 39458)

Section III – Management (FR p. 39458)

Wild and scenic rivers shall be managed with plans prepared in accordance with the requirements of the Act, other applicable laws, and the following general management principles. Management plans will state: General principles for any land acquisition which may be necessary; the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated; and specific management measures which will be used to implement the management objectives for each of the various river segments and protect esthetic, scenic, historic, archeologic and scientific features. (FR p. 39458)

General Management Principles (FR p. 39458)

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** (emphasis added) which caused it to be included in said system without, insofar as is consistent therewith, 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 esthetic, scenic, historic, archeologic, and scientific features** (emphasis added). Management plans for any such component may establish varying degrees of intensity for its protection and development on the special attributes of the area.

This section is interpreted as stating a **nondegradation and enhancement policy** (emphasis added) for all designated river areas, regardless of classification. Each component will be managed to protect and enhance the values for which the river was designated, while providing for public recreation and resource uses which do not adversely impact or degrade those values. . . . New land uses must be evaluated for their compatibility with the purposes of the Act. (FR pps. 39458 - 39459)

The management principles which follow stem from section 10(a) (FR p. 39459).

Managing agencies will implement these principles to the fullest extent possible under their general statutory authorities and existing Federal, State and local laws. Because of these limitations, however, implementation of the principles may differ among and within components of the system depending on whether the land areas involved are federally, State locally or privately owned (FR p. 39459).

- *Carrying Capacity.* Studies will be made during preparation of the management plan and periodically thereafter **to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area** (emphasis added). Management for the river areas can then be planned accordingly. (FR p. 39459)
- *Public Use and Access.*
- *Basic Facilities.*
- *Major Facilities.*
- *Agricultural and Forestry Practices.*
- *Other Resource Management Practices.*
- *Water Quality.*
- *Land Use Controls.*
- *Rights-of-Way.*

User Capacity & Carrying Capacity (EnLaw, p. 846)

In 1982, the Departments of Agriculture (Office of the Secretary, Forest Service) and Interior (Office of Secretary, National Park Service) released the WSRA Guidelines, which defined **carrying capacity**. See Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. 39,454, 39,455 (Sept. 7, 1982). In response, Congress amended the WSRA in 1986, **ratifying the carrying capacity requirement but terming it “user” capacity**. See Pub. L. No. 99-590, § 501, 100 Stat. 3330, 3335 (1986) (deleting reference to “necessary developments” from the statute). Because Congress incorporated user capacity, which the administering departments defined and discussed in a previous interpretation of WSRA duties, courts may imply that Congress meant the same thing as the agency’s previous interpretation. See, e.g., *Hall v. U.S. Env’t Prot. Agency*, 273 F.3d 1146, 1158 (9th Cir. 2001) (noting, in a case involving the 1990 amendments to the Clean Air Act, that there is a “strong inference” that when Congress incorporates an administratively defined term, it intends “the term to be construed in accordance with pre-existing . . . interpretations” (alteration in original) (citing *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998))) (EnLaw, p. 846)

1988 BLM Guidelines for Fulfilling Requirements of the Wild and Scenic Rivers Act

Director BLM. September 8, 1988. *Guidelines for Fulfilling Requirements of the Wild and Scenic Rivers Act*. Instruction Memorandum No. 88-670 to All WO and Field Officials. Washington, D.C.

This memorandum sets forth (Attachment 1) guidelines for the identification, evaluation, reporting, and interim protection of potential wild, scenic, and/or recreational (WSR) rivers to the National Wild and Scenic Rivers System. The purpose of this memorandum is to provide detailed BLM direction to guide WSR river studies and interim management until incorporated into the appropriate BLM Manual(s). Section 5(d) of the Wild and Scenic Rivers Act, resource management planning, public concern, and interagency coordination require your attention and assistance in implementing these guidelines.

USDI, BLM. August 1988. *Guidelines for Fulfilling Requirements of the Wild and Scenic Rivers Act*. Wild, Scenic, and Recreational River Studies. Washington, D.C.

VIII. The River Study Process (p. Attachment 1-9)

A. Eligibility, Classification, and Suitability. The river study process for river segments follows a three-step assessment process outlined as follows: (p. Attachment 1-9)

1. Determination of Eligibility. As part of the first step, to be eligible for inclusion, a river must be “free-flowing” and, with its adjacent land area, must possess one or more “outstandingly remarkable” values. The eligibility of a river for the National System is determined by applying the criteria in Sections 1(b) and 2(b) of the Wild and Scenic Rivers Act, **as interpreted** (emphasis added) by USDI-USDA Guidelines. (p. Attachment 1-9)

a. Criteria. (p. Attachment 1-9)

1) Free-flowing Values. (p. Attachment 1-9)

2) Outstandingly Remarkable Values. For any river segment to be eligible for designation to the National Wild and Scenic Rivers System, one or more of the following values within the river area must be **outstandingly remarkable: scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar value** (emphasis added). Only one such value is needed for eligibility and is a **subjective judgment** (emphasis added). Although several river segments on public land may possess similar values, each river must be looked at individually and may be outstandingly remarkable when considered in a **regional, State, or national context**. (p. Attachment 1-9)

b.) Study Team. The determination that a river area contains one or more outstandingly remarkable values is a **professional judgement** (emphasis added) on the part of the study team. Study team members may be part of an interdisciplinary (RMP) team or a separate team comprised of invited professional from interested local, State, Federal agencies to participate in the study. (p. Attachment 1-9)

1989 Management of the Wild and Scenic Rogue River Needs and Opportunities BLM, MDO, April 28, 1989

Introduction (p. 1)

Congress recognized the “extraordinary remarkable qualities” of the Rogue River in 1968 by designating it as one of the Nation’s initial eight rivers comprising the National Wild and Scenic Rivers System. In 1970, the Rogue was one of the six rivers to be designated as a State Scenic Waterway by the State of Oregon. (p. 1)

The BLM-administered portion includes the wild section, from Grave Creek to Mule Creek, which flows through an essentially natural canyon environment with outstanding scenic values. (p. 1)

The 27 mile segment from the Applegate River to Grave Creek (recreation section) provides a broader range of land and water based recreation opportunities (p. 1)

The BLM has made a large investment in the Rogue River since 1970. One hundred sixty six scenic easements and 99 fee acquisitions (at a total cost of 7 million dollars) protect the scenic qualities of the river corridor (emphasis added). (p. 1)

NEEDS (p. 2)

Rogue River Recreation Section This outstanding 27 mile long section of the Rogue presents the broadest variety of recreation opportunities to the largest segment of the populations. (p. 2)

Dominant uses within the recreation section are commercial and private fishing (bank and boat), commercial jet boat touring, private motorized boating, and white water floating (emphasis added). These uses often conflict when concentration of users occur within the more popular portions of the river section. (p. 2)

**C. REVISION OF HELLGATE RECREATION AREA MANAGEMENT PLAN:
1991 - 1998**

**1991 Summary of the Analysis of the Management Situation, Medford District Office
Resource Management Plan (February 1991)**

USDI, BLM, MDO. February 1991. Summary of the Analysis of the Management Situation, Medford District Office Resource Management Plan. Medford, OR (MDO 1991 AMS)

Table 2. Existing Decision Valid Subject to Further Analysis (MDO 1991 AMS, p. 6)

Decision: Recreation Management Plans for the Rogue River Wild Section Rogue National Wild and Scenic River Activity Plans for the Hellgate Recreation Section.

Summary: **These Plans address the interaction of recreation and wildlife** (emphasis added) and do not need to be reanalyzed in the RMP unless major changes in land use allocation occur.

Status of Decision: In force.

Wild and Scenic Rivers, Existing Conditions (MDO 1991 AMS, p. 54)

Eight-four miles of the Rogue River have been designated by Congress under the Wild and Scenic River Act (see Table 22 and Map 8). (MDO 1991 AMS, p. 54)

BLM manages 47 miles of the Rogue National Wild and Scenic Rivier in cooperation with Siskiyou National Forest, Oregon Scenic Waterways program, and Oregon State Marine Board (MDO 1991 AMS, p. 60)

**1991 Preplan Analysis for Revising the Recreational Area Management Plan (Activity
Plan: Hellgate Recreation Section) Rogue River Recreation Section**

The 1991 Preplan Analysis document included many ideas of which a significant one was the use of Legislative intent to assist in the identification of ORVs. This is because as an instant river in 1968 there was no study plan required nor developed with among other requirements identified the ORVs. This document was the first of many planning documents for revising the HRAMP in the 1990s. It included a range of ideas from various sources on the ORVs. Its focus was the identification of an initial range ORVs that would be verified and/or sorted out in the HRAMP planning process (i.e., it did not immediately focus on the specific ORVs, but considered the range per the WSRA, Sections 1(a) - 1(b)). (see [Sec. II.A.2](#))

1991 Speed's Place on the Rogue, National Register of Historic Places

**1992 Compliance Background Paper for Revising the Hellgate Recreation Area
Management Plan**

**1992 Management Guidance and Direction from the Prohibited Acts in Rogue National
Wild and Scenic River Area of 1992 (Federal Register Vo. 57, No. 110, 24271-24274)**

1992 Rogue River Studies Program Background Paper for Revising the Hellgate Recreation Area Management Plan

The Rogue River Studies Program was the result of early internal BLM scoping resulting in a contracted studies program, the time for which to complete the last contracting paper in 1995, resulted in the opportunity to expand the program with ID team background resource papers (the list of resource papers are located at the end of this Section (III.C)).

1992 Public Participation Plan for Revising the Hellgate Recreation Area Management Plan

The following reference is not related to the HRAMP public participation plan, but it is illustrative of the passion of the involved river public.

James Rainey, Yosemite Valley Plan Seen as a Quest for Beauty and Balance, L.A. TIMES, Nov. 15, 2000, at A3. President Clinton's Interior Secretary Bruce Babbitt characterized Yosemite's diverse stakeholders as a "'cantankerous, eccentric, passionate, irrational, idealistic, quarrelsome, impossible crowd of people.'" Brian Melley, Yosemite: Tough Task Ahead for New Superintendent, SEATTLE POST INTELLIGENCER, Feb. 6, 2003, (quoting Interior Sec. Babbitt). (Friends, p. 835).

1992 Medford District Resource Management Plan and Environmental Impact Statement [DEIS]

USDI, BLM, MDO. August 1992. *Medford District Resource Management Plan and Environmental Impact Statement [DEIS]*. Volume I. Medford, OR. (MDO 1992 Draft RMP/EIS Vol I)

Chapter 2, Alternatives

BLM uses a three-step wild and scenic rivers study process: the first step is to determine eligibility, the second step is to determine potential classification (both were completed in early 1990 [for study rivers]) and the third step is to determine suitability which is done through this planning process. Final decision concerning designation of Wild and Scenic Rivers is reserved by Congress. (MDO 1992 Draft RMP/EIS Vol I, p. Chapter 2-14)

Files used to document eligibility and potential classification are maintained in the Medford District Office. Wild and scenic rivers eligibility and classification criteria are shown in Appendix 2-WS-1. Suitability findings for Alternatives A-E were directed by the State Director Guidance (see Appendix 1-F). (MDO 1992 Draft RMP/EIS Vol I, p. Chapter 2-14)

No Action Alternative

Wild and Scenic Rivers. The Rogue National Wild and Scenic (47 miles) would continue to be managed in accordance with Federal guidelines. Management plans are currently being revised for the recreation and wild sections. (MDO 1992 Draft RMP/EIS Vol I, p. Chapter 2-27)

Chapter 3, Affected Environment

Wild and Scenic Rivers. BLM manages 47 miles of the Rogue National Wild and Scenic River in cooperation with the Siskiyou National Forest, the Oregon Scenic Waterways program, and the Oregon

State Marine Board (see Table 3-WS-1 and Map 3-WS-1). (MDO 1992 Draft RMP/EIS Vol I, p. Chapter 3-74)

The National Rivers Inventory (NRI) identified no river segments which cross or are within a quarter mile of BLM-administered land in the planning area which would require studying for potential W&SR designation. However, the BLM, public, state agencies, and others identified 92 segments of other such rivers which could have potential for national wild, scenic, or recreational river designation. To each of these river segments **BLM applied eligibility and classification criteria established in U.S. Department of the Interior-Department of Agriculture guidelines** (emphasis added) evaluating a corridor extending a quarter mile on each side of the segment (see Appendix 2-WSR-2). The status of eligibility determinations for these rivers is shown in Table 3-WS-2. (MDO 1992 Draft RMP/EIS Vol I, p. Chapter 3-74)

1992 Appendices Medford District Resource Management Plan and Environmental Impact Statement [DEIS] [MDO 1992 Draft RMP/EIS Vol II]

Appendix 2-WS-1. Wild and Scenic River Eligibility and Classification Determinations

USDI, BLM, MDO. August 1992. *Medford District Resource Management Plan and Environmental Impact Statement [DEIS]*. Volume II - Appendices. Medford, OR. (MDO 1992 Draft RMP/EIS Vol II)

[Determine the eligibility of the XX WSR using the criteria listed in the Wild and Scenic Rivers Act and the standards for outstandingly remarkable values listed in BLM Instruction Memorandum OR-89-632. The BLM standards were developed for use throughout Western Oregon in its land use planning process.]

BLM. 1989. Instruction Memorandum OR-89-632. USDI, BLM, Oregon/Washington State Office.

The outstandingly remarkable values are stated in the Wild and Scenic Rivers Acts as “scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values.” The Rivers Act did not specifically spell out the criteria to judge these values. The BLM Westside Oregon Bureau District developed criteria (written up in Instruction Memorandum OR-89-632) [which in part follows.] (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-71)

A river’s scenic, recreational, geologic, fish and wildlife, cultural, historic(s), are deemed “outstandingly remarkable” if one or more of the following guidelines apply to the value(s) under consideration. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-71)

[The following are selected portions of the criteria]

Scenic . . . are unique and harmonious . . . must be scenic quality “A” . . . (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-71)

Recreational . . . unique enough to attract visitors from outside the geographic region. Visitors would be willing to travel long distances to use the river resources for recreation purposes. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-71)

Geologic . . . phenomena that is rare, unusual, one-of-a-kind or, unique to the geographic region. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-71)

Fish . . . The river is nationally or regionally one of the top producers of resident and/or anadromous fish species. Of particular significance is the presence or wild or unique stocks of populations listed or candidate threatened and endangered species. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-71)

Wildlife . . . nationally or regionally important populations of indigenous wildlife species Of particular significance are considered unique or populations of federal listed or candidate threatened and endangered species . . . (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-72)

Cultural . . . site(s) where there is evidence of occupation or use by native Americans. Sites must be rare, one-of-a-kind, have unusual characteristics or exceptional human interest value(s). Sites may have national or regional importance for interpreting prehistory, may be rare and represent an area where a culture or cultural period was first identified and described, may have been used concurrently by two or more cultural groups, or may have been used by cultural groups for rare or sacred purposes. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-72)

Historic . . . site(s) or feature(s) associated with a significant event, an important person, or a cultural activity of the past that was rare, unusual or one-of-a-kind in the region. Of particular significance are sites or features listed in or are eligible for inclusion in the National Register of Historic Places. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-72)

After determining a river's eligibility for inclusion in the National Wild and Scenic River System, it must be classified according to the category (wild, scenic, or recreational) that best fits each eligible segment. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-72)

The **Federal Register, Vol. 47, No. 174, September 7, 1982** (emphasis added), gives guidance for classifying rivers pursuant to the Wild & Scenic Rivers Act. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-72)

Appendix 2-WS-2. Management Guidelines and Standards For Wild and Scenic Rivers

The following guidelines and standards are extracted from the February 3, 1970 and **August 26, 1982, joint Department of Interior and Department of Agriculture guidelines** (emphasis added). **They would apply to formally designated rivers through incorporation in formal management plans** (emphasis added), which are normally developed within three years of designation. The guidelines also apply on an interim basis to BLM-administered land along BLM study rivers . . . (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-75)

Section 10(a) of the Act . . . This section is interpreted by the Secretaries of the Interior and Agriculture as stating that all designated river area, regardless of classification, will be **enhanced and not degraded** (emphasis added). (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-75)

Discussion of the BLM's inventory to determine which river stretches are eligible for consideration as components of the system is presented in Chapter 3 and Appendix 2-WS-1. Also included in that appendix are **definitions and criteria for eligibility and classification** (emphasis added) (wild, scenic, recreational) as well as the results of BLM's eligibility studies. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-75)

Management Objective for Recreational River Areas. Management of recreational river areas should give primary emphasis to protecting the values that make it outstandingly remarkable while providing river-related outdoor recreation opportunities in a developed setting. (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-76)

Management Objectives Common To Wild, Scenic, And Recreational River Areas (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-79)

Recreation. The management plan for a river would evaluate current and potential recreational use, and if appropriate, **identify a maximum carrying capacity for recreational boating use** (emphasis added). The implementation of permit systems, other than permits for commercial (outfitters and guides) use of federal lands and waters, is typically undertaken only **when public use approaches the identified maximum carrying capacity** (emphasis added). (MDO 1992 Draft RMP/EIS Vol II, p. Appendix 2-80)

1993 Scoping Document Background Paper for Revising the Hellgate Recreation Area Management Plan

1993 Cultural Resources Background Paper for Revising the Hellgate Recreation Area Management Plan

Winthrop, Kate. May 1993. *Cultural Resources Background Paper for Revising the Hellgate Recreation Management Plan*. United States Department of Interior (USDI), Bureau of Land Management (BLM), Medford District Office (MDO). Medford, OR.

The Rogue River corridor has provided a place for people to live and work for at least 10,000 years. Both the ethnographic record, documented by anthropologists in the early decades of this century, and historic documents substantiate the importance of the river to the history of this area. Prehistoric and historic sites along the Rogue River represent this past, and management of the river corridor includes responsibility for their evaluation, preservation, and interpretation (p. 3).

Several groups of Indians lived along the stretch of the Rogue River between the Applegate River and Grave Creek. The territory of the Takelma extended from the Rogue River valley to some point between Grave Creek and Marial, possibly around Rainie Falls. Other groups, speaking Athapaskan languages, lived along Galice Creek and the Applegate River. Major Athapaskan villages existed at the confluences of these streams with the Rogue River (p. 3).

The importance of the river is reflected in the numerous place-names that survived in the memories of the native people who lived to tell their story in the early twentieth century. Although these informants had been forcibly removed from the area in their youth, the impression of the river remained strong, as did their memories of the homes and places along it. The following lists the places known along the HRA of the Rogue River between the Applegate River and Grave Creek (pps. 4 - 5).

- Salwaxk'an: A place near the confluence of the Applegate and the Rogue River.
- Tatmelmal: A village on the north bank of the Rogue River, west of the confluence of the Rogue River and the Applegate.
- Talkwa-lkh: A place on the southern bank of the Rogue River, and west of the Applegate River. Possibly this is the archaeologically known Marthaller site.
- Da-gelam: A place along the river between the Applegate and Jump-off Joe Creeks, possibly at Griffin's Ferry or Flanagan Slough.
- Hat'onk: A place along the Rogue River where Jump-off Joe Creek joins the Rogue River.
- Xat'o-nkh: Another place along the Rogue River near the confluence with Jump-off Joe Creek.
- Takalaksj: A place near Xat'o-nkh, where the Takelma Indians came to live at some time during the Rogue Indian Wars.
- S-omo-luk: A place downstream from the mouth of Jump-off Joe Creek, on the north bank of the Rogue River.
- Yawa-kha: A place downstream from the mouth of Jump-off Joe Creek, located on both sides of the river, possibly located about one mile downriver from Jump-off Joe Creek, on the old Crow ranch, on a point of land.
- Taktkamaykh: Rainie Falls, about three miles below the mouth of Grave Creek, a place for a portage of canoes.
- Talustun: The village at the mouth of Galice Creek

Archaeologically Sites Examples of several important archaeologically sites along the HRA of the Rogue River follow.

- Ritsch Site
- Marthaller Site
- Pickett Creek Site
- Hellgate Canyon Site
- Stratton Creek Site
- Galice Site
- Marial Site

The following Lowland Takelma references are just a few establishing the importance of the Takelma in the Rogue River corridor of the W&S Rogue River.

Atwood, Kay; Grey Dennis J. January 1996. *People and the River: A History of the Human Occupation of the Middle Court of the Rogue River of Southwestern Oregon*. Volume I. Prepared for the USDI, BLM, Grants Pass Resource Area. Medford, OR.

Gray, Dennis J. (1987). *The Takelmas and Their Athapascan Neighbors: A New Ethnographic Synthesis for the Upper Rogue River Area of Southwestern Oregon*. University of Oregon Anthropological Papers, No. 37. Eugene: Department of Anthropology, University of Oregon.

Harrington, John Peabody. 1981 *The Papers of John Peabody Harrington in the National Anthropological Archives of the Smithsonian Institution 1907-1957*. Reel number 28. Kraus International Publications. Millwood, New York.

Pullen, Reg. 1996. Overview of the Environment of Native Inhabitants of Southwestern Oregon, Late Prehistoric Era. Prepared USDA, Rogue River National Forest, Siskiyou National Forest, and USDI, Medford District Office. Medford, OR.

Historic sites along the National Wild & Scenic Rogue River (entire 84-miles) reflect many of the major themes of this region's history (p. 5).

- Rogue Indian Wars from 1851-1856
- Gold Mining in Southwestern Oregon
- Development of Small-scale Subsistence Economies and Communities in the Siskiyou Mountains
- Development of Recreation
- Impact of the Great Depression in the 1930s
- Development of Logging and Forestry

The following historic sites and locations are noted or recorded along the HRA of the Rogue River. This is not an exhaustive list; like the prehistoric component, these locations represent only an example of the types of sites likely to occur (pps. 7 - 8).

- Flanagan Slough
- Robertson Bridge
- Indian Mary Campground
- Speed's Place
- Galice
- Robert Dean Placer
- Rand

National Register of Historic Places (on BLM 47-mile managed recreation and wild sections).

- Whiskey Creek Cabin (September 5, 1975)
- Stratton Creek: Partially excavated by Oregon State University in 1992 (35JO21); Prehistoric Occupation of the Stratton Creek Site (35JO21), Josephine County, Oregon*
- Speed's Place on the Rogue (June 21, 1991)
- Rand Ranger Station (June 10, 1999)
- Zane Grey's Cabin (nominated to National Register of Historic Places)
- Rogue River Ranch at Marial (35CU84) (1973?) (December 29, 1975?)

The Bialas thesis confirms that the **Stratton Creek Site offers valuable data to the understanding of prehistory of southwestern Oregon for the past 11, 000 years. Only one other site in the Rogue River watershed dating to these time periods, Marial (35CU84), has been extensively excavated.***

* Bialas, Catherin M. (Catherin Maria), *11,000 years on the Rogue River: Prehistoric Occupation of the Stratton Creek Site (35JO21), Josephine County, Oregon* (2012). WWU Masters Thesis Collection. Paper 232. <http://cedar.wwu.edu/cgi/viewcontent.cgi?article=1231&context=wwuet>.

Rogue River Trail Log

<http://www.blm.gov/or/resources/recreation/rogue/trail-log.php>

1994 Agency Responsibility Background Paper for Revising the Hellgate Recreation Area Management Plan (January 1994)

1994 Issues and Alternatives for Management of the Heligate Recreation Area of the Rogue River: May 1994

The HRAMP's May 1994 document entitled, *Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River*, identified that "The outstandingly remarkable values for which the Rogue River was designated are its **natural scenic environment, the fisheries resource, and the recreational opportunities** it provides." (see pps IC 7 - ?).

The cover letter to the issues and alternatives document identified that the purpose of the HRAMP was to align recreation use levels to achieve the WSRA (p. i).

The BLM and cooperating agencies having management responsibilities within the 27 miles of the National Wild and Scenic Rogue River's Hellgate Recreation Area, or recreation section, are in the process of revising the recreation area management plan (RAMP) which will guide the management of the area for the next several years. The purpose of the revised RAMP is to align recreational use levels to achieve the purposes of Public Law 90-542, October 2, 1968, the Wild and Scenic Rivers Act (p. i).

In 1968 the United States Congress designated the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) as the lead agencies for managing the land and water within the identified Rogue National Wild and Scenic River corridor (i.e., 84 miles from its confluence with the Applegate River downstream to the Lobster Creek Bridge). The portion of the river from the mouth of the Applegate River downstream to Marial, a distance of approximately 47 miles, is administered by the Medford District Office (MDO), BLM. The lower 37 miles are located within the boundaries of the Siskiyou National Forest and are administered by the USFS. **The outstandingly remarkable values for which the Rogue River was designated are its natural scenic environment, the fisheries resource, and the recreational opportunities it provides** (emphasis added). While not specifically singled out by Congress, Federal managers of the river also consider the wildlife and cultural resources to be significant. (p. 3)

In 1970 this same 84-mile segment was designated as a component of the Oregon State Scenic Waterways System which is administered by the Oregon Parks and Recreation Department (OPRD). (p. 3)

Chapter IV, “The Planning Process” to the issues and alternatives document identified issues identified by the public: possible impacts to river resources from visitor use, health and safety concerns, socioeconomic benefits, motorized versus nonmotorized boating, and the social carrying capacity of the river (p. 7). It also identified that the common interests of all users and/or visitors were the opportunity to view scenery and wildlife, to be in a natural setting, and to enjoy the river.

Two scoping processes were conducted by BLM from May 1991 to December 1992 (Walker and Littlefield 1992) and from October 1 through November 30, 1993. Approximately 3,000 written responses were analyzed during these scoping efforts to revise the Hellgate RAMP. The issues identified by the public addressed several areas of concern: possible impacts to river resources from visitor use, health and safety concerns, socioeconomic benefits, motorized versus nonmotorized boating, and the social carrying capacity of the river. **Social carrying capacity relates to the question of the increased visitor use altering or degrading the recreational experience** (emphasis added). The jet boat or motorized tour boat (MTB) service was clearly identified as the major point of controversy among users of the Hellgate Recreation Area. The common interests of all users and/or visitors were the opportunity to view scenery and wildlife, to be in a natural setting, and to enjoy the river. The BLM is concerned with protecting the recreational resources and reducing visitor use conflicts within the Hellgate Recreation Area (p. 7).

Chapter VI, “Management Common to All Alternatives” to the issues and alternatives document identified for the first time to the public that the ORVs for the HRA were the three previous identified ORVs (i.e., natural scenic environment, the fisheries resource, and the recreational opportunities it provides) for the entire 84 miles of the Rogue River, including that “The Rogue River in the Hellgate Recreation Area is to be preserved in its free-flowing condition to protect its water quality and to maintain its undisturbed condition.” (p. 13)

Management common to all alternatives for the Hellgate Recreation Area is found in the Congressional designation decision. A 27-mile stretch of the Rogue River from the confluence of the Applegate River to Grave Creek was found to meet Congress's objective for a recreational segment of a National Wild and Scenic River. The Rogue River possesses outstandingly remarkable values and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. The Rogue River in the Hellgate Recreation Area is to be preserved in its free-flowing condition to protect its water quality and to maintain its undisturbed condition (p. 13).

The Hellgate Recreation Area will be administered in such manner as to protect and enhance the values which caused it to be included in said system 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. Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on the cultural values, fisheries resource, natural scenic environment, recreational opportunities, or wildlife habitat (p. 13).

There are nine overall objectives for the entire planning area. Management actions would be taken to prevent, stop, or reverse the following unacceptable conditions in the planning area (emphasis added) (p. 17):

- A. Any riparian area that is in a state of declining health.
- B. Any riverbank that is actively eroding at such a rate that water quality and fish habitat are adversely affected.

- C. Any significant health or safety hazard caused by human use.
- D. Any damage to protected species or critical habitat caused by human use.
- E. Any significant archaeological, geological, or historical sites, or recreational values that are eroding or being irreparably damaged by human use to the point that they are in danger of being lost.
- F. Any significant degradation of water quality due to human use.
- G. Any significant fish population decreases caused by human use.
- H. Any significant damage to private land and improvements within the planning area resulting from public use.

1994 Draft Scenic Easements Background Paper for Revising the Hellgate Recreation Area Management Plan (August 1994)

1994 Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative

Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative. Memorandum from Jim Leffmann, Rogue River Manager, to Interdisciplinary (ID) Team Members for Hellgate Recreation Area Management Plan (RAMP) Revision. USDI, BLM MDO. Medford, OR. Internal BLM Draft: the Development of the Preferred Alternative

The design criteria of the preferred alternative will be to meet the management criteria of the National Wild and Scenic Rivers Act (i.e., especially the protection and management of the outstandingly remarkable values, and to satisfy the eight overall objectives. . . (p. Attachment 1-1).

Management common to all alternatives for the Hellgate Recreation Area is found in the Congressional designation decision. A 27-mile stretch of the Rogue River from the confluence of the Applegate River to Grave Creek was found to meet Congress's objective for a recreational segment of a National Wild and Scenic River. The Rogue River possesses outstandingly remarkable values and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. The Rogue River in the Hellgate Recreation Area is to be preserved in its free-flowing condition to protect its water quality and to maintain its undisturbed condition (p. Attachment 1-1).

The Hellgate Recreation Area will be administered in such a manner as to protect and enhance the values which caused it to be included in said system without limiting other uses that do not substantially interfere with public use and enjoyment of these values. The outstandingly remarkable values for which the Rogue River was designated are its **natural scenic environment, the fisheries resource, and the recreational opportunities (e.g., motorized boating, non-motorized boat fishing, non-motorized float boating, day use, etc.)** (emphasis added) (p. Attachment 1-1) it provides. While not specifically singled out Congress, Federal managers of the river also consider the wildlife and cultural resources to be significant. In such administration, **primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeological, and scientific features** (emphasis added) (p. Attachment 1-1). Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on the **cultural values, fisheries resource, natural scenic environment, recreation opportunities, or wildlife habitat** (emphasis added) (p. Attachment 1-1).

1994 Medford District Proposed Resource Management Plan/Environmental Impact Statement [FEIS]

USDI, BLM, MDO. October 1994. *Medford District Proposed Resource Management Plan/Environmental Impact Statement [FEIS]*. Volume I. Medford, OR. (MDO PRMP/FEIS Vol I)

Wild and Scenic Rivers. Objectives (MDO PRMP/FEIS Vol I, p. Chapter 2-39)

Manage designated segments of the National Wild and Scenic Rivers System to protect their outstandingly remarkable values and maintain and enhance the natural integrity of river-related values. (MDO PRMP/FEIS Vol I, p. Chapter 2-39)

Protect outstandingly remarkable values identified on BLM-administered lands within the study corridors of eligible river segments studied and administratively found suitable for inclusion as components of the National Wild and Scenic Rivers System. (MDO PRMP/FEIS Vol I, p. Chapter 2-39)

Provide interim protection management for outstandingly remarkable values identified on BLM-administered lands along river segments determined eligible but not studied for inclusion as components of the National Wild and Scenic Rivers System. (MDO PRMP/FEIS Vol I, p. Chapter 2-39)

Suitable River Segments (MDO PRMP/FEIS, p. Chapter 2-40)

Suitability reports for river segments found suitable for inclusion in the national system are located in **Appendix J**. (emphasis added). (MDO PRMP/FEIS Vol I, p. Chapter 2-40)

Manage the natural integrity of the river-related values to maintain or enhance the highest tentative classification. **Classification criteria are found in Appendix 2-WS-1, Draft RMP**. (emphasis added). (MDO PRMP/FEIS Vol I, p. Chapter 2-40)

Management Actions/Direction (MDO PRMP/FEIS Vol I, p. Chapter 2-40)

Revise approved wild and scenic river management plans for both the wild and recreation segments of the Rogue River to address attainment of Aquatic Conservation Strategy and riparian reserve objectives. (MDO PRMP/FEIS Vol I, p. Chapter 2-40)

Manage the previously designated Rogue River, both the wild and recreation segments, according to existing management plans. A new management plan for the recreation segment is currently being prepared. (emphasis added) (MDO PRMP/FEIS Vol I, p. Chapter 2-40)

Appendix J. Wild and Scenic River Suitability Assessments (MDO PRMP/FEIS Vol II, pps. Appendices 81 - 98)

USDI, BLM, MDO. October 1994. *Medford District Proposed Resource Management Plan/Environmental Impact Statement* [FEIS]. Volume II. Medford, OR. (MDO PRMP/FEIS Vol II)

This appendix contains suitability assessment for 4 of the 92 river segments previously found eligible as Wild for inclusion in the National Wild and Scenic Rivers System (NWSRS). (MDO PRMP/FEIS Vol II, p. Appendices 81)

The analysis of a river's potential for designation under the National Wild and Scenic Rivers Act involves three separate steps: determination of eligibility, classification, and finding of suitability. Rivers or river segments can be classified as Wild, Scenic, or Recreational river areas. Final designation decisions are made by Congress. (MDO PRMP/FEIS Vol II, p. Appendices 81)

Based on planning criteria in the State Director's Guidance for formulation of planning alternatives (see Appendix B), BLM made a comparison of outstandingly remarkable values associated with each eligible river segment in each SCORP region. (MDO PRMP/FEIS Vol II, p. Appendices 82)

Four designated rivers (the Rogue, Upper Rogue, Illinois, and North Umpqua) (emphasis added) and one Congressionally mandated study river (the upper Klamath) flow through SCORP Region 9. Therefore, the outstandingly remarkable values associated with those rivers were ranked above those on nondesignated rivers. **The four highest ranked river areas per outstandingly remarkable value are shown in Table WSR-1 and are listed first.** The only segments being studied through this planning process that possess outstandingly remarkable values which rank in the top four for the SCORP Region 9 are Whiskey Creek (historic) and Antelope Creek (cultural). Both the eligibility and suitability determinations were coordinated with all appropriate BLM Districts and National Forests in the SCORP region. (MDO PRMP/FEIS Vol II, p. Appendices 82)

Table WSR-1 Ranking of Outstandingly Remarkable Values in Region 9 (MDO PRMP/FEIS Vol II, p. Appendices 83)

The following is from Table WSR-1 for only the first river ranked - the Rogue River.

Table WSR-1 Ranking of Outstandingly Remarkable Values in Region 9								
River Segment	Recreation	Geological	Fish	Wildlife	Scenic	Cultural	Historical	Other
Rogue2	X		X	X	X		X	
Footnote 2. River segments previously designated. (MDO PRMP/FEIS Vol II, p. Appendices 83)								

In summary, Appendix J. Wild and Scenic River Suitability Assessments, in volume II of the 1994 Medford District Proposed RMP/FEIS ranked the National Wild and Scenic Rogue River as having five designated ORVs.

1. **Recreation**
2. **Fish**
3. **Wildlife**
4. **Scenic**
5. **Historical**

During the years it took to develop the 1994 Medford District Proposed RMP/FEIS, the author was also a full-time member of the ID Team member responsible for the rural interface issue.

1995 Record of Decision and Resource Management Plan [MDO RMP]

USDI, BLM, MDO. June 1995. *Record of Decision and Resource Management Plan* [MDO RMP]. Medford, OR. (MDO ROD & RMP)

Wild and Scenic Rivers. Objectives (MDO ROD & RMP, p. 68)

Manage designated segments of the National Wild and Scenic Rivers System to protect their outstandingly remarkable values and maintain and enhance the natural integrity of river-related values. (MDO ROD & RMP, p. 68)

Protect outstandingly remarkable values identified on BLM-administered lands within the study corridors of eligible river segments studied and administratively found suitable for inclusion as components of the National Wild and Scenic Rivers System. (MDO ROD & RMP, p. 69)

Provide interim protection management for outstandingly remarkable values identified on BLM-administered lands along river segments determined eligible but not studied for inclusion as components of the National Wild and Scenic Rivers System. (MDO ROD & RMP, p. 69)

Suitable River Segments (MDO ROD & RMP, p. 69)

Suitability reports for river segments found suitable for inclusion in the national system are located in **Appendix J of the Final PRMP**. (emphasis added) (MDO ROD & RMP, p. 69)

Manage the natural integrity of the river-related values to maintain or enhance the highest tentative classification. **Classification criteria are found in Appendix 2-WS-1, Draft RMP**. (emphasis added) (MDO ROD & RMP, p. 69)

Management Actions/Direction

Revise approved wild and scenic river management plans for both the wild and recreation segments of the Rogue River to address attainment of Aquatic Conservation Strategy and riparian reserve objectives. (MDO ROD & RMP, p. 69)

Manage the previously designated Rogue River, both the wild and recreation segments, according to existing management plans. A new management plan for the recreation segment is currently being prepared. (emphasis added) (MDO ROD & RMP, p. 69)

**Rogue River Studies Program Background Paper for
Revising the Hellgate Recreation Area Management Plan**
(continuation of Section III.C. Revision of HRAMP: 1991 - 1998)

The 1992 Rogue River Studies Program was the result of early internal BLM scoping resulting in a contracted studies program, the time for which to complete, resulted in the opportunity to expand it with ID team background study papers.

Contracted Studies (chronological order of date completed)

- Dec 1992** Shindler, Bruce, and Shelby, Bo. December 1992. *Rogue River User Study: Wild Rogue Planning and Policy Study*. Department of Forestry, Oregon State University. Prepared for USDI, BLM, MDO, GPRA. Corvallis, OR.
- March 1993** Shindler, Bruce, and Shelby, Bo. March 1993. *Rogue River Study: Assessments Of Recreation Impacts and User Perceptions on the Bureau of Land Management Recreation Section*. Department of Forestry, Oregon State University. Prepared for USDI, BLM, MDO, GPRA. Corvallis, OR.
- July 1993** Economic Strategies Northwest. July 1993. *Economic Effects Study, Hellgate Recreation Area Management Plan*. Prepared for BLM MDO. Lake Oswego, OR.
- Dec 1993** Klingeman, Peter C., Cordes, Larry M. December 1993. *Rogue River Erosion/Deposition Study*. Oregon State University. Prepared for USDI, BLM, MDO. Corvallis, OR.
- March 1994** Oregon Department of Fish and Wildlife. March 1994. *Effect of Boat Traffic on Juvenile Salmonids in the Rogue River Annual Progress Report*. T. D. Satterthwaite for USDI, BLM, MDO. Portland, OR.
- June 1995** WRC - Environmental Water Resources Consulting. June 1995. *Rogue River Boating Safety and Conflicts Study*. Prepared for USDI, BLM, MDO & Oregon State Marine Board. Portland, OR.
- Dec 1995** Oregon Department of Fish and Wildlife. December 1995. *Effect of Boat Traffic on Juvenile Salmonids in the Rogue River*. T. D. Satterthwaite for USDI, BLM, MDO, GPRA. Portland, OR.

RAMP ID TEAM BACKGROUND STUDIES (chronological order of date completed for resource papers; planning papers covered elsewhere (e.g., pre-planning, scoping, public participation plan, studies program, agency responsibility, compliance, etc.)

- Mar 1992** *Commercial Permittee Operating Plan for the Wild Section of the Rogue National Wild and Scenic River (Grave Creek to Watson Creek)*

USDI BLM; USDOA, USFS. March 1992. *Commercial Permittee Operating Plan for the Wild Section of the Rogue National Wild and Scenic River (Grave Creek to Watson Creek)*. Medford/Gold Beach, OR.
- May 1992** *Wildlife and Wildlife Habitat Background Paper for revising the Hellgate Recreation Area Management Plan*

USDI BLM. May 1992. *Wildlife and Wildlife Habitat Background Paper for revising the Hellgate Recreation Area Management Plan*. Cliff Oakley, Wildlife Biologist. Medford, OR.

Threatened and Endangered Species. Some habitats are of special concern because of their importance for threatened and endangered species. Three avian species, the bald eagle, peregrine, and spotted owl are listed as threatened or endangered by the U.S. Fish and Wildlife Service and their range is within the recreation corridor (Section III.A., p. 5).

June 1992 ***Recreation Opportunity Spectrum Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. May 1992. *Recreation Opportunity Spectrum Background Paper for revising the Hellgate Recreation Area Management Plan*. Jeanne Klein, Park Ranger. Medford, OR.

Sept 1992 ***Water Resources Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. September 1992. *Water Resources Background Paper for revising the Hellgate Recreation Area Management Plan*. Ted Hass, Soil Scientist. Medford, OR.

Sept 1992 ***Flood Plains Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. September 1992. *Flood Plains Background Paper for revising the Hellgate Recreation Area Management Plan*. Ted Hass, Soil Scientist. Medford, OR.

Jan 1993 ***Fishery Resources Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. January 1993. *Fishery Resources Background Paper for revising the Hellgate Recreation Area Management Plan*. Bob Bessey, Fishery Biologist. Medford, OR.

Rogue River coho salmon are a state "sensitive" species (Chilcote and Weeks 1993) and may be petitioned for endangered status (Medford Mail Tribune 1992) under the Endangered Species Act of 1973. The American Fisheries Society considers the species to be at high risk of extinction in the Rogue Basin (Section III.C. p. 7).

Rogue River summer steelhead may be petitioned for listing as threatened under the Endangered Species Act of 1973. The American Fisheries Society considers this fish stock to be at moderate risk of extinction, primarily due to loss of freshwater habitat (Section IV.B. p. 9).

The Rogue River and its tributaries are the largest salmon and steelhead producer of Oregon's coastal streams south of the Columbia River and one of the most important on the Pacific coast. An average of 32,100 spring chinook; 45,000 fall chinook; 130,300 summer steelhead; 44,000 winter steelhead and 6,800 coho salmon return to the river annually (Section VI.B. p. 10).

A substantial portion of the basin's juvenile and adult fish utilize the Hellgate recreation section of the river for migration, spawning, or rearing. About 50 percent of the coho salmon and all spring chinook salmon produced in the Rogue basin originate upstream of the RAMP area. Approximately 14 percent of the basin's fall chinook salmon spawn in the RAMP area. Juvenile wild salmon and steelhead rearing in or upstream of the recreation section use the river as a migration corridor to the ocean throughout the year. The 2.2 million salmon and steelhead smolts produced annually by Cole M. Rivers Hatchery migrate seaward through the RAMP area from April through October (Section VI.B. p. 10).

May 1993 ***Cultural Resources Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI, BLM, GPRA. May 1993. *Cultural Resources Background Paper for revising the Hellgate Recreation Area Management Plan*. Kate Winthrop. Medford, OR.

May 1993 ***Botanical Resources Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI, BLM. May 1993. *Botanical Resources Background Paper for revising the Hellgate Recreation Area Management Plan*. Beth Whitman. Medford, OR.

March 1993 ***Prospectus: Rogue River Cultural Resources Inventory Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI, BLM, GPRA. March 1993. *Prospectus: Rogue River Cultural Resources Inventory Background Paper for revising the Hellgate Recreation Area Management Plan*. Kate Winthrop. Medford, OR.

Mar 1993 ***Existing Recreation Facilities Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. March 1993. *Existing Recreation Facilities Background Paper for revising the Hellgate Recreation Area Management Plan*. Medford, OR.

April 1994 ***Commercial Outfitter Operating Plan for the Hellgate Recreation Section***

USDI BLM. April 1994. *Commercial Outfitter Operating Plan for the Hellgate Recreation Section*. Medford, OR.

Oct 1994 ***A Survey of the Attitude of Residents along the Hellgate Recreation Area of the Rogue River Toward User Groups and Their Impact***

York, Richard; Rowland, Paul; and Salley, Karen. October 1994. *A Survey of the Attitude of Residents along the Hellgate Recreation Area of the Rogue River Toward User Groups and Their Impact*. Department of Psychology, Southern Oregon State College Background Study for HRAMP, Prepared for USDI, BLM. Ashland, OR.

Aug 1994 ***Motorized Tour Boat History Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. GPRA. August 1994. *Motorized Tour Boat History Background Paper for revising the Hellgate Recreation Area Management Plan*. Michael Walker and Louise Austermuehle. Medford, OR.

Aug 1994 ***Scenic Easements Background Paper for revising the Hellgate Recreation Area Management Plan***

USDI BLM. GPRA. Draft August 1994. *Scenic Easements Background Paper for revising the Hellgate Recreation Area Management Plan*. Eric Schoblom. Medford, OR.

The federal government has rarely exercised its eminent domain powers with respect to WSRs. Of the 203 rivers in the National System as of May 2011, 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 (1998 *Wild and Scenic Rivers and the Use of Eminent Domain*) (2014 Compendium, p. 62).

- Dec 1994** ***Sound Inventory Background Paper for revising the Hellgate Recreation Area Management Plan***
- USDI BLM. December 1994. *Sound Inventory Background Paper for revising the Hellgate Recreation Area Management Plan*. Michael Walker and Pete Littlefield. Medford, OR.
- Nov 1995** ***Visitor Use Background Paper for revising the Hellgate Recreation Area Management Plan***
- USDI BLM. November 1995. *Visitor Use Background Paper for revising the Hellgate Recreation Area Management Plan*. Louise Austermuehle. Medford, OR.
- 1996 - 1998 The Hellgate RAMP process slowed way down with a change of management in the BLM Grant Pass Resource Area and corresponding changes in priorities, funding, and the administration structure of the HRAMP ID team, along with the RAMP/DEIS Team Leader's relation to it. By early 1998 a preliminary internal RAMP/EIS was evolving.
- 1998 The author retired from federal service after 30 years in May 1998.

D. CURRENT HELLGATE RECREATION AREA MANAGEMENT PLAN: 2004 - 2014

1999 Rand listed on the National Register of Historic Places

1999 *Sokol v. Kennedy* (1999)

In *Sokol v. Kennedy* the Eighth Circuit Court of Appeals determined that ORVs must be defined under the “controlling language” of the WSRA. The court found that the NPS erred when it did not specifically define ORVs at the beginning of the Wild and Scenic River planning process for the Niobrara River in Nebraska. Instead, the NPS focused on the “significance” and “importance” of river resources. The NPS argued that the WSRA is unclear on the agency’s obligation to define a river’s ORVs, and the task “was relevant only to the selection of new rivers for inclusion in the Wild and Scenic Rivers System.” The court replied that “this interpretation conflicts with the administrative duty clearly set out in Section 1281(a),” footnoting that, “Such an open-ended and standardless interpretation of the Act would also leave defendants [DOI] open to a claim of unconstitutional delegation of legislative power. We choose to construe the Act in such a way as to avoid any such constitutional question.” [The Interagency Council’s “Study Process” paper was published after the NPS completed the Niobrara River study, in the same month that the Eighth Circuit Court of Appeal issued a decision in this case.] (NPS. 2024. ORVs Over Time).

National Park Service. *Comparison of Merced River Outstandingly Remarkable Values Over Time*. http://www.nps.gov/yose/parkmgmt/upload/Comparison_of_Merced-River_ORVs_Over_Time.pdf Downloaded November 27, 2014. (NPS. 2024. ORVs Over Time).

1999 The Wild & Scenic River Study Process. Interagency Wild and Scenic Rivers Coordinating Council

Interagency Wild and Scenic Rivers Coordinating Council. December 1999. *The Wild & Scenic River Study Process*. Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council.

The 1999 *The Wild & Scenic River Study Process* was the first methodology to significantly assist the applicable Federal agencies in satisfying their mandate to identify eligibility rivers with detailed standards that could be applied consistently across agencies.

Most rivers are added to the National Wild and Scenic Rivers System through federal legislation, after a study of the river’s eligibility and suitability for designation by one or more of the four federal agencies responsible for wild and scenic rivers (WSRs). Congress can authorize a study by adding the river to Section 5(a) of the Act. Significantly, agencies are also required to consider and evaluate rivers on lands they manage for potential designation while preparing their broader land and resource management plans under Section 5(d)(1) of the Act ([Appendix G](#)).

Required Findings The following findings are required for all river studies conducted under Section 5 of the Act. (p. 12)

Eligibility To be eligible for designation, a river must be free-flowing and possess one or more ORVs (emphasis added). Thus, the eligibility analysis consists of an examination of the river’s hydrology, including any man-made alterations, and an **inventory of its natural, cultural and recreational resources** (emphasis added). There are a variety of methods to determine whether certain resources are so unique, rare or exemplary as to make them outstandingly remarkable. The determination that a river area contains ORVs is a professional judgment on the part of the IDT, based on objective, scientific analysis. Input from organizations and individuals familiar with specific river resources should be sought and documented as part of the process. (p. 12)

In order to be assessed as outstandingly remarkable, a river-related value must be a unique, rare or exemplary feature that is significant at a comparative regional or national scale (emphasis added). Dictionary definitions of the words “unique” and “rare” indicate that such a value would be one that is a conspicuous example from among a number of similar values that are themselves uncommon or extraordinary. One possible procedure would be to list all of the river’s special values and then assess whether they are unique, rare or exemplary within the state, physiographic province, ecoregion, or the other area of comparison. **Only one such value is needed for eligibility** (emphasis added). (p. 12)

The following eligibility criteria are offered to foster greater consistency within the federal river-administering agencies. They are intended to set **minimum thresholds to establish ORVs** (emphasis added) and are illustrative but not all-inclusive. If utilized in an agency’s planning process, these criteria may be modified to make them more meaningful in the area of comparison, and additional criteria may be included. (p. 13)

- 1) **Scenery** (see study process)
- 2) **Recreation** (see study process)
- 3) **Geology** (see study process)
- 4) **Fish** (see study process)

5) **Wildlife**

Wildlife values may be judged on the relative merits of either terrestrial or aquatic wildlife populations or habitat or a combination of these conditions.

• *Populations*: The river, or area within the river corridor, contains nationally or regionally important populations of indigenous wildlife species. **Of particular significance are species considered to be unique, and/or populations of federal or state listed (or candidate) threatened, endangered or sensitive species** (emphasis added). Diversity of species is an important consideration and could, in itself, lead to a determination of “outstandingly remarkable.”

• *Habitat*: The river, or area within the river corridor, provides exceptionally high quality habitat for wildlife of national or regional significance, and/or may provide unique habitat or a critical link in habitat conditions for **federal or state listed (or candidate) threatened, endangered or sensitive species** (emphasis added). Contiguous habitat conditions are such that the biological needs of the species are met. Diversity of habitats is an important consideration and could, in itself, lead to a determination of “outstandingly remarkable.”

6) **Prehistory**

The river, or area within the river corridor, contains a site(s) where there is evidence of occupation or use by Native Americans. Sites must have unique or rare characteristics or exceptional human interest value(s). Sites may have national or regional importance for interpreting prehistory; may be rare and represent an area where a culture or cultural period was first identified and described; may have been used concurrently by two or more cultural groups; and/or may have been used by cultural groups for rare sacred purposes. Many such sites are **listed on the National Register of Historic Places** (emphasis added), which is administered by the NPS.

7) **History**

The river or area within the river corridor contains a site(s) or feature(s) associated with a significant event, an important person, or a cultural activity of the past that was rare or one-of-a-kind in the region. Many such sites are **listed on the National Register of Historic Places** (emphasis added). A historic site(s) and/or features(s) is 50 years old or older in most cases.

8) Other Values

2000 *Rogue National Wild and Scenic River: Hellgate Recreation Area Management Plan/Draft Environmental Impact Statement*. November 2000. USDI, BLM, MDO.

2002 *Wild & Scenic River Management Responsibilities*. Interagency Coordinating Council

Discussion of Intent (W&S Management Responsibilities, p. 2)

The purposes for which WSRs are added to the National Wild and Scenic Rivers System (National System) are made explicit in this section—specifically, to protect a river’s freeflowing condition, water quality, and outstandingly remarkable values (ORVs). Sections 7(a) and 10(a) make reference to these collective “values” for which rivers are added to the National System. A river’s ORVs are identified pre-designation through a study or, for an “instant river,” post-designation during preparation of a CRMP.

Management Implications (W&S Management Responsibilities, p. 2)

- Focus the CRMP and subsequent river management on protecting a river’s free-flowing condition and water quality in addition to the ORVs.
- Thoroughly define the ORVs to guide future management actions and to serve as the baseline for monitoring.

Section 2(b) – Classification: Management Implications (W&S Management Responsibilities, p. 5)

- Describe a river’s classification and landscape character at the date of designation in the CRMP to serve as the basis for evaluating proposed land uses and monitoring.

Sections 3(d)(1) and 3(d)(2) – Management Plans; Review Requirements for Early Designations: Discussion of Intent (W&S Management Responsibilities, pps. 7 - 8)

Prior to 1986, Section 3(b) of the Act required the river-administering agency to “prepare a plan for necessary developments in connection with its administration in accordance with such classification.” Through a generic amendment of the Act in 1986, Section 3 was amended with a new subsection requiring a “comprehensive management plan . . . to provide for protection of the river values” (Section 3(d)(1)). The CRMP must address:

- Resource protection;
- Development of lands and facilities;
- User capacities; and
- Other management practices necessary or desirable to achieve the purposes of the Act.

Refer to Appendix A for a detailed discussion of the contents and key elements of a CRMP.

Management Implications (W&S Management Responsibilities, p. 12)

- A CRMP is required for all congressionally designated WSRs.
- Include a detailed description of the ORVs as a platform for development of necessary management direction in the CRMP.
- Address the types and amounts of public use the river area can sustain without adverse impact to other values in the CRMP (Interagency Guidelines).
- Review and revise, as necessary, pre-1986 CRMPs to include all elements described in Section 3(d)(1).

- Prior to the completion of a CRMP, thoroughly analyze the effects of a proposed activity on the values for which the river was designated.

Section 10(a) – Management Direction: Discussion of Intent (W&S Management Responsibilities, p. 12)

The Interagency Guidelines interpret Section 10(a) as a “nondegradation and enhancement policy for all designated river areas, regardless of classification.” Existing uses on federal lands may continue where they do not conflict with river protection. Adverse effects to the values made explicit in Section 1(b) of the Act on federal and nonfederal lands must be identified in development of the CRMP, with appropriate strategies detailed for their resolution. To achieve a nondegradation standard, the river-administering agency must document baseline resource conditions and monitor changes to these conditions.

Section 10(a) – Management Direction: Management Implications (W&S Management Responsibilities, p. 26)

- This section is interpreted as a nondegradation and enhancement policy for all rivers, regardless of classification (Interagency Guidelines). The river manager must seek to protect existing river-related values and, to the greatest extent possible, enhance those values.
- Provide for public recreation and resource uses that do not adversely impact or degrade the values for which the river was designated (Interagency Guidelines).
- Protect rivers by documenting and eliminating adverse impacts on values (free-flow, water quality, ORVs), including activities that were occurring on the date of designation. Enhance rivers by seeking opportunities to improve conditions.

2003 *Rogue National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement.* March 2003. USDI, BLM, MDO (2003 HRAMP/FEIS)

Executive Summary (pps. Summary i to Summary xi)
Summary of Changes Between the Draft and Final RAMP/EIS (pps. Summary iii)

The “Outstandingly Remarkable Values” section has been expanded to include legislative intent (emphasis added). (p. Summary iii)

CHAPTER 1 INTRODUCTION (2003 HRAMP/FEIS, p. Chapter 1 - 1)
Summary of Changes (p. Chapter 1 - 1)

The “Outstandingly Remarkable Values” section has been expanded to include legislative intent (emphasis added). (p. Chapter 1 - 3)

Purpose and Need (p. Chapter 1 - 4)

Purpose (p. Chapter 1 - 4) The Bureau of Land Management’s purpose in preparing this plan is to replace the *1978 Rogue National Wild and Scenic River Activity Plan for the Hellgate Recreation Section* of the Rogue National Wild and Scenic River. The purpose of this plan, the Hellgate Recreation Area Management Plan (RAMP) is to: (1) provide direction and guidance on the management of the Hellgate section pursuant to the Wild and Scenic Rivers Act (Public Law 90-542, October 2, 1968), (2) conform with management direction contained in the *1995 Medford District Record of Decision and Resource Management Plan*, and (3) maintain a mix of river recreation types common to the river since its designation in 1968 as a National Wild and Scenic River. (p. Chapter 1 - 4)

Need There has been a substantial increase in river use in the Hellgate Recreation Area since the completion of the current Hellgate section management plan in 1978. There has also been a change in the mix of types of river recreation since 1978. This has resulted in increased conflicts among river users, particularly between jet boaters and floaters during the summer months and between jet boaters and anglers during the fall fishing season. An update of the management plan is needed to insure that river management into the future continues to meet the objectives and requirements of the Wild and Scenic Rivers Act (WSRA), and particularly the **protection of the outstandingly remarkable values (ORVs)** that led to its congressional designation. (p. Chapter 1 - 4)

CHAPTER 2 ALTERNATIVES

BLM Rationale for Elimination of Detailed Consideration (Chapter 2 - 49) The entire elimination of visitor use by MTBs, nonmotorized floaters, or any other recreational use and the probable denial of access to a substantial, diversified, and statistically significant percentage of the total visitor use would be the equivalent of denying or diminishing the recreational ORV. (Chapter 2 - 49)

CHAPTER 3 AFFECTED ENVIRONMENT

Outstandingly Remarkable Values (2003 HRAMP/FEIS, Chapter 3 - 5)

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)** (emphasis added; **see Sec. I.B**); 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** (emphasis added). Other river-related values that are important, but were not considered outstandingly remarkable at the time include **wildlife and cultural resources** (emphasis added).

Natural Scenic Qualities. Recognized for its diversity of scenery due its geology, topography, and relatively undeveloped visual appearance (Chapter 3 - 5).

Fisheries Resource. Recognized for its outstanding salmon and steelhead fishing (Chapter 3 - 5).

Recreational Opportunities. 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 (Chapter 3 - 5).

CHAPTER 4 ENVIRONMENTAL CONSEQUENCES (2003 HRAMP/FEIS, Chapter 4 - 1)

Summary of Effects on the Outstandingly Remarkable Values Introduction (Chapter 4 - 3) The Wild and Scenic Rivers Act of 1968 (WSRA) (Public Law 90-542, Sec. 1b) 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, geological, fish and wildlife, historic, cultural or other similar values, shall be preserved in a free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”(pps. Chapter 4 - 3 to Chapter 4 - 4)

In relation to the outstandingly remarkable values (ORV) that a river possesses, the WSRA also states in Section 10(a):

“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 without, insofar as is consistent therewith, 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.” (p. Chapter 4 - 4)

The outstandingly remarkable values for the Rogue River, **as identified by Congress (see Sec. I.B) (HR 1917 September 24, 1968 and HR 1623 July 3, 1968)** (emphasis added); 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. 131, 13408-13416) **include the natural scenic qualities, fish, and recreation** (emphasis added). Other river-related values that are important, but were not considered outstandingly remarkable at the time, include **wildlife and cultural resources** (emphasis added)(USDI 1992). **Only the outstandingly remarkable natural scenic quality, fisheries, and recreation values are addressed in this section** (emphasis added). All other river-related values will be covered under specific resources (e.g., wildlife, soils, water), and other site-specific NEPA analysis. (p. Chapter 4 - 4)

Natural Scenic Qualities (p. Chapter 4 - 4) The Rogue River was recognized by Congress in 1968 for its diversity of scenery due to its geology, topography, and relatively undeveloped visual appearance (see Sec. I.B). A study in 1993, *Assessments of Recreation Impacts and User Perceptions on the Bureau of Land Management Recreation Section* (Shindler and Shelby) found that the majority of visitors rated enjoyment of the scenery along the river as very important to the overall quality of their visit. Approximately 90 percent of all visitors rated the existing management and maintenance of the scenery as positive, thus indicating satisfaction and a perception of the scenery as high quality. (p. Chapter 4 - 4)

The Wild and Scenic Rivers Act’s description for a recreation classification segment of river characterizes the acceptable elements for scenery through the following definition: (p. Chapter 4 - 4)

Recreation River Areas - Those rivers or sections of 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. (p. Chapter 4 - 4)

Fisheries Resource (p. Chapter 4 - 5) The Rogue River was recognized by Congress for its outstanding salmon and steelhead sport fisheries (see Sec. I.B). The 1993 study on recreation impacts and user perceptions (Shindler and Shelby) found that over 60 percent of the visitors to the Rogue came to fish. This fishing occurs year-round and includes fishing from nonmotorized watercraft (drift boats), motorized watercraft (jet boats and drift boats with kickers), and the riverbank (p. Chapter 4 - 5).

Recreation Opportunities (p. Chapter 4 - 6) The Rogue River was recognized by Congress for its exciting white water float trips and its outstanding salmon and steelhead fishing (see Sec. I.B). Other recreation activities recognized included: hunting, swimming, hiking, boating, picnicking, camping, and sightseeing. The Wild and Scenic Rivers Act states that a designated river “shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.” The 1993 study on recreation impacts and user perceptions (Shindler and Shelby) found that visitor’s reasons for coming to the Rogue included viewing scenery, rafting and floating, fishing, hiking, camping, jet boating, and a variety of other activities. The study also found that visitors to the river participating in white water floating (91 percent), fishing (57 percent), and riding on an MTB (96 percent) found their experience to be excellent or perfect. (p. Chapter 4 - 6)

CHAPTER 5 - CONSULTATION AND COORDINATION. FEIS (2003 HRAMP/FEIS, pps. Chapter 5 - 1 to Chapter 5 - 84) Selected comments on Chapter 5 follow.

Monitoring Plan (p. Chapter 5 - 24)

Comment: The BLM needs to identify methods for monitoring and evaluation of recreation site conditions (set standards for limits of acceptable change) and for informing management when limits are exceeded. A detailed monitoring plan should be included in the analysis (p. Chapter 5 - 24).

Response: A resource monitoring plan is included in the RAMP/FEIS (p. Chapter 5 - 24).

Outstandingly Remarkable Values (pps. Chapter 5 - 24 to Chapter 5 - 26)

Comment: There are significant concerns with how ORVs are applied and selected for the Hellgate Recreation Area under the National Wild and Scenic Rivers Act. How were the ORV’s identified? Why aren’t other resource values identified as ORVs? **ORVs that the BLM failed to identify are: cultural values, wildlife values, hydrologic values, and ecological values** (emphasis added). They satisfy the criteria for ORVs in addition to natural scenic values, fisheries, and recreation. These missing ORVs are evident from discussions in the 1972 plan, the RAMP itself, and from public input. Have these ORV elements as well as all the ORV elements been coordinated with the US Forest Service? The identification of ORVs should be subject to public comment (p. Chapter 5 - 24).

Response: In 1968, the Rogue River was one of the original eight rivers that received “instant” designation under the Wild and Scenic Rivers Act. Because of this instant designation, the **ORVs were not identified in any designating legislation** (emphasis added fishing; see Sec. I.B) . The need to identify the ORVs led the managing agencies to **rely on congressional records to determine what the legislation intended** (emphasis added). Memorandum to Files, 8351.2 (11785) ORV2 outlines the legislative history of the Wild and Scenic Rivers Act of 1968, and includes language from legislative discussions relative to the Rogue River and its ORVs (pps. Chapter 5 - 24 to Chapter 5 - 25).

The outstandingly remarkable values for the Rogue River, as recognized by Congress (see Sec. I.B) HR 1917 September 24, 1968 and HR 1623 July 3, 1968); 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. 131, 13408-13416) include fish, water-based recreation, and the natural scenic features along the river corridor (p. Chapter 5 - 25).

Other river-related values that are important, but were not considered outstandingly remarkable at the time include cultural and wildlife resources (p. Chapter 5 - 25).

Comment: Within the values already denoted, the BLM fails to identify natural quiet as part of the natural setting of the scenic value of the important research values of the river corridor (p. Chapter 5 - 25).

Response: Natural quiet (or the natural ambient sound conditions) has only recently been recognized by the National Park Service. It is usually a resource considered in more primitive areas such as national parks or wildernesses, not in a recreational river section designated under the Wild and Scenic Rivers Act (p. Chapter 5 - 25).

Comment: Are the three listed ORVs of equal value? How does the BLM decide which ORV has precedence over other ORVs in terms of protection? The BLM should document and present the criteria by which one ORV will be protected over another ORV. This should be documented in a supplemental DEIS (p. Chapter 5 - 25).

Response: As stated in section 10(a) of the Wild and Scenic Rivers Act, “. . . 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.” Actions must protect all Outstandingly Remarkable Values; one ORV does not take precedence over another ORV. **When values are in conflict with each other, the net effect to ORVs must be beneficial** (emphasis added). The RAMP/FEIS includes a range of alternatives that provides for emphasis of different ORVs in each alternative. A supplemental DEIS is not necessary (p. Chapter 5 - 25).

Comment: How do you justify the Preferred Alternative in light of the requirement to “protect and enhance” ORVs? (emphasis added) (p. Chapter 5 - 25).

Response: Section 10(a) of the WSRA states that: “Each component of the National Wild and Scenic Rivers System shall be **administered in such a manner as to protect and enhance the values** (emphasis added) which caused it to be included in said system without, insofar as is consistent therewith, 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.” (p. Chapter 5 - 25).

This section is interpreted by the Secretaries of the Interior and Agriculture as meaning that all designated river areas, regardless of classification, will be protected and/or enhanced and not degraded. Each action alternative, including the proposed, was developed on the basis of protecting the ORVs (p. Chapter 5 - 25).

Comment: Listing jet boating as an ORV threatens all other ORVs since all other listed ORVs are diminished by the presence of jet boat activity or motorized tour boats at present levels of use. How did the BLM decide that the MTB ORV had less priority than the experience of anglers by watercraft and the nonmotorized float boater ORV? (pps. Chapter 5 - 25 to Chapter 5 - 26).

Response: MTB use and nonmotorized floating are not ORVs; they are components of the recreation ORV (p. Chapter 5 - 26).

Use Limits (p. Chapter 5 - 26)

In the BLM’s responses, the term “Use Limits” has replaced the term “Carrying Capacity.”

Comment: How can the BLM make decisions without the identification of carrying capacities? (emphasis added) The BLM needs to identify the carrying capacity for all types of use. We take exception to the statement that the Preferred Alternative established carrying capacities for each use. Motorized boating has many limits documented in the alternatives chapter, but no carrying capacity analysis. Nonmotorized float boaters have a carrying capacity analysis documented in the DEIS. Other users such as boat anglers, bank anglers, hikers, campers, and day use visitors do not have any carrying capacity analysis documented in the DEIS. The Hellgate RAMP/DEIS should evaluate current and potential recreation use and identify a carrying capacity for all recreational boating use (i.e., motorized boating, nonmotorized

boating, and nonmotorized boat angling) and adjacent land activities (i.e., camping, trail use, and day use areas), which were identified as significant issues (p. Chapter 5 - 26).

Response: There is no dispute regarding the need for establishment of use limits for all types of use. These determinations were made within the context of a monitoring plan, which functions as a key management tool for assessment of all resource conditions, values, and quality. **The monitoring plan addresses use limits. It contains a process to determine indicator conditions for each type of recreation and resource use** (emphasis added). The process will provide managers with a set of options to effectively administer mitigation measures. Control tools and methods of protection and enhancement were outlined for all resource values including, but not limited to, the ORVs in the planning area (p. Chapter 5 - 26).

A review of current management of the other seven rivers designated along with the Rogue in 1968, found that use limits are established in an assortment of methods, each of which has its merits and weaknesses. Although use limit determinations are not common, those that have been established were generally driven by a need to address a user perception of overcrowding and dissatisfaction (p. Chapter 5 - 26).

It appears imperative to approach the use limit situation as a concern that merits a detailed and prudent study approach that would be anticipatory in nature rather than an effort in reactive management (p. Chapter 5 - 26).

Development of the process for use limit determinations should involve all recreation users and all management entities to ensure a balanced approach is obtained. Once use limits are reached, an amendment to this plan would occur (p. Chapter 5 - 26).

Bibliography (pps. Bibliography - 1 to Bibliography - 10)

United States Department of the Interior, Bureau of Land Management, Medford District Office, Grants Pass Resource Area. 1992c. *Rogue River's Outstandingly Remarkable Values (ORVs). Memorandum* from Outdoor Recreation Planner, Medford District Office, October 29, 1992. 8351.2(11785). Medford, OR. (Bibliography p. 8)

Appendix B. Management Guidelines and Standards for the Hellgate Recreation Area (pps. Appendices -15 to Appendices 34)

The following include management guidelines and standards direct what will and will not occur within the planning area to achieve the desired goals. These multi-resource standards supplement, but do not replace, other direction found in legislation, policies, or management plans. They are designed to comply with applicable State and Federal laws (**see Chapter 1, Management Goals, Guidelines, and Standards for the Hellgate Recreation Area**). (p. Appendices - 17).

Fish (p. Appendices - 20)

Protect fish species considered to be threatened or endangered (p. Appendices -20).
Manage resources and visitors to enhance the fishery (p. Appendices -20).

Natural Scenic Qualities (p. Appendices - 27)

The natural beauty and character of the river corridor will be protected, enhanced, and maintained through effective visitor and land use management.

Supplemental Information - Recognition of the Rogue River's outstanding scenery has been focal to descriptions of the river and its environment since European settlers first arrived in the valley. The first active management efforts to protect the river's scenic beauty began in 1958. The BLM and the United States Fish and Wildlife Service concurred, through a cooperative agreement, that the river and its immediate environment should receive a different and more sensitive type of management than the

surrounding lands. As concern for the preservation of free-flowing rivers increased and the Wild and Scenic Rivers Act was passed in 1968, active and effective protection of the natural scenic qualities began in earnest. With the purchase of scenic easements on all private properties and establishment of restrictive management mandates on public land, the river and its scenic corridor received a level of protection necessary and adequate to preserve the Rogue River's famous beauty (pps. Appendices - 27 to p. Appendices - 28).

The BLM Scenic Easement Program maintains or even enhances the protection of this important outstandingly remarkable value. Past and ongoing management methods are specifically designed to protect the wide array of aesthetic resources that make the Rogue River special (p. Appendices - 28).

The BLM-administered lands within the Hellgate Recreation Area of the Congressionally-designated Rogue Wild and Scenic River corridor are allocated to visual resource management Class I (for preservation of the existing character of landscapes) (p. Appendices - 28).

Recreation (p. Appendices - 28 to Appendices - 29).

The management plan for a river would evaluate current and potential recreational use, and if appropriate, identify a maximum carrying capacity for recreational boating use (emphasis added).

The implementation of permit systems, other than permits for commercial use of federal lands and related waters, is typically undertaken only when public use approaches the identified maximum carrying capacity (p. Appendices - 28).

Supplemental Information - One of the key reasons for including the Rogue River in the National Wild and Scenic Rivers System was to **protect and enhance the recreational values the river possesses** (emphasis added). These values are realized in a great variety of activities. They range from individuals pitting their knowledge and skills against the sometimes hostile forces of nature to recreation uses where the facilities and equipment are so sophisticated that the river can be enjoyed with no special knowledge or skill (USDI 1972). (p. Appendices - 28 to Appendices - 29).

- Consistent with the objectives of a recreational river classification, sufficient recreation facilities, on both private and federal land, would be developed to meet the needs of the recreationists. **Use levels would not be allowed to reach the point where the quality of recreational experience or quality of the stream environment deteriorates** (emphasis added; Appendices - 29).
- Since boating, fishing, and sightseeing are the main recreational uses on the river, top priority for recreation development would be given to improving the quality of these activities (Appendices - 29).
- Although 1969 levels of all types of boating activity created few problems, uncontrolled future use would probably result in safety hazards and a lowering of the quality of the recreation experience. **When the need warrants, this would be prevented by the establishment of regulations limiting size, numbers, type, and speed to provide optimum boat use** (Appendices - 29).
- Future technological advances may result in new types of equipment that could be used on the river. Only such types of equipment compatible with management objectives would be permitted (Appendices - 29).

The W&S Merced River legal challenges had been moving forward since 1999 when in 2003 the 9th Circuit issued an opinion (*Friends of Yosemite Valley v. Norton*, 348 F.3d 789), during the same year the proposed Hellgate RAMP/FEIS was published ([Appendix E](#)).

2004. Recreation Area Management Plan. July 2004. *Rogue National Wild and Scenic River: Hellgate Recreation Area.*

Applicable portions of July 16, 2004 cover letter to “Dear Friend of the Rogue River,” from Abbie Jossie, Field Manager, Grants Pass Resource Area, and Timothy B. Reuwsaat, District Manager, Medford District follows.

The Recreation Area Management Plan sets forth a program design to manage the mix of river recreation uses and users in a developed, recreational setting, while managing and protecting the environment and the outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities.

The Hellgate Recreation Area, the first 27 miles of the Rogue National Wild and Scenic River, is classified as a recreational river area (see Figure 1-1 in Appendix A). A recreational river is defined by Congress as a river that is readily accessible by road or railroad, may have some development on its shoreline, and may have been impounded or diverted in the past. **Management of this recreational river area will give primary emphasis to protecting the values that make it outstandingly remarkable** (emphasis added), while providing a diversity of river-related recreational opportunities in a developed setting (p. 1).

Monitoring

Monitoring is the process of tracking the implementation and effectiveness of a land use plan. **The purposes of monitoring are to: ensure protection and enhancement of the outstandingly remarkable values** (emphasis added), **provide a mechanism to address user capacities** (emphasis added), ensure activities are occurring in conformance with the plan, determine if activities are producing the expected results, and determine if activities are causing the effects identified in the RAMP/FEIS (p. 17).

Monitoring and evaluations will be utilized to ensure that decisions and priorities conveyed by the plan are being implemented, that progress toward identified resource objectives is occurring, and that mitigating measures and other management direction are effective in avoiding or reducing adverse environmental impacts.

Based on information from monitoring and specific analysis of proposed projects, specific mitigation measures will be addressed as projects are analyzed. Baseline data gathered during the planning process will be utilized as a comparison to monitor the river activities and resource conditions (see Table 1. Monitoring, p. 27).

APPENDIX B. LEGISLATION, BLM POLICIES, PLANS, AND AGENCY PROGRAMS

Legislated Requirements and Management Direction

The Federal Land Policy and Management Act of 1976 and associated BLM planning regulations (43 CFR 1600, 8351.2) and manuals set forth the process for amending, and tiering to, a resource management plan. The National Environmental Policy Act (NEPA) of 1969 and the Council of Environmental Quality’s National Environmental Policy Act regulations (40 CFR 1500) provide the basic national charter for protection of the environment and analysis of major Federal actions. The NEPA process is the tool used to analyze the proposed actions of the Federal government. The Americans with Disabilities Act of 1990 (ADA) also provides direction for management of the river. This ensures a national mandate to eliminate discrimination against individuals with disabilities. The ADA essentially extends to the private sector the rights and protections already prohibiting discrimination on the basis of disability in federal government and federally-assisted programs, as mandated by the Architectural Barriers Act and Section 504. The Archaeological Resources Protection Act of 1979 (ARPA) provides for the protection of archaeological resources and sites on public lands. Congress enacted the Endangered Species Act of 1973 (ESA) to provide a means whereby the ecosystems, upon which endangered and threatened species depend, may be conserved, and to provide a program for the conservation of such species. Federal land managers and other

federal agencies must ensure their activities do not jeopardize the continued existence of listed species or adversely modify habitat critical to those species. (p. 61)

National Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act of 1968 established the wild and scenic rivers system (Public Laws 90-542 and 99-590). The Wild and Scenic Rivers Act (WSRA) established a method for providing federal protection for certain remaining free-flowing rivers and preserving them and their immediate environments. Rivers are included in the system so they may benefit from the protective management and control of development for which the WSRA provides (USDI 1992b, Appendix 2-WS-2). Listed below are portions of several sections of the WSRA that provide the overall framework for managing the river or provide the guidance for developing and implementing any proposed management action within the river corridor. (p. 61)

Section 1(b) of the WSRA 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, geological, fish and wildlife, historic, cultural or other similar values** (emphasis added), shall be preserved in a free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” (p. 61)

The outstandingly remarkable values for the Rogue River, as identified by Congress (HR 1917 September 24, 1968 and HR 1623 July 3, 1968) (emphasis added); 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. 131, 13408-13416) include **natural scenic qualities along the river, fish, and recreation** (emphasis added). Other river-related values that are important, but were not considered outstandingly remarkable at the time include cultural and wildlife resources. (p. 62)

Section 3(b) of the WSRA states:

“Every wild, scenic, or recreational river in its free flowing condition...shall be classified, designated, and administered as one of the following: (1) Wild River Areas – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail; (2) Scenic River Areas – Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads; and (3) Recreational River Areas – Those rivers or sections of 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. (p. 62)

The Hellgate Recreation Area was classified as a recreational river. (p. 62)

Section 7(a) of the WSRA states:

“No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the **values for which such river was established...**” (emphasis added) (p. 62)

Section 7 of the Wild and Scenic Rivers Act (16 USC 1278) requires a rigorous process to ensure that proposed water resources projects, implemented or assisted by federal agencies within the bed and banks of designated rivers, “do not have a direct and adverse effect” on the **values for which the river was designated** (emphasis added). Water resources projects include any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, or other construction of

developments which would affect the free-flowing characteristics of a wild and scenic river. In addition to projects licensed by the Federal Energy Regulatory Commission, water resource projects may also include: dams, water diversions, fisheries habitat and watershed restoration/enhancement projects, bridges and other roadway construction/reconstruction projects, bank stabilization, channelization, levees, boat ramps, and fishing piers that occur within the bed and banks of a designated Wild and Scenic River (IWSRCC 1999) and that affect the river's free-flowing characteristics. These projects include the types of actions along the Rogue National Wild and Scenic River that could come up for decision, including those projects for which the purposes are to improve the free-flowing condition of the river. (p. 62)

The agency designated as river manager must complete a Section 7 determination to assess whether the project proposed, assisted, or permitted by a federal agency would directly and adversely affect the values for which the river was designated. Water resources projects that have a direct and adverse effect on the **values of a designated river** (emphasis added) must either be redesigned and resubmitted for a subsequent Section 7 determination, abandoned, or reported to the Secretary of Interior and the United States Congress, in accordance with the act. (p. 62)

Emergency projects (such as repairing a broken sewer line in or near the river) may temporarily proceed without Section 7 determination. However, a Section 7 determination must be completed in a timely manner upon completion of the project. Emergency water resources projects that are later determined to have a direct and adverse effect on the river values shall be mitigated based on the findings of the Section 7 determination. (pps. 62 - 63)

Section 10(a) of the WSRA states that:

“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 without, insofar as is consistent therewith, 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, archaeologic, and scientific features** (emphasis added). 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.” This section is interpreted by the Secretaries of the Interior and Agriculture as meaning that all designated river areas, regardless of classification, will be protected and/or enhanced and not degraded. (p. 63)

The WSRA requires that a comprehensive river management plan be prepared to provide for the protection of the river's outstandingly remarkable values. The plan is required to address resource protection, development of land and facilities, **user capacities** (emphasis added), and other management practices as needed. (p. 63)

1972 Comprehensive River Management Plan

In 1972, the U.S. Forest Service and the BLM revised and combined their *1969 Master Plans for the Rogue River Component of the National Wild and Scenic Rivers System*. The combined plan is the *Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan* (1972 Plan) (Federal Register Vol. 37, No. 131, 13408-13416). The 1972 Plan provides the basic framework of policies, objectives, and direction for managing the river. The 1972 Plan is not changed or amended by the RAMP. (p. 63)

1995 Medford District Resource Management Plan

The Hellgate RAMP will not amend the BLM Medford District Record of Decision and Resource Management Plan (RMP). The Hellgate RAMP is an activity plan in conformance with the BLM Medford District RMP. The following program activity components represent land use allocations or management direction contained in the RMP: (1) activity components not present in the Hellgate Recreation Area, and (2) present activity components with a prescription provided in the RMP. (p. 63)

An amendment determination for the BLM Medford District RMP is not necessary because:

1. These resources are not present in the Hellgate Recreation Area: coal, livestock grazing, wild horse and burro management, and wilderness study areas. (p. 63)
2. These resources have management direction for all land use or specific land use allocations and are managed according to the RMP: survey and manage species, protection buffer species, riparian reserves, late-successional reserves, managed late-successional areas, and matrix allocations. (p. 63)
3. These resources have program direction and are managed according to the RMP: air quality, water and soil, wildlife habitat, fisheries habitat, special status and special attention species habitat, special areas, forest health, recreation, visual resources, cultural resources (including Native American values), timber resources, special forest products, energy and minerals, socioeconomic conditions, lands, land tenure adjustments, rights-of-way, access, withdrawals, roads, rural interface areas, fire management, noxious weeds, and hazardous materials. (p. 64)

Northwest Forest Plan

The Hellgate RAMP is designed to be compliant with the *Final Supplemental Environmental Impact Statement (FSEIS) on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* (USDA, USFS; USDI, BLM 1994). It also meets the requirements of the Aquatic Conservation Strategy, a component of the Northwest Forest Plan designed to maintain and restore the productivity and resiliency of riparian and aquatic ecosystems. (p. 64)

Noxious Weed Control and Management

The control and management of noxious weeds for all alternatives will be directed by and conform to the Medford District's *Integrated Weed Management Plan and Environmental Assessment (EA) #OR-110-98-14*, tiered to the Northwest Area Noxious Weed Control Program Environmental Impact Statement prepared December 1985 and amended March 1987. (p. 64)

2004. Record of Decision. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area

Applicable portions of July 16, 2004 cover letter to “Dear Friend of the Rogue River,” from Abbie Jossie, Field Manager, Grants Pass Resource Area, and Timothy B. Reuwsaat, District Manager, Medford District follows.

The Recreation Area Management Plan sets forth a program design to manage the mix of river recreation uses and users in a developed, recreational setting, while managing and protecting the environment and the outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities.

1.0 Introduction (p. 3)

In this Record of Decision (ROD), the BLM Medford District Office, Grants Pass Resource Area, adopts and approves for immediate implementation the Hellgate Recreation Area Management Plan (RAMP).

Management of the Hellgate Recreation Area is guided by numerous legal requirements and by established management direction. This Record of Decision is supported by and consistent with the BLM Medford District Record of Decision and Resource Management Plan (USDI 1995) and the Final Supplemental Impact Statement (FSEIS) on Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (USDA, USFS; USDI, BLM 1994).

The Hellgate Recreation Area Management Plan (RAMP) is designed to provide for a mix of river recreation uses and users while managing and protecting the environment and the **outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities** (emphasis added). This Record of Decision adopts the RAMP and replaces the Rogue National Wild and Scenic River Activity Plan Hellgate Recreation Section (USDI 1978). The Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan (**1972 Plan**) (emphasis added) (Federal Register Vol. 37, No. 131, 13408-13416) is still valid and is not changed or amended by the Recreation Area Management Plan. The Hellgate RAMP contains the decision selected from Alternative E, as analyzed in the Final EIS, as well as, guidance and direction from the Rogue National Wild and Scenic River, Oregon: Notice of Revised **Development and Management Plan of 1972** (emphasis added), the **Prohibited Acts in Rogue National Wild and Scenic River Area of 1992** (emphasis added) (Federal Register Vol. 57, No. 110, 24271-24274), and the BLM Medford District Record of Decision and Resource Management Plan of 1995.

The ROD is based on the need to protect and enhance the outstandingly remarkable values of the Rogue River pursuant to the Wild and Scenic Rivers Act of 1968 (emphasis added), as amended. All known issues, competing interests, opinions, and values of the public were considered during the planning process. While the ROD decisions will likely not completely satisfy all individuals or groups, we believe the decisions are reasonable and provide the best balance of protecting and enhancing the river and recreational values. The decisions provide a beneficial mix of values for the public within a framework of the existing laws, regulations, policies, public needs and desires, and capabilities of the land, while meeting the stated purpose and need for this river plan.

2.0 Alternatives Considered (pps. 3-4)

Alternatives were developed by the interdisciplinary team in response to the issues gathered at internal and public scoping meetings. Alternatives were also submitted by special interest groups for consideration in the alternative development process and were analyzed in the Draft and Final EISs.

Five alternatives were analyzed in the Final EIS. The alternatives were designed to achieve the purpose and need for action, management goals and standards, desired future conditions, and **protection and enhancement of the outstandingly remarkable values** (emphasis added).

Additionally, a **monitoring plan was developed to track the implementation and effectiveness of the proposed action. The purposes of monitoring are to: ensure the protection and enhancement of the outstandingly remarkable values, provide a mechanism to address user capacities, ensure activities are occurring in conformance with the plan, determine if activities are producing the expected results, and determine if activities produce the effects identified in the RAMP/FEIS.** (emphasis added)

2.5 Alternative E: The Selected Action

The goals of Alternative E (Selected Action) are to **manage the level of recreational use while protecting the environment and the outstandingly remarkable values** (emphasis added). The sights, sounds, and interactions with other individuals or groups would often be high. The Selected Action is designed to minimize potential impacts to the fisheries resource and increase fishing opportunities while enhancing the fishing experience. This alternative also maximizes floating opportunities and enhances the floating experience. The Special Recreation Permits (SRP) and fees would be required for commercial outfitters. **User fees and permits would be required and the number of permits would be restricted for all watercraft users, if use limits are reached. Except for commercial motorized tour boats and commercial motorized angling, overall recreation use levels would continue to increase until use limits are reached. Once use limits are reached, an amendment to the plan would occur** (emphasis added).

7.0 Mitigation and Monitoring

All protective measures and other management direction identified in the RAMP will be taken to avoid or mitigate adverse impacts. These measures will be taken throughout implementation. All practical means to avoid or reduce environmental harm will be adopted, monitored and evaluated, as appropriate. Some of these measures or management direction might include: **the implementation of a user education program, low impact use ethics, permit requirements, user fees, access control/fees, further commercial restrictions, and use limits** (emphasis added).

River activities and conditions (resources and social) **will be monitored** (emphasis added) to provide data for use in evaluating the effect of management activities and human impacts upon the environment and the outstandingly remarkable values in the corridor. Evaluations will measure compliance in achieving the goals and objectives of the Hellgate Recreation Area Management Plan; **the effectiveness in protecting and enhancing the outstandingly remarkable values of the river corridor** (emphasis added); and the **ability to achieve and maintain the standards, objectives, and desired future conditions** (emphasis added).

The monitoring plan provides a process by which management accomplishments, trends, and needs for the river corridor are reported and evaluated. Monitoring will be conducted as identified in the Recreation Area Management Plan.

10.0 Recommendation and Approval

10.1 Recommendation

After careful examination and consideration of public input, existing laws, regulations, policies, guidance and planning decisions, I recommend adoption of the Rogue National Wild and Scenic River: Hellgate Recreation Area Management Plan. This plan does not amend but conforms to the Medford Resource Management Plan (USDI 1995). This Record of Decision replaces the Rogue National Wild and Scenic River Activity Plan Hellgate Recreation Section (USDI 1978). The Rogue National Wild and

Scenic River, Oregon: Notice of Revised **Development and Management Plan (1972 Plan)** (emphasis added) (Federal Register Vol. 37, No. 131, 13408-13416) is still valid and is not changed or amended by the Hellgate Recreation Area Management Plan. The Hellgae RAMP has been prepared consistent with rules and regulations based on the National Wild and Scenic Rivers Act of 1968, as amended; the Federal Land Policy and Management Act of 1976; the National Environmental Policy Act of 1969 and the Council of Environmental Quality's National Environmental Policy Act regulations; the Endangered Species Act of 1973; the Americans with Disabilities Act of 1990; the Archaeological Resources Protection Act of 1979, and the Endangered Species Act of 1973.

Abbie Jossie
Grants Pass Field Manager
BLM Medford District Office

10.2 Approval

I approve the Record of Decision for the implementation of the Rogue National Wild and Scenic River: Hellgate Recreation Area Management Plan as recommended.

Timothy B. Reuwsaat
District Manager
BLM Medford District Office

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E. SUMMARY

The historical ORVs record is fairly comprehensive, but it is not complete with many potentially significant documents not available for this review (e.g., 1968 U.S. House of Representatives bills, 1992 BLM memorandum to the files, etc.).

The National Wild and Scenic (W&S) Rogue River has a long planning history as one of the first eight “instant” rivers designated by Congress in 1968. A research of the historical W&S Rogue’s planning documents (see I.A - D) found a wide range of opinion statements in the records for ORVs, other similar values, and other river values, but little supporting assessment, study, or analysis for these opinions. Thirty-six years later, in 2004, this process resulted for the first time in formally identified ORVs for the Hellgate Recreation Area of the Wild and Scenic Rogue River.

1. **Natural Scenic Qualities.** Recognized for its diversity of scenery due its geology, topography, and relatively undeveloped visual appearance.
2. **Fisheries Resource.** Recognized for its outstanding salmon and steelhead fishing.
3. **Recreational Opportunities.** 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.

Section 2(A)(5) of the 1968 Wild and Scenic River Act for the Rogue River is brief. It described the physical 84-mile segment of the Rogue River that was designated as a component of the NWSRS as one of the eight instant rivers (see p. IB - 1).

(A) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(5) ROGUE , OREGON. – The segment of the river extending from the mouth of the Applegate River downstream downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

The March 2003 Hellgate Recreation Area Management Plan (HRAMP)/FEIS describes the ORV history of the HRAMP (see p. ID - 5 to 6). However, there is no designating legislative that describes the ORVs for the W&S Rogue. The BLM determined the legislative intent for the ORVs from two 1968 U.S. House of Representative bills and a 1992 BLM memorandum to the files. The ORVs reported to be recognized by Congress in the two house bills and the BLM memorandum were purported to be described in the 1969 Master Plan and the 1972 Development and Management Plan as fish, water-based recreation, and natural scenic features.

“In 1968, the Rogue River was one of the original eight rivers that received “instant” designation under the Wild and Scenic Rivers Act. Because of this instant designation, the ORVs were not identified in any designating legislation. The need to identify the ORVs led the managing agencies to rely on congressional records to determine what the legislation intended. Memorandum to Files, 8351.2 (11785) ORV2 outlines the legislative history of the Wild and Scenic Rivers Act of 1968, and includes language from legislative discussions relative to the Rogue River and its ORVs.” (pps. Ch. 5 - 24 to Ch. 5 - 25).

“The outstandingly remarkable values for the Rogue River, as recognized by Congress (HR 1917 September 24, 1968 and HR 1623 July 3, 1968); 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. 131, 13408-13416) include fish, water-based recreation, and the natural scenic features along the river corridor.” (p. Ch. 5 - 25).

“Other river-related values that are important, but were not considered outstandingly remarkable at the time include cultural and wildlife resources.” (p. Ch. 5 - 25).

The following summary is of the historical chronological ORV record in its four categorized parts.

1. Legislative Intent: 1958 - 1968 (see Sec. I.A.)
2. Early Implementation of Wild & Scenic Rivers Act: 1968 - 1990 (see Sec. I.B.)
3. Revision of Hellgate Recreation Area Management Plan: 1991 - 1998 (see Sec. I.C.)
4. Current Hellgate Recreation Area Management Plan: 2014 (see Sec. I.D.)

Legislative Intent: 1958 - 1968

Legislative intent is defined as interpreting the 1958 - 1968 records available for research prior to the 1968 Wild and Scenic Rivers Act. On September 3, 1958, Public Land Order 1726 withdrew from all forms of appropriation under the public land laws, including the mining laws, lands along the Rogue River, and other lands for the protection and preservation of scenic and recreation areas adjacent to the river and its tributaries. Other withdrawals in 1959 and 1963 followed. Original records were not available (ORNA).

At least three other major publications were not available: 1. 1961 Senate Select Committee on National Water Resources, 2. 1962 Outdoor Recreation for America by Outdoor Recreation Resources Review Commission, and 3. 1963 Wild Rivers Study by USDI and USDOA (ORNA).

A significant available resource was the 1964 draft *Study Report on the Rogue River, Oregon*. The report was ahead of its time. It’s style was professional opinion supported by some comparisons of significant scale (e.g., regional, national, etc). There was no discussion of indicators nor standards or references to sources of its conclusions. The report identified five identified categories of river values for the entire 84 miles of what would become the W&S Rogue River, especially the wild section.

1. Outstandingly Remarkable
2. Primary Considerations
3. BLM Plans for the Future
4. Outstanding Quality Features
5. Study Team’s Outstanding Quality Features

One might debate that the 1964 draft Study Report's was significantly accurate in its description of today's three identified ORVs and could have been the original basis of today's management by BLM of the ORVs. Or, without an identified concept of ORVs in 1964, it could be looked at as a caldron situation characterized by a shotgun of evolving river values (i.e., five categories of river values) and strong diversified public attitudes. After the fact it is easy to find what you want in a an interpretive horoscope. Regardless, this early study is identical to the 2004 ROD's ORVs for scenic qualities. It is close for fisheries (i.e., fishery and fishing versus fisheries resources), and close, but further apart for recreation (i.e., boating and floating as a recreation use of outstanding quality versus recreational opportunities). It is in conflict with the ROD for its identification of historical significance.

Two other records reported to have been use by BLM in interpreting congressional intent were 1968 US Congressional reports: House Reports No. 1623 and No. 1917 (ORNA).

Early Implementation of Wild & Scenic Rivers Act: 1968 - 1990

Early implementation is defined as interpreting the 1968 - 1990 records available for research after the 1968 Wild and Scenic Rivers Act to the year just before management made the decision to revise the 1978 BLM Hellgate Plan. The Act itself and three river plans are of significance.

- 1968 Wild and Scenic Rivers Act
- 1969 BLM Master Plan For The Rogue River
- 1972 Joint FS/BLM Rogue River Plan
- 1978 BLM Hellgate Plan

The Act itself was of minimum value in actually identifying the ORVs for the Rogue River. This is because. as one of the eight instant rivers in 1968, there was no study plan required nor developed that identified the ORVs. The physical location of the instant 84-mile WS Rogue River was identified in Section 3(A)(5).

The BLM 1969 Master Plan for the Rogue River Component Of The National WSRS is in three sections: 1. Two cover letters from USDI, 2. Enclosure No. 1., The Plan, and 3. Enclosure No. 2., Supplemental Information (*Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System* October 1969 prepared by BLM). The report is not straight forward as much of the two enclosures duplicate information (i.e., some is significantly different, but most of the text is the same).

Enclosure 1, The Plan, is mostly a policy document out of the Washington D.C. Office, in many cases repeating the Act's sections or the ideas in the 1964 study. It addressed segments of the river and their administration, management for a generic recreation segment, and primary considerations for the specific entire 84 miles of the Rogue River. It did not address ORVs.

Enclosure No. 2, Supplemental Information, was a based on a five month study by BLM personnel from the Medford District Office and Oregon State Office. It addressed the "outstanding features" and the "primary considerations" applicable to the entire 84 miles of the

W&S Rogue River. Five outstanding features and five primary recreation use considerations were identified. However, these features and considerations were not sorted nor synthesized into today's recognizable ORVs.

Outstanding Features

1. The Rogue River is nationally, and perhaps world renowned for the outstanding salmon and steelhead trout fisheries.
2. White-water boating, the ultimate experience for many river users.
3. Commercial jet boat operations.
4. Natural features, including towering cliffs and large moss-covered boulders, are spellbinding in some of the canyons and chutes.
5. Historical significance of the area.

Primary Recreation Use Considerations

1. Fishery and Fishing
2. Boating (commercial jet boats, professionally-guided float trips, and private boating)
3. Hiking
4. Wildlife
5. Camping and Picnicking

The 1972 Joint FS/BLM Revised Rogue River Development and Management Plan was a combined plan for development, operation and management of the W&S Rogue River administered by the BLM and the USFS. That portion of the Rogue River under the administration of the BLM extended from the mouth of the Applegate River downstream approximately 47 miles to the Siskiyou National Forest boundary near Marial. The FS had administrative responsibilities for that portion of the Rogue River from the Siskiyou National Forest boundary downstream approximately 37 miles to the Lobster Creek Bridge. This single plan revised and combined the BLM and the FS Master Plans for the WSRR because there had been some difference in language which caused public confusion.

The boundaries remain unaltered for the W&S Rogue River. The only substantial revision pertained to expansion of existing lodges on the stretch of river classified as "Wild River." Under the original BLM Master Plan, lodge expansion was permitted provided approval of construction and site plans was obtained from BLM. The original FS Plan did not allow expansion of lodges. The new combined plan prohibited lodge expansion.

The 1972 Plan provided the basic framework of policies, objectives, and direction for managing the river. In terms of identified law and policy, the 1972 Plan was not substantially different from the 1969 BLM Master Plan For W&S Rogue River that had proceeded it. The 1972 plan was much clearer and understandable in the sense of eliminating the duplication and redundancy of what was in effect two 1969 Hellgate RAMPs.

Overall the 1978 Hellgate RAMP was a significant step forward as the Hellgate Recreation Area's (HRA) first activity plan, but it was based on the ambiguity of the 1972 BLM/FS plan. The RAMP covered the HRA, a 27-mile segment from the Applegate River to Grave Creek. In 1972, the U.S. Forest Service and the BLM had revised and combined their 1969 Master Plans for the Rogue River component of the National WSRS. This combined 1972 Master Plan, together with the directives of the Act, provided the basic framework of policies and objectives within which the river was to be managed.

The HRAMP provided specific "recreational development" details for the BLM-administered HRA Section, and it did repackage the ORVs and similar river values in a similar yet different way. Significantly the HRAMP implied a broader policy for the values the river was to be managed with some more detailed guides to land use management policies.

In summary, the 1978 plan could be interpreted to identify the three current ORVs, or it could be interpreted to include a broader range of ORVs, including wildlife habitat and cultural values, or it could be interpreted to scope a range of possible ORVs that are necessary to be assessed in the future.

Revision of Hellgate Recreation Area Management Plan: 1991 - 1998

The 1991 Preplan Analysis document officially stated the river planning process to revise the HRAMP. It included many ideas of which a significant one was the use of legislative intent to assist in the identification of ORVs. This is because as an instant river in 1968 there was no study plan required nor developed with among other requirements identified the ORVs. This document was the first of many planning documents for revising the HRAMP in the 1990s. It included a range of ideas from various sources on the ORVs. Its focus was the identification of an initial range ORVs that would be verified and/or sorted out in the HRAMP planning process (i.e., it did not immediately focus on the specific ORVs, but considered the range per the WSRA, Sections 1(a) - 1(b)).

The 1992 Medford District Resource Management Plan and Draft Environmental Impact Statement (DEIS) verified the status quo in its no action alternative: The BLM-administered W&S Rogue River' 47 miles would continue to be managed in accordance with federal guidelines. Management plans are currently being revised for the recreation and wild sections.

It also identified a three-step wild and scenic rivers study process for study rivers (not instant rivers): the first step was to determine eligibility, the second step was to determine potential classification (both were completed in early 1990 for study rivers) and the third step was to determine suitability which was done through this planning process for study rivers. Files used to document eligibility and potential classification for study rivers were to be maintained in the Medford District Office. Of interest to the ORVs' purpose of this assessment was Appendix 2-WS-1, Wild and Scenic River Eligibility and Classification Determinations, to the MDO RMP/DEIS, Vol II. It provided relatively good guidance on eligibility findings for study rivers.

The 1994 MDP Proposed RMP/FEIS was pretty straightforward in implementing the ORVs process identified in the 1992 RMP/DEIS. A significant difference was Appendix J, Wild and Scenic River Suitability Assessments (MDO PRMP/FEIS Vol II). Part of Appendix J for study rivers included information about the 1968 instant W&S Rogue River. It ranked the W&S Rogue River, along with the separate study rivers, as having five designated ORVs.

1. Recreation
2. Fish
3. Wildlife
4. Scenic
5. Historical

The purpose of the 2003 Proposed Hellgate RAMP/FEIS was to replace the 1978 BLM Hellgate Plan. The purpose of the proposed HRAMP was to: 1. provide direction and guidance on the management of the HRA pursuant to the Act (2) conform with management direction contained in the 1995 MDO ROD and RMP, and 3. maintain a mix of W&S Rogue River recreation types common to the river since its designation in 1968. Its position on designating three ORVs (i.e., natural scenic qualities, fish, and recreation) follows.

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. Other river-related values that are important, but were not considered outstandingly remarkable at the time include wildlife and cultural resources.

It was more specific as to the development of the OVS in its response to public comments on the 1992 MDO RMP/DEIS.

Response: In 1968, the Rogue River was one of the original eight rivers that received “instant” designation under the Wild and Scenic Rivers Act. Because of this instant designation, the ORVs were not identified in any designating legislation. The need to identify the ORVs led the managing agencies to rely on congressional records to determine what the legislation intended. Memorandum to Files, 8351.2 (11785) ORV2 outlines the legislative history of the Wild and Scenic Rivers Act of 1968, and includes language from legislative discussions relative to the Rogue River and its ORVs

Current Hellgate Recreation Area Management Plan: 2014

The 2003 Proposed Hellgate RAMP/FEIS provided specific rationale for why the three designated ORVs were eligible.

Natural Scenic Qualities The Rogue River was recognized by Congress in 1968 for its diversity of scenery due to its geology, topography, and relatively undeveloped visual appearance. A study in 1993, *Assessments of Recreation Impacts and User Perceptions on the Bureau of Land Management Recreation Section* (Shindler and Shelby) found that the majority of visitors rated enjoyment of the scenery along the river as very important to the overall quality of their visit. Approximately 90 percent of all visitors rated

the existing management and maintenance of the scenery as positive, thus indicating satisfaction and a perception of the scenery as high quality.

Fisheries Resource The Rogue River was recognized by Congress for its outstanding salmon and steelhead sport fisheries. The 1993 study on recreation impacts and user perceptions (Shindler and Shelby) found that over 60 percent of the visitors to the Rogue came to fish. This fishing occurs year-round and includes fishing from nonmotorized watercraft (drift boats), motorized watercraft (jet boats and drift boats with kickers), and the riverbank.

Recreation Opportunities The Rogue River was recognized by Congress 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. The Wild and Scenic Rivers Act states that a designated river “shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.” The 1993 study on recreation impacts and user perceptions (Shindler and Shelby) found that visitor’s reasons for coming to the Rogue included viewing scenery, rafting and floating, fishing, hiking, camping, jet boating, and a variety of other activities. The study also found that visitors to the river participating in white water floating (91 percent), fishing (57 percent), and riding on an MTB (96 percent) found their experience to be excellent or perfect.

The 2004 Hellgate Recreation Area Management Plan was approved by the 2004 ROD which follows.

[2004 ROD] The Hellgate Recreation Area Management Plan (RAMP) is designed to provide for a mix of river recreation uses and users while managing and protecting the environment and the outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities. This Record of Decision adopts the RAMP and replaces the Rogue National Wild and Scenic River Activity Plan Hellgate Recreation Section (USDI 1978). The Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan (1972 Plan) (Federal Register Vol. 37, No. 131, 13408-13416) is still valid and is not changed or amended by the Recreation Area Management Plan. The Hellgate RAMP contains the decision selected from Alternative E, as analyzed in the Final EIS, as well as, guidance and direction from the Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan of 1972, the Prohibited Acts in Rogue National Wild and Scenic River Area of 1992 (Federal Register Vo. 57, No. 110, 24271-24274), and the BLM Medford District Record of Decision and Resource Management Plan of 1995.

Record Sufficiency The rest of this summary is more about the sufficiency of the planning record versus the content of the record.

There was little standardization in the historical documents for the eligibility assessment process. It is important to develop and apply standardized criteria through a documented carrying capacity evaluation process for the ORV eligibility, including thresholds (i.e. indicators and standards).

The BLM’s records for the ORVs, especially the HRAMP ORVs, provide no explicit documentation of the application (i.e., analysis) of ORV eligibility criteria, inventory process, and evaluation. The unknown ultimate outcome of the eligibility and suitability process was the three designated ORVs (the final step). There has been difficulty in identifying the MDO’s documents related to an assessment of the free-flowing condition and identification of ORVs.

When the time comes to revise the BLM's current Hellgate and Wild section activity plans (i.e., CRMPs), management should consider the Act's focus for a plan per "Section 3(d)(1)" (Appendix I), especially the court's concerns about "user capacities" (i.e. for the purpose of this paper, user capacity, carrying capacity, visitor capacity, and recreational carrying capacity, are the same).

1. Resource protection;
2. Development of lands and facilities;
3. User capacities; and
4. Other management practices necessary or desirable to achieve the purposes of the Act.

Comprehensive Management Plan (CMP) (Appendix I)

1. Protecting Wild and Scenic Rivers by Preventing Degradation
2. Development of lands and facilities
3. User Capacities
4. Other management practices necessary or desirable to achieve the purposes of the Act.

Comprehensive Management Plan (CMP)

Not surprisingly, time and resources are positively related to the quality of thresholds and the accuracy of user capacity estimates. More accurate and defensible approaches are more costly, in time and resources. Capacity processes can generally be arrayed on a spectrum from (1) explicit thresholds, high accuracy approaches that require substantial time and resources to (2) implicit thresholds, low accuracy approaches that require little time and resources. The selection of a numerical estimation capacity process will largely be one of selecting an appropriate point on this spectrum, understanding the limitations of whatever process is undertaken, and striving to minimize those limitations. This is similar to the concept of a sliding scale: "The sliding scale rule of analysis says that the level of analysis should be commensurate with the purpose or potential consequences." The greater the potential consequences, impacts or risks, the more certainty and precision are needed, with resultant implications for the amount and quality of science and information that is needed (*Numerical Visitor Capacity*).

The process of deriving a meaningful numerical capacity is useful for the entirety of visitor use management. It involves **identifying goals, objectives, desired conditions, and what we refer to as thresholds (often called indicators and standards)**. It requires **monitoring**, evaluating the factors that influence impacts of concern, and identifying the **entire suite of visitor management actions** to be taken. Consequently, working through a capacity estimation process, regardless of whether limiting use is an important management tool, will benefit any recreation management program (*Numerical Visitor Capacity*).

II. INTERPRETATIONS

What is the role of citizens in protecting wild and scenic river (WSR) values? Citizen stewards are increasingly important in protecting WSR values, often through river specific or regional stewardship organizations. Individually, or through nonprofit entities, citizens help survey and monitor resource conditions, provide interpretive and education opportunities, contribute to restoration efforts, and support many other protection activities.

The public can be helpful with eligible study reports which include, among other normal inventory and study processes, the land ownership and use in the area and reasonably foreseeable potential uses of land and water. Neighbors can help assemble, evaluate data, and develop alternatives. 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 the river planning and ID teams. As the process continues, similar discussions on the suitability of eligible rivers take place as determinations and environmental documents are prepared (Compendium, p. 15).

The public can also be involved in the development of any future CRMPs for the W&S Rogue River. Interested communities and individuals are key players in the development of a CRMP. They help with data collection and establishing baseline conditions, identifying issues and opportunities to be addressed in the planning process and, increasingly, in monitoring and implementation of aspects of the CRMP. The Act anticipates the participation of federal, state or local governments, landowners, private organizations and/or individuals in planning, protecting and administering the W&S Rogue River (Compendium, p. 65).

This “Interpretations” section is a preliminary assessment of the *Rogue River’s Outstandingly Remarkable Values, Other Similar Values, & Other River Values*, by Mike Walker representing three citizen co-sponsors: Hugo Neighborhood Association & Historical Society, Goal One Coalition, and Rogue Advocates ([Appendix B](#)).

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A. Reminiscences & Opinions

This “Interpretations” Chapter II, like Chapter I on the “Historical Chronological ORV Record”, is a preliminary assessment which has not been quality controlled nor provided adequate time for professional editing. It is a set of armchair summaries, in the sense of being remote from the direct responsibilities of wild and scenic river issues, and professional opinions of the author based on his planning career with the BLM, especially when he was employed as an Outdoor Recreation Planner, during the Hellgate Recreation Section of the Rogue River’s planning process from 1991 - 1998. It is 16 years since the author retired from BLM in 1998 and four years prior to the publication of the 2003 *Rogue National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement*.

It is also recognized that the vantage point of hindsight and reminiscences are not necessarily accurate and/or fair. The author has tried his best to be accurate by constantly trying to remember this dilemma in eliminating recognized bias.

Restated, this interpretations chapter focused on designated ORVs and the eligibility studies and/or analysis that lead to those values being determined to be ORVs for the 27-mile Hellgate Recreation Area of the W&S Rogue River. Some review of ORVs was for the whole 84-miles of the W&S Rogue River and the 20-mile wild section managed by the BLM, but this overall review was part of the context to the ORVs in the HRAMP, and in most cases could not be avoided because the early record was only applicable to the entire designated Rogue.

1. Qualifications of Author

The HRAMP/EIS Team Leader position involved a controversial complex river planning process to revise the Rogue River’s Hellgate RAMP through an EIS. The scoping process resulted in this position’s position description expanding into Grant Writer and Project Inspector for an \$800,000 HRAMP grant program involving erosion, fisheries (expert panel on adult salmon spawning), fisheries (juveniles), safety, economic effects, and visitor attitudes ([Appendix A](#)).

2. Outstandingly Remarkable Values

The seemingly initial ca., 1968 - 1990 blessing for BLM river managers of not having to address studies for ORVs (i.e., eligibility and suitability, including user capacity/carrying capacity) of the Rogue River (i.e., one of the eight instant 1968 rivers) has turned into a nagging problem and void that seems to enlarge in significance with the passing years. This interpretations’ section has 10 subsections.

- a) Preplan Analysis for Revising the Recreational Area Management Plan (Activity Plan: Hellgate Recreation Section) Rogue River Recreation Section: 1991
- b) Study Report on the Rogue River, Oregon: 1964
- c) BLM Master Plan For Wild & Scenic Rogue River: 1969
- d) BLM & FS Comprehensive River Management Plan: 1972
- e) BLM Hellgate Recreation Section Activity Plan: 1978

- f) Rogue River's Outstandingly Remarkable Values (ORVs): 1992 Bibliographic Reference
- g) Cultural Resources Background Paper: 1993
- h) Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River: May 1994
- i) Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative: 1994
- j) Comparisons
- k) Comprehensive River Management Plans

a) Preplan Analysis for Revising the Recreational Area Management Plan (Activity Plan: Hellgate Recreation Section) Rogue River Recreation Section: 1991

The 1991 Preplan Analysis document included many ideas of which a significant one was the use of legislative intent to assist in the identification of ORVs. This is because there was no study for instant river in 1968 required nor developed (see Sec. IC).

The Preplan the first of many planning documents for revising the HRAMP in the 1990s.

- Preplan Analysis for Revising Recreation Area Management Plan 1991
- Public Input Analysis Background Paper for revising the Hellgate Recreation Area Management Plan and the Wild Recreation Area Management Plan 1992
- Preparation Plan for Revising the Hellgate Recreation Area Management Plan 1993
- Notice of Intent 1993
- Scoping Document 1993
- Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River 1994

The 1991 Preplan Analysis could have been based on the three river plans that proceeded it: 1. 1969 BLM Master Plan, 2. 1972 Joint FS/BLM Plan, and 3. 1978 BLM Hellgate Plan. This is because it had the same structure of including a range of ideas from various sources on the ORVs. The Preplan's focus was the identification of an initial range ORVs that would be verified and/or sorted out later in the HRAMP planning process - it did not immediately focus on the specific ORVs, but considered the range per Section 1(b) of the Act.

"(b) 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 (emphasis added), 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 major outline sections of the Preplan Analysis identifying the range of ideas on the ORVs follows.

- Chapter IV. Recreational Management Objectives
- Appendix IV-A. Legislative Intent
- Appendix IV-B. Management Direction from Development and Management Plans of 1972
- Appendix IV-C. Research and Evaluation, Activity Plan: Hellgate Recreation Section

The public raised the issue of other river values being ORVs (i.e., beyond natural scenic qualities, fisheries resources, and recreational opportunities) or similar values identified by the

WSRA (Section 1(b)) during the proposed 2000 HRAMP/DEIS. Some of these comments were documented in the 2003 proposed HRAMP/FEIS (see Sec. I.D).

Comment: There are significant concerns with how ORVs are applied and selected for the Hellgate Recreation Area under the National Wild and Scenic Rivers Act. How were the ORV's identified? Why aren't other resource values identified as ORVs? ORVs that the BLM failed to identify are: cultural values, wildlife values, hydrologic values, and ecological values. They satisfy the criteria for ORVs in addition to natural scenic values, fisheries, and recreation. These missing ORVs are evident from discussions in the 1972 plan, the RAMP itself, and from public input.

Response: In 1968, the Rogue River was one of the original eight rivers that received "instant" designation under the Wild and Scenic Rivers Act. Because of this instant designation, the ORVs were not identified in any designating legislation. The need to identify the ORVs led the managing agencies to rely on congressional records to determine what the legislation intended. Memorandum to Files, 8351.2 (11785) ORV2 outlines the legislative history of the Wild and Scenic Rivers Act of 1968, and includes language from legislative discussions relative to the Rogue River and its ORVs.

b) Study Report on the Rogue River, Oregon: 1964

Draft Study Report of the Rogue River, Oregon. Prepared by the Pacific Southwest Regional Task Group for consideration of the Wild Rivers Study Team, July 1, 1964. Representatives of USDI & USDA (214 pages) (1964 draft Study Report)

The 1964 draft *Study Report of the Rogue River, Oregon* was ahead of its time; it would be four more years before there was a WSRA. The report's style was professional opinion supported by some comparisons of significant scale (e.g., regional, national, etc). There was no discussion of indicators nor standards or references to sources of its conclusions (see Sec. IA). The report did not have a definition of ORVs; it had five identified categories of river values for the entire 84 miles of what would become the W&S Rogue River, especially the wild section.

1. Outstandingly Remarkable
2. Primary Considerations
3. BLM Plans for the Future
4. Outstanding Quality Features
5. Study Team's Outstanding Quality Features

Outstanding Features The 1964 report did not have a formal eligibility process where each identified river segment of the Rogue River was evaluated to determine whether it was eligible for inclusion in the NWSRS. To be eligible, a river segment must be "free flowing" and must possess at least one ORV. What was missing in the report was the explicit "eligibility determinations" - to be considered as "outstandingly remarkable", a river related value must be a unique, rare, or exemplary feature that is significant at a comparative regional or national scale. However, it's concept of "outstanding features" for the entire 84-miles is remarkably close to today's definition of the HRAMP's ORVs. The exception was recreation which was not one of the identified "outstanding features." The report would identify recreation as a "primary consideration" not an outstanding feature. This idea is close to the relationship of "recreation rivers" segment and recreation ORVs (i.e., a recreation classification does not imply that recreation is an ORV; it can be, but it might not be).

- It is recognized that the Rogue River and its environment possess many noteworthy natural features such as flora and fauna, geological formation, scenic tributary streams and other **scenic qualities**.
- The Rogue River is nationally, and perhaps world renowned for its outstanding salmon and steelhead trout **fisheries**. It is a big fish river which produces salmon upwards of 40 pounds and steelhead trout exceeding 15 pounds.
- Four individual **extremely unique and picturesque stretches** totaling approximately 5 miles in total length were identified in the study area. These areas are characterized by near vertical cliffs, large moss cover boulders, a tight river channel (less than 20 feet at certain points) and churning white-water conditions.
- Some 66 river miles can be termed outstanding insofar as **white-water boating** opportunity is concerned.
- The natural features of the Rogue and its setting are complimented by the **historical significance** of the area. Indian and white skirmishes, and Indian wars occurred throughout the study area in the 1850's.

Primary Considerations The report's concept of "primary considerations" included recreation use and opportunities (i.e., beautiful scenery, nationally famous salmon and steelhead fisheries, fishing, boating, and floating).

- Oregon is essentially an outdoor state with a few metropolitan areas, a great deal of open space and an abundance of **beautiful scenery** – a truly magnificent combination that draws a continuously increasing flow of recreational travelers.
- The Rogue River is **nationally famous for its excellent salmon and steelhead fisheries**. It is considered one of the top streams in the nation for fly fishing for steelhead trout. In addition, there is a large sport fishery for both natural and planted trout which extends over the basin.
- In the study area, **fishing** is considered one of the chief recreational pursuits. Angling is pursued by various methods including fishing from anchored and floated boats, salmon "boards" and from the shore.
- The **boating** opportunities on the Rogue may be termed of an excellent quality. First, it offers a very diversified type of boating opportunity in that rafts, kayaks, specially constructed "Rogue River boats", and conventional outboards and even innertubes may be safely used on segments of the river.
- **Floating** the Rogue River is advertised to be nationally and world famous and truly it may be as it offers an outstanding and unique experience.

BLM Plans for the Future The report also included a section on BLM plans for the future - "Statement of Bureau of Land Management Plans for Study Area."

- Outstanding features of the wild segment of the Rogue River (i.e., 47 miles from Grave Creek to Marial) and adjacent lands include 1. excellent salmon and steelhead **fishing**, 2. unusual opportunities for **boating** in rapid water, and 3. **dramatic scenery** created by precipitous mountain slopes clothed with coniferous and hardwood timber
- The Rogue River Recreational Withdrawal (PLO 1726 dated Sept 3, 1958 amended and revised by PLO 1855 dated May 14, 1959 (24 FR 4056) and PLO 3165 dated July 31, 1963) reserved and set aside designated lands for the protection and preservation of the scenic and recreation areas adjacent to the Rogue River and its tributaries. Under PLO 1726 all BLM administered lands within ½ mile of the river (approximately 100 miles of the river) were **withdrawn for recreation purposes**.
- **Recreation use** of the area dominates all other uses, including mining and timber production. Hundreds of persons now use the Rogue River trail.
- The Bureau of Land Management plans to maintain these lands adjacent to the wild Rogue in their **natural state** for enjoyment of recreationists who enjoy the solitude of primeval conditions.
- This lower portion of the Rogue River area will be maintained by the Bureau of Land Management in as near its **pristine condition** as possible for the enjoyment of those who wish to travel by foot, trail, or boat.

Study Team's Outstanding Quality Features The applicable conclusions and recommendations of the study team in the 1964 draft *Study Report*, of which the most important were the identified “outstanding quality” features of the Rogue, follow (i.e., fishery, scenic qualities, and boating).

1. The most significant feature of the Rogue is its outstanding salmon and steelhead trout **fishery**
2. Four individual stretches exist in the study area which have **outstanding scenic qualities**
3. **Boating** the Rogue River, in addition to providing an excellent means of viewing the scenic features, **represents a recreation use of outstanding quality**

The flora and fauna along the river are of an exceptional quality. The manner in which the river and its setting may be observed is worthy of mention as a natural quality.

In summary, one could argue that the 1964 draft Study Report's was significantly accurate in its description of today's identified ORVs, and could have been the original basis of today's management by BLM of the ORVs.

The HRAMP's May 1994 document entitled, *Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River*, identified that “The **outstandingly remarkable values** for which the Rogue River was designated are its **natural scenic environment, the fisheries resource, and the recreational opportunities** it provides.

Record of Decision. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area. The Hellgate Recreation Area Management Plan (RAMP) is designed to provide for a mix of river recreation uses and users while managing and protecting the environment and the **outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities.**

Or, without an identified concept of ORVs in 1964, it could be looked at as a caldron situation characterized by a shotgun of evolving river values (i.e., 1. Outstandingly remarkable, 2. Primary considerations, 3. BLM plans for the future, 4. Outstanding quality features, and 5. study team's outstanding quality features) and strong diversified public attitudes. After the fact it is easy to find what you want in a an interpretive horoscope, but no scientific studies have shown support for the accuracy of horoscopes, and its methods used to make interpretations are generally considered pseudo-scientific.

This exercise of interpreting the potential ORVs in the 1964 study report and the 2004 ROD is educational (Table IIA-1), but probably not important in terms of establishing the legal intent of Congress when the WSRA was signed by the President in 1968 as the Act has zero information on the ORVs for which the Rogue River was designated. However, this early study is identical to the 2004 ROD for scenic qualities. It is close for fisheries (i.e., fishery and fishing versus fisheries resources), and close, but further apart for recreation (i.e., boating and floating as a recreation use of outstanding quality versus recreational opportunities). Without any information in the record, it is possible that the classification of a recreational river (i.e., Section (2)(b) of Act interpreted by the 1982 Interagency Guidelines) tilted BLM toward the all encompassing “recreation opportunities” versus the narrower boating for fishing and floating recreation uses.

Table IIA-1. Interpretation of Outstandingly Remarkable Values: 1964 Versus 2004	
1964 Draft Study Report¹	Record of Decision: July 2004²
Outstanding Scenic Qualities	Natural Scenic Qualities
Outstanding Salmon and Steelhead Trout Fishery & Fishing	Fisheries Resources
Boating for Fishing/Floating Represents Recreation Uses of Outstanding Quality	Recreational Opportunities
Historical Significance	Considered

Footnotes

1. July 1, 1964 Draft *Study Report of the Rogue River, Oregon* prepared by the Pacific Southwest Regional Task Group (i.e., representatives of USDI & USDA) for consideration of the Wild Rivers Study Team.
2. Record of Decision. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area. The Hellgate Recreation Area Management Plan (RAMP) is designed to provide for a mix of river recreation uses and users while managing and protecting the environment and the **outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities** (emphasis added). This Record of Decision adopts the RAMP and replaces the Rogue National Wild and Scenic River Activity Plan Hellgate Recreation Section (USDI 1978). The Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan (1972 Plan) (Federal Register Vol. 37, No. 131, 13408-13416) is still valid and is not changed or amended by the Recreation Area Management Plan. The Hellgate RAMP contains the decision selected from Alternative E, as analyzed in the Final EIS, as well as, guidance and direction from the Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan of 1972, the Prohibited Acts in Rogue National Wild and Scenic River Area of 1992 (Federal Register Vo. 57, No. 110, 24271-24274), and the BLM Medford District Record of Decision and Resource Management Plan of 1995.

The river record has not provided the rationale for today’s three ORVs, but it has referenced Congressional intent as the source of its identified ORVs, perhaps in two 1968 house bills, and one 1992 BLM memorandum for the files.

- United States Congress. House. 1968. Report No. 1623. Providing for a National Scenic Rivers System and for Other Purposes. 90th Congress. 2d Session.
- United States Congress. House. 1968. Report No. 1917. National Wild and Scenic Rivers System: Conference Report. 90th Congress. 2d Session.
- United States Department of the Interior, Bureau of Land Management, Medford District Office, Grants Pass Resource Area. 1992c. *Rogue River’s Outstandingly Remarkable Values (ORVs)*. Memorandum from Outdoor Recreation Planner, Medford District Office, October 29, 1992. 8351.2 (11785). Medford, OR. (Bibliography p. 8)

In conclusion, the author was well aware of the draft 1964 Study Report and was impressed with it, and by implication the Study Team which was comprised of representatives from the Forest Service, National Park Service, Bureau of Sport Fisheries, Bureau of Land Management, Bureau of Commercial Fisheries, and Bureau of Outdoor Recreation. It did not formally identify ORVs, but it is the author’s opinion that this report could be the future foundation for the missing ORVs baseline conditions at the time the river was designated. The Study Team did not know of the eventual importance of the ORVs baseline conditions (**Appendix I**), but its product’s broad comprehensive strokes at identifying the rivers’ values was impressive and useful, and partially responsible for the influencing the development of the 1991 Pre-Plan Analysis’ focus on a range of ORVs per Section 1(b) of the Act.

This direction [to protect and enhance, Section 10(A) of Act] by Congress, which has been affirmed in several court cases, is why defining baseline conditions of the values for which the river was designated (free-flow, water quality and ORVs) is critically important. This baseline serves as the basis from which the degree/intensity of existing and future impacts can be measured. All future activities are to be measured from this baseline to ensure continued high quality conditions and to eliminate adverse impacts (*protect*) or improve conditions (*enhance*) within the river corridor. If a thorough resource assessment that includes a baseline description of the ORVs is not completed at the time of designation, this assessment should be included in the river management plan. The river management plan then establishes the baseline conditions at the time of designation — including a description of any degradation—and proposes management actions that will be taken to improve conditions until they meet the requirement to protect and enhance the river's values, including free flowing condition, water quality and ORVs (Appendix I).

c) BLM Master Plan For Wild & Scenic Rogue River: 1969 (see Sec. I.B)

The BLM 1969 Master Plan for the Rogue River component of the National WSRS is in three sections: 1. two cover letters from USDI, 2. Enclosure No. 1. The Plan, and 3. Enclosure No. 2., Supplemental Information (*Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System* October 1969 prepared by BLM). The report is not straight forward as much of the two enclosures duplicate information (i.e., some is significantly different, but most of the text is the same).

ENCLOSURE NO. 1. [Enc. 1] the Plan Enclosure 1 is mostly a policy document out of the Washington D.C. Office, in many cases repeating the Act's sections, or the ideas in the 1964 study. It addressed segments of the river and their administration, management for a generic recreation segment, and primary considerations for the specific entire 84miles of the Rogue River. It did not address ORVs.

Purpose Pubic Law 90-542, October 1968, the National Wild and Scenic Rivers Act, designates certain selected rives of the Nation possessing outstanding scenic, recreational, natural and other similar values (emphasis added) and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. Approximately, 84 miles of Oregon's Rogue River, from the mouth of the Applegate River downstream to Lobster Creek bridge, are included in the Act. (Enc. 1 The Plan, p. 1)

Administration of this segment of the river is the joint responsibility of the Secretaries of Interior and Agriculture through the Bureau of Land Management and the Forest Service. The stretch of river from the mouth of the Applegate downstream to Marial, a distance of approximately 47 miles, will be administered by the Bureau of Land Management (emphasis added) with the remaining 37 miles flowing through the Siskiyou National Forest, to be administered by the Forest Service. (Enc. 1 The Plan, p. 1)

Objectives Development of a rationale for protecting and preserving the outstanding scenic, recreational, historic, cultural, and other values (emphasis added) of the designated rivers and their immediate environments for the benefit of present and future generations is implicit within the Act. (Enc. 1 The Plan, p. 2)

This report is an analysis of the 84 miles of lower Rogue River included in the national wild and scenic rivers system. The upper 47 miles are to be administered by the Bureau of Land Management. The recreational river area will be managed to provide or restore a wide range of public outdoor recreation opportunities on the river in its free-flowing condition.

Primary Considerations for 84 Miles

Fisheries	Rare & endangered Osprey and Bald Eagle
Wildlife Resources	White-water Boating
Natural Features	Commercial Jet Boat
Historical Significance	Private Boating
Black-tailed Deer	Boat Launching Sites
Black Bear	Rogue River Trail
Upland Game Species	Camping & Picnicking Facilities
American Mergansers, Mallards, & Wood Ducks	Recreation

Management objectives for the recreational river area will be to provide opportunities for engaging in a wide range of recreation activities which are enhanced by its free-flowing nature. Other resource uses and activities will be permitted so long as they do not lower the quality of the recreation experience, degrade the setting, or damage the fishery and wildlife habitat.

Emphasis will be on the development of water-oriented recreation facilities that will provide a wide range of compatible recreation activities. Generally, the use of motorboats will be permitted to continue, subject to normal state and local regulation.

ENCLOSURE NO. 2. Supplemental Information was based on a five month study by bureau of land management personnel from the BLM Medford District and Oregon State Office. Enclosure 2 addressed the outstanding features and the primary considerations applicable to the entire 84 miles of the Wild & Scenic Rogue River.

Outstanding Features

- The Rogue River is **nationally, and perhaps world renowned** for the **outstanding salmon and steelhead trout fisheries**. It is a “big fish” river which produces salmon upwards of 40 pounds and steelhead exceeding 15 pounds. In excess of 100,000 salmon and steelhead spawn in the Rogue River basin annually. The character of the Rogue River, its setting, and the characteristics of the anadromous salmon and steelhead provide the fisherman with a diverse fishing opportunity. Angling may be accomplished by wading, trolling, floating, or shore fishing with bait, hardware, or flies .
- **White-water boating**, the ultimate experience for many river users, is available in a 55-mile stretch from Finley to Agness. Around every bend in this stretch a new challenge is encountered. Large rapids, submerged boulders, and shallow water tax the most skilled boatmen in this segment. Rainie Falls, with a vertical drop of some ten feet, is the only spot where it is necessary to portage or rope the boat around the rapids.
- **Commercial jet boat operations** are on a daily scheduled basis from the coast to Agness or Paradise Bar providing a taste of both white-water and natural grandeur for many people.
- **Natural features**, including towering cliffs and large moss-covered boulders, are spellbinding in some of the canyons and chutes. Outstanding, in an area where each succeeding vista is noteworthy, are sights in Hellgate Canyon, Howard Creek Chute, Kelsey Canyon, and Mule Creek Canyon. In the latter two instances the river winds its way through narrow canyons which rise abruptly from the water. Water boils, swirls, and churns as it gushes through these narrow passages, providing the boating enthusiast and unforgettable white-water experience.

- The natural features of the Rogue and its surroundings are complimented by the **historical significance of the area**. Indian and white skirmishes, and Indian wars occurred throughout the area in the 1850s. Zane Grey patented a mining claim at Winkle Bar. One of his cabins still remains as a memento of his world, and the past glory of the West.

Primary Considerations (recreation use of the river applicable to the entire 84 miles of the Wild & Scenic Rogue River]

1. Fishery and Fishing
2. Boating (commercial jet boats, professionally-guided float trips, and private boating)
 - Jet boat excursion trips from Gold Beach annually carry about 40,000 persons to the Agness or Paradise Bar area. These daily scheduled trips provide the only participation in Rogue River recreation for many people. A similar jet boat operation runs from Grants Pass downstream to Hellgate Canyon during the summer months.
 - Guided float trips are generally associated with fishing. Of the approximately 2,000 people drifting the river annually with professional river guides, over 50% are non-resident. They may pay \$200 or more for the 102-mile trip from Grants Pass to the ocean.
 - A recent innovation in river floating, summer raft floats, is receiving considerable favor. These guided tours are offered by several commercial operators and provide five to eight day trips. Camping and primitive conditions are stressed to provide an almost wilderness experience.
 - Private boating is enjoyed to some extent on all portions of the river. Although specially-built Rogue River boats, kayaks, and rafts are the major types of craft employed, conventional outboards and jet boats can be safely used in some portions.
3. Hiking
4. Wildlife
5. Camping and Picnicking

In summary, five outstanding features and five primary recreation use considerations were identified in Enclosure 2 applicable to the entire 84 miles of the Wild & Scenic Rogue River. These features and considerations were not sorted nor synthesized into today's recognizable ORVs.

Outstanding Features

1. The Rogue River is nationally, and perhaps world renowned for the outstanding salmon and steelhead trout fisheries.
2. White-water boating, the ultimate experience for many river users.
3. Commercial jet boat operations.
4. Natural features, including towering cliffs and large moss-covered boulders, are spellbinding in some of the canyons and chutes.
5. Historical significance of the area.

Primary Recreation Use Considerations

1. Fishery and Fishing
2. Boating (commercial jet boats, professionally-guided float trips, and private boating)
3. Hiking
4. Wildlife
5. Camping and Picnicking

In conclusion, was the author was well aware of the 1969 BLM Master Plan and also was impressed with it. Its inventory strokes were not as broad as the 1964 Study Plan and it also did not formally identify ORVs, but it was still comprehensive with its idea of outstanding features and primary “recreation use” considerations. It is the author’s opinion that this report in combination with the 1964 Study Plan could assist in developing the baseline conditions for the ORVs at the time the river was designated. (Appendix I). It, like the 1964 Study Plan, was partially responsible for the 1991 Pre-Plan Analysis’ focus on Section 1(b) of the Act when it came to identifying ORVs.

d) BLM & FS Comprehensive River Management Plan: 1972

In 1972, the U.S. Forest Service and the BLM revised and combined their 1969 master plans for the W&S Rogue River. The combined plan was the *Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan* (1972 Plan) (see Sec. I.D).

Department of the Interior, Bureau of Land Management. *Rogue National Wild and Scenic River, Oregon* (Notice of revised development and management plans; Federal Register, Friday, July 7, 1972, Washington, D.C.; Volume 37, Number 131, 13408-13416, Part II).

The 1972 Joint FS/BLM Plan was for the entire 84-mile W&S Rogue River as administered by the two federal agencies. The first 47 miles was under the administration of the BLM extending from the mouth of the Applegate River downstream to the FS boundary near Marial. The second 37 miles was administered by the FS from the FS boundary downstream to the Lobster Creek Bridge. Although the original 1969 BLM and FS Master Plans were closely coordinated, there was some difference in language which caused public confusion. Therefore, the BLM and FS developed the 1972 Joint FS/BLM Plan. This plan would guide both agencies in their development and management of the W&S Rogue River.

The 1972 Plan provided the basic framework of policies, objectives, and direction for managing the river. In terms of identified law and policy for the HRAMP, the 1972 Plan was not substantially different from the 1969 BLM Master Plan that preceded it (see previous section on 1969 Master Plan). It was much clearer and understandable in the sense of eliminating the duplication and redundancy of what was in effect two 1969 Hellgate RAMPs

In conclusion, the author was knowledgeable of the 1972 Joint FS/BLM Plan and thought it was reasonable, but not earth shaking in identifying the ORVs, as it, like the previous two river plans, didn’t. It mostly corroborated the previous river planning. It is the author’s opinion that this report in combination with the previous two river plans could assist in developing the baseline conditions for the ORVs at the time the river was designated. (Appendix I). It, like the previous two river plans, was partially responsible for the 1991 Pre-Plan Analysis’ broad focus on Section 1(b) of the Act when it came to identifying ORVs.

e) BLM Hellgate Recreation Section Activity Plan: 1978

The 1978 Hellgate RAMP document was the first BLM W&S Rogue River publication meeting quality service in design and production standards. The publication's professional design showcased the BLM's W&S river expertise for the Rogue and the publication stood out from the competition. It presented itself well and was written and marketed for public consumption versus the bureaucratic planner, and the content was good for its purpose.

The BLM HRA is a 27-mile segment of the Rogue River (see [Section I.B](#)). In 1972, the FS and the BLM revised and combined their 1969 Master Plans for the W&S Rogue River. This combined 1972 Master Plan, together with the directives of the Act, provided the basic framework of policies and objectives identified in the 1978 plan.

The HRAMP implementation plan was about recreational development, and it accomplished that mission well. It was comprehensive and detailed on specific "recreational development" details. A page analysis of the 80-page Hellgate RAMP demonstrated that 83% was related to management policies for development issues and developing and managing recreational facilities ([Appendix L](#)). Of the 17% left, none covered the issue of explicit designated ORVs. A small section of the RAMP identified a need for river values to be assessed.

The RAMP's purpose was not about identifying the Hellgate RA's ORVs nor explaining their rationale. In general, the 1978 Hellgate RAMP was based on the ambiguity of the 1972 BLM/FS plan's treatment that ORVs needed to be protected and enhanced.

Except for its philosophical preface, the 1978 Hellgate RAMP did not provide much to the basic framework and objectives beyond the 1972 Master Plan. It did provide specific "recreational development" details for the BLM Hellgate RA, and it did repackage possible ORVs and similar river values in a similar yet different way.

Significantly the Hellgate RAMP implied a broader policy for the values the river was to be managed with some more detailed guides to land use management policies. The specific identified objectives of the RAMP follow.

- Protect, enhance, and maintain the natural beauty and character of the river corridor through effective visitor and land use management.
- The BLM is trying to preserve the special qualities of the Rogue through long-range planning of land and water resources. Toward this goal, the BLM is responsible for managing the Rogue River corridor **to protect our fish and wildlife habitat, preserve the environment and cultural values, and provide for the enjoyment of life through outdoor recreation opportunities.**

The 1978 plan could be interpreted to identify the three current ORVs (i.e., natural scenic qualities, fisheries resources, and recreational opportunities), if the reader agreed with statements in the 2003 Hellgate RAMP/FEIS that the same three explicitly identified ORVs were identified in the 1969 BLM Master Plan and the 1972 Joint FS/BLM Joint Plan. After all, if the ORVs were identified in the 1969 and 1972 river plans and are the same as the 2004 Hellgate RA Plan, they must be the same in the 1978 plan. However, the 2004 Hellgate RA Plan does not identify that the ORVs are the same in the 1978 plan, only the same as the 1969 and 1972 plans.

Or, the Hellgate RAMP could be interpreted to include a broader range of ORVs, including wildlife habitat and cultural values, or it could be interpreted to scope a range of possible ORVs that are necessary to be assessed in the future. In a section on “Determining Quality Recreation Experiences” the 1978 RAMP acknowledged management did not explicitly know what the river values were and they needed to be assessed: “. . . *it is necessary to assess what values are present in the Rogue River corridor, and to what extent they may be utilized.*”

As stated in the Wild and Scenic Rivers Act, rivers which possess **outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic and cultural values**, shall be preserved in a free-flowing condition, and they and their environments shall be protected for the benefit and enjoyment of present and future generations. In order to carry out the directives of this federal law, **it is necessary to assess what values are present in the Rogue River corridor**, and to what extent they may be utilized.

In conclusion, the author was knowledgeable of the 1978 Hellgate RAMP and thought it was visually pleasing, and well written accomplishing its purpose of marketing recreational development. However, it was not reveling in identifying the ORVs, as it, like the previous two river plans, didn't. It mostly corroborated previous river planning policies.

It is the author's opinion that except for its philosophical preface, the 1978 plan did not provide much to the basic framework and objectives beyond the 1972 Master Plan. It did provide specific “recreational development” details for the Hellgate RA Section, and it did repackage the ORVs and similar river values in a similar yet different way. Significantly the 1978 plan implied a broader policy for the values the river was to be managed, and pointed out the need to assess what the river values were.

This report in combination with the previous two river plans could assist in developing the baseline conditions for the ORVs at the time the river was designated. (Appendix I). It, like the previous two river plans, but at a much lesser level, was partially responsible for the 1991 Pre-Plan Analysis' broad focus on Section 1(b) of the Act when it came to identifying ORVs.

f) *Rogue River's Outstandingly Remarkable Values (ORVs): 1992 Bibliographic Reference*

The question of this section involves a 1992 memorandum with the topic of *Rogue River's Outstandingly Remarkable Values (ORVs)* (see [Section I.D., Proposed HRAMP/FEIS](#)).

United States Department of the Interior, Bureau of Land Management, Medford District Office, Grants Pass Resource Area. 1992c. *Rogue River's Outstandingly Remarkable Values (ORVs)*. Memorandum from Outdoor Recreation Planner, Medford District Office, October 29, 1992. 8351.2 (11785). Medford, OR. (Bibliography p. 8, from *National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement*. March 2003. USDI, BLM, MDO).

The 2003 proposed HRAMP/FEIS identified that because the Rogue River was one of eight instant river WSRs, the ORVs were not identified in the original designating 1968 WSR Act. Therefore, the need to identify the ORVs led the BLM to rely on congressional records to determine what the legislation intended for the Rogue River. The BLM proceeded to specifically share where the study analysis of legislative intent was located (i.e., 1992

memorandum to files). It was written that this memo outlined the legislative history of the Act, and included language from legislative discussions relative to the Rogue River and its ORVs.

It is unknown whether the memorandum directly responded to the 1982 Interagency Guidelines. It is odd, but the author does not have a recollection of the 1992 memo on ORVs. Must be old age. Smile. The author provides several alternatives to explain the bibliographic reference.

Alternative 1. The author, as Outdoor Recreation Planner for the Grants Pass Resource Area (GPRA), wrote 1992 ORV memorandum, but does not remember.

Alternative 2. BLM Medford District Office (MDO) Outdoor Recreation Planner wrote 1992 ORV memorandum. Rationale supporting this alternative is: (1) the author does not remember writing the memo and (2) the reference includes organizational indexing for paperwork management (i.e., “8351.2 (11785)”) which the author did not use in the 33 “*Background Paper[s] for Revising the Hellgate Recreation Area Management Plan.*”

Alternative 3. The 1992 *Rogue River’s Outstandingly Remarkable Values (ORVs)* memo was relocated to some archives or eliminated after 10 years as irrelevant to future planning processes.

Alternative 4. Editing errors by ID Team HRAMP/FEIS.

A potential issue is that the 1992 memo 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 eligibility determination from the 1982 Interagency Guidelines, the 1999 The Wild & Scenic River Study Process, or the 2002 WSR Management Responsibilities technical report guidelines for the Rogue’s values to be considered as ORVs by being unique, rare, or exemplary features significant at a comparative regional or national scale (see [Section I.B](#)).

The 1992 memo was identified in the 2003 Hellgate RAMP/FEIS as rational for the three ORVs: (i.e., natural scenic qualities, fisheries resources, and recreational opportunities) in a response to an ORV comment on the 2000 Hellgate RAMP/DEIS.

Response: In 1968, the Rogue River was one of the original eight rivers that received “instant” designation under the Wild and Scenic Rivers Act. Because of this instant designation, the **ORVs were not identified in any designating legislation**. The need to identify the ORVs led the managing agencies to **rely on congressional records to determine what the legislation intended**. Memorandum to Files, 8351.2 (11785) ORV2 **outlines the legislative history of the Wild and Scenic Rivers Act of 1968, and includes language from legislative discussions relative to the Rogue River and its ORVs** (see [Section I.D](#)).

A weakness to deficiency of the HRANP planning/EIS processes is why important ORV information in the 1992 memorandum was not provided in the Hellgate RAMP/DEIS or FEIS, or provided in whole or in part in an appendix? With that stated it noted that the importance of the ORVs in guiding the performance of CRMPs was also not understood by the ID Team, including the Team Leader (the author) from 1991 - 1998, which had the 1882 Interagency Guidelines.

In summary, the 2003 BLM proposed HRAMP/FEIS identified that because the Rogue WSR was an instant river, that the ORVs were not identified in any designating legislation. Therefore, the need to identify the ORVs led the managing agencies to rely on two 1968 U.S. House bills and one 1992 BLM memorandum to files to determine what the legislation intended. The BLM proceeded to specifically share where the study analysis of legislative intent was located (i.e., Memorandum to Files, 8351.2 (11785) ORV2. The HRAMP/FEIS recorded that this memo outlined the legislative history of the WSRA, and included language from legislative discussions relative to the Rogue River and its ORVs (see Sec. I.D).

What documentation is needed for eligibility determinations? The applicable documentation requirements for eligibility analysis/assessment/studies available to the 2003 HRAMP/FEIS were provided in one policy document and two technical papers.

1982 Interagency Guidelines.	1982 U.S. Department of the Interior - U.S. Department of Agriculture <i>Final Revised Guidelines for Eligibility, Classification, and Management of River Areas.</i>
1999 WSR Study Process.	<i>The Wild & Scenic River Study Process</i> , Interagency Coordinating Council (IAC).
2002 WSR Management Responsibilities	<i>Wild and Scenic River Management Responsibilities</i> , IAC.

1982 Interagency Guidelines (see Sec. I.B) The guidelines provided that a report would contain a “Determination of Eligibility.” Each report (e.g., assessment, analysis, etc.) will contain a determination as to the eligibility of all portions of the authorized study area. The determination of whether a river area contains “outstandingly remarkable” values is a professional judgment on the part of the study team. The basis for the judgement will be documented in the study report. However, they was no guidance as to how the determination of eligibility should be documented in a future or revised RAMP/EIS.

1999 The Wild & Scenic River Study Process (Appendix G) The study process was an early approach for the BLM’s instant rivers. This paper documented the first methodology to significantly assist the applicable Federal agencies in satisfying their mandate to identify eligibility rivers with detailed standards that could be applied consistently across agencies, and that required written findings of eligibility.

The WSR study process provided that land use plans prepared by agencies are revised on either a 10 - to 15-year cycle, or on an issue basis. WSR eligibility findings and/or suitability determinations should be reviewed during the revision process; however, absent changed resource conditions and/or trends, or changed levels of local support, the results of a WSR study are typically incorporated into the plan revision. It required eligibility findings. To be eligible for designation, a river must be free-flowing and possess one or more ORVs. Thus, the eligibility analysis consists of an examination of the river’s hydrology, including any man-made alterations, and an inventory of its natural, cultural and recreational resources. There are a variety of methods to determine whether certain resources are so unique, rare or exemplary as to make them outstandingly remarkable. The determination that a river area contains ORVs is a professional judgment on the part of the IDT, based on objective, scientific analysis. They were some quite detailed standards for how the IDT written findings of eligibility. However, again,

they was no specific guidance as to how the determination of eligibility should be documented in an RAMP/EIS.

2002 WSR Management Responsibilities. (Appendix H) By 2002 the Merced River and other WSRs' legal challenges were on the radar of river managers (Appendix E).

Managing WSRs requires a thorough understanding of the provisions of the Act. An interagency interpretation of the Act was completed in 1982 Interagency Guidelines. Since issuance of these guidelines, several sections of the Act have been amended to clarify intent, most notably the requirement for the development of a comprehensive river management plan (CRMP). In addition, the courts have provided interpretation of various provisions of the Act as a result of litigation. The 2002 paper discusses those sections of the Act that relate to managing WSRs, including a detailed discussion of the contents and key elements of a CRMP (Appendix H).

Guidance for the river manager in managing a designated WSR or developing (revising) a CRMP is provided. The purposes for which WSRs are added to the NWSRS are made explicit in this paper —specifically, to protect a river's freeflowing condition, water quality, and outstandingly remarkable values (ORVs). Sections 7(a) and 10(a) make reference to these collective "values" for which rivers are added to the National System. A river's ORVs are identified pre-designation through a study or, **for an "instant river," post-designation during preparation of a CRMP.** Management implications were identified, such as the following.

- Thoroughly define the ORVs to guide future management actions and to serve as the baseline for monitoring.
- Describe a river's classification and landscape character at the date of designation in the CRMP to serve as the basis for evaluating proposed land uses and monitoring.

Prior to 1986, Section 3(b) of the Act required the river-administering agency to "prepare a plan for necessary developments in connection with its administration in accordance with such classification." Through a generic amendment of the Act in 1986, Section 3 was amended with a new subsection requiring a "comprehensive management plan . . . to provide for protection of the river values" (Section 3(d)(1)). The CRMP must address:

Section 3(d)(1) allows the CRMP to be coordinated with, and incorporated into, a river administering agency's resource management plan. The CRMP for rivers designated on or after January 1, 1986, is to be completed within three full fiscal years after the date of designation with a notice of completion and availability published in the *Federal Register*. **For rivers designated before this date, Section 3(d)(2) requires review of the CRMP to determine if it conforms to Section 3(d)(1).**

In conclusion, the author does not remember the 1992 ORVs memorandum to the files. Is the memorandum adequate to satisfy the 1982, 1999, and 2002 policy and technical report guides of the Interagency Coordinating Council (IAC)? At this point it is unknown.

The 1982 Interagency Guidelines and 1999 WSR Study Process were hazy in their requirements of instant rivers needing eligibility studies and for the documentation of eligibility studies (e.g., assessments, analysis, etc.) in a CRMP.

The 2002 WSR Management Responsibilities' paper was clear, and when combined with the 1982 Interagency Guidelines and the 1999 W&S River Study Process paper, they collectively were explicitly clear that they were also applicable to instant rivers and the documentation of eligibility studies was required in revised RAMPs/EISs. However, the Interagency Coordinating Council's (IAC) early technical reports were not understood to be near mandatory guidance as they are today (i.e., as acknowledged in 2012 BLM Manual 6400 W&S Rivers Manual; [Appendix K](#)).

Today a bald opinion relying on a 1992 ORV memorandum with references to the legislative record without providing any of the studies' rationale would certainly not be in compliance with today's interpretation of the Wild and Scenic Rivers Act (e.g., 2012 BLM Manual 6400 and its reliance on the IAC white papers/technical reports ([Appendix K](#)), etc.).

g) Cultural Resources Background Paper: 1993

It is not understood why other river values would not be identify as ORVs. The historical planning record makes a strong case that if an eligibility study was developed that cultural and wildlife values along with others would have a high probability of being ORVs. For example, the cultural resources within the entire Rogue River corridor are especially significant.

The question of cultural resources and other river values qualifying as ORVs were identified as public comments in the DEIS comments process (see [Sec. I.D., Proposed HRAMP/FEIS](#)). The answer that "*Other river-related values that are important, but were not considered outstandingly remarkable at the time include cultural and wildlife resources.*" was not adequate. The reason was that zero insight, or analysis/assessments/studies were provided in the FEIS to support why cultural resources were not considered ORVs.

Comment: There are significant concerns with how ORVs are applied and selected for the Hellgate Recreation Area under the National Wild and Scenic Rivers Act. How were the ORV's identified? Why aren't other resource values identified as ORVs? ORVs that the BLM failed to identify are: cultural values, wildlife values, hydrologic values, and ecological values.

Response: In 1968, the Rogue River was one of the original eight rivers that received "instant" designation under the Wild and Scenic Rivers Act. Because of this instant designation, the ORVs were not identified in any designating legislation (emphasis added). The need to identify the ORVs led the managing agencies to rely on congressional records to determine what the legislation intended. Memorandum to Files, 8351.2 (11785) ORV2 outlines the legislative history of the Wild and Scenic Rivers Act of 1968, and includes language from legislative discussions relative to the Rogue River and its ORVs.

Other river-related values that are important, but were not considered outstandingly remarkable at the time include cultural and wildlife resources.

The historical planning record includes four documents providing an understanding of the significance of cultural resources as a probable ORV: 1. 1964 draft Study Report, 2. 1969 BLM Master Plan, 3. 1972 Joint FS/BLM Plan, and 4. 1993 Cultural Resources Background Paper (see Sec. I.C).

The Rogue River corridor has provided a place for people to live and work for at least 10,000 years. Both the ethnographic record and historic documents substantiate the importance of the river to the history of this area. Prehistoric and historic sites along the river represent this past. The importance of the river is reflected in the numerous place-names that survived in the memories of the native people who lived to tell their story in the early twentieth century. There are over a half dozen examples of several important archaeologically sites along the HRA of the Rogue River. Historic sites along the National Wild & Scenic Rogue River (entire 84-miles) reflect many of the major themes of this region's history.

- Rogue Indian Wars from 1851-1856
- Gold Mining in Southwestern Oregon
- Development of Small-scale Subsistence Economies and Communities in the Siskiyou Mountains
- Development of Recreation
- Impact of the Great Depression in the 1930s
- Development of Logging and Forestry

There are as many examples of historic sites and locations noted or recorded along the HRA of the Rogue River. The following National Register of Historic Places are located on the BLM 47-mile administered and managed recreation and wild sections.

- Whiskey Creek Cabin (September 5, 1975)
- Stratton Creek: Partially excavated by Oregon State University in 1992 (35JO21); Prehistoric Occupation of the Stratton Creek Site (35JO21), Josephine County, Oregon*
- Speed's Place on the Rogue (June 21, 1991)
- Rand Ranger Station (June 10, 1999)
- Zane Grey's Cabin (nominated to National Register of Historic Places)
- Rogue River Ranch at Marial (35CU84) (1973?) (December 29, 1975?)

It would appear from a reading of the 1982 Interagency Guidelines that the cultural resources (i.e., both pre-historic and historic) would meet the eligibility criteria as ORVs.

In conclusion, the author's professional opinion was that cultural resources and other river values would have been identified as ORVs if an eligibility study by a planning team was completed. For example, cultural resources has been identified as significant in the 1964 Study Plan and 1969 Master Plan. Historical values had been determined to be eligible as an ORV in Appendix J of the 1994 MDO Proposed RMP/FEIS.

This view of conducting eligibility studies was in conflict with BLM policy from Washington and the Oregon State Office that instant rivers were not legally required to conduct eligibility studies. The significant rationale was simple. Legal interpretation were that the Act was unclear on an agency's obligation to define a river's ORVs, and the task was relevant only to the selection of new rivers for inclusion into the WSRS.

Just as important was the fact that the HRAMP ID Team, including the Team Leader (author), were not knowledgeable of the eventual importance of identifying ORVs and their baseline conditions. This was because it was a given that the river's values would be protected (e.g., 1966 National Historic Preservation Act, 1969 NEPA Act, 1973 Endangered Species Act, 1972 Federal Water Pollution Control Act, 1976 Federal Land Policy & Management Act, 1979 Archaeological Resources Protection Act etc.). They were satisfied that the three emerging ORVs (1. its natural scenic environment, 2. the fisheries resource, and 3. the recreational opportunities) had been satisfactorily identified, and saw no reason for a conflict with management toward the goal of providing an additional "eligibility" analysis/study for an instant river that was required for later rivers.

h) Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River: 1994 (see Sec. I.D.)

Like the 1978 Hellgate RAMP, the issues and alternatives document was a publication exceeding the normal government quality service in design and production standards. The publication's professional design showcased the BLM's W&S river expertise for the Rogue River and the publication stood out.

This was the first time in this process to revise the HRAMP that the ORVs were identified: 1. natural scenic environment, 2. fisheries resource, and 3. recreational opportunities. The three ORVs were for the entire 84-miles of the Wild and Scenic Rogue River.

The portion of the Rogue River from the mouth of the Applegate River downstream to Marial, a distance of approximately 47 miles, is administered by the Medford District Office (MDO), BLM. The lower 37 miles are located within the boundaries of the Siskiyou National Forest and are administered by the USFS. **The outstandingly remarkable values for which the Rogue River was designated are its natural scenic environment, the fisheries resource, and the recreational opportunities it provides.** While not specifically singled out by Congress, Federal managers of the river also consider the wildlife and cultural resources to be significant.

The scoping issues previously identified by the public addressed several areas of concern: possible impacts to river resources from visitor use, health and safety concerns, socioeconomic benefits, motorized versus nonmotorized boating, and the social carrying capacity of the river. Social carrying capacity relates to the question of the increased visitor use altering or degrading the recreational experience. The jet boat or motorized tour boat (MTB) service was clearly identified as the major point of controversy among users of the HRA. The common interests of all users and/or visitors were the opportunity to view scenery and wildlife, to be in a natural setting, and to enjoy the river.

There were no eligibility studies completed for the HRA segment of the W&S Rogue River to determine whether it was eligible for inclusion in the NWSRS per the 1982 Interagency Guidelines (i.e., it was already an instant river). To be eligible, a river segment must be “free flowing” and must possess at least one ORV. The legal interpretation were that the Act was unclear on an agency’s obligation to define a river’s ORVs, and the task was relevant only to the selection of new rivers for inclusion into the WSRS.

The issues and alternatives document implied that the ORVs came from the original October 2, 1968 WSRA (see Sec. I.B; Appendix D), but the original Act provided no identification of the ORVs, similar values, or other river values for the W&S Rogue River. There was zero rationale provided for the ORVs as there had been no study to identify the eligibility for inclusion into the WSRS. The author believes the basis for the 1994 identification of the ORVs started with the 1964 Study Report (see Sec. I.A) and the 1969 BLM Master Plan (see Sec. I.B).

Per the Issues and Alternatives document, the three ORVs for the HRAMP were identified because they were the ORVs for the entire 84-mile Wild & Scenic Rogue River identified in the 1969 Master Plan per Congressional intent, presumably in two house reports referenced, but not provided in anyway except to identify the three ORVs.

In conclusion, the author’s professional opinion was that the HRAMP ID Team, including the Team Leader (author), was satisfied that the three ORVs had been satisfactorily identified. This view was inline with BLM policy from Washington and the Oregon State Office that instant rivers were not legally required to conduct eligibility studies. The significant rationale for this policy was simple. Legal interpretation were that the Act was unclear on an agency’s obligation to define a river’s ORVs, and the task was relevant only to the selection of new rivers for inclusion into the WSRS. The author saw no reason to provide an additional “eligibility” analysis for an instant river that was required for later rivers being considered for the WSRS. Just as important was the fact that the HRAMP ID Team, including the Team Leader (author), were not knowledgeable of the eventual importance of identifying ORVs and their baseline conditions.

The conflict for the author remained. Privately the author’s professional opinion was that cultural resources and other river values would be identified as ORVs if an eligibility study was completed. However, the three ORVs had been satisfactorily identified and it was believed a given that the river’s other values would be protected. The author saw no significant reason to provide an additional “eligibility” analysis for an instant river that was required for later rivers being studied that would buck higher level policy. Trying to change policy that did not appear to harm the river did not seem worth it.

Right or wrong the author made an internal compromise that did not feel like core values were being violated (i.e., the author’s and the river’s core values). It appeared that eligibility studies would be helpful and result in different ORVs, but that the river’s values would be protected without additional eligibility studies costing more time and money. The author did not want to fight management and a compromise agreement was acceptable because it did not obviously harm the river.

i) Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative: 1994

Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative. Memorandum from Jim Leffmann, Rogue River Manager, to Interdisciplinary (ID) Team Members for Hellgate Recreation Area Management Plan (RAMP) Revision. USDI, BLM MDO. Medford, OR.

Relevant portions of the memorandum follow.

INTERNAL BLM DRAFT: THE DEVELOPMENT OF THE PREFERRED ALTERNATIVE

The design criteria of the preferred alternative will be to meet the management criteria of the National Wild and Scenic Rivers Act (i.e., especially the protection and management of the outstandingly remarkable values, and to satisfy the eight overall objectives. . . (p. Attachment 1-1).

Management common to all alternatives for the Hellgate Recreation Area is found in the Congressional designation decision. A 27-mile stretch of the Rogue River from the confluence of the Applegate River to Grave Creek was found to meet Congress's objective for a recreational segment of a National Wild and Scenic River. The Rogue River possesses outstandingly remarkable values and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. The Rogue River in the Hellgate Recreation Area is to be preserved in its free-flowing condition to protect its water quality and to maintain its undisturbed condition (p. Attachment 1-1).

The Hellgate Recreation Area will be administered in such a manner as to protect and enhance the values which caused it to be included in said system without limiting other uses that do not substantially interfere with public use and enjoyment of these values. The outstandingly remarkable values for which the Rogue River was designated are its **natural scenic environment, the fisheries resource, and the recreational opportunities (e.g., motorized boating, non-motorized boat fishing, non-motorized float boating, day use, etc.)** (p. Attachment 1-1) it provides. While not specifically singled out Congress, Federal managers of the river also consider the wildlife and cultural resources to be significant. In such administration, **primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeologic, and scientific features** (p. Attachment 1-1). Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on the **cultural values, fisheries resource, natural scenic environment, recreation opportunities, or wildlife habitat** (p. Attachment 1-1).

The author does not remember why his supervisor, the Rogue River Manager, elected to write the minutes of this September 22, 1994, ID Team Meeting on the preliminary draft recommendation for preferred alternative. He assumes he did it because it was the first clear effort to identify the preferred alternative. It is one of the very few memorandums the author made a copy and saved after he retired May 1998.

In conclusion, the author's professional opinion was that the three ORVs had been satisfactorily identified several months earlier in the May 1994 issues and alternatives document ([see previous section](#)). This ORVs view was inline with BLM policy from Washington and the Oregon State Office that the Act was unclear on an agency's obligation to define a river's ORVs, and the task was relevant only to the selection of new rivers for inclusion into the WSRS (i.e., not instant rivers).

j) Comparisons of ORVs: 1958 - 2014

A preliminary summary of comparing the potential range of ORVs from the historical planning documents reviewed, including other similar values, and other river values, is contained in Table IIA-1 and Table IIA-2. Substantial information was provided in these historical documents which could support a vigorous dialogue about what the HRA's ORVs are, and perhaps should be, from the Rogue River's many different constituencies. After reviewing the historical record, it takes little effort to realize the wide range of possible ORVs, similar river values, and other river values.

The USDI Secretary Bruce Babbitt's February 6, 2003 comment on the active interested public of the Yosemite Park, including the National Wild and Scenic Merced River, humorous, are probably applicable to the HRA. He characterized Yosemite's diverse stakeholders as a "*cantankerous, eccentric, passionate, irrational, idealistic, quarrelsome, impossible crowd of people.*"

The methodologies to be eligible for designation (i.e., a river must be free-flowing and possess one or more ORVs) were not well developed through the mid-1990s. Thus, the eligibility analysis generally consisted of an examination of the river's hydrology, including any man-made alterations, and an inventory of its natural, cultural and recreational values. The historical documents applicable to the HRA were all over the board in examining possible ORVs (Table IIA-2).

The 1964 draft *Study Report of the Rogue River, Oregon* included applicable conclusions and recommendations of the study team, of which the most important were the identified "outstanding quality" features of the Rogue.

1. The most significant feature of the Rogue is its outstanding salmon and steelhead trout fishery
2. Four individual stretches exist in the study area which have **outstanding scenic qualities**
3. Boating the Rogue River, in addition to providing an excellent means of viewing the scenic features, represents a recreation use of outstanding quality

The flora and fauna along the river are of an exceptional quality. The manner in which the river and its setting may be observed is worthy of mention as a natural quality.

One could argue that the 1964 study was significantly accurate in its description of today's identified ORVs and could have been the original basis of today's management by BLM of the ORVs. This exercise of comparing the ORVs in the 1964 study report and the 2004 ROD is educational (Table IIA-1), but probably not important in terms of establishing the legal intent of Congress as the 1968 Act has zero information on the ORVs for which the Rogue River was designated.

In summary, the standards for identifying the eligibility of possible ORVs were limited and the range of possible ORVs identified in the historical planning documents was broad.

k) Comprehensive River Management Plans

When the time comes to revise the BLM's current Hellgate and Wild section activity plans (i.e., CRMPs), management should consider the Act's focus for a plan per "Section 3(d)(1)" (**Appendix I**), especially the court's relatively recent concerns about "user capacities" (i.e. user capacity, carrying capacity, visitor capacity, or recreational carrying capacity are the same), and the 2012 BLM Manual 6400.

1. Resource protection;
2. Development of lands and facilities;
3. User capacities; and
4. Other management practices necessary or desirable to achieve the purposes of the Act.

What follows are examples of CRMP outlines beyond the requirements of Section 3(d)(1). This is an area that river managers have latitude.

Alternative 1. Comprehensive River Management Plan (CRMP) Outline

1. Protecting Wild and Scenic Rivers by Preventing Degradation
2. Development of lands and facilities
3. User Capacities
 - 3.1 Thresholds (goals or desired conditions)
 - 3.2 Define Analysis Areas
 - 3.3 Estimate Capacities for each Analysis Area (river segment)
 - 3.3.1 Implicit Capacities (e.g., Status Quo)
 - 3.3.2 Explicit Capacities (e.g., Pro-active, measurable, indicators and standards)
4. Other management practices necessary or desirable to achieve the purposes of the Act.

Alternative 2. Comprehensive River Management Plan (CRMP) Interagency Outline (**Appendix I**)

1. Protecting Wild and Scenic Rivers by Preventing Degradation
 - 1.1 Management Direction
 - 1.1.1 Goals and Desired Future Conditions
 - 1.1.2 Standards and Guidelines by Resource
 - 1.1.3 River Corridor Boundary
 - 1.1.4 Principles for Land Acquisition (as appropriate)
3. User Capacities
 - 3.1 Description of River Setting and Resource Values
 - 3.1.1 Regional River Setting
 - 3.1.2 Description of River Corridor (by resource)
 - 3.2.1 Basic hydrology
 - 3.2.2 Type/amount of recreation use (private and commercial)
 - 3.2.3 Type/amount of other uses permitted uses (e.g., livestock grazing, mineral activities)
 - 3.1.3 Land Ownership and Land-Use Description
 - 3.1.4 Outstandingly Remarkable Values (sufficiently detailed to serve as baseline for desired management direction and monitoring)

- [3.1.4.1 Thresholds (goals or desired conditions)]
- [3.1.4.2 Define Analysis Areas]
- [3.1.4.3 Estimate Capacities for each Analysis Area (river segment)]
 - [3.1.4.3.1 Implicit Capacities (e.g., Status Quo/Grand-fathering)]
 - [3.1.4.3.2 Explicit Capacities (e.g., Pro-active, measurable, indicators and standards)]

The following discussion is about “user capacities” (i.e. user capacity, carrying capacity, visitor capacity, or recreational carrying capacity, or terms for the same concept), a legal Act mandate covered in both alternatives. It is also about the following topics identified in Appendix A of the 2002 *Wild & Scenic River Management Responsibilities* document by the Interagency Wild & Scenic Rivers Coordinating Council ([Appendix H](#)).

1. Outstandingly Remarkable Values (sufficiently detailed to serve as baseline for desired management direction and monitoring)
2. Management Direction for 1. Goals and Desired Future Conditions and 2. Standards and Guidelines by Resource
3. Monitoring Strategy for 1. Standards, 2. Indicators for Management Actions, and 3. Process (intensity, frequency, personnel needs, and other costs)
4. Potential Appendix Material - Visitor Capacity Studies

It is also more focused on “user capacities” (i.e. user capacity, carrying capacity, visitor capacity, or recreational carrying capacity) as defined by concepts of explicit and implicit thresholds (often called indicators and standards), visitor capacity estimates, numerical estimation capacity process, and risk of a particular quality of thresholds, both to the ORVs and the courts.

Comprehensive River Management Plan (CRMP). Not surprisingly, time and resources are positively related to the quality of thresholds and the accuracy of user capacity estimates. More accurate and defensible approaches are more costly, in time and resources. Capacity processes can generally be arrayed on a spectrum from (1) explicit thresholds, high accuracy approaches that require substantial time and resources to (2) implicit thresholds, low accuracy approaches that require little time and resources. The selection of a numerical estimation capacity process will largely be one of selecting an appropriate point on this spectrum, understanding the limitations of whatever process is undertaken, and striving to minimize those limitations. This is similar to the concept of a sliding scale: “The sliding scale rule of analysis says that the level of analysis should be commensurate with the purpose or potential consequences.” The greater the potential consequences, impacts or risks, the more certainty and precision are needed, with resultant implications for the amount and quality of science and information that is needed (USDOA, USFS, Rocky Mountain Research Station. October 2010. *Numerical Visitor Capacity: A Guide to its Use in Wilderness*. Fort Collins, CO). [*Numerical Visitor Capacity*].

The process of deriving a meaningful numerical capacity is useful for the entirety of visitor use management. It involves **identifying goals, objectives, desired conditions, and what we refer to as thresholds (often called indicators and standards)**. It requires **monitoring**, evaluating the factors that influence impacts of concern, and identifying the **entire suite of visitor management actions** to be taken. Consequently, working through a capacity estimation process, regardless of whether limiting use is an important management tool, will benefit any recreation management program (*Numerical Visitor Capacity*).

Protecting Wild and Scenic Rivers by Preventing Degradation Thresholds (or indicators and standards) can sometimes be found in existing plans, but in many cases they will need to be developed. Even thresholds in existing plans may need to be adapted or supplemented, because existing plans may not have identified some of the specific issues that are important for WSRs. Although the general issues which thresholds should address, such as preserving natural conditions, are similar across all WSRs, specific indicators will vary among areas.

The Wild and Scenic Rogue River's ORVs need development as their existing plans eligibility studies and assessments are deficient. The BLM's Hellgate and Wild Section RAMP's need to be supplemented to respond to public interest and recent court opinions. This is because in 1968, the Rogue River was one of the original eight rivers that received "instant" designation under the Act. Because of this instant designation, the ORVs were not identified in any designating legislation. The need to identify the ORVs led the managing agencies to rely on congressional records to determine what the legislation intended. This was not satisfactory to BLM or the public because, beyond the statement of reliance, the record of congressional intent was not available in the normal major planning records (i.e., EISs, RMPs, CRMPs, and RODs).

Addressing capacity is likely to be required in many situations where excessive visitor use has degraded the ORVs. Policy suggests that (1) use should be limited if necessary to avoid degraded, (2) any limits on visitor use should be based on estimates of visitor capacity, and (3) capacity should be based on concerns regarding protection of both the biophysical resource and social conditions. Managers need to think carefully before deciding to limit use and should not overlook other more effective means of dealing with impacts. But where limits are deemed appropriate, user capacity estimates are important inputs to decisions regarding use limits (*Numerical Visitor Capacity*).

Development of Lands and Facilities (BLM Activity Plans)

The 1978 BLM's *Rogue National Wild & Scenic River Activity Plan, Hellgate Recreation Section* is an example of a BLM activity plan whose primary focus was development of lands and facilities (see [Sec. II.B](#)). It will not be discussed here, but the relatively new 2012 BLM Manual 6400 for Wild and Scenic Rivers addresses "development of lands and facilities."

2012 BLM Manual 6400 Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public) [BLM Manual 6400]

7.5 Management Guidelines for Activities on Designated Rivers (pps. 7-3 to 7-9)

The responsible official must ensure activities on Federal lands meet the protection and enhancement standard set forth in the WSR Act. This may include actions outside the river corridor that have the potential to impact outstandingly remarkable values. The following guidelines are based on explicit direction in the WSR Act and interpretation provided in the **Interagency Guidelines** on how best to achieve the protection and enhancement standard by activity and classification. The following guidelines should be considered when developing CRMPs for designated rivers and incorporated where appropriate. These guidelines should also be considered for site-specific activities affecting designated rivers prior to CRMP approval. (BLM Manual 6400, p. 7-3)

User Capacities - BLM 2012 Manual 6400 for Wild and Scenic Rivers Supplemented

BLM 2012 Manual 6400 for Wild and Scenic Rivers

2012 BLM Manual 6400 Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public) [BLM Manual 6400]

Visitor Use and Capacity (BLM Manual 6400, pps. 7-9 to 7-10)

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** (emphasis added). 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** (emphasis added) is a useful tool for visitor use management (e.g., monitoring changes in use patterns). However, managers must 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.

A. Components of the CRMP. The CRMP should:

1. Include specific, measurable limits on use.
2. Discuss the maximum number of people that can be accommodated in a river corridor.
3. Make an explicit tie between the kinds and amounts of visitor and other public use (e.g., recreation events, commercial services, and noncommercial group use) and the protection and enhancement of outstandingly remarkable values.
4. Make an explicit tie between the location and size of facilities in the river corridor and the protection and enhancement of outstandingly remarkable values.
5. Describe an actual level of visitor use that will not adversely impact or degrade outstandingly remarkable values.
6. Specify an appropriate quantity of use based on an analysis of resource values and desired conditions, not necessarily previous or current use levels.
7. Include proactive rather than reactive measures, such as measures to trigger management actions before negative impacts to river values occurs.
8. Schedule periodic and ongoing studies to determine whether the quantity and mixture of use leads to adverse impact on the resource values of the river area.

Supplemental User Capacity Considerations (to BLM Manual 6400)

Numerical visitor capacities is only one of many visitor use management tools. For example, the amount of visitor use, the variable that capacity deals with, is often less important than such variables as the behavior of users or how and where use is distributed. If user capacity is used, it must be embedded in the context of a thorough analysis of the root cause of problems and a management prescription of diverse strategies and techniques (*Numerical Visitor Capacity*).

It is a given that developing numerical capacities are sometimes necessary. For example, in 2008 Merced the Ninth Circuit US Court of Appeals (*Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024 (9th Cir. 2008)) noted the “plain meaning” of the mandate to address user capacities was to “deal with or discuss the maximum number of people...which the river area can sustain without impact to the ORVs ([Appendix E](#)). This section treats the concept of the Ninth Circuit’s “user capacities” to be the same as carrying capacity, visitor capacity, or recreational carrying capacity.

Thresholds (goals or desired conditions) The terms “threshold” and “standard” are interchangeably, although the use the generic term “threshold” is used most often. As noted earlier, thresholds are not to be exceeded. They are requirements, not a suggestion (*Numerical Visitor Capacity*).

Carrying capacity studies were not developed for the BLM Hellgate RAMP and/or existing visitor use was designated the carrying capacity (i.e., for BLM Wild Section of WS Rogue River).

Estimate Capacities for each Analysis Area Note that the numerical capacities are estimates not decisions. These estimates are likely to change over time, as conditions change and better information becomes available. In contrast, the thresholds should be stable at least through planning cycles.

Monitoring Must Be Proactive. Even if there is no monitoring data and uncertainty is high, capacities can still be estimated. It is not necessary to wait until research and monitoring data are available or to avoid making an estimate because there are insufficient resources for research and monitoring.

Ideally thresholds should be explicit and quantitative. To address the most important values at risk, it is best to develop thresholds for multiple attributes of concern. Explicit, quantitative thresholds are referred to as indicators and standards in capacity processes such as Limits of Acceptable Change (LAC) and Visitor Experience and Resource Protection (VERP), as well as in some more general planning processes. However, some capacity estimation processes rely on implicit thresholds. Two processes that have frequently been used, in which the thresholds are implicit, are (1) capacity estimates based on procedures described in the Recreation Opportunity Spectrum (ROS) and (2) capacity estimates based on a freeze on current use.

The river management plan then should establish the baseline conditions at the time of designation — including a description of any degradation—and proposes management actions that will be taken to improve conditions until they meet the requirement to protect and enhance the river's values, including free flowing condition, water quality and ORVs (*Numerical Visitor Capacity*).

The baseline conditions of the values for which the river was designated (free-flow, water quality and ORVs) are critically important and were generally missing from the HRAMPs/EISs assessments, inventories, and CRMPs. They are needed to establish the plan requirement of user capacities. Without these baselines there is little basis from which the degree/intensity of existing and future impacts can be measured, and, therefore, minimal information to ensure continued high quality conditions and to eliminate adverse impacts or improve conditions within the river corridor. A thorough resource assessment that included baseline descriptions of the ORVs were not completed at the time of designation for the W&S Rogue River, or if completed at the time of designation, or after, they were not known to the author.

Monitoring is not absolutely necessary to estimate capacity but, if done well, it always increases the accuracy of estimates. The importance of monitoring increases as the risk to valued resources increases and as the uncertainty associated with predictions based on professional judgment, logic, experience or research increases (i.e., significant adverse impacts to ORVs or legal challenges high). And, in real world experience is that monitoring programs are usually not successfully implemented and are started over with each successive planning/EIS process.

Other management practices necessary or desirable to achieve the purposes of the Act

Where managers have little information and where the consequences of a capacity-based decision are not very controversial, rapid approaches may suffice. However, 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 approach is warranted. The keys to success are (1) employing the best available information; (2) basing an estimate on clear management objectives, logical thinking, sound science, and professional judgment (so it is not arbitrary); 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 (*Numerical Visitor Capacity*).

3. NEPA Significant Impact Methodology

The author believes there is a high correlation between the requirements of the WWSRA and 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. He finds it interesting and significant that both the WWSRA and NEPA became law in the same year - 1968. They both have principles of carrying capacity and thresholds performing exactly the same task ([Appendix C](#); [Appendix D](#)).

1. NEPA significant impacts with indicator and thresholds or standards
2. NEPA carrying capacity with indicators and thresholds or standards
2. WWSRA user capacities (carrying capacity) indicators with standards (thresholds)

The environmental policy of the U.S. is federal governmental action to regulate activities that have an environmental impact. The goal of environmental policy is to protect the environment for future generations while interfering as little as possible with the efficiency of commerce or the liberty of the people and to limit inequity in who is burdened with environmental costs. This policy grew mainly out of the environmental movement in the U.S. in the 1960s and 1970s during which several environmental laws were passed, regulating air and water pollution and forming the Environmental Protection Agency (EPA).

1963	Clean Air Act	1970	Clean Air Act
1965	Solid Waste Disposal Act	1972	Clean Water Act
1965	Water Quality Act	1972	Noise Control Act
1967	Air Quality Act	1973	Endangered Species Act
1968	W&S Rivers Act	1974	Safe Drinking Water Act
1969	NEPA Act		

Even after five years experience in the NEPA business and leading EIS teams, the author had several near revolts in quality controlling what is today considered a normal impact methodology (i.e., using thresholds with indicators and standards). The belief of the author was that, in the early 1980s, interdisciplinary specialists were experts at describing their resources of responsibility, but were behind the curve in explaining why impacts to these resources were significantly beneficial and/or adverse.

The author early on was interested in organizing impacts in a concise logical way. This was normal and different from the other ID specialists that were responsible for resource programs, not process. He was responsible for the planning process and was satisfied to find some guidance in a 1982 BLM publication (USDI, BLM. Preliminary draft June 11, 1982. *A Systematic Interdisciplinary Language For Environmental Analysis Under NEPA*. Authors P. T. Haug, R.W. Burwell, G. Yeager, A. Stein, and B. L. Bandurski. pages 24. Washington D.C.). The author believes the simple brief working glossary for environmental analysis was illustrative.

Baseline	Consequence
Change Agent	Human Environment
Component	Impact
Context	Index (today's standard)
Ecosystem	Indicator
Effect = Environmental	

The author remembered that in Nevada BLM, during 1979 - 1980, he had the responsibility of providing guidance and coordination for three grazing EISs as the *Environmental Protection Specialist*, BLM Nevada State Office: 1. Tonopah Grazing FEIS, 2. Paradise-Denio Grazing DEIS, and 3. Sonoma-Gerlach Grazing DEIS. For some ID specialists, resistance to identify thresholds for resource indicators was so great that he would not review for logic, but only for a threshold process (i.e., were indicators and standards identified?).

For example, the author's Nevada State Office wildlife counterpart came up with a threshold of significance for wildlife impacts (see [Appendix C](#)) which follows: "*The threshold is the existing population or quality of habitat. Any change in population would be significant.*" Several good chuckles were had over the years that the author had let the wildlife specialist place a statement in the 1981 Sonoma-Gerlach Grazing DEIS (p. 3-3) that the loss of one mule deer was significantly adverse. The way the author figured it the wildlife specialist was the author of the threshold standard, not him. He kept waiting to get his hands slapped, but it did not come.

He had more satisfaction in being the 1980 *EIS Team Leader* for the open-pit Anaconda Moly mining and transmission line project (i.e., DEIS and FEIS Anaconda Hall Nevada Moly Project EIS) where he had final decision-making on the methodology of the impact analysis as the Moly EIS project was contracted out for \$800,000 under the authority of 40 CFR 1506.5 (a) and (c). What follows are some NEPA standards very similar to WSRA standards.

NEPA, Section 102(2)(C) — Threshold Determinations. All agencies shall include an EIS with any proposal which is a major federal action significantly affecting the quality of the human environment. Therefore, all agencies must make a threshold determination concerning any proposal as to whether it is a major federal action, and if so, whether it significantly affects the quality of the human environment ([Appendix C](#); [Appendix D](#)).

What criteria should be used to assess whether or not impacts are significant (see 40 CFR 1508.27). The ID team is responsible for the identification and use of thresholds of context and intensity for use in determining impacts.

Factors to consider in determining significance are set forth in 40 CFR 1508.27. To determine significance, impact prediction may be compared to some parameter or maximum/minimum level of effect beyond which the impacts become significant (i.e., a significance threshold). Law, regulation, prior commitments, professional expertise, the manager's best judgement, and public opinion can affect the setting of significance thresholds.

The analysis of impacts must address direct, indirect (i.e., regional), and cumulative impacts on all affected resources of the human environment, including critical elements (i.e., air quality, areas of critical environmental concern, cultural resources, farm lands - prime or unique, flood plains, Native American religious concerns, threatened or endangered species, wastes - hazardous or solid wastes, water quality - drinking and ground, wetlands, riparian zones, wild and scenic rivers, and wilderness). Impacts should be identified in relationship to thresholds of context and intensity.

B. Methodology for Determining Outstandingly Remarkable Values For Wild & Scenic Rivers

Protections and Procedures of the Wild and Scenic Rivers Act Congress enacted the Wild and Scenic Rivers Act in 1968 to protect free-flowing rivers from dams and other development for present and future generations.¹ The WSRA and U.S. Code sections 1271–1287 establish designation procedures, management directives, and protection mandates for free-flowing rivers.² To qualify for designation, a river or segment of a river must possess at least one “outstandingly remarkable value” (ORV),³ including “scenic, recreational, geologic, fish and wildlife, historic, and cultural” values.⁴ Under U.S.C. § 1274(d), river managers responsible for managing WSRs shall prepare 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 WSRA.⁵ Under U.S.C. § 1281, river managers must “protect and enhance” designated ORVs.⁶ Although the WSRA’s “protect and enhance” mandate places a primary emphasis on “esthetic, scenic, historic, archeologic, and scientific features,”⁷ the statute contemplates uses compatible with preservation.⁸ The WSRA 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.”⁹ Thus, the statute and its implementing guidelines establish a preservation mandate, but allow uses that do not adversely affect a river’s ORVs.

Footnotes

1. The National Wild and Scenic Rivers System (Public Law No. 90-542, 82 Stat. 906 (1968) (codified at 16 U.S.C. §§ 1271–1287 (2006)). This Act may be cited as the “Wild and Scenic Rivers Act.”
2. P.L. No. 90-542, Sections 1 - 17; 16 U.S.C. §§ 1271–1287 (2006).
3. P.L. No. 90-542, Section 1 & Section 2(b); 16 U.S.C. §§ 1271, 1273(b).
4. P.L. No. 90-542, Section 1; 16 U.S.C. § 1271. ORVs, in short, are values that make the river worthy of protection. Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. 39,454, 39,457 (Sept. 7, 1982) (“Other similar values, . . . if outstandingly remarkable, can justify inclusion of a river in the national system.”).
5. P.L. No. 90-542, Section 3(d)(1); 16 U.S.C. § 1274 (2006). For rivers designated on or after January 1, 1986, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this chapter.
6. P.L. No. 90-542, Section 10; 16 U.S.C. § 1281(a) (2006).
7. P.L. No. 90-542, Section 10; 16 U.S.C. § 1281(a) (2006).
8. P.L. No. 90-542, Section 10; 16 U.S.C. § 1281(a) (2006). (“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 in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.”).
9. Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. at 39,458–59.

The Act requires that BLM, as part of land use planning processes, conduct an “eligibility” inventory of streams to determine if they have “outstandingly remarkable values” and to conduct a “suitability” study to see if eligible stream segments meet the requirements of the Act for designation.

The Act was passed by Congress to preserve riverine systems that contain outstanding features. The law was enacted during an era when many rivers were being dammed or diverted, and is intended to balance this development by ensuring that certain rivers and streams remain in their free-flowing condition. The BLM is mandated to evaluate stream segments on public lands as potential additions to the National Wild and Scenic Rivers System (NWSRS) during the Resource Management Plan (RMP) process under Section 5(d) of the Act. The NWSRS study guidelines are found in BLM Manual 8351 (update is 2012 BLM Manual 6400), the 1982 Interagency Guidelines, and in various BLM memoranda and policy statements. The NWSRS study process has three distinct steps:

1. **Eligibility.** Determine what rivers or river segments are eligible for NWSRS designation;
2. **Classification.** Determine the potential classification of eligible river segments as wild, scenic, recreational or any combination; and
3. **Suitability.** Conduct a suitability study to determine if the river segments are suitable for designation as components of the NWSRS.

1. Eligible for for NWSRS Designation

In order to be eligible for inclusion into the National System, the river, and its adjacent land area, must have one or more ORVs. A variety of methods can be used to determine whether certain river-related values are so unique, rare, or exemplary as to make them outstandingly remarkable. The determination that a river area contains ORVs is a professional judgment on the part of an interdisciplinary team, based on objective analysis (See Appendix J).

The eligibility of a river for potential inclusion in the National System is determined by applying inventory criteria from the WSRA (further described in the 1982 Interagency Guidelines). The inventory criteria are: the river must be free flowing and, with its adjacent land area, possess one or more ORVs. No other factors are considered in determining the eligibility of a river. The determination of eligibility is part of the inventory process and does not require a decision or approval document (See Appendix J).

2. Visitor Use and Capacity (BLM Manual 6400, pps. 7-9 to 7-10)

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 must 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.

a) *Components of the CRMP* (BLM Manual 6400, pps. 7-9 to 7-10). The CRMP should:

1. Include specific, measurable limits on use.
2. Discuss the maximum number of people that can be accommodated in a river corridor.
3. Make an explicit tie between the kinds and amounts of visitor and other public use (e.g., recreation events, commercial services, and noncommercial group use) and the protection and enhancement of outstandingly remarkable values.
4. Make an explicit tie between the location and size of facilities in the river corridor and the protection and enhancement of outstandingly remarkable values.
5. Describe an actual level of visitor use that will not adversely impact or degrade outstandingly remarkable values.
6. Specify an appropriate quantity of use based on an analysis of resource values and desired conditions, not necessarily previous or current use levels.
7. Include proactive rather than reactive measures, such as measures to trigger management actions before negative impacts to river values occurs.
8. Schedule periodic and ongoing studies to determine whether the quantity and mixture of use leads to adverse impact on the resource values of the river area.

C. POTENTIAL REVISION OF BLM HELLGATE And/or WILD RAMP(s)

The section is a brief overview of some historical W&S river policy documents that could be the foundation of any future BLM planning process to revise the Hellgate RAMP;

Section 3(d)(1) of the 1968 Act allows the comprehensive river management plan (CRMP) to be coordinated with, and incorporated into, a river administering agency's resource management plan. The CRMP for rivers designated on or after January 1, 1986, is to be completed within three full fiscal years after the date of designation with a notice of completion and availability published in the *Federal Register*. For rivers designated before this date, **Section 3(d)(2) requires review of the CRMP to determine if it conforms to Section 3(d)(1)** (2014 Compendium).

The purposes for which WSRs are added to the NWSRS are made explicit in section 1(b) of the Act—specifically, to protect a river's freeflowing condition, water quality, and outstandingly remarkable values (ORVs). Sections 7(a) and 10(a) make reference to these collective “values” for which rivers are added to the National System. A river's ORVs are identified pre-designation through a study **or, for an “instant river,” post-designation during preparation of a CRMP**. There is no statutory requirement that a CRMP be revisited in a specified timeframe. **However, 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** (2014 Compendium).

The following is selected information from the Interagency Coordinating Council's 2014 Compendium which relate to eligibility and CRMPs.

Interagency Wild & Scenic River Coordinating Council. May 2014. *A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*. [Page references = Compendium]

Question (Q). For WSRs flowing through federal lands, how does the CRMP relate to the WSR administering agency's unit-wide management plan (e.g., BLM Resource Management Plan, NPS General Management Plan, FWS Comprehensive Conservation Plan, USFS Land and Resource Management Plan)? (Compendium, p. 64)

Answer (A). The requirements specified for a CRMP in Section 3(d)(1) are most often developed through a separate-in-time planning process. This can result in either an amendment to the direction in the agency's unit-wide plan of a stand-alone plan, depending on agency practices.

Q. Is there a requirement for periodic updates to a CRMP for a river designated by Congress? (Compendium, p. 64)

A. No, there is no statutory requirement that a CRMP be revisited in a specified timeframe. However, 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. Agency unit-wide plans that are revised following a CRMP-specific plan amendment will follow individual agency practices for plan revision. In some cases, this may include updating the CRMP during the agency unit-plan revision cycle.

Q. What are the responsibilities of the federal WSR-administering agency (for rivers designated by Congress)? (Compendium, p. 69)

A. The federal WSR-administering 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. It is also responsible to protect and enhance a river's values, through its authorities on federal lands and through voluntary, cooperative strategies developed with other governments, tribal nations and landowners on non-federal lands, and to evaluate water resources projects under Section 7(a).

Initially guidance for the development of ORVs was limited. The exception was the **1982 *Final Guidelines for Eligibility, Classification, and Management of River Areas*** was available, and provided guidance for agency development of ORVs. The BLM's 1988 eligibility guidelines were also of value, but the record for the Hellgate RAMP does not appear to have applied them (Director BLM. September 8, 1988. *Guidelines for Fulfilling Requirements of the Wild and Scenic Rivers Act*. Instruction Memorandum No. 88-670 to All WO and Field Officials. Washington, D.C.).

It is believed that the BLM recognizes a need in any revised CRMP process to respond to questions and concerns in the interests of promoting transparency, accountability, sharing incremental work products, encouraging dialogue and building understanding between the BLM, visitors and stakeholders.

Guidance for agency development of ORVs was initially limited, but no longer, especially since 1999 and the ***The Wild & Scenic River Study Process*** policy document. Identification of future ORVs for any revised BLM river activity plans (i.e., Hellgate RAMP, and/or Wild RAMP) anticipated to be considered, but not be limited to, the following W&S river policy documents.

- 1968** **The Wild and Scenic Rivers Act** of 1968, 16 USC 1271-1287; Public Law 90-542, as amended
- 1982** **Interagency Guidelines** National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification, and Management of River Areas. Federal Register. September 7, 1982.
- 1999** **The Wild & Scenic River Study Process** Interagency Wild and Scenic Rivers Coordinating Council — This paper explains the wild and scenic river study process for congressionally authorized and agency-identified study rivers.
- 2002** **Wild and Scenic River Management Responsibilities** Wild and Scenic Rivers Coordinating Council — Considerations in managing—and developing management plans for wild and scenic rivers.
- 2010** **Interim Management and Steps to Develop a CRMP** Wild and Scenic Rivers Coordinating Council — This paper provides guidance for interim management of a newly designated wild and scenic river and generalized steps to develop a comprehensive river management plan. It expands the content of Appendix A of the Wild & Scenic River Management Responsibilities paper above.
- 2012** **BLM Manual 6400 Wild and Scenic Rivers**, Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public)
- 2014** **A Compendium of Questions & Answers** Relating to Wild & Scenic Rivers. Wild and Scenic Rivers Coordinating Council — Everything you wanted to know about wild and scenic rivers in a Q&A format.
- XXX Case law (see [Chapter III; Appendix E](#)).

The **WSRA** states simply “*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 or protected under the Act. Beyond the introductory description of values presented in the opening paragraph of the WSRA, the law provides no definition or specific requirements for developing ORVs. Because of the law’s emphasis in protecting and enhancing all river values, this list of ORVs typically forms the foundation of any river study process or comprehensive management plan. **WSRA Section 10(a)** 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 in said system ...*” Congress directed the USDI and the DOA to focus on specific plans and various management tasks in the administration of the WSRA (NPS. 2014. ORVs Over Time).

National Park Service. *Comparison of Merced River Outstandingly Remarkable Values Over Time.*
http://www.nps.gov/yose/parkmgmt/upload/Comparison_of_Merced-River_ORVs_Over_Time.pdf
Downloaded November 27, 2014. (NPS. 2014. ORVs Over Time).

In the interest of consistent implementation of the act, the USDI and USDOA published the final *Wild and Scenic Rivers Guidelines (Interagency Guidelines)* in 1982. The Interagency Guidelines provide that for “each report,” and presumably each plan, “*The description of the river area will identify the outstandingly remarkable values and the extent of man’s activity in the river environment to provide a clear basis for the findings of eligibility and classification. While only one [ORV] is necessary for eligibility, the study report should carefully document all values of the river area.*” (NPS. 2014. ORVs Over Time).

With regard to the development of ORV statements, the Interagency Guidelines provide that, “*The determination of whether a river area contains ‘outstandingly remarkable’ values is a professional judgment on the part of the study team. The basis for the judgment will be documented in the study report.*” In **1995**, the federal agencies charged with implementation of the WSRA – USFS, USNPS, USF&WS, and USBLM – established a collaborative working group known as the **Interagency Wild and Scenic Rivers Coordinating Council (Interagency Council)** through a charter signed by officials of the USDI and DOA. The council’s purpose is to improve interagency coordination in administering the WSRA, thereby improving public service and enhancing protection of the nation’s river resources (NPS. 2014. ORVs Over Time).

In 1999, the Interagency Council published “*The Wild and Scenic River Study Process*” technical paper in order to promote consistency and public understanding in the application of the provisions of the WSRA in the study process. The river study process paper has been widely adopted by agencies in the practice of defining what makes a value “outstandingly remarkable.” (NPS. 2014. ORVs Over Time).

1. In the paper the Interagency Council advises that, “In order to be assessed as outstandingly remarkable, a river-related value must be a unique, rare or exemplary feature that is significant at a comparative regional or national scale . . . one that is a conspicuous example from among a number of similar values that are themselves uncommon or extraordinary.”

2. The Interagency Council urges that studies and plans define the regional context “as a basis for meaningful comparative analysis.” The Council suggests that a region should be “defined on the scale of an administrative unit, a portion of a state, or an appropriately scaled physiographic or hydrologic unit.”
3. The Interagency Council notes that, given the planning emphasis on the river corridor, ORVs should be river-related and river-dependent. “That is, they should: (1) be located in the river or on its immediate shore lands (generally within one-quarter mile on either side of the river); (2) contribute substantially to the functioning of the river ecosystem; and/or (3) owe their location or existence to the presence of the river.

The Interagency Council’s paper on “**Management Responsibilities**” succinctly states that, “*The purposes for which [Wild and Scenic Rivers] are added to the National Wild and Scenic Rivers System are made explicit*” in Section 1(b) of the WSRA, Congressional Declaration of Policy. Specifically, they are “*to protect a river’s freeflowing condition, water quality, and outstandingly remarkable values. Sections 7(a) and 10(a) make reference to these collective ‘values’ for which rivers are added to the National System. A river’s ORVs are identified predesignation through a study or, for an ‘instant river,’ postdesignation during preparation of a [Comprehensive River Management Plan].*” Hence, the Interagency Council affirmed that the obligation to define ORVs is retroactive in cases when a river is listed by Congress (NPS. 2014. ORVs Over Time).

There are a limited number of landmark court cases involving federal agency applications of the Wild and Scenic Rivers Act and the content or composition of ORVs within the planning process (NPS. 2014. ORVs Over Time; [Appendix E](#)).

One court case of interest for the WS Merced River was a settlement agreement in the matter of *Friends of Yosemite Valley, et al. v. Salazar*, authorized by the U.S. District Court, Eastern District of California, Fresno Division. The NPS agreed to work with certain **user capacity** experts and revisit ORVs as part of the planning process. These experts were engaged as consultants at the beginning of the planning process in October, 2009, and worked with park planners in defining revised ORVs with an eye toward what must be addressed under the **user capacity study process**. The settlement agreement requires the NPS to develop new ORVs “in accordance with all legal requirements and guidance, including but not limited to the language contained in the 1982 Secretarial Guidelines and the reports of the Interagency Wild and Scenic River Coordinating Council.” (NPS. 2014. ORVs Over Time).

D. SUMMARY AND CONCLUSIONS

What of value has been discovered about the ORVs for the Hellgate RAMP? What is available in the historic planning record? Is the record adequate to support the currently identified ORVs, revised, or new ORVs? Is adequate policy guidance available for the future? The following summary and conclusion observations are for Chapter II, Interpretations, Sections II.A - II.C. They are the author's reminiscences and/or opinions.

W&S River Act's Protections and Procedures. Congress enacted the Wild and Scenic Rivers Act in 1968 to protect free-flowing rivers from dams and other development for present and future generations. The W&S River 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, including "scenic, recreational, geologic, fish and wildlife, historic, and cultural" values. WSRs require a CMP for the protection of the river values by addressing user capacities necessary or desirable to achieve the purposes of the Act which requires 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.

WSRA and NEPA. There is a high correlation between the requirements of the WSRA and 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. They both have principles of carrying capacity and thresholds performing exactly the same task.

1. NEPA significant impacts with indicator and thresholds or standards
2. NEPA carrying capacity with indicators and thresholds or standards
2. NWSRA user capacities (carrying capacity) indicators with standards (thresholds)

Section 3(d)(1) of the 1968 Act allows the 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 planning process for "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 Hellgate RAMP? The plan is 10 years old with a monitoring program. 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?

ORV Documents. The historical records review 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.

Adequacy of Congressional Records. In 1968, the Rogue River 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 ORVs in the Act. A later need to identify the ORVs for the Hellgate RAMP led the managing agency to rely on congressional records to determine what the legislation intended. According to the 2003 BLM proposed Hellgate RAMP/FEIS, a "Memorandum to Files, 8351.2 (11785) ORV2" outlined the legislative history of the Act, and included language from legislative discussions relative to the Rogue River and its ORVs. The above explanatory statements are not adequate as the actual legislative history was not provided, in the RAMP/ROD/FEIS, to support the three current ORVs, and a preliminary search at the MDO had not discovered it.

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.

Adequacy of ORV Analyses. 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 ([Appendix E](#)).

Management Muddling Through. 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 require eligibility or suitability studies. The assumed management's perspective is empathized with - the view of muddling through when confronted with the realities of evolving priorities, including the challenges posed by funding and personnel constraints, which can encumber timely and appropriate action. 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. Smile. 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.

User Capacity Information. 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.

Visitor Use and Capacity Methodology. 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.

Guidance for agency development of ORVs was initially limited, but no longer, especially since 1999 and the *The Wild & Scenic River Study Process* policy document. 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 1982 Interagency Guidelines, and many new technical policy publications by the Interagency W&S River Council. While not perfect, BLM has noteworthy and useful policy guidance in its 2012 Manual 6400 for Wild and Scenic Rivers.

User Capacities Exceeded or Not? 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. See the following examples of ORV user capacity issues not available in the record.

1. Describe an actual level of visitor use that will not adversely impact or degrade outstandingly remarkable values.
2. Specify an appropriate quantity of use based on an analysis of resource values and desired conditions, not necessarily previous or current use levels.
3. Include proactive rather than reactive measures, such as measures to trigger management actions before negative impacts to river values occurs.
4. Schedule periodic and ongoing studies to determine whether the quantity and mixture of use leads to adverse impact on the resource values of the river area.

The use limits for the motorized tour boats in the Hellgate RAMP section are the exception. However, it is unknown what user capacities were used that would withstand the scrutiny of a court review.

Future Revised RAMPs. Future revised RAMPs can be in compliance with the Act with guidelines as interpreted by the Interagency Wild & Scenic Rivers Coordinating Council 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.

Inventories and Monitoring. 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 their contracting. However, the importance of using ORVs as monitoring standards was not understood and ORV user capacity types of studies were not funded. See the following three examples of ORV studies not funded

1. Make an explicit tie between the kinds and amounts of visitor and other public use (e.g., recreation events, commercial services, and noncommercial group use) and the protection and enhancement of outstandingly remarkable values.
2. Make an explicit tie between the location and size of facilities in the river corridor and the protection and enhancement of outstandingly remarkable values.
3. Describe an actual level of visitor use that will not adversely impact or degrade outstandingly remarkable values.

Regardless of this history, inventories and monitoring are usually at the bottom of the funding schedule in tight budget years. Are there any loose 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.

Misleading. There were many written statements in the 2003 Hellgate Proposed RAMP/FEIS that were misleading on the identified three 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 it leaves the reader is that the ORVs were identified by Congress implying the law. However, the 1968 W&S Rivers Act had 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. The two referenced documents purporting 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 explicit designated ORVs. They represent 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). Do not accept the author's opinion; read Chapter I, Historical Chronological ORV Record. Ask your own questions and make your own interpretations.

Success. 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 a couple of years. However, there is the normal hesitancy to be slow to 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).

Will to Implement Actions. 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 an 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.

Risks. 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 2004 HRA's ROD (see [Sec. I.D](#)) provides the following.

River activities and conditions (resources and social) will be monitored to provide data for use in evaluating the effect of management activities and human impacts upon the environment and the outstandingly remarkable values in the corridor. Evaluations will measure compliance in achieving the goals and objectives of the Hellgate Recreation Area Management Plan; the effectiveness in protecting and enhancing the outstandingly remarkable values of the river corridor; and the ability to achieve and maintain the standards, objectives, and desired future conditions. The monitoring plan provides a process by which management accomplishments, trends, and needs for the river corridor are reported and evaluated. Monitoring will be conducted as identified in the Recreation Area Management Plan.

The 2004 HRA's RAMP (see [Sec. I.D](#)) provides the following.

Monitoring is the process of tracking the implementation and effectiveness of a land use plan. The purposes of monitoring are to: ensure protection and enhancement of the outstandingly remarkable values, provide a mechanism to address user capacities, ensure activities are occurring in conformance with the plan, determine if activities are producing the expected results, and determine if activities are causing the effects identified in the RAMP/FEIS. Monitoring and evaluations will be utilized to ensure that decisions and priorities conveyed by the plan are being implemented, that progress toward identified resource objectives is occurring, and that mitigating measures and other management direction are effective in avoiding or reducing adverse environmental impacts. Based on information from monitoring and specific analysis of proposed projects, specific mitigation measures will be addressed as projects are analyzed. Baseline data gathered during the planning process will be utilized as a comparison to monitor the river activities and resource conditions (see Table 1. Monitoring).

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).

Termination of ORV Research. The original two ORV questions and the decision to research and publish a record were not as simple 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.

The response to the questions/issues became this preliminary draft document which is a set of armchair summaries, in the sense of being remote from the direct responsibilities of wild and scenic river issues, and the professional opinions of the author based on his planning career with the BLM, especially when he was employed as the Team Leader and Outdoor Recreation Planner, during the Hellgate RA Section of the Rogue River's planning process from 1991 - 1998. The research addressed eligibility studies and/or analysis that lead to those rivers values being determined to be designated ORVs for the HRA.

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 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 the 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 fun, and he would contemplate revising this paper after some other on-going history and land use projects are completed.

III. MERCED RIVER PRECEDENTS FOR THE FUTURE?

The research for this Chapter III does not propose to be comprehensive. The more the author researches the topic of ORVs the more questions and leads were discovered for further research.

A. COURT CASES

- . *Friends of Yosemite Valley v. Norton*, 348 F.3d 789 (9th Cir.2003) (Yosemite I)
- . *Friends of Yosemite Valley v. Norton*, 366 F.3d 731 (9th Cir.2004) (Yosemite II)
- . *Friends of Yosemite Valley v. Kempthorne* 520 F.3d 1024 (2008) (Yosemite III)

The Merced River gained status under the Wild and Scenic Rivers Act in 1987, and the U.S. Park Service was to prepare a management plan by 1990. The agency released a plan in 2000, only after being sued over inadequate planning for repairs and improvements to the El Portal Road, which runs next to the river. The NPS has been in litigation over river planning ever since (Appendix E).

The agency produced three plans—in 2000, 2003, and 2005—but none were deemed adequate by the courts. Why not? The key issue is “user capacity.” How many people can recreate or “use” the river, and in what ways, while not degrading river values? The latest 2014 FEIS is the National Park Service’s most recent attempt.

- 2000 Merced Wild & Scenic River Plan
- 2003 Merced River Wild and Scenic Comprehensive Management Plan (CMP)
- 2005 Merced Wild & Scenic River Plan
- 2014 The Merced Wild and Scenic River Final Comprehensive Management Plan and Environmental Impact Statement was released in February 2014.
- XXX Court opinions interpreting the Act, the 1982 Agency Guidelines, and the technical guidance papers of the Interagency W&S Council. For example.
 - 1999 *The Wild & Scenic River Study Process* Technical Paper, Interagency Wild and Scenic Rivers Coordinating Council.
 - 2002 *Wild and Scenic River Management Responsibilities* Technical Paper, Interagency Council.
 - 2010 *Interim Management and Steps to Develop a CRMP* Technical Paper, Interagency Council.
 - 2014 *A Compendium of Questions & Answers Relating to Wild & Scenic Rivers* Technical Paper, Interagency Council.

A Comprehensive River Management Plan (CRMP) will be inadequate and the record of decision (ROD) not supported by substantial evidence in the whole record where the proposal is not in compliance with the WSRA.

B. IMPLICATIONS OF COURT CASES TO REVISING THE HRAMP

1. *Friends of Yosemite Valley v. Kempthorne*

Friends of Yosemite Valley v. Kempthorne 520 F.3d 1024 (2008) (see [Appendix E3](#))

a) Overall Issues

(1) Comprehensive Management Plan (CMP) does not describe an actual level of visitor use that will not adversely impact the Merced's Outstanding Remarkable Values ("ORVs") as required by Yosemite I and the Wild and Scenic Rivers Act (WSRA), because the Visitor Experience and Resource Protection ("VERP") framework is reactionary and requires a response only after degradation has already occurred.

(2) The interim limits are based on current capacity limits and National Park Service (NPS) has not shown that such limits protect and enhance the Merced's ORVs.

(3) The CMP be in the form of a single, comprehensive document, which addresses all the required elements, including both the "kinds" and "amounts" of use (i.e., a single, self-contained plan).

(4) The Supplemental Environmental Impact Statement (SEIS) violates National Environmental Policy Act (NEPA) because the "no-action" alternative assumed the existence of the very plan being proposed; the three action alternatives which are each primarily based on the VERP framework are unreasonably narrow; and for the first five years, the interim limits proposed by the three alternatives are essentially identical.

The WSRA framework designates rivers based on specific "ORVs" which both justify the initial designation of a river as a WSRS component, and provide the benchmark for evaluating a proposed project affecting a designated river. While, under the WSRA, protecting and enhancing the designated ORVs is paramount, this goal may be compatible with other uses.

b) The Secretaries' Joint 1982 Guidelines (Secretarial WSRA Guidelines)

- Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. 39,454 (Sept. 7, 1982) (the "Secretarial Guidelines"). The Secretarial Guidelines interpret the management principles of § 1281(a) "as stating a nondegradation and enhancement policy for all designated river areas, regardless of classification."
- Guidelines require management to protect and enhance its ORVs, "while providing for public recreation and resource uses which do not adversely impact or degrade those values."
- Guidelines envision the use of varying strategies and implementations.
- Guidelines discuss "carrying capacity," a term that does not appear in the WSRA itself and is defined as "the quantity of recreation use which an area can sustain without adverse impact on the ORVs and free-flowing character of the river area, the quality of recreation experience, and public health and safety."
- Guidelines contemplate that Studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Management of the river area can then be planned accordingly..
- Guidelines also require that a component's management plan state the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated, and specific management measures which will be used to implement the management objectives for each of the various river segments and protect esthetic, scenic, historic, archeologic and scientific features.

c) Addressing User Capacities

- VERP does not properly address “user capacities” because, by not requiring a response to environmental degradation until after it already occurs, it is reactive and thereby violates WSRA.
- VERP was reactionary not because a framework that monitors and maintains is inherently reactive and thus can never be proactive. Rather, the revised VERP at issue was found to be reactionary, and thus responsive after-the-fact to already occurring degradation, because it does not “describe an actual level of visitor use that will not adversely impact the Merced's ORVs.”
- That an indicator may be able to provide an early warning, does not mean that it does in practice. A standard must be chosen that does in fact trigger management action before degradation occurs. Also, that an early warning sign may call for the implementation of proactive management does not provide much assurance that such implementation will occur.
- There is no authority for a presumption that holding facility levels to those in existence when a river was designated under the WSRA, the WSRA is protective of ORVs or satisfies the user capacity component of the required CMP.
- River managers have a responsibility under the “protect and enhance” requirement of the WSRA to address both past and ongoing degradation. Setting interim limits to current capacity limits does not address the problem of past degradation.
- And although the WSRA does not preclude basing user capacity limits on current capacity limits, NPS's decision to base many of its interim limits on current capacity limits was not “founded on a reasoned evaluation of the relevant factors.” Nor has NPS “articulated a rational connection between the facts found and the choice made.”

d) Requirement of a Single, Self-contained Plan

- The WSRA requires a single, comprehensive plan that collectively addresses all the elements of the plan both the “kinds” and “amounts” of permitted use-in an integrated manner.
- In Yosemite II, we indicated that a single document covering all required elements must be produced. This does not mean that NPS is required to start from scratch with respect to each element of the 2000 CMP that was not explicitly found deficient or that it cannot incorporate parts of the 2000 CMP in preparing its new or revised plan. But, it is required to prepare a single plan.
- Guidelines mandate such an interpretation of the WSRA, stating that the WSRA requires that a river's comprehensive management plan state both “the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated.”

2. The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities

Cathcart-Rake, John. 2009. *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities*. Associate Editor, *Environmental Law*, 2009–2010, 39-3 XX 9TH CIR 8/31/2009 6:27 PM. Lewis and Clark Law School. Portland, OR (see [Appendix E4](#)).

This article chronicles the decade-long battle over the Merced Comprehensive Management Plan (CMP) and **user capacity** in Yosemite Valley, placing the recent controversy within the context of the National Park Service's (NPS's) traditional promotion of visitation and recreation. Although the Ninth Circuit stopped short of requiring a visitor cap in Yosemite Valley, this article examines the arguments for and against such a cap, discusses the immediate consequences for NPS officials tasked with correcting the Merced CMP's deficiencies, and considers **the ripple effects of the Ninth Circuit's ruling on river managers nationwide**.

In Yosemite Valley **each natural feature and view has its own constituency**. In 2000 USDI Secretary Bruce Babbitt characterized Yosemite's diverse stakeholders as a **"cantankerous, eccentric, passionate, irrational, idealistic, quarrelsome, impossible crowd of people."**

The WSRa **requires river managers to "address . . . user capacities" in CMPs**.

a) The Wild and Scenic Rivers Act: Requirements and Judicial Review

The WSRa became a primary avenue of challenges to NPS planning because the **WSRa places a primary emphasis on preserving river values over development and other uses inconsistent with the river's preservation**.

(1) Protections and Procedures of the WSRa Congress enacted the Wild and Scenic Rivers Act in 1968 to protect free-flowing rivers from dams and other development for present and future generations. Under section 1281(a) of the WSRa, CMPs may establish a wide range of agency discretion, by providing for "varying degrees of intensity for a river component's protection and development, based on the special attributes of the area," but under section 1274(d), plans must also "address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the WSRa's purposes." Although the statute does not define **"user capacities,"** the WSRa Guidelines discuss an analogous term, **"carrying capacity,"** and offer guidance about the duty to address **user capacities** in a CMP. The **WSRa Guidelines define "carrying capacity"** as "the quantity of recreation use which an area can sustain without adverse impact on the ORVs and freeflowing character of the river area, the quality of recreation experience, and public health and safety." The WSRa Guidelines further require that a CMP describe the "kinds and amounts of public use," including recreation, that each river segment can sustain without adverse affect on its ORVs. Thus, to satisfy the WSRa Guidelines' **carrying capacity provisions**, and hence, the **WSRa's requirement to address user capacity**, CMPs must not allow amounts and types of uses that adversely affect a river's ORVs.

In 1982, the Departments of Agriculture and Interior released the **WSRa Guidelines, which defined carrying capacity**. In response, Congress amended the WSRa in 1986, **ratifying the carrying capacity requirement but terming it "user" capacity**. Because **Congress incorporated user capacity**, which the administering departments defined and discussed, courts may imply that Congress meant the same thing as the agency's interpretation.

The **WSRa Guidelines** also contemplated that during the preparation of the CMP, the management agency would undertake a study **"to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area."** A CMP is central to agency management because it defines the **methods and levels of protection** for river ORVs, and conversely, the levels of use and development that river ORVs can tolerate.

Because the **WSRa requires limits to uses that "substantially interfere" with public use and enjoyment of river ORVs**, courts have granted a managing agency wide discretion with regard to limiting uses and developments

that affect a river. Although the burden of proof in these matters is unclear, courts have been more willing to conclude that an agency acted arbitrarily when the **administrative record contains scientific evidence and recommendations that contradict the findings of agency management decisions, plans, and actions regarding degradation in the river corridor.**

The Ninth Circuit invalidated the plan, **interpreting section 1274(d)(1) of the WSRA and the WSRA Guidelines to require descriptions of actual levels of visitor use that will not adversely affect the Merced's ORVs.**

(2) The Merced River Plan In the 2000 CMP, the NPS proposed **VERP as the primary method of “addressing user capacities.”** VERP is an adaptive process, requiring “a continual learning process, a reiterative evaluation of goals and approaches, and redirection based on an increased information base and changing public expectations.” In lieu of specific numerical limits on visitors, VERP focuses on the prescription and maintenance of selected “**desired conditions**” of cultural resources, natural resources, and visitor experiences, and uses management zoning to specify desired conditions for specific areas of the Merced River corridor. To protect desired conditions, VERP calls for management action when indicators reflect that desired conditions have fallen below standards, but the plan provided neither specific indicators nor standards.

In 2003 the Ninth Circuit's ruling was based on its interpretation of the **plain language of section 1274(d)(1)** and the WSRA Guidelines. The court interpreted the WSRA's command to “**address user capacity**” in **section 1274(d)(1) to require the Park Service to “deal with or discuss the maximum number of people that can be received” in a wild and scenic river corridor.** WSRA Guidelines require the CMP to contain “**specific measurable limits on use.**” Because the VERP contained only sample standards and indicators, the Ninth Circuit ruled that it failed to describe an actual level of visitor use that will not adversely affect the Merced's ORVs.

The 2005 revision proposed **VERP as the primary method of addressing user capacity.** The revised Merced CMP contained a revised VERP, which the NPS planned to implement and refine over five years. The revised VERP, like the 2000 version, relied on a system of **monitoring indicators of desired conditions to protect the Merced River's ORVs.** Unlike the earlier plan, the 2005 version contained ten actual indicators and standards.

(3) 2008 Friends of Yosemite v. Kempthorne (Yosemite III) In March 2008, the court ruled that the CMP was invalid because it **failed to address user capacities.**

Although the court noted that VERP could be an acceptable method of addressing user capacities if implemented properly, it ruled that the **revised VERP failed to address user capacity since VERP's system of monitoring requires management action only after degradation has already occurred.** The court criticized the nature of choosing standards that “**may be able**” to protect from degradation, ruling that **standards “must be chosen” that can trigger management action before degradation occurs.** Additionally, the court rejected VERP's permissive warning signs, which “**may call**” for proactive management as conditions near standards, but **require management action only when degradation has already occurred.**

Interim limits failed to adequately address user capacity because the NPS could not advance a rational connection between the interim levels and its WSRA duty to protect and enhance the Merced River. Facility capacity levels in existence when Congress designated the Merced as a wild and scenic river do not necessarily protect the Merced's ORVs or satisfied the user capacity requirement. Under the statute's “**protect and enhance**” command, the NPS had a responsibility to **address both past and ongoing degradation.**

b) Lessons and Implications of the Court Opinions

The Ninth Circuit did not ultimately hold that the NPS must cap the number of people entering a river corridor to satisfy the WSRA's user capacity mandate. It suggested that a more flexible, adaptable framework of monitoring and maintaining environmental and experiential conditions might satisfy the WSRA under certain conditions. The court opinions also outlined how a managing agency must estimate **visitor caps, if it uses them, by requiring a connection to the designated river's ORVs**, instead of existing facilities and uses. **As the Yosemite opinions represent the judiciary's first interpretation of the WSRA's user capacity mandate, the analysis may influence management plans for eighty-six wild and scenic river segments.**

Muddying the Waters: Should the Park Service Cap Access to the Merced River Corridor? Despite the Ninth Circuit's **interpretation of the WSRA's user capacity mandate to require a description of the "maximum number of people"** at the Merced river in Yosemite I, as well as the court's suggestion that caps are an appropriate and common way of protecting the environment in Yosemite III, the court ultimately left the decision about capping public access to the NPS. The Ninth Circuit tempered its definition of the **user capacity mandate by explaining that the WSRA did not mandate "one particular approach" or a numerical cap on visitors specifically.**

The effectiveness of visitor caps is premised on the assumption that adverse effects on river resources are directly related to the number of users, and that the managing agency is capable of calculating a specific user capacity number for each area. In practice, river degradation is often the result of many factors, including the **types of uses, the dispersion of users, and the season of use**, and the NPS posits that there is no scientific way to determine a particular area's capacity. Further, caps preemptively select the most restrictive management action that may not correct the root cause of a problem; in contrast, VERP contemplates a variety of management actions, including the restriction of uses, based on the type and extent of the problem.

On the other hand, there are problems with the Park Service's primary reliance on VERP as a user capacity program without other numeric limits. First, the **WSRA places a primary emphasis on "esthetic, scenic, historic, archeologic, and scientific features," and clearly contemplates limiting uses that interfere with a river's ORVs.** Monitoring frameworks do not replace the need for **proactive numeric visitor capacity decisions**, which can inform stakeholders of the prescribed supply of recreation opportunities to aid decision-making. Of course, although it tends to be a management device of last resort, land managers have long rationed uses on protected public lands, including rivers. Further, research indicates a surprising amount of public support for management practices that ration and allocate use, as long as those practices are fair. Finally, critics of the Park Service have warned that VERP provides the Park Service with **too much discretion, without requisite funding and institutional support, and have thus advocated a system that incorporates both VERP and numerical limits on visitors.**

Protecting Wild and Scenic Rivers: Modifying VERP to Prevent Degradation - To protect a designated river, a **CMP using VERP must require management action prior to degradation.** Both courts reasoned that VERP's management protocol was too reactive, ruling that management **action must be required before degradation.** For the Merced River, the Park Service could correct VERP's deficiency by **replacing the program's permissive language with mandatory language.** For example, instead of stating that early warning signs "**may call for**" proactive management actions, the NPS could require that VERP's monitoring standards and indicators "**shall call for**" such action. This revision would respond directly to the Ninth Circuit's request that management action occur prior to degradation, but **mandating action in a CMP would also provide an environmental plaintiff with judicial review of an agency's inaction.** Moreover, this type of revision would not guarantee a particular kind of management action, **nor would it resolve the challenges posed by NPS funding and personnel constraints, which can encumber timely and appropriate action.**

In Yosemite III, the court ruled that **VERP's standards must be set to trigger management action. To be able to trigger management action prior to degradation, a managing agency must calibrate standards and indicators in a way that correlates levels of use to effects on a river's ORVs.** In Yosemite III, the court focused

on VERP's deficient management action and did not resolve whether VERP's standards and indicators constituted adequate measures of use, much less levels of use that did not adversely affect the Merced River.

Enhancing Wild and Scenic Rivers: Confronting the Status Quo - The Yosemite opinions indicate that if a managing agency implements a visitor cap to address user capacity, the cap cannot rely on existing development, but instead **must address past and ongoing degradation facilitated by over development**. Fewer facilities and parking equals less crowding and cars—but **provided no analysis about the relationship between setting caps at maximum facility capacity and preventing degradation of the Merced's ORVs**. Although the **WSRA does not require the removal of existing facilities that do not complement the statute's "protect and enhance" mandate**, if a managing agency wants to use facility capacities to address user capacities, the agency must show how current facility capacities protect or enhance a river's ORVs.

Similarly, a managing agency **cannot simply maintain the status quo by grandfathering in existing uses**. The WSRA requires a managing agency to **limit uses that substantially interfere with or degrade a river's ORVs, no matter how long those uses have been in existence**.

Channeling the Yosemite Decisions to the WSRA - The court's interpretation of the statutory language of **"address user capacities" to mean dealing with or discussing the "maximum number of people that can be received" could serve as persuasive precedent** for a court. Unless a court rules that the **visitor carrying capacity requirement** unambiguously requires a specific numeric visitor cap, a court is likely to rule that the Service's interpretation of the **visitor carrying capacity requirement** is a permissible interpretation of the National Parks and Recreation Act language.

c) Conclusion River managers have new tools to preserve protected areas while providing for public use and enjoyment, based on the concept of **user capacity**. Yet the task of protecting Yosemite Valley, the shiniest facet of the park system's grandest jewel, **has not become easier because the demand for park resources has increased, while supply has remained static**. There is still only one Yosemite Valley, and park stakeholders have not yet arrived at an agreeable to ensure that future generations can enjoy the valley, unimpaired, by regulating the use and enjoyment of current users.

The judiciary's first interpretation of the duty to address capacity related issues in Yosemite, albeit **in the context of the Wild and Scenic Rivers Act**, complicates the NPS's traditional management of carrying capacity within Yosemite Valley, as well as the Service's application of **VERP, a new adaptive management framework**, within the Merced River corridor. The Yosemite decisions force the NPS to **address past and ongoing degradation** by connecting interim limits on use and facilities with the Merced's ORVs, instead of existing uses and development. Further, the Yosemite decisions require the NPS to **modify VERP so that the monitoring framework contains mandatory action prior to ORV degradation**. In short, the rulings serve as a costly reminder to the Service that the **agency must protect and enhance rivers within park units and also as a guide to managing agencies preparing CMPs for newly designated wild and scenic rivers**. However, the Yosemite decisions signal neither the end of the NPS's use of monitoring and maintenance frameworks like VERP, nor the beginning of visitor caps for all river corridors, and are unlikely to have a legal effect on judicial interpretations of the NPS's duty to identify and implement carrying capacities in park units outside designated WSRA corridors. **But because the management of Yosemite often becomes the blueprint for other park units, the court's past invalidations of the CMP, as well as the court's treatment of the next plan may influence the management of both protected parks and rivers for years to come.**

C. POTENTIAL LESSONS AND IMPLICATIONS FOR HRAMP MANAGERS

The issues of the Merced Comprehensive Management Plan's (CMP) adequacy, and appropriate application of user capacity in the Yosemite Valley being in compliance with the Wild and Scenic Rivers Act (WSRA), creates controversy with the National Park Service's (NPS's) traditional promotion of visitation and recreation. This controversy could broil over into how BLM plans and manages WSRs, and intensity any future process to revise the Hellgate Recreation Area Management Plan (RAMP).

The Rogue River like the Merced River has its varied, active, passionate stakeholders (i.e., in both valleys, each ORV, natural feature, and view has its own constituency. For example, in 2000 USDI Secretary Bruce Babbitt characterized Yosemite's diverse stakeholders as a "*cantankerous, eccentric, passionate, irrational, idealistic, quarrelsome, impossible crowd of people.*"

As the Yosemite courts' opinions represent the judiciary's first interpretation of the WSRA's user capacity mandate, their opinions will influence other CMPs.

Although the Ninth Circuit stopped short of requiring a visitor or user limit for the Merced WSR, there are considerations for and against such a user limit in correcting the Merced CMP's court interpreted deficiencies, especially the potential of the ripple effects of the Ninth Circuit's ruling on river managers nationwide.

Estimating visitor limits, if used, must have a connection to the designated river's ORVs, instead of existing facilities and uses.

The court's interpretation of the statutory language of "address user capacities" to mean dealing with or discussing the "maximum number of people that can be received" could serve as persuasive precedent for a court. However, unless a court rules that the visitor carrying capacity requirement unambiguously requires a specific numeric visitor limit, a court is likely to rule that the river manager's interpretation of the visitor carrying capacity requirement is a permissible interpretation.

1. Potential Categories of Requirements

What does it potentially require for a CMP to be in compliance with the WSRA?

- Protecting Wild and Scenic Rivers by Preventing Degradation
- Addressing User Capacities
- Monitoring Must Be Proactive
- Providing Comprehensive Management Plan (CMP)
- Requiring Single Self-contained Plan (CMP)
- Addressing Status Quo
- Following Secretaries' Joint Guidelines

a) Protecting Wild and Scenic Rivers by Preventing Degradation

The WSRA places a primary emphasis on preserving river values over development and other uses inconsistent with the river's preservation.

Under the WSRA, protecting and enhancing the designated ORVs is paramount; this goal may be compatible with other uses. The Act requires limits to uses that "substantially interfere" with public use and enjoyment of river ORVs.

No matter the CMP's emphasis on protection, it does not guarantee a particular kind of management action, nor would it resolve the challenges posed by funding and personnel constraints which can encumber timely and appropriate action.

The ORV impact methodology standards must be set to trigger management action. To be able to trigger management action prior to degradation, a river manager must calibrate standards and indicators in a way that correlates levels of use to effects on a river's ORVs.

Deficient management action does not resolve whether a ORV impact methodology's standards and indicators constituted adequate measures of use, much less levels of use that did not adversely affect the river.

b) Addressing User Capacities

The WSRA requires river managers to address "user capacities" in CMPs.

Under section 1281(a) of the WSRA, CMPs may establish a wide range of river manager discretion, by providing for "varying degrees of intensity for a river component's protection and development, based on the special attributes of the area," but under section 1274(d), plans must also "address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the WSRA's purposes."

The plain language of the WSRA, section 1274(d)(1), and the WSRA Guidelines require the CMP to "address user capacity" in section 1274(d)(1) and require a river manager to "deal with or discuss the maximum number of people that can be received" in a WSR corridor.

The WSRA does not define "user capacities," the WSRA Guidelines discuss an analogous term, "carrying capacity," and offer guidance about the duty to address user capacities in a CMP. The WSRA's user capacity mandate require a a description of the "maximum number of people." However, the river manager makes the decision about limiting public access as the user capacity mandate did not mandate "one particular approach" or a numerical limit on visitors specifically.

Interim limits will fail to adequately address user capacity if a rational connection between the interim levels and its WSRA duty to protect and enhance the WSR is not provided.

ORV impact methodologies must address “user capacities” having a response to environmental degradation before it occurs.

The WSRA does not preclude basing user capacity limits on current capacity limits, however, when the decision is to base interim limits on current capacity limits, there must be founded on a reasoned evaluation of the relevant factors (i.e., articulated a rational connection between the facts found and the choice made).

Fewer facilities and parking equals less crowding and cars, however, they must be the required analysis about the relationship between setting limits at maximum facility capacity and preventing degradation of the ORVs.

c) Monitoring Must Be Proactive

A monitoring program must contains mandatory action prior to ORV degradation.

To protect a designated river, a CMP’s monitoring plan must require management action prior to degradation.

The WSRA does not require a limit to the number of people entering a river corridor to satisfy the WSRA’s user capacity mandate. A flexible, adaptable framework of monitoring and maintaining environmental and experiential conditions might satisfy the WSRA if proactive to prevent degradation.

Monitoring is acceptable for addressing user capacities if it requires management action before degradation has occurred; standards “must be chosen” that can trigger management action before degradation occurs. Permissive warning signs, which “may call” for proactive management as conditions near standards, but require management action only when degradation has already occurred are invalid.

ORV impact methodologies can be reactionary, but not because a program that monitors and maintains is inherently reactive, and, therefore, can never be proactive. They are reactionary when responsive after-the-fact to already occurring degradation, and do not “describe an actual level of visitor use that will not adversely impact the WSR’s ORVs.”

That an ORV impact methodology indicator may be able to provide an early warning, does not mean that it does in practice. A standard must be chosen that does in fact trigger management action before degradation occurs. Also, that an early warning sign may call for the implementation of proactive management does not provide much assurance that such implementation will occur.

A benchmark for evaluating a proposed project affecting a designated river are the specific ORVs at the time the river was designated.

d) Providing Comprehensive Management Plan (CMP)

Under section 1274(d) of the WSRA, CMPs must address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the WSRA's purposes.

The CMP must describe an actual level of visitor use that will not adversely impact the ORVs.

The CMP be in the form of a single, comprehensive document, which addresses all the required elements, including both the "kinds" and "amounts" of use (i.e., a single, self-contained plan.

Interim limits based on current capacity limits must shown that such limits protect and enhance the ORVs.

During the preparation of the CMP, the river manager would undertake a study "to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area.

A CMP is central to management because it defines the methods and levels of protection for river ORVs, and conversely, the levels of use and development that river ORVs can tolerate.

e) Requiring Single Self-contained Plan (CMP)

The WSRA requires a single, comprehensive plan that collectively addresses all the elements of the plan both the "kinds" and "amounts" of permitted use-in an integrated manner.

A single document covering all required elements must be produced. This does not mean that a river manager is required to start from scratch or that it cannot incorporate parts of the CMP being revised in preparing its new or revised plan. But, it is required to prepare a single plan.

The WSRA requires that a river's CMP state both "the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated.

f) Addressing Status Quo

A river manager cannot simply maintain the status quo by grandfathering in existing uses. The WSRA requires limits to uses that substantially interfere with or degrade a river's ORVs, no matter how long those uses have been in existence.

If a river manager implements a visitor limit to address user capacity, the use limit cannot rely on existing development, but instead must address past and ongoing degradation facilitated by over development.

The WSRA does not require the removal of existing facilities that do not complement the WSRA's "protect and enhance" mandate, however, if a river manager wants to use facility

capacities to address user capacities, the manager must show how current facility capacities protect or enhance a river's ORVs.

Under the statute's "protect and enhance" command, the river manager has a responsibility to address both past and ongoing degradation.

There is no authority for a presumption that holding facility levels to those in existence when a river was designated under the WSRA; the Act is protective of ORVs or satisfies the user capacity component of the required CMP.

River managers have a responsibility under the "protect and enhance" requirement of the WSRA to address both past and ongoing degradation. Setting interim limits to current capacity limits without an ORV impact analysis does not address the problem of past degradation.

g) Following Secretaries' Joint 1982 Guidelines (Secretarial WSRA Guidelines)

Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. 39,454 (Sept. 7, 1982) (the "Secretarial Guidelines").

The WSRA Guidelines define "carrying capacity" as "the quantity of recreation use which an area can sustain without adverse impact on the ORVs and free flowing character of the river area, the quality of recreation experience, and public health and safety."

The WSRA Guidelines further require that a CMP describe the "kinds and amounts of public use," including recreation, that each river segment can sustain without adverse affect on its ORVs. Thus, to satisfy the WSRA Guidelines' carrying capacity provisions, and hence, the WSRA's requirement to address user capacity, CMPs must not allow amounts and types of uses that adversely affect a river's ORVs.

Management principles of 16 U.S. Code § 1281(a) requires a protect and enhancement policy for all designated river areas, regardless of classification.

Require management to protect and enhance its ORVs, "while providing for public recreation and resource uses which do not adversely impact or degrade those values."

WSRA Guidelines require the CMP to contain "specific measurable limits on use." Carrying capacity does not appear in the WSRA and is defined as "the quantity of recreation use which an area can sustain without adverse impact on the ORVs and free-flowing character of the river area, the quality of recreation experience, and public health and safety."

Studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area.

CMP must state the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated, and specific management measures which will be used to implement the management objectives for each of the various river segments and protect esthetic, scenic, historic, archeologic and scientific features.

2. Conclusion

The river manager must protect and enhance WSRs.

The Yosemite courts' first interpretation of the duty to address capacity related issues in Yosemite, in the context of the Wild and Scenic Rivers Act, complicates the river manager implementing management through carrying capacity analysis.

The management of Yosemite, including the Merced WSR, often becomes the blueprint for other NPS units and other river managers, therefore, the court's past invalidations of the Merced CMP, as well as the court's treatment of the next CMP will probably influence the management of other parks and WSRs for years to come.

Based on the concept of user capacity, river managers have tools to preserve protected areas while providing for public use and enjoyment. However, the task of protecting highly popular WSRs has not become easier because the demand for resources has increased, while supply has remained static. There is still only one Yosemite Valley and Rogue Valley, and the respective stakeholders have not yet arrived at an agreeable to ensure that future generations can enjoy the valleys, unimpaired, by regulating the use and enjoyment of current users.

The WSRA requires addressing past and ongoing degradation by connecting any interim limits on use and facilities with the ORVs, instead of existing uses and development.

A monitoring framework must contain mandatory action prior to ORV degradation.

Yosemite court decisions are guides to managing agencies preparing CMPs for newly designated WSRs and revised CMPs.

The issues of the Merced CMP adequacy, and appropriate application of user capacity in the Yosemite Valley being in compliance with the WSRA, creates controversy with the NPS's traditional promotion of visitation and recreation. This controversy could broil over into how BLM plans and manages WSRs, and intensify any future process to revise the Hellgate RAMP.

3. Summary

In summary, in light of the court cases for WSR implications for the Merced River and the potential lessons and implications for HRAMP managers, it might be wise to consider the precautionary principle and/or the worst case analysis.

- . *Friends of Yosemite Valley v. Norton*, 348 F.3d 789 (9th Cir.2003)
- . *Friends of Yosemite Valley v. Norton*, 366 F.3d 731 (9th Cir.2004)
- . *Friends of Yosemite Valley v. Kempthorne* 520 F.3d 1024 (2008)

The precautionary principle or precautionary approach to risk management states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is not harmful falls on those taking an action. The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

A worst case analysis might be considered to avoid being mired in court for future revised CRMPs. The original CEQ worst case analysis concept was located at 40 CFR 1502.22, which addressed incomplete or unavailable information in an environmental impact statement (EIS). Where the impacts are uncertain or unknown, the regulations used to require that the EIS include a worst case analysis and an indication of the probability or improbability of its occurrence. That requirement was changed in favor of evaluating “reasonably foreseeable” environmental impacts, including low-probability but potentially catastrophic impacts, “provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

The Deepwater Horizon disaster vividly illustrates the need to fix one of the new rules shortcomings. The recent Gulf oil disaster offers a powerful argument for going back to the original requirement for worst-case analysis, which the current regulation allows agencies to avoid.

Restated, a 1978 NEPA regulation required agencies to address uncertainties with worst-case analyses (40 C.F.R. § 1502.22(b) (1979)). After it generated significant controversy, that regulation was amended in 1986 to rescind the worst-case requirement, and replace it with a more flexible mandate that agencies must discuss the uncertainties in their analyses (40 C.F.R. § 1502.22(b) (1986)). In the years since the change, no clear understanding has arisen as to how agencies should address uncertainties in predicting environmental consequences in their NEPA documents. Agencies have addressed the issue on an ad hoc rather than systematic basis, and courts reviewing challenges to agency NEPA analyses have treated uncertainties erratically as well.

Practical Real World Realities While the Hellage Recreation Area'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 require eligibility or suitability studies.

It is the author's opinion that there is no fatal flaw in the current Hellgate RAMP. It was developed during a time when the courts' early review of W&S river plans, and the work of the Interagency Coordinating Council arrived on the radar screen of river managers.

A revised regional BLM resource management plan or revised HRAMP would be wise to consider the mountain of new policy direction by the courts and the managing agencies' standards. For BLM, that would be BLM Manual 6400 - Wild and Scenic Rivers.

Effective monitoring per the current Hellgate RAMP standards may, or may not, be an issue.

IV. DISCLAIMER

This disclaimer implies situations that involve some level of uncertainty, waiver, or risk. It is a defensive measure, used for the purpose of protection from unwanted claims or liability.

1. It is a warning of expectations to the public in order to fulfill a duty of care owed to prevent unreasonable risk of harm or injury, and
2. It is intended to limit exposure to damages after a harm or injury has already been suffered.

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. It is not the author's goal to try impose "the truth" on the reader, and does not ask that they trust something just because they read it in this document. The author does not ask for their trust. 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.

Verifiability is related to another core content concept, neutral point of view, which holds that all significant views on a subject be included. Citing reliable sources for any material challenged or likely to be challenged gives readers the chance to check for themselves that the most appropriate sources have been used, and used as well as the applicable evidence available. The author believes information becomes more valuable as it is shared, and less valuable as it is hoarded.

A secondary purpose of the incomplete scoping ORVs paper is a public resource via web publishing (i.e., surrogate college introduction course to WSRs' ORVs). However, it is considered a preliminary paper in concept and has not been quality controlled nor edited. It is as much about providing information and provoking questions as about providing opinions concerning the evolution of the ORVs for the HRA. It may be updated in the future.

This paper does not provide recommendations to citizens and it is not legal advice. It does not take the place of a lawyer. If citizens use information contained in this preliminary paper, it is their personal responsibility to make sure that the facts and general information contained are applicable to their situation. The author and co-sponsors assume no liability for the information provided.

The materials available at the web site are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. The opinions expressed at or through this site are the opinions of the author and may not reflect the opinions of the three co-sponsors.

APPENDICES

- Appendix A. Qualifications of Author
- Appendix B. Co-sponsors
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- Appendix E3. *Friends of Yosemite Valley v. Kempthorne* 520 F.3d 1024 (2008)
- Appendix E4. *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities*
- Appendix F. Interagency Wild and Scenic Rivers Coordinating Council's Technical Reports
- Appendix G. Wild & Scenic River Study Process: 1999
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TABLES

- Table IIA-1 Comparison of Outstandingly Remarkable Values: 1964 Versus 2004
- Table IIA-2 Comparison of Outstandingly Remarkable Values (ORVs), Other Similar Values, and Other River Values: 1958 - 2014

ACRONYMS & ABBREVIATIONS

GLOSSARY

Appendix A. Qualifications of Author

EMPLOYMENT

1966 - 1967	Assistant County Planner, Josephine County, Oregon. Materially assisted in the development of <i>A General Plan For The Josephine County Urbanizing Area And The City Of Grants Pass</i> , 1969.
1967 - 1972	Officer in the United States Navy. Aviator, Vietnam conflict.
1972 - 1974	Graduate Research Assistant with Extension Service, Clatsop County, Oregon; Research Assistant with Northam & Associates; and County Planning Assistant, Yamhill County, Oregon.
1975 - 1979	Community Planner/Interdisciplinary Team Member, Alaska Outer Continental Shelf Office, Anchorage, Alaska; grant writer and project inspector for multi-million dollar socio-economic studies program.
1979 - 1980	Environmental Protection Specialist, BLM Nevada State Office, Reno.
1981 - 1982	Planning Coordinator, BLM Medford District Office (MDO), Oregon.
1981 - 1984	Technical Publications Writer/Team Member, MDO.
1985 - 1986	Environmental Specialist/Interdisciplinary Team Leader, MDO.
1986 - 1990	Environmental Specialist/Technical Coordinator/Interdisciplinary Team Member, MDO. Program lead for developing BLM's western Oregon rural interface area issue (citizens living in the woods) during its resource management planning effort.
1991 - 1998	Outdoor Recreation Planner, MDO. Team Leader for Rogue River's Hellgate Recreation Area Management Plan (RAMP) through an environmental impact statement process.
1997 - 1998	Chief Steward, National Federation of Federal Employees, MDO.
1998 - 2014	President of NEPA Design Group. This group provides customized National Environmental Policy Act consulting services designed to address resource issues through the interdisciplinary team process of addressing problems, affected environment, alternative opportunities, and the impacts (direct, indirect, and cumulative) of those opportunities.
1999 - 2004	Secretary, Hugo Neighborhood Association & Historical Society (HNA&HS). Advocate for Oregon Statewide Goal 1 - Citizen Involvement in Josephine County and land use advocate in county land use applications and procedures.
2003 - 2012	Director, Goal One Coalition - http://www.goall.org/
2004 - 2014	Education Chair, HNA&HS - http://www.hugoneighborhood.org/
2004 - 2006	Associate Director, Josephine Soil & Water Conservation District.
2006 - 2014	Director, Rogue Advocates - http://www.rogueadvocates.org/

EDUCATION

B.S.	Natural Resources, Oregon State University (OSU), 1966
M.S.	Resource Geography, OSU, 1974, dissertation <i>The Relationship Of Land Use And Size Of Land Parcel To Water Services Needed In The Merlin Irrigation District: 1973</i> , program emphasis in water resources and land use techniques
Ph.D	All but dissertation in Urban Planning/Resource Geography from University of Oregon and OSU, 1975.

SPECIFIC NEPA EXPERIENCE

1973 - 1974	Advanced studies in NEPA at Oregon State University and University of Oregon.
1975 - 1978	<i>Community Planner</i> , BLM Alaska Outer Continental Shelf Office. <i>Interdisciplinary (ID) Team Member</i> on three different EIS teams specifically responsible for analyzing land use and population effects of developing oil and gas on the outer continental shelf of Alaska. <ul style="list-style-type: none">• FEIS for OCS Oil and Gas Lease Sale Lower Cook Inlet 1975• DEIS and FEIS for OCS Oil and Gas Lease Sale Lower Cook Inlet 1976• DEIS OCS Oil and Gas Lease Sale Western Gulf--Kodiak, Alaska Inlet 1977 This included being the <i>Project Inspector</i> for a three year, multi-million dollar, socioeconomic studies program designed to support the NEPA EIS efforts.
1979 - 1980	<i>Environmental Protection Specialist</i> , BLM Nevada State Office. <i>EIS Coordinator</i> accountable for three grazing EISs. <ul style="list-style-type: none">• FEIS Tonopah Grazing Environmental Impact Statement 1980• DEIS Paradise-Denio Grazing Environmental Impact Statement 1980• DEIS Sonoma-Gerlach Grazing Environmental Impact Statement 1981
1980	<i>NEPA Trainer</i> , Environmental Impact Statement Short Training Course, BLM Nevada
1980	<i>EIS Team Leader</i> for the open-pit Anaconda Moly mining and transmission line project. <ul style="list-style-type: none">• DEIS and FEIS Anaconda Hall Nevada Moly Project Environmental Impact Statement

1981 - 1982	The Moly EIS project was contracted out for \$800,000 [40 CFR 1506.5 (a) and (c)]. <i>Planning Coordinator</i> , BLM Medford District Office (MDO). Team Leader responsible for amendments to the MDO's MFPs (i.e., Jackson/Klamath Sustained Yield Units (SYUs) and the Josephine SYU). The amendments were developed using the environmental assessment (EA) process and covered the resources of grazing, areas of critical environmental concern, and wilderness.
1981 - 1984	<i>District Technical Publications Writer (defacto Environmental Coordinator)</i> , BLM MDO. ID team member responsible for NEPA when annually coordinating and writing major timber sale EAs (i.e. over 100 million board feet per year) for the Klamath, Jacksonville, and Butte Falls resource areas, including vegetation management supplemental EAs, and annually writing 20 - 30 minor EAs, and finding of no significant impacts (FONSIs). <ul style="list-style-type: none"> • coordinated and wrote 26 major timber sale EAs in 1981 • coordinated and wrote draft and final vegetation management supplemental EA 1981 • coordinated and wrote 11 major timber sale EAs in 1982 • coordinated and wrote draft and final vegetation management supplemental EA 1982 • coordinated and wrote 10 major timber sale EAs in 1983 • developed a EA program guidance document for timber sale EAs (i.e., Preparation Plan, Jackson/Klamath Sustained Yield Units Fiscal Year 1983 Timber Sale Environmental Assessments) • coordinated and wrote 10 major timber sale EAs in 1984
1983	<i>Case Histories Of Court Decisions Concerning Environmental Assessments</i> , BLM MDO, Butte Falls Resource Area. <i>District Technical Publications Writer</i>
1985 - 1986	<i>Environmental Specialist</i> , BLM MDO. <i>Team Leader</i> for the MDO RMP/EIS effort and <i>Team Leader</i> of a supplemental EIS for the Jackson/Klamath and Josephine Timber Management EISs. <ul style="list-style-type: none"> • DEIS Josephine/Jackson-Klamath Timber Management Supplemental Environmental Impact Statement 1984 • FEIS Josephine/Jackson-Klamath Timber Management Supplemental Environmental Impact Statement 1985
1986 - 1990	The issue of the supplemental EIS process was clear cutting versus shelterwood prescriptions. <i>Environmental Specialist</i> , BLM MDO. ID team member responsible for the <i>Technical Coordinator</i> functions of developing the BLM MDO's RMP/EIS, including "acting" <i>Team Leader</i> for significant portions of time. Also the ID team member responsible for writing the section on the rural interface areas (RIAs). The section covering the RIA issue was new and without precedent in federal planning. <ul style="list-style-type: none"> • Summary of the Analysis of the Management Situation: Medford District Office Resource Management Plan 1991 • DEIS Medford District Resource Management Plan and Environmental Impact Statement 1992
1991 - 1998	<i>Outdoor Recreation Planner</i> , BLM MDO. <i>Team Leader</i> of a controversial complex river planning process to revise the Hellgate Recreation Area Management Plan through an EIS process. <ul style="list-style-type: none"> • Preplan Analysis for Revising Recreation Area Management Plan 1991 • Public Input Analysis Background Paper for revising the Hellgate Recreation Area Management Plan and the Wild Recreation Area Management Plan 1992 • Preparation Plan for Revising the Hellgate Recreation Area Management Plan 1993 • Notice of Intent 1993 • Scoping Document 1993 • Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River 1994 • \$800,000 recreation studies program (i.e., 40 contracted and ID team background studies or inventories) supporting EIS effort 1992 - 1996 • DEIS (unpublished) Management of the Hellgate Recreation Area of the Rogue River 1998
1997 - 1998	NEPA Negotiations Document by Chief Steward, National Federation of Federal Employees, MDO.
1998 - 2014	President of NEPA Design Group 1999 EA Handbook For BLM Timber Sales 2005 - 2006 NEPA Training Workshops for Citizens 2006 - 2012 Effective Land Use Testimony Training (ELUTT) - Informal Program Co-Sponsors: Rogue Advocates; Hugo Neighborhood Association & Historical Society; Goal One
Coalition	2013 - 2014 ELUTT - Formal Program http://hugoneighborhood.org/training.htm

Outdoor Recreation Planner/team Leader, Rogue River's Hellgate Recreation Area Management Plan (HRAMP)

It was a challenging process leading the Hellgate RAMP starting in 1992 - 1993 when management of the river schedule changed as a result of the contracted Rogue River studies program, the final study of which was completed May 1995.

1991 - 1998. Outdoor Recreation Planner, MDO. Team Leader of a controversial complex river planning process to revise the Rogue River's Hellgate RAMP through an environmental impact statement process. Grant writer and project inspector for grants involving economics, erosion, safety, and public attitudes, and background studies involving fisheries, wildfire, flood plains, riparian areas, soils, water resources, wildlife and wildlife habitat, and timber management.

- Planning and interdisciplinary (ID) team leader of a controversial and complex river National Environmental Policy Act (NEPA) planning process to revise the National Wild and Scenic Rogue River's Hellgate Recreation Area Management Plan (RAMP) through an 22 ID team member environmental impact statement (EIS) process.
- Responsible for developing, implementing, and monitoring the long-term RAMP program, and coordinating completion of annual work plan (AWP) commitments. Determined and recommended efficient use of human resources, time, and funding. Monitored and reported RAMP work progress to ensure AWP objectives were met, ensured expenditures were consistent with budget allocations. Provided overall planning and NEPA program technical guidance and quality control. Ensured coordination with the ID team, other staff, and advised management on technical resource matters, and policies and regulations.
- Led two outreach scoping processes identifying public issues in 1991 - 1992 and 1993 that garnered approximately 3,000 written comments. Lead the ID team's effort to analyze the comments through a content analysis program and develop the issues and alternatives in 1994: "Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River." Received a special achievement award for this effort.
- Manager, grant writer, and project inspector for the half-million dollar 1992 - 1995 Rogue River Studies Program, an environmental and socio-economic studies program. It was a combination of six contracted studies (i.e., economic effects, erosion, fisheries, safety, and visitor attitudes) and 33 internal studies including wildlife, air quality, wildfire, recreation sites, recreation opportunity spectrum, cultural, scenic easements, noise, timber management, silvicultural, lands and minerals, transportation, public outreach and information, and GIS mapping.
- Led the ID team in the development of the internal draft EIS.

The contracted Rogue River Studies Program was a BLM management response to the issues and concerns identified by the public during scoping. It is a combination of the 6 contracted studies (i.e., erosion, fisheries (expert panel on adult salmon spawning), fisheries (juveniles), safety, economic effects, and visitor attitudes) and 33 background papers. The studies effort would eventually become the "facts" of the planning process to revise the Hellgate RAMP.

Uncertainty in completion dates for the RMP process and the economics, erosion, safety, and fisheries studies created uncertainties in the schedule for completing the Hellgate RAMP.

- Shindler, B. and B. Shelby. 1993. Rogue River Study: Assessments of Recreation Impacts and User Perceptions on the Bureau of Land Management Recreation Section. Department of Forest Resources, Oregon State University. Corvallis, OR.
- Klingeman, P.C., L.M. Cordes and I. Nam. 1993. Rogue River Erosion/Deposition Study. Civil Engineering Department, Oregon State University. Corvallis, OR.
- Economic Strategies Northwest. 1994. Economic Effects Study Summary Report. Lake Oswego, OR.
- Water Resources Consulting (WRC). 1995. Rogue River Boating Safety and Conflicts Study. Sacramento, CA.
- Satterthwaite, T.D. 1995. Effects of Boat Traffic on Juvenile Salmonids in the Rogue River. Oregon Department of Fish and Wildlife. Portland, OR.

It also created an opportunity for an expanded involvement and analysis by the ID team to develop 33 background papers a few of which follow.

- Preplan Analysis for Revising Recreation Area Management Plan 1991
- Public Input Analysis Background Paper for revising the Hellgate Recreation Area Management Plan and the Wild Recreation Area Management Plan 1992
- Preparation Plan for Revising the Hellgate Recreation Area Management Plan 1993
- Notice of Intent 1993
- Scoping Document 1993
- Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River 1994
- \$800,000 recreation studies program (i.e., 40 contracted and ID team background studies or inventories) supporting EIS effort 1992 - 1996
- DEIS (unpublished) Management of the Hellgate Recreation Area of the Rogue River 1998

Appendix B. Co-Sponsors & Authors

The Hugo Neighborhood Association & Historical Society (*Hugo Neighborhood*), Goal One Coalition, and Rogue Advocates are nonprofit organizations whose missions include providing assistance and support to citizens of the Rogue Valley in matters affecting their communities.

1. Hugo Neighborhood Association & Historical Society

The Hugo Neighborhood Association & Historical Society (*Hugo Neighborhood*) is an informal nonprofit charitable and educational organization of unpaid volunteers with a land use and history mission promoting the social well-being of its neighbors by working to champion Oregon Statewide Goal 1 — Citizen Involvement, and by preserving, protecting, and enhancing the livability and economic viability of its farms, forests, and rural neighbors. The mission of the *Hugo Neighborhood* follows.

<u>Land Use</u>	<ul style="list-style-type: none">• <i>Promote Citizen Involvement (Oregon Statewide Goal 1)</i>• <i>Promote Education</i>• <i>Protect Our Farms and Forests (Oregon Statewide Goals 3 & 4)</i>• <i>Protect Our Community's Rural Quality of Life</i>
<u>History</u>	<ul style="list-style-type: none">• <i>Preserve Our Local History (preserving, documenting, promoting & interpreting)</i>• <i>Promote Education</i>• <i>Promote Analysis of Local Cultural Resources (Oregon Statewide Goal 5 & Josephine County Comprehensive Plan, Goal 7)</i>

One of the ways the *Hugo Neighborhood* aims to best promote the social welfare of its Hugo neighbors is by collecting, preserving, interpreting, and researching its rich local history, and encouraging neighbor's interest in the history of the Hugo area, in their geographic place, in their community. We know the quality of rural life in Hugo is enhanced through citizen knowledge of its history and the sense of community that a historical perspective facilitates.

We believe culture, as one basis for a healthy community, can be an alternative to destructive behavior and a healing force, and that children educated in their history and culture will contribute to the creative workforce of our evolving technological world. In the end, Hugoites will be able to tell the story of cultural growth and cultural impact. Children will see its impact on their learning. Families will see the effect of culture through their local participation and use of resources. Community development will see its impact economically and through greater social involvement and especially pride.

2. Goal One Coalition

The Goal One Coalition champions the role of citizens in creating communities that are livable and economies that are sustainable, within a healthy and diverse natural environment.

- It advocates for the protection of our waters, farms, rangelands, forests, coasts, and other natural landscapes from loss and degradation.

- It works for vibrant, compact cities and economies that provide for everyone equitably.
- It helps citizens and citizen groups to organize and advocate effectively, provide information, education and advice about how the land use planning program works, and provide assistance with important issues.
- It encourages local governments to invite and welcome citizen participation in planning for economically and ecologically sustainable communities.

The Goal One Coalition's most important task in building healthy, sustainable communities is to encourage and help people to take charge of their own future.

3. Rogue Advocates

Rogue Advocates champions the sustainability and livability of communities in the Rogue Valley. The *Rogue Advocate's* core geographical interests are private lands in Jackson County and Josephine County, but its land use concerns are the Rogue Valley basin-wide.

Historically the biggest threats to realizing sustainable and livable communities were the lack of a dependable, comprehensive review and response to local land use proposals that are not in compliance with sustainability and livability standards. Rogue Advocates' goal is to fill this gap and address the threats by infusing vision, intelligence, and forethought into local county and city land use planning processes. This vision uses Oregon's land use laws, environmental laws, science, public education and collaboration, to facilitate the Rogue Valley becoming an example of a sustainable and livable community.

Appendix C. 40 CFR 1508: NEPA's Significantly

What criteria should be used to assess whether or not impacts are significant when determining the scope of an action? The following are applicable standards quoted from the CEQ regulations, 40 CFR 1508.

NEPA, Section 102(2)(C) — Threshold Determinations. All agencies shall include an EIS with any proposal which is a major federal action significantly affecting the quality of the human environment. Therefore, all agencies must make a threshold determination concerning any proposal as to whether it is a major federal action, and if so, whether it significantly affects the quality of the human environment.

40 CFR 1508

Sec. 1508.4 Categorical Exclusion. "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.7 Cumulative Impact. "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects. "Effects" include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.13 Finding of No Significant Impact. "Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human Environment. "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.19 Matter. "Matter" includes for purposes of Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation. "Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.25 Scope. Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

- (a) Actions (other than unconnected single actions) which may be:
 - 1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
 - (i) Automatically trigger other actions which may require environmental impact statements.
 - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
 - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
 - 2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
 - 3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.
- (b) Alternatives, which include:
 - 1. No action alternative.
 - 2. Other reasonable courses of actions.
 - 3. Mitigation measures (not in the proposed action).
- (c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.27 Significantly. "Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetland, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulative significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Determination of Significant Impacts Example: 1981

Chapter 3 Environmental Consequences

1981 DEIS Sonoma-Gerlach Grazing Environmental Impact Statement (pps. 3-2 to 3-3)

The purpose of this section is to identify the process for determining whether any impact is significant, and to define the threshold used in each resource to identify significant impacts.

An environmental impact is defined as a change in the ecosystem caused by an act of man.

An impact becomes significant for some affected interest when it meets both of the following criteria:

- 1) The amount of change exceeds (varies from) a threshold; and,
- 2) Exceeding that threshold takes on new importance for that affected interest (i.e., according to a particular viewpoint or value system, it is not acceptable to cross that threshold).

The threshold is a standard to be used by BLM specialists to judge whether or not actions proposed in alternatives in the EIS will cause significant impacts and, if significant, whether the impact would be adverse or beneficial.

A threshold is a maximum or minimum number, or other parameter, established by somebody or something that will be affected by the impact. It may be an individual or interest group, or it may be a tolerance within the ecosystem itself. The threshold is set according to a particular point of view (value system). Based on the best available information, thresholds may change as new data becomes available.

Thresholds may be specifically defined levels of resource use, production or development which are established as maximum or minimum constraints. A threshold may be a single defined level such as a drinking water standard, or it may be a range with maximum and minimum levels defined.

When an environment impact exceeds a threshold, that impact becomes significant. Significant impacts are either adverse or beneficial depending upon whether the effect is good or bad. An affected interest is an individual person or species, a human or other population, or any other part or process of the ecosystem affected by the impact.

Different affected interests hold different values that influence their respective viewpoints. A value system is a set of values held by any affected interest. Usually the values we hold strongly shape our opinions, attitudes, and behavior, and thus our judgement about what is significant.

For example, the threshold for deer is defined as the existing situation. Therefore, if the deer population stays about the same there is no impact. If the deer numbers increase above the existing situation it is a beneficial impact. If, however, deer numbers decrease below the existing situation it is an adverse impact.

Appendix D. Original October 2, 1968 Wild and Scenic Rivers Act's Notations

The National Wild and Scenic Rivers System (Public Law 90-542; 16 U.S.C. 1271 et seq.)
An Act To provide for a National Wild and Scenic Rivers System, and for other purposes.

Table Appendix D.1. Original October 2, 1968 Wild and Scenic Rivers Act Notations	
Left Hand Notations	Selection Portions Of W&S Rivers Act¹
October 2, 1968 (S. 119)	To provide for a National Wild and Scenic Rivers System, and for other purposes
Wild and Scenic Rivers Act.	Section 1(a) <i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i> That (a) This Act may be cited as the “Wild and Scenic Rivers Act.”
National Wild and scenic rivers system.	Sec. 2 The national wild and scenic rivers system shall comprise rivers that are . . .
Eligibility for inclusion.	Sec. 2(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act.
National wild and scenic rivers components.	Sec. 3(a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system.
Publication in Federal Register.	Sec. 3(b) Prepare a plan for necessary developments
Report, maps, etc.	Sec. 4(a) Each [study and plan] proposal shall be accompanied by a report
Printing as Senate or House document.	Sec. 4(a) Each such report shall be printed as a Senate or House document.
Publication in Federal Register.	Sec. 4(c) Evaluate and give due weight [suitability?]
Potential additions, designation.	Sec. 5(a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system (NWSRS).
Studies.	Sec. 5(b) Study each of the rivers named in subsection (a) of this section in order to determine whether it should be included in the NWSRS.
Land acquisition.	Sec. 6(a) Authorized to acquire lands and interests
Right of use and occupancy.	Sec. 6(g)(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination.
“Improved property.”	Sec. 6(g)(3) The term “improved property” as used in this Act, means a detached, one-family dwelling the construction of which begun before January 1, 1967.
Water resources projects, restrictions.	Sec. 7(a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other works under the Federal Power Act, on or directly affecting any river which is designated in section 3.

49 Stat 863. 16 USC 791a.	Sec. 7(b) That have a direct and adverse effect on the values for which the river might be designated as determined by the Secretary responsible for its study or approval.
Publication in Federal Register.	Sec. 7(b)(i) On the basis of study, conclude that such river should not be included in the NWSRS.
Mining and mineral leasing laws.	Sec. 9(a) Nothing in this Act shall affect the applicability of the U.S. mining and mineral leasing laws within components of the NWSRS except that –
Administration.	Sec. 10(a) Each component of the NWSRS shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system, without insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of those values.
16 USC 1131 note.	Sec. 10(b) Any portion of the NWSRS that is within the national wilderness preservation system shall be subject to the provisions of both, and in the case of conflict between the provision of these Acts the more restrict provisions shall apply.
State or local governments, cooperative agreements	Sec. 10(e) Administering agency of NWSRS component may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State.
State and local projects, financial assistance.	Sec. 11(a) The Secretary of the Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965.
Administration and management policies, review.	Sec. 12(a) Shall review administrative and management policies, regulations, contract, and plans affecting lands under their respective jurisdictions which include, border upon, or are adjacent to the rivers listed in subsection (a) of Section 5 of this Act in order to determine what actions should be taken to protect such rivers.
Fish and wildlife, jurisdiction.	Sec. 13(a) Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife.
Water rights, compensation.	Sec. 13(b) Any taking by the U.S. of a water right which is vested at the time such river is included in the NWSRS shall entitle the owner thereof to just compensation.
Easement and rights-of-way.	Sec. 13(g) May grant easements and rights-of-way.
Easements as contributions, claim and allowance.	Sec. 14 Easements as contributions, claim and allowance.
Definition.	Sec. 15 As use in this Act, the term(s) “River”, “Free-flowing”, and “Scenic Easement” means.
Appropriations.	Sec. 16 There is hereby authorized to be appropriated such sums as may be necessary, but not more than.
1. Read the details of the Act as this is only a partial summary of the requirements.	

Procedural and Substantive Requirement of the W&S Rivers Act

This section was a brainstorming idea that never really got started.

- Section 1(b) – Congressional Declaration of Policy (protect ORVs) & [Eligibility]
- Section 2 – Eligibility
- Sections 3(d)(1) and 3(d)(2) – Management Plans; Review Requirements for Early Designations
- Section 5(d)(1) – Direction to Evaluate Rivers, Agency Identified Studies
- Section 5 – Required Eligibility Findings
- Section 10(a) – Management Direction
- Section 12(a) – Management Policies

Appendix E. Court Cases For Wild & Scenic Merced River

- Appendix E. Court Cases For Wild & Scenic Merced River
- Appendix E1. Wild & Scenic Rivers Act, The United States Department of Justice
- Appendix E2. Court Cases For Wild & Scenic Merced River
- Appendix E3. *Friends of Yosemite Valley v. Kempthorne* 520 F.3d 1024 (2008)
- Appendix E4. *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities*

Appendix E1. Wild & Scenic Rivers Act, The United States Department of Justice
(<http://www.justice.gov/enrd/3189.htm>)

Congress enacted the Wild and Scenic Rivers Act (WSRA) in 1968, declaring it 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.” 16 U.S.C. § 1271. As originally enacted, the WSRA named specific rivers or segments of rivers for inclusion in the Wild and Scenic River System (“WSRS”). Id. § 1274(a)(1)-(a)(8). The WSRA also sets forth a procedure for future designations to the WSRS. Id. § 1273(a). WSRS components are administered by the Secretary of the Interior or, if the river falls within a national forest, the Secretary of Agriculture. Id. § 1281(c)-(d). , p. The WSRA framework designates rivers based on specific “outstandingly remarkable values” (ORVs) which both justify the initial designation of a river as a WSRS component, Id. §1271, and provide the benchmark for evaluating a proposed project affecting a designated river. While, under the WSRA, protecting and enhancing the designated ORVs is paramount, this goal may be compatible with other uses:

[e]ach component of the [WSRS] shall be administered in such manner as to protect and enhance [those ORVs that] caused it to be included in[the WSRS] without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values[, with] primary emphasis ... given to protecting its esthetic, scenic, historic, archeologic, and scientific features.

Id. § 1281(a). The WSRA further recognizes that “[m]anagement plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.” Id. To the extent that the WSRA conflicts with the Wilderness Act, id. § 1131-1136, or statutes administering the national park system and national wildlife system, the WSRA instructs that “the more restrictive provisions shall apply.” Id. § 1281(b)-(c). The WSRA requires the administering agency to “take such action respecting management policies, regulations, contracts, [and] plans ... as may be necessary to protect such rivers in accordance with” the WSRA, and “cooperate with the ... Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.” Id. § 1283(a), (c).

Once a river is designated as part of the WSRS, the following statutory timetable applies: (1) within one year, the administering agency is required to “establish detailed boundaries” for the river and classify it (generally or by its various segments) as “wild,” “scenic,” or “recreational,” Id. §§ 1274(b); 1273(b); and (2) within three full fiscal years, the administering agency must prepare a comprehensive management plan (“CMP”) “to provide for the protection of the river values,” id. § 1274(d)(1). “The [CMP] shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the [WSRA's] purposes.” Id.

Challenges brought under WSRA generally involve allegations that the National Park Service failed to prepare an appropriate comprehensive management plan once a river has been designated for inclusion in the Wild and Scenic River System. See *Friends of Yosemite Valley v. Norton*, 348 F.3d 789 (9th Cir. 2003); *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024 (9th Cir. 2008).

Appendix E2. Court Cases For Wild & Scenic Merced River

- 1968 *The Wild and Scenic Rivers Act* ("WSRA"), 16 U.S.C. §§ 1271-1287
- 1987 Congress designated segments of the Merced River as WSRS components, including sections flowing through the very popular Yosemite National Park, and its administrative site, El Portal. See Public Law No. 100-149, 101 Stat. 879 (Nov. 2, 1987) (codified at 16 U.S.C. § 1274(a)(62)(A)).
- 1999 *Sokol v. Kennedy* (1999) [related case]. In *Sokol v. Kennedy* the Eighth Circuit Court of Appeals determined that ORVs must be defined under the “controlling language” of the WSRA. The court found that the NPS erred when it did not specifically define ORVs at the beginning of the Wild and Scenic River planning process for the Niobrara River in Nebraska. Instead, the NPS focused on the “significance” and “importance” of river resources. The NPS argued that the WSRA is unclear on the agency’s obligation to define a river’s ORVs, and the task “was relevant only to the selection of new rivers for inclusion in the Wild and Scenic Rivers System.” The court replied that “this interpretation conflicts with the administrative duty clearly set out in Section 1281(a),” footnoting that, “Such an open-ended and standardless interpretation of the Act would also leave defendants [DOI] open to a claim of unconstitutional delegation of legislative power. We choose to construe the Act in such a way as to avoid any such constitutional question.” [The Interagency Council’s “Study Process” paper was published after the NPS completed the Niobrara River study, in the same month that the Eighth Circuit Court of Appeal issued a decision in this case.]
- 1999 *Sierra Club v. Babbitt*, 69 F. Supp. 2d 120269F. Supp.2d1202, 1263 (E.D.Cal.) [district court]
- 1982 *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas*, 47 Fed. Reg. 39,454 (Sept. 7, 1982) (the "Secretarial Guidelines").
- 2003 *Friends of Yosemite Valley v. Norton*, 348 F.3d 789 (9th Cir.2003) (Yosemite I). Merced River ORVs were initially challenged within *Friends of Yosemite Valley, et al. v. Norton* (2003). The ORV statements were initially challenged as arbitrary and capricious, but upheld by the court because ORVs were prepared under the accepted guidance of Interagency Council criteria. The Court of Appeals later affirmed: “With the exception of the user capacities and river boundaries . . . the [Merced River Plan] was prepared with sufficiently specific data and information to satisfy Section 1281(a)'s goal of protecting and enhancing ORVs.”
- In a settlement agreement in the matter of *Friends of Yosemite Valley, et al. v. Salazar*, authorized by the U.S. District Court, Eastern District of California, Fresno Division, the NPS agreed to work with certain user capacity experts and revisit ORVs as part of the planning process. These experts were engaged as consultants at the beginning of the planning process in October, 2009, and worked with park planners in defining revised ORVs with an eye toward what must be addressed under the user capacity study process. The settlement agreement requires the NPS to develop new ORVs “in accordance with all legal requirements and guidance, including but not limited to the language contained in the 1982 Secretarial Guidelines and the reports of the Interagency Wild and Scenic River Coordinating Council.”
- 2004 *Friends of Yosemite Valley v. Norton*, 366 F.3d 731 (9th Cir.2004) (Yosemite II).
- 2006 *Friends of Yosemite Valley v. Scarlett*, 439 F. Supp.2d 074439F. Supp. 2d1074439F. Supp. 2d1074 (E.D. Cal. 2006). [district court]
- 2006 *Friends of Yosemite Valley v. Kempthorne*, 464 F. Supp. 2d 993464F. Supp.2d993 (E.D. Cal. 2006). [district court]
- 2008 *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024 (9th Cir. 2008) (Yosemite III)
- 2014 The Merced Wild and Scenic River Final Comprehensive Management Plan and Environmental Impact Statement was released in February 2014.

Appendix E3. *Friends of Yosemite Valley v. Kempthorne* 520 F.3d 1024 (2008)

Twenty years after the Merced River, which lies in the heart of the Yosemite National Park, was designated a Wild and Scenic River, and seventeen years after the National Park Service ("NPS") was statutorily required to prepare a Comprehensive Management Plan ("CMP") for the Merced Wild and Scenic River, the question whether NPS has developed a valid CMP is again before us. In 2003, we found certain deficiencies in an earlier CMP the 2000 CMP and remanded to the district court. See *Friends of Yosemite Valley v. Norton*, 348 F.3d 789 (9th Cir.2003) (Yosemite I). We clarified our opinion in *Friends of Yosemite Valley v. Norton*, 366 F.3d 731 (9th Cir.2004) (Yosemite II). On July 19, 2006, the district court ruled on cross-motions for summary judgment. It concluded that NPS continues to violate certain provisions of the Wild and Scenic Rivers Act ("WSRA"), 16 U.S.C. §§ 1271-1287, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321-4375, as well as our instructions in Yosemite I and Yosemite II. *Friends of Yosemite Valley v. Scarlett*, 439 F. Supp.2d 1074439F. Supp.2d1074439F. Supp.2d1074 (E.D.Cal.2006).

Appellants Dirk Kempthorne, in his official capacity as Secretary of the Interior; the National Park Service; Jonathan Jarvis, in his official capacity as NPS Regional Director of the Pacific West Region; and Michael Tollefson, in his official capacity as Superintendent of Yosemite National Park (collectively, "NPS") argue that the district court erred in finding that (1) the Merced Wild and Scenic River Revised Comprehensive Management Plan and Supplemental Environmental Impact Statement ("2005 Revised Plan") fails sufficiently to "address . . . user capacities" as required by § 1274(d) of the WSRA; (2) the 2005 Revised Plan is deficient because it is not a wholly self-contained plan; and (3) the supplemental environmental impact statement ("SEIS") prepared for the 2005 Revised Plan violates NEPA.

We have jurisdiction under 28 U.S.C. § 1291 and affirm the district court. We hold that the 2005 Revised Plan does not describe an actual level of visitor use that will not adversely impact the Merced's Outstanding Remarkable Values ("ORVs") as required by Yosemite I and the WSRA, because the Visitor Experience and Resource Protection ("VERP") framework is reactionary and requires a response only after degradation has already occurred. Moreover, the interim limits are based on current capacity limits and NPS has not shown that such limits protect and enhance the Merced's ORVs. And, as we made clear in Yosemite II, we again conclude that the WSRA requires that the CMP be in the form of a single, comprehensive document, which addresses all the required elements, including both the "kinds" and "amounts" of use, and thus the 2005 Revised Plan is deficient because it addressed only the two components struck down in Yosemite I and was not a single, self-contained plan. Finally, we conclude that the SEIS violates NEPA because the "no-action" alternative assumed the existence of the very plan being proposed; the three action alternatives which are each primarily based on the VERP framework are unreasonably narrow; and for the first five years, the interim limits proposed by the three alternatives are essentially identical.

Friends of Yosemite Valley v. Norton, 348 F.3d 789 (9th Cir.2003) (Yosemite I).
Friends of Yosemite Valley v. Norton, 366 F.3d 731 (9th Cir.2004) (Yosemite II).
Friends of Yosemite Valley v. Kempthorne 520 F.3d 1024 (2008) (Yosemite III)

The WSRA framework designates rivers based on specific "outstandingly remarkable values" ("ORVs") which both justify the initial designation of a river as a WSRS component, see *id.* § 1271, and provide the benchmark for evaluating a proposed project affecting a designated river. While, under the WSRA, protecting and enhancing the designated ORVs is paramount, this goal may be compatible with other uses:

[e]ach component of the [WSRS] shall be administered in such manner as to protect and enhance [those ORVs that] caused it to be included in [the WSRS] without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values[, with] primary emphasis . . . given to protecting its esthetic, scenic, historic, archeologic, and scientific features.

The Secretaries' Joint Guidelines (Secretarial WSRA Guidelines)

Because of inconsistencies caused by the WSRA's provision for administration by agencies under both the Department of Agriculture and the Department of the Interior, the President asked both Secretaries to jointly issue guidelines interpreting the WSRA. See National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. 39,454 (Sept. 7, 1982) (the "Secretarial Guidelines"). The Secretarial Guidelines interpret the management principles of § 1281(a) "as stating a nondegradation and enhancement policy for all designated river areas, regardless of classification." *Id.* at 39,458. The Secretarial Guidelines further explain that the WSRA requires the administering agency to manage each component so as to protect and enhance its ORVs, "while providing for public recreation and resource uses which do not adversely impact or degrade those values." *Id.* at 39,458-59. The Secretarial Guidelines also envision the use of varying strategies and implementations, depending on the segment's classification and ownership. *Id.* at 39,459.

Notably, the Secretarial Guidelines discuss "carrying capacity," a term that does not appear in the WSRA itself^[1] and is defined as "[t]he quantity of recreation use which an area can sustain without adverse impact on the [ORVs] and free-flowing character of the river area, the quality of recreation experience, and public health and safety." *Id.* at 39,455. The Secretarial Guidelines contemplate that

[s]tudies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Management of the river area can then be planned accordingly.

Id. at 39,459 (emphasis added). The Secretarial Guidelines also require that a component's management plan state

the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated[,], and specific management measures which will be used to implement the management objectives for each of the various river segments and protect esthetic, scenic, historic, archeologic and scientific features. *Id.* at 39,458 (emphasis added).

Addressing User Capacities²¹

The 2005 Revised Plan, pursuant to the ROD, adopts VERP as its primary method of addressing user capacity. NPS argues that the district court erred in finding that the 2005 Revised Plan did not remedy the deficiency we found in the user capacity component of the 2000 CMP. According to NPS, sufficiently specific measurable limits on use can be found in (1) the Wilderness Trailhead Quota System; the Superintendent's Compendium limits; (2) the new VERP indicators and standards; and (3) the interim limits imposed by the User Capacity Management Program.

1. Wilderness Trailhead Quota System and Superintendent's Compendium

The district court properly concluded that neither the Wilderness Trailhead Quota System nor the Superintendent's Compendium^[3] are "persuasive as to whether the 2005 Revised Plan adequately addresses user capacities." *Friends of Yosemite*, 439 F.Supp.2d at 1096. Although they are steps in the right direction, both these methods for addressing user capacity "predate the 2000[CMP] and were relied upon by [NPS] in support of that plan" to no avail. *Id.*

2. VERP

The district court correctly found that VERP does not properly address user capacities because, by not requiring a response to environmental degradation until *1034 after it already occurs, it is reactive and thereby violates 16 U.S.C. § 1281(a) and the Secretarial Guidelines, 47 Fed.Reg. at 39,458-59, interpreting the management principles of § 1281(a).

NPS argues that the district court based its holding on a legally incorrect view that the WSRA does not allow reliance on a program that monitors particular indicators, such as VERP, because such a program is, by definition, "reactive." According to NPS, that ruling is contrary to our holding in *Yosemite I*, where we held that NPS could address user capacities with a VERP framework that monitors and maintains environmental and experiential criteria. See *Yosemite I*, 348 F.3d at 796-97. NPS further contends that the district court's ruling incorrectly requires NPS to set specific limits on the number of visitors, even though we stated in *Yosemite I* that a numerical cap is not required. NPS misreads the district court's analysis, and its argument is therefore flawed. The reason the district court found that the revised VERP was reactionary was not because a framework that monitors and maintains is inherently reactive and thus can never be proactive. Rather, the revised VERP at issue was found to be reactionary, and thus responsive after-the-fact to already occurring degradation, because it does not "describe an actual level of visitor use that will not adversely impact the Merced's ORVs." See *Friends of Yosemite*, 439 F.Supp.2d at 1098-1100 (quoting *Yosemite I*, 348 F.3d at 797).

NPS next argues the district court incorrectly stated that the VERP as set out in the 2005 Revised Plan "is not oriented towards preventing degradation." It contends that the indicators and standards established in VERP trigger action prior to degradation of ORVs. In support, NPS asserts that (1) the indicators and standards are set conservatively so that, although management may not act before the indicators and standards are exceeded, action will be taken before there is degradation; (2) the text of the 2005 Revised Plan provides that "[i]ndicators, which are

measurable variables, are determined first; standards quantifiably define the acceptable conditions (i.e., measured values) for each indicator. . . . [which] are set at a level that will protect and enhance the Merced River's [ORVs]" (emphasis added); (3) NPS does not choose a particular indicator unless that indicator is "[a]ble to provide an early warning for resource degradation"; (4) management action may occur before a standard is exceeded because "[t]he process of monitoring and its relationship to management actions can be likened to a traffic signal. . . . A yellow-light condition occurs when monitoring shows that conditions are approaching the standard. This early warning sign may call for implementing proactive management actions to protect and enhance the [ORVs]"; and (5) the district court's conclusion is at odds with this panel's decision in Yosemite I.

That an indicator may be able to provide an early warning, does not mean that it does in practice. A standard must be chosen that does in fact trigger management action before degradation occurs. Also, that an early warning sign may call for the implementation of proactive management does not provide much assurance that such implementation will occur. Despite NPS's statements to the contrary, in Yosemite I, we did not foreclose a later finding by the district court that the VERP system remains problematic even if VERP does not rely on examples instead of actual indicators and standards. Currently, VERP requires management action only when degradation has already occurred, and it is therefore legally deficient.[4]

***1035 3. Interim Limits**

The district court properly concluded that the interim limits "do not describe an actual level of visitor use that will not adversely impact the Merced's ORVs." *Friends of Yosemite*, 439 F.Supp.2d at 1099-1100. The 2005 Revised Plan adopted interim limits for a five-year period to restrict the kinds and amounts of visitor use in the Merced River corridor while the VERP program is being tested. These interim limits include caps on overnight lodging, campsites, day-visitor parking, bus parking spaces and employee housing units. Buses are limited to 92 per day in the Yosemite Valley segment, which according to NPS, is consistent with the number of buses that entered the Yosemite Valley at peak periods such as in the mid-1990s. Day-visitor parking spaces, bus parking spaces, and overnight lodging facilities are set at existing levels. The number of campsites in Yosemite Valley would be allowed to increase slightly during the interim period by 163 sites for an interim limit of 638 sites, a level which, as NPS states, falls below both the number of campsites in the Yosemite Valley prior to the 1997 flood and when the Merced River was designated Wild and Scenic in 1987. Some of the limits, while at existing capacity limits, are below facility levels that existed in 1980, before the Merced River was designated under the WSRA.

According to NPS, its choice of interim limits is not arbitrary or capricious. NPS argues that "[i]f the status of the Merced River's ORVs was sufficient for eligibility in 1987 when Yosemite Valley had more parking spaces, rooms and campsites than at present, it would be improper to simply assume that the lower facility levels permitted under the 2005 [Revised Plan] will 'degrade' the ORVs." Furthermore, NPS argues that its decision is consistent with § 1281(a) of the WSRA because it does not "limit[] other uses that do not substantially interfere with public use and enjoyment of the Merced's ORVs. 16 U.S.C. § 1281(a).

There is no authority for a presumption that holding facility levels to those in existence in 1987, when the Merced was designated under the WSRA, is protective of ORVs or satisfies the user capacity component of the required CMP. See *Friends of Yosemite*, 439 F.Supp.2d at 1099-1100. NPS has a responsibility under the "protect and enhance" requirement of the WSRA to address both past and ongoing degradation. Setting interim limits to current capacity limits does not address the problem of past degradation.[5] Moreover, 1036 nowhere has NPS shown how its interim limits place "primary emphasis" on the protection of the Merced River's "esthetic, scenic, historic, archeologic, and scientific features" as required by § 1281(a). And although the WSRA does not preclude basing user capacity limits on current capacity limits, NPS's decision to base many of its interim limits on current capacity limits was not "founded on a reasoned evaluation of the relevant factors." See *Yosemite I*, 348 F.3d at 793 (internal quotation marks omitted). Nor has NPS "articulated a rational connection between the facts found and the choice made." See *id.*[6]

B. Requirement of a Single, Self-contained Plan

The district court did not err by faulting NPS for assuming that the 2000 CMP still existed and finding that the 2005 Revised Plan was deficient because, focusing only on the elements that were explicitly struck down in *Yosemite I*, it was not a single, self-contained plan. See *Friends of Yosemite*, 439 F.Supp.2d at 1093-94. The WSRA requires a single, comprehensive plan that collectively addresses all the elements of the plan, both the "kinds" and "amounts" of permitted use-in an integrated manner. As *Friends* argue, NPS has simply tacked onto the 2000 CMP ten indicators and standards for the purposes of limiting the "amounts" of use, but has failed simultaneously to address the appropriate "kinds" of use. Moreover, before the district court, NPS, in a futile effort to correct this problem, attempted to rely on a December 2005 "Presentation Plan" which, according to NPS, combines all elements from the 2000 CMP and the 2005 Revised Plan that comprise the management plan for the Merced as administered by NPS. The district court properly rejected any such reliance because it was created after the approval of the 2005 Revised Plan, was not presented for public review as the revised plan and contradicted the 2005 Revised Plan which states that it is "the" final revised CMP. See *id.* at 1094 n. 2.

In *Yosemite II*, we clarified that in *Yosemite I*, "we held . . . the entire Merced Wild and Scenic River [CMP] . . . invalid" and that "we did not otherwise uphold the[2000 CMP]." *Yosemite II*, 366 F.3d at 731 (internal quotation marks omitted). We thus concluded that, "[NPS] must prepare a new or revised CMP." *Id.* Contrary to NPS's assertion, in *Yosemite II*, we indicated that a single document covering all required elements must be produced. This does not mean that NPS is required to start from scratch with respect to each element of the 2000 CMP that was not explicitly found deficient or that it cannot incorporate parts of the 2000 CMP in preparing its new or revised plan. But, it is *1037 required to prepare a single plan, not issue supplemental volumes that simply cross-reference thousands of pages of material from the 2000 CMP.

The Secretarial Guidelines mandate such an interpretation of the WSRA, stating that the WSRA requires that a river's comprehensive management plan state both "the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated." 47 Fed.Reg. at 39,458. NPS cannot, thus, address the "amounts" of use without also

addressing the "kinds" of use. The two are inseparable. Further support comes from the plain meaning of "comprehensive," which, according to the Oxford English Dictionary, is "having the attribute of comprising or including much; of large content or scope."

NPS cites to *Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17, 20, 73 S.Ct. 8573S.Ct.8573S.Ct.85, 97 L.Ed. 15 (1952), for the proposition that the district court's holding conflicts with principles of judicial review. In *Idaho Power*, the Supreme Court stated "that the function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the [agency] for reconsideration." *Id.* There, the D.C. Circuit had entered a judgment and remanded the case to the agency for entry of an order in accordance with its opinion. *Id.* at 19, 73 S.Ct. 8573S.Ct.8573S.Ct.85. However, in response to a motion to clarify the judgment, the appellate court entered a new judgment and itself undertook to modify the agency's order. *Id.* at 20, 73 S.Ct. 8573S.Ct.8573S.Ct.85 ("[T]he Court of Appeals entered a new judgment, stating that the order of the [agency] `be, and it is hereby, modified by striking therefrom paragraph (F) thereof, and that the order of the[agency] herein as thus modified be, and it is hereby, affirmed.>"). When we required NPS to prepare a revised or new CMP, we did not commit the same error as the D.C. Circuit—we did not assume the responsibility of revising the 2000 CMP itself, but rather remanded to the agency. The same holds true for the district court with respect to its decision on the cross-motions for summary judgment. Thus, NPS's argument is without merit.

Appendix E4. *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities*

The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities.
Environmental Law (Journal), Volume 39, Issue Three, Lewis & Clark Law School
<http://elawreview.org/articles/volume-39/issue-39-3/the-friends-of-yosemite-valley-saga-the-challenges-of-addressing-the-merced-rivers-user-capacities/>

Cathcart-Rake, John. 2009. *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities*. Associate Editor, Environmental Law, 2009–2010, 39-3 XX 9TH CIR 8/31/2009 6:27 PM. Lewis and Clark Law School. Portland, OR.

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The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities

In the fall of 2009, Ken Burns's documentary series on the National Park system premieres on PBS. Around the same time, the Park Service plans to release a comprehensive management plan for the Merced River corridor in Yosemite National Park. While Burns' documentary will echo Wallace Stegner's characterization of the park system as one of America's "best" ideas, and is thus likely to inspire nostalgia, as well as increased visitation to popular parks, such as Yosemite, the release of the Merced River Plan will **reignite controversy** regarding the Park Service's duty under the Wild and Scenic River Act (WSRA) **to control visitors and development to prevent the degradation** of the Merced River corridor, including Yosemite Valley. The Ninth Circuit, in *Friends of Yosemite Valley v. Norton and Friends of Yosemite Valley v. Kempthorne*, has already rejected two versions of the Merced River Plan. This Chapter chronicles the decade-long battle over the Merced River Plan and **user capacity** in Yosemite Valley, placing the recent controversy within the context of the Park Service's traditional promotion of visitation and recreation. Although the Ninth Circuit stopped short of requiring a visitor cap in Yosemite Valley, this Chapter examines the arguments for and against such a cap, discusses the immediate consequences for Park Service officials tasked with correcting the Merced River Plan's deficiencies, and considers **the ripple effects of the Ninth Circuit's ruling on river managers nationwide** (EnLaw, pps. 833 - 834).

In Yosemite Valley, where each natural feature and view has its **own constituency**,⁸ (EnLaw, pps. 835).

8. James Rainey, Yosemite Valley Plan Seen as a Quest for Beauty and Balance, L.A. TIMES, Nov. 15, 2000, at A3. President Clinton's Interior Secretary Bruce Babbitt characterized Yosemite's diverse stakeholders as a "**cantankerous, eccentric, passionate, irrational, idealistic, quarrelsome, impossible crowd of people.**" Brian Melley, Yosemite: Tough Task Ahead for New Superintendent, SEATTLE POST INTELLIGENCER, Feb. 6, 2003, http://www.seattlepi.com/getaways/107353_yosemite06.shtml (last visited July 19, 2009) (quoting Interior Sec. Babbitt).

The WSRA requires river managers to "address . . . user capacities" in comprehensive management plans.¹⁶ (EnLaw, p. 836)

16. Id. § 1274(d)(1). **Guidelines published by the Interior and Agriculture departments in 1982** for wild and scenic river management refer to **carrying capacity**. Final Revised Guidelines for **Eligibility, Classification and Management of River Areas**, 47 Fed. Reg. 39,454, 39,455 (Sept. 7, 1982). Thus, **user capacity tends to be used interchangeably with "carrying capacity,"** which has origins in managing natural resources. See NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, THE VISITOR EXPERIENCE AND RESOURCE PROTECTION (VERP) FRAMEWORK: A HANDBOOK FOR PLANNERS AND MANAGERS 9 (1997), available at <http://planning.nps.gov/document/verphandbook.pdf> [hereinafter VERP HANDBOOK]. The National Parks and Recreation Act of 1978 referred to **visitor carrying capacity**. 16 U.S.C. § 1a-7(b) (2006). Note that both **user capacity and carrying capacity are more inclusive of other nonrecreation uses of an area, such as employee housing and work stations,**

than “visitor carrying capacity.” NAT’L PARK SERV., U.S. DEP’T OF THE INTERIOR, MERCED WILD AND SCENIC RIVER REVISED COMPREHENSIVE MANAGEMENT PLAN AND SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, at II-2 n.1 (2005), available at http://www.nps.gov/archive/yose/planning/mrp/pdf/08_mrp_ch2.pdf [hereinafter REVISED MERCED RIVER PLAN].

III. THE WILD AND SCENIC RIVERS ACT: REQUIREMENTS AND JUDICIAL REVIEW

In the post-flood litigation, the WSRA became a primary avenue of challenges to Park Service planning⁷⁸ because the **WSRA places a primary emphasis on preserving river values over development and other uses inconsistent with the river’s preservation.**⁷⁹ (EnLaw, p. 844)

78. Sierra Club challenged the expedited reconstruction plans for Yosemite Lodge, *Sierra Club v. United States (Yosemite Lodge)* 23 F. Supp. 2d 1132, 1133 (N.D. Cal. 1998), and El Portal Road, *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1207 (E.D. Cal. 1999), alleging, inter alia, violations of the WSRA.

79. Wild and Scenic Rivers Act, 16 U.S.C. § 1281(a) (2006); Lemons & Stout, supra note 41, at 59 (suggesting the WSRA “strengthens the preservation objective that the [Park Service] must use to govern its decisions to allow an activity”). One commentator observed that “if the Merced River had been protected by a statute like the Wild and Scenic Rivers Act since the early days of its inclusion in Yosemite National Park, the tragedy of Yosemite Valley could not have occurred.” Brian E. Gray, No Holier Temples: Protecting the National Parks through Wild and Scenic River Designation, in *OUR COMMON LANDS: DEFENDING THE NATIONAL PARKS* 331, 339 (David J. Simon ed., 1988) (footnote omitted).

A. Protections and Procedures of the Wild and Scenic Rivers Act

Congress enacted the Wild and Scenic Rivers Act in 1968 to **protect free-flowing rivers from dams and other development for present and future generations.**⁸⁵ The WSRA establishes **designation procedures, management directives, and protection mandates for free-flowing rivers.**⁸⁶ To qualify for designation, a river or segment of a river must possess at least one “**outstandingly remarkable value**” (ORV),⁸⁷ including “**scenic, recreational, geologic, fish and wildlife, historic, [and] cultural**” values.⁸⁸ Under section 1281 of the WSRA, river managers must “**protect and enhance**” designated ORVs.⁸⁹ Although the WSRA’s “**protect and enhance**” mandate places a **primary emphasis on “esthetic, scenic, historic, archeologic, and scientific features,”**⁹⁰ the statute contemplates uses compatible with preservation.⁹¹ The WSRA 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.”**⁹² Thus, the statute and its implementing guidelines establish a **preservation mandate, but allow uses that do not adversely affect a river’s ORVs.** (EnLaw, p. 845)

85. See Pub. L. No. 90-542, 82 Stat. 906 (1968) (codified at 16 U.S.C. § 1271 (2006)).

86. See 16 U.S.C. §§ 1271–1287 (2006).

87. See id. §§ 1271, 1273(b).

88. Id. § 1271. **ORVs, in short, are values that make the river worthy of protection.** James Bacon et al., VERP: Putting Principles into Practice in Yosemite National Park, 23 *GEORGE WRIGHT F.* 73, 74 (2006), available at www.georgewright.org/232bacon.pdf. The Agriculture and Interior departments’ joint guidelines also provide for values not listed in the statute. See **Final Revised Guidelines for Eligibility, Classification and Management of River Areas**, 47 Fed. Reg. 39,454, 39,457 (Sept. 7, 1982) (“[O]ther similar values, . . . if outstandingly remarkable, can justify inclusion of a river in the national system.”).

89. 16 U.S.C. § 1281(a) (2006).

90. Id.

91. Id. (“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 in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.**”).

92. **Final Revised Guidelines for Eligibility, Classification and Management of River Areas**, 47 Fed. Reg. at 39,458–59.

Under section 1281(a) of the WSRA, **CMPs may establish a wide range of agency discretion**, by providing for “varying degrees of intensity for [a river component’s] protection and development, based on the special attributes of the area,”⁹⁶ **but under section 1274(d), plans must also “address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the [WSRA’s] purposes.”**⁹⁷ **Although the statute does not define “user capacities,” the WSRA Guidelines discuss an analogous term, “carrying capacity,” and offer guidance about the duty to address user capacities in a CMP.**⁹⁸ The WSRA Guidelines define “**carrying capacity**” as “[t]he quantity of recreation use which an area can sustain without adverse impact on the [ORVs] and freeflowing character of the river area, the quality of recreation experience, and public health and safety.”⁹⁹ The WSRA Guidelines further require that a CMP describe the “**kinds and amounts of public use,**” including recreation, that each river segment can sustain without

adverse affect on its ORVs.¹⁰⁰ Thus, to satisfy the **WSRA Guidelines carrying capacity provisions**, and hence, the **WSRA's requirement to address user capacity, CMPs must not allow amounts and types of uses that adversely affect a river's ORVs.** (EnLaw, pps. 845 - 846)

96. 16 U.S.C. § 1281(a) (2006).

97. Id. § 1274(d)(1).

98. Before 1986, the WSRa required agencies to "prepare a plan for necessary developments in connection with [the river's] administration in accordance with such classification." 16 U.S.C. § 1274(b) (1982). In 1982, the Departments of Agriculture and Interior released the **WSRA Guidelines, which defined carrying capacity**. See Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Fed. Reg. 39,454, 39,455 (Sept. 7, 1982). In response, Congress amended the WSRa in 1986, **ratifying the carrying capacity requirement but terming it "user" capacity**. See Pub. L. No. 99-590, § 501, 100 Stat. 3330, 3335 (1986) (deleting reference to "necessary developments" from the statute). Because **Congress incorporated user capacity**, which the administering departments defined and discussed in a previous interpretation of WSRa duties, courts may imply that Congress meant the same thing as the agency's previous interpretation. See, e.g., *Hall v. U.S. Env't Prot. Agency*, 273 F.3d 1146, 1158 (9th Cir. 2001) (noting, in a case involving the 1990 amendments to the Clean Air Act, that there is a "strong inference" that when Congress incorporates an administratively defined term, it intends "the term to be construed in accordance with pre-existing . . . interpretations" (alteration in original) (citing *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998))).

99. **Final Revised Guidelines for Eligibility, Classification and Management of River Areas**, 47 Fed. Reg. at 39,455.

100. Id. at 39,458. The **WSRA Guidelines** also contemplated that during the preparation of the CMP, the management agency would undertake a study **"to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area."** Id. at 39,459.

In *Sierra Club v. Babbitt*,¹⁰³ a precursor to the Yosemite cases, the court concluded that **a CMP is central to agency management¹⁰⁴ because it defines the methods and levels of protection for river ORVs, and conversely, the levels of use and development that river ORVs can tolerate.**¹⁰⁵ When a plan does not exist, a managing agency's ability to comply with the WSRa's protect-and-enhance ORV standard is "severely limited."¹⁰⁶ A court can order the preparation of a plan under the APA¹⁰⁷ and can consider the failure to prepare a plan in issuing injunctive relief.¹⁰⁸ (EnLaw, p. 847)

103. 69 F. Supp. 2d 1202 (E.D. Cal. 1999) (ordering the Park Service to prepare a CMP for the Merced River and enjoining reconstruction of a one mile section of El Portal Road for violations of the WSRa and NEPA).

104. Id. at 1250-51.

105. Id. at 1251.

106. See Charlton H. Bonham, *The Wild and Scenic Rivers Act and the Oregon Trilogy*, 21 PUB. LAND & RESOURCES L. REV.

109, 136 (2000). 107. See *Sierra Club v. Babbitt*, 69 F. Supp. 2d at 1263; *Nat'l Wildlife Fed'n v. Cosgriff*, 21 F. Supp. 2d 1211, 1224 (D. Or. 1998) (ordering Bureau of Land Management to prepare a CMP six years after the statutory deadline passed).

108. See *Sierra Club v. Babbitt*, 69 F. Supp. 2d at 1251 (concluding that failing to plan could factor into the court's consideration of injunctive relief for a substantive violation of the WSRa). But see *Sierra Club v. United States*, 23 F. Supp. 2d 1132 (N.D. Cal. 1998) (holding that the WSRa does not indicate that a court may enjoin an agency's land management activities because of a mere failure to timely adopt a comprehensive management plan in the absence of a substantive violation of the WSRa).

Because the **WSRA requires a managing agency to limit uses that "substantially interfere" with public use and enjoyment of river ORVs**,¹¹¹ courts have granted a managing agency wide discretion with regard to limiting uses and developments that affect a river.¹¹² Although the burden of proof in these matters is unclear,¹¹³ courts have been more willing to conclude that an agency acted arbitrarily when the **administrative record contains scientific evidence and recommendations that contradict the findings of agency management decisions, plans, and actions regarding degradation in the river corridor.**¹¹⁴ (EnLaw, p. 848)

111. *Wild and Scenic Rivers Act*, 16 U.S.C. § 1281(a) (2006).

112. See Gray, *supra* note 79, at 336-37. Compare *Sierra Club v. United States*, 23 F. Supp. 2d at 1139 (upholding a Park Service proposal to reroute a road into the Merced River's floodplain because of the recreational values of the area), with *Or. Natural Desert Ass'n v. Green*, 953 F. Supp. 1133, 1143-44 (D. Or. 1997) (invalidating a Bureau of Land Management decision to construct new parking lots, make improvements on an access road, and allow cattle grazing in a river segment Congress classified as "wild," meaning that it was to be free of impoundments and generally inaccessible except by trail).

113. See Bonham, *supra* note 106, at 138.

114. See *id.*

The district court upheld the plan, concluding that the Park Service had not acted arbitrarily in addressing user capacity.¹²¹ But on appeal, the Ninth Circuit invalidated the plan, **interpreting section 1274(d)(1) of the WSRa and the WSRa Guidelines to require descriptions of actual levels of visitor use that will not adversely effect the Merced's ORVs.**¹²² Following the invalidation, the district court enjoined several Yosemite Valley construction projects.¹²³

1. The Merced River Plan

In the 2000 Merced River Plan, the Park Service proposed **VERP as the primary method of “address[ing] user capacities.”**¹²⁴ **VERP is an adaptive process, requiring “a continual learning process, a reiterative evaluation of goals and approaches, and redirection based on an increased information base and changing public expectations.”**¹²⁵ **In lieu of specific numerical limits on visitors, VERP focuses on the prescription and maintenance of selected “desired conditions” of cultural resources, natural resources, and visitor experiences,**¹²⁶ **and uses management zoning to specify desired conditions for specific areas of the Merced River corridor.**¹²⁷ **To protect desired conditions, VERP calls for management action when indicators**¹²⁸ **reflect that desired conditions have fallen below standards,**¹²⁹ **but the plan provided neither specific indicators nor standards.**¹³⁰ (EnLaw, pps. 849 - 850)

121 Friends of Yosemite Valley v. Norton, 194 F. Supp. 2d at 1102–03.

122 Yosemite I, 348 F.3d at 797.

123 See Friends of Yosemite Valley v. Kempthorne, 464 F. Supp. 2d 993, 1000 n.1 (E.D. Cal. 2006) (discussing projects enjoyed by Judge Ishii’s unpublished Memorandum Opinion and Order from July 6, 2004); infra notes 149–51 and accompanying text.

124 MERCED RIVER PLAN, supra note 10, at 103. The Park Service intended the Merced River Plan and its use of VERP to dovetail with the use of **VERP principles** within Yosemite National Park, which began in 1998. Friends of Yosemite Valley v. Norton, 194 F. Supp. 2d at 1101. **VERP arose out of more than 30 years of research, planning, and management experience.** Bacon et al., supra note 88.

125 MERCED RIVER PLAN, supra note 10, at 103.

126 Id.

127 Id. at 56. The Park Service **determined desired conditions through an “ongoing, iterative process,” relying on data collection, data analysis, and continual hypothesis testing.** Id. at 103. The Park Service alleged that **desired conditions correlated to the Merced River’s ORVs.** Friends of Yosemite Valley v. Norton, 194 F. Supp. 2d at 1102. **128 Indicators are measurable variables that reflect a desired condition.** MERCED RIVER PLAN, supra note 10, at 106.

129 **Standards represent acceptable measurements of indicators.** Id. at 108. **Essentially, standards provide the thresholds against which indicators are measured, and can trigger if or when management action should be taken.** Id. at 106–08. 130 Id. at 108.

In 2003 the Ninth Circuit’s ruling was based on its interpretation of the **plain language of section 1274(d)(1)** and the WSRA Guidelines. The court interpreted the WSRA’s command to **“address user capacity” in section 1274(d)(1) to require the Park Service to “deal with or discuss the maximum number of people that can be received” in a wild and scenic river corridor.** The court also looked to the language in the WSRA Guidelines, which it interpreted to require the Merced River Plan to contain **“specific measurable limits on use.”** Because VERP contained only sample standards and indicators, the Ninth Circuit ruled that it failed to describe an actual level of visitor use that will not adversely affect the Merced’s ORVs (Yosemite I, 348 F.3d 789, 792–93 (9th Cir. 2003); EnLaw, pps. 850 - 851).

The 2005 revision proposed **VERP as the primary method of addressing user capacity.**¹⁵⁷ The Revised Merced River Plan contained a revised VERP, which the Park Service planned to implement and refine over five years.¹⁵⁸ The revised VERP, like the 2000 version, relied on a system of **monitoring indicators of desired conditions to protect the Merced River’s ORVs.**¹⁵⁹ Unlike the earlier plan, the **2005 version contained ten actual indicators and standards.**¹⁶⁰ (EnLaw, p. 853)

157 REVISED MERCED RIVER PLAN, supra note 16, at II-1.

158 Scarlett, 439 F. Supp. 2d at 1098.

159 See REVISED MERCED RIVER PLAN, supra note 16, at II-30; see also supra notes 125–31 and accompanying text.

160 See REVISED MERCED RIVER PLAN, supra note 16, at II-30 to II-31, II-39 to II-47; Bacon et al., supra note 88, at 75 tbl.1. For example, the Park Service proposed the **length of visitor-created informal trails in meadows as an indicator in areas zoned for “Day Use” in order to study and manage the “contiguity and ecological health of meadows and wetland areas,” which relates to a biological ORV.** REVISED MERCED RIVER PLAN, supra note 16, at II-31, II-44 tbl.II-5. The Park Service set the standard for social trail length at “[n]o net increase in length of social trails,” **calibrated from a 2004 baseline.** Id. at II-44 tbl.II-5. **VERP’s management action still depended on the information gleaned from monitoring set indicators.** Id. at II-33 to II-34. Thus, **when conditions approach a standard, a yellow-light condition occurs, which “may call” for management action.** Id. **When conditions fail to meet a standard, a red light condition occurs and management action “must be taken” to restore conditions to the acceptable standard.** Id. The Park Service listed several categories of possible management actions, including **1) visitor education, 2) site management, 3) regulation, 4) deterrence and enforcement, and 5) rationing and allocation.** Id. at II-35.

2008 Friends of Yosemite v. Kempthorne (Yosemite III)

In March 2008, the Ninth Circuit ruled, for a third time, that the Park Service's Merced River Plan was invalid. The Ninth Circuit upheld Judge Ishii's ruling that the Wilderness Trailhead Quota System and the Superintendent's Compendium **failed to address user capacities**.¹⁹¹ Although the court characterized these methods as "steps in the right direction,"¹⁹² it reasoned that these methods were not persuasive, because these methods predated the 2000 plan, and the Park Service had relied on them without success in Yosemite I.¹⁹³ Thus, the Park Service could not rely on the Wilderness Trailhead Quota or the Superintendent's Compendium to fulfill the **agency's duty to address user capacity** (Yosemite III; EnLaw p 856).

Although the Ninth Circuit noted that VERP could be an acceptable method of addressing user capacities if implemented properly, the court ruled that the **revised VERP failed to address user capacity since VERP's system of monitoring requires management action only after degradation has already occurred**. The court criticized the nature of choosing standards that "**may be able**" to protect from degradation, ruling that **standards "must be chosen" that can trigger management action before degradation occurs**. Additionally, the court rejected VERP's permissive warning signs, which "**may call**" for proactive management as conditions near standards, but **require management action only when degradation has already occurred**. Thus, the Ninth Circuit affirmed Judge Ishii's ruling that VERP still failed to adequately address user capacities (Yosemite III; EnLaw pps 856 - 857).

The Ninth Circuit also affirmed the district court's ruling that the interim limits **failed to adequately address user capacity because the Park Service could not advance a rational connection between the interim levels and its WSRA duty to protect and enhance the Merced River**. Like Judge Ishii, the Ninth Circuit rejected the Park Service's presumption that the facility capacity levels in existence when Congress designated the Merced as a wild and scenic river adequately protected the Merced's ORVs or satisfied the user capacity requirement. Under the **statute's "protect and enhance" command**, the court reasoned the Park Service had a responsibility to address both past and ongoing degradation. The court implied that the multitude of recreational facilities and services along the Merced, from the swimming pools and mountain sports shops to the gift shops and bars, could not rationally serve as a basis for a user capacity that protected the Merced River from degradation because those facilities and services did not qualify for classification as a recreational ORV under the Service's classification scheme in the Merced River Plan. The Ninth Circuit also reasoned that the interim limits violated the statutory command of WSRA by **failing to demonstrate a "primary emphasis" on the protection of the Merced River's "esthetic, scenic, historic, archeologic, and scientific features."** (Yosemite III; EnLaw p 857).

Lessons and Implications of the Yosemite Opinions

After the Ninth Circuit affirmed the district court's invalidation of the plan and related injunctions, the Park Service renewed planning efforts for a new and improved plan, which is scheduled for release in September 2009. Because the Ninth Circuit first requested, then rejected, the Park Service's interim "caps" on visitation based on facilities, the Yosemite decisions stirred **longstanding arguments for and against rationing use in protected areas**. However, the Ninth Circuit did not ultimately hold that the Park Service must cap the number of people entering a river corridor to satisfy the WSRA's user capacity mandate.²⁰⁷ Instead, the court suggested that a more flexible, adaptable framework of monitoring and maintaining environmental and experiential conditions might satisfy the WSRA under certain conditions.²⁰⁸ In addition, the Yosemite opinions outlined how a managing agency must estimate **visitor caps, if it uses them, by requiring a connection to the designated river's ORVs**, instead of existing facilities and uses. **As the Yosemite opinions represent the judiciary's first interpretation of the WSRA's user capacity mandate, the analysis may influence management plans for eighty-six wild and scenic river segments** designated in March 2009, especially those in developed parks like Zion. However, the Ninth Circuit's decision did not change the interpretation of the Service's charge to identify or implement commitments to carrying capacity in national parks or threaten the widespread application of VERP outside of wild and scenic river corridors. (EnLaw pps. 857 - 858).

Muddying the Waters: Should the Park Service Cap Access to the Merced River Corridor?

Despite the Ninth Circuit's **interpretation of the WSRA's user capacity mandate to require a description of the "maximum number of people"** at the Merced river in Yosemite I, as well as the court's suggestion that caps are an appropriate and common way of protecting the environment in Yosemite III, the court ultimately left the decision about capping public access to the Park Service. The Ninth Circuit tempered its definition of the **user capacity mandate by explaining that the WSRA did not mandate "one particular approach" or a numerical cap on visitors specifically.** The court also suggested that monitoring and maintaining environmental and experiential criteria under VERP could provide a useful measure of use. For the Merced River, the court urged the Service to devise interim limits on use because of the agency's lengthy delay in preparing a plan. Some specific and generic arguments for and against each approach are addressed below (EnLaw p. 858).

Several arguments undergird the Park Service's preference for a monitoring and maintenance framework, such as VERP, over visitor caps. First, even famed environmentalist David Brower argued that claims of overcrowding in Yosemite Valley are exaggerated, and that there is no reason to cap visitation beyond facility capacity. As a philosophical matter, visitor caps can "imply cultural elitism" and raise questions of equity by rationing access to certain classes of people. As a statutory matter, general visitor caps can undermine a managing agency's attempt to provide for public uses and enjoyment clearly contemplated by WSRA, without necessarily determining which uses are incompatible with a river's ORVs. Critics allege caps cause counterproductive side effects because, by restricting the public's access to rivers and parks, caps erode taxpayer support for the Park Service and for withdrawing lands and waters for conservation. **The effectiveness of visitor caps is premised on the assumption that adverse effects on river resources are directly related to the number of users, and that the managing agency is capable of calculating a specific user capacity number for each area.** But in practice, river degradation is often the result of many factors, including the **types of uses, the dispersion of users, and the season of use,** and the Park Service posits that there is no scientific way to determine a particular area's capacity. Further, **caps preemptively select the most restrictive management action that may not correct the root cause of a problem; in contrast, VERP contemplates a variety of management actions, including the restriction of uses, based on the type and extent of the problem** (EnLaw pps. 859 - 860).

On the other hand, there are problems with the Park Service's primary reliance on VERP as a user capacity program without other numeric limits. First, the **WSRA places a primary emphasis on "esthetic, scenic, historic, archeologic, and scientific features," and clearly contemplates limiting uses that interfere with a river's ORVs.** Monitoring frameworks do not replace the need for **proactive numeric visitor capacity decisions,** which can inform stakeholders of the prescribed supply of recreation opportunities to aid decision-making. Of course, although it tends to be a management device of last resort, land managers have long rationed uses on protected public lands, including rivers. Further, research indicates a surprising amount of public support for management practices that ration and allocate use, as long as those practices are fair. Finally, critics of the Park Service have warned that VERP provides the Park Service with **too much discretion, without requisite funding and institutional support, and have thus advocated a system that incorporates both VERP and numerical limits on visitors** (EnLaw p. 860).

Protecting Wild and Scenic Rivers: Modifying VERP to Prevent Degradation

To protect a designated river, **a comprehensive management plan using VERP must require management action prior to degradation.** Both the Ninth Circuit and the district court reasoned that VERP's management protocol was too reactive, ruling that **management action must be required before degradation.** For the Merced River, the Park Service could correct VERP's deficiency by **replacing the program's permissive language with mandatory language.** For example, instead of stating that early warning signs "**may call for**" proactive management actions, the Park Service could require that VERP's monitoring standards and indicators "**shall call for**" such action. This revision would respond directly to the Ninth Circuit's request that management action occur prior to degradation, but **mandating action in a CMP would also provide an environmental plaintiff with judicial review of an agency's inaction.** Moreover, this type of revision would not guarantee a particular kind of management action, **nor would it resolve the challenges posed by Park Service funding and personnel constraints, which can encumber timely and appropriate action** (EnLaw. p 861).

The Ninth Circuit noted another related deficiency of VERP that might be more difficult to remedy. In Yosemite III, the court ruled that **VERP’s standards must be set to trigger management action. To be able to trigger management action prior to degradation, a managing agency must calibrate standards and indicators in a way that correlates levels of use to effects on a river’s ORVs.** In Yosemite III, the court focused on VERP’s deficient management action and **did not resolve whether VERP’s standards and indicators constituted adequate measures of use, much less levels of use that did not adversely affect the Merced River.** This is a difficult task, but simulation modeling of visitor use can help the Service make estimates of levels of visitor use that will ultimately violate standards, so that the Service can manage user capacities more proactively. Because of the **complexity of choosing indicators and setting standards**, as well as the public’s involvement in revising Yosemite’s **user capacity plan**, it seems likely the court would defer to a managing agency’s specific system that included mandatory preventive action—unless, as in Yosemite III, the record indicated that the system failed to prevent degradation (EnLaw pps. 861 - 862).

Enhancing Wild and Scenic Rivers: Confronting the Status Quo

The Yosemite opinions indicate that if a managing agency implements a visitor cap to address user capacity, the cap cannot rely on existing development, but instead **must address past and ongoing degradation facilitated by overdevelopment.** In Yosemite III, the Park Service acknowledged the obvious—fewer facilities and parking equals less crowding and **cars—but provided no analysis about the relationship between setting caps at maximum facility capacity and preventing degradation of the Merced’s ORVs.** Although the **WSRA does not require the removal of existing facilities that do not complement the statute’s “protect and enhance” mandate**, if a managing agency wants to use facility capacities to address user capacities, the agency must show how current facility capacities protect or enhance a river’s ORVs. Based on the “dozens” of facilities the Ninth Circuit cited as perpetuating degradation within Yosemite Valley, the Park Service faces an uphill battle in justifying that these facility capacities actually protect and enhance the Merced River. **Requiring a rational connection between facility capacity as a visitor limit and a designated river’s ORVs could potentially reduce uses associated with certain facilities by removing facility capacities from overall visitor cap calculations, as well as discourage future development that affects designated rivers** (EnLaw pps. 862 - 863)

Similarly, a managing agency **cannot simply maintain the status quo by grandfathering in existing uses.**²⁵¹ The WSRA requires a managing agency to **limit uses that substantially interfere with or degrade a river’s ORVs,**²⁵² **no matter how long those uses have been in existence.**²⁵³ Thus, an agency’s selection of ORVs can predetermine **user capacity estimations** by creating an inherent class of appropriate uses. For the Merced River, the Park Service allows human uses that satisfy two elements **to be considered a recreational ORV: those that are 1) river-related or river-dependent, and 2) rare, unique, and exemplary in a regional or national context.**²⁵⁴ (EnLaw p. 863).

251. The Ninth Circuit’s opinion echoes other court rulings in the context of wilderness areas, see *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630, 648 (2004) (**holding that Forest Service’s decision to grant wilderness special use permits at their preexisting levels in the face of documented damage resulting from overuse did not have rational validity**), and *wildlife refuges, Defenders of Wildlife v. Andrus*, No. 78-1210, 1978 U.S. Dist. LEXIS 16578, at *13 (D.D.C. July 14, 1978) (“**Past recreational use is irrelevant to the statutory standard except insofar as deterioration of the wildlife resource from prior recreational use serves to increase the need to protect, enhance and preserve the resource. Past recreational abuses may indeed require the Secretary to curtail recreational use to an even greater degree than mandated by the Refuge Recreation Act, in order to restore and rehabilitate the area promptly as required by the Secretary’s existing regulations.**”).

252. *Wild and Scenic Rivers Act*, 16 U.S.C. § 1281(a) (2006); **Final Revised Guidelines for Eligibility, Classification and Management of River Areas**, 47 Fed. Reg. at 39,458–59. 253. See *Final Revised Guidelines for Eligibility, Classification and Management of River Areas*, 47 Fed. Reg. at 39,458.

Channeling the Yosemite Decisions to the WSRA

Because the court did not evaluate the Park Service’s **user capacity program** under the Organic Act or National Parks and Recreation Act, the Yosemite decisions have no direct effect on the Service’s duties related to **carrying capacity** or implementation of VERP in national parks. Of course, the **Ninth Circuit’s interpretation of the statutory language of “address user capacities” to mean dealing with or discussing the “maximum number of people that can be received” could serve as persuasive precedent** for a court interpreting the Service’s duty to identify and implement commitments to visitor carrying capacity in other park units, based on the Park Service statutes’ similar purpose and planning requirements. However, a federal district court already upheld the Park

Service's integration of VERP into a general management plan in *Isle Royale Boaters Association v. Norton*, reasoning that no authority required a specific numeric cap. Thus, at least one court has declined to define the Service's carrying capacity duty under the Park Service statutes as stringently as under the WSRA (EnLaw pps. 863 - 864).

Administrative law might explain why the Park Service's interpretation of its Organic Act duty to identify and implement commitments to **carrying capacity** deserves more deference than under the WSRA. Because the Park Service uniquely administers the Park Service statutes, the agency's statutory interpretation may deserve substantial deference. Conversely, because Congress entrusted four agencies in two federal departments to administer the WSRA, the Park Service's interpretation may not be entitled to such deference. Further, the Park Service's statutes are supplemented by the Service's own Management Policies, which incorporate the VERP framework for addressing visitor carrying capacity. Because the Park Service's Management Policies went through a notice and comment period and represent the Service's official interpretation of its statutory obligations, courts have recognized that the Service's interpretations deserve deference. Thus, unless a court rules that the **visitor carrying capacity requirement** unambiguously requires a specific numeric visitor cap, a court is likely to rule that the Service's interpretation of the **visitor carrying capacity requirement** is a permissible interpretation of the National Parks and Recreation Act language (EnLaw pps. 864 - 865).

CONCLUSION

Forty years after Garrett Hardin depicted Yosemite Valley as a classic manifestation of the tragedy of the commons, recreation science and ecosystem management have armed park and river managers with new tools to preserve protected areas while providing for public use and enjoyment, based on the concept of **user capacity**. Yet the task of protecting Yosemite Valley, the shiniest facet of the park system's grandest jewel, **has not become easier because the demand for park resources has increased, while supply has remained static**. There is still only one Yosemite Valley,²⁶⁹ and park stakeholders have not yet arrived at an agreeable solution—what Hardin might refer to as “**mutual coercion**”—to ensure that future generations can enjoy the valley, unimpaired, by regulating the use and enjoyment of current users (EnLaw pps. 865 - 866).

The judiciary's first interpretation of the duty to address capacity related issues in Yosemite, albeit **in the context of the Wild and Scenic Rivers Act**, complicates the Park Service's traditional management of carrying capacity within Yosemite Valley, as well as the Service's application of **VERP, a new adaptive management framework**, within the Merced River corridor. The Yosemite decisions force the Park Service to **address past and ongoing degradation** by connecting interim limits on use and facilities with the Merced's ORVs, instead of existing uses and development. Further, the Yosemite decisions require the Service to **modify VERP so that the monitoring framework contains mandatory action prior to ORV degradation**. In short, the rulings serve as a costly reminder to the Service that the **agency must protect and enhance rivers within park units and also as a guide to managing agencies preparing comprehensive management plans for newly designated wild and scenic rivers**. However, the Yosemite decisions signal neither the end of the Park Service's use of monitoring and maintenance frameworks like VERP, nor the beginning of visitor caps for all river corridors, and are unlikely to have a legal effect on judicial interpretations of the Service's duty to identify and implement carrying capacities in park units outside designated WSRA corridors. **But because the management of Yosemite often becomes the blueprint for other park units, the Ninth Circuit's past invalidations of the Merced River Plan, as well as the court's treatment of the next plan scheduled for release in September 2009, may influence the management of both protected parks and rivers for years to come** (EnLaw p. 866).

Appendix F. Interagency Wild & Scenic River Coordinating Council's Technical Papers

<http://www.rivers.gov/council.php>

Contact the Council at daniel_haas@fws.gov.

Protecting Our River Heritage For more than four decades, the National Wild and Scenic Rivers Act has protected much of our river heritage. Rivers have defined our country and ourselves. In 1968, Congress recognized that many of our rivers were imperiled and the National Wild and Scenic Rivers System was born. Although an immediate success, for the first 25 years designated rivers have been managed differently by each agency, and many issues and questions related to the National Wild and Scenic Rivers Act have remained unresolved.

Development of the Interagency Wild & Scenic Rivers Coordinating Council Charter In 1993, at the celebration marking the 25th anniversary of the National Wild and Scenic Rivers System, conservation organizations issued a challenge to the land management agencies—to establish an interagency council to address administration of our wild and scenic rivers. A few months later in Portland, Oregon, river planners from the Bureau of Land Management, National Park Service, and U.S. Forest Service met to draft a rough outline of what such a council would look like and what it could do. In April of 1995, heads of these agencies and the U.S. Fish and Wildlife Service, at a ceremony in Washington, D.C., signed the Interagency Wild & Scenic Rivers Coordinating Council Charter. Department of the Interior Assistant Secretaries George Frampton, Jr., and Robert Armstrong, and Department of Agriculture Undersecretary James Lyons then approved the Charter, thereby changing 25 years of managing wild and scenic rivers.

Goal The overriding goal of the Council is to improve interagency coordination in administering the Wild and Scenic Rivers Act, thereby improving service to the American public and enhancing protection of important river resources. The Council addresses a broad range of issues, from management concerns on rivers presently in the national system to potential additions listed on the Nationwide Rivers Inventory, from state designations to the provision of technical assistance to other governments and non-profits organizations.

Wild & Scenic Rivers Managing Agencies There are four primary federal agencies charged with protecting and managing our wild and scenic rivers and our nation's cultural, recreational and natural resources.

- Bureau of Land Management
- National Park Service
- U.S. Fish and Wildlife Service
- U.S. Forest Service

Council White Papers

- **1998 An Introduction to Wild & Scenic Rivers** — A concise primer on wild and scenic rivers and what designation means to you.
- **1999 The Wild & Scenic River Study Process** — This paper explains the wild and scenic river study process for congressionally authorized and agency-identified study rivers ([Appendix G](#))
- **2002 Wild & Scenic River Management Responsibilities** — Considerations in managing—and developing management plans for—wild and scenic rivers.
- **2004 Wild and Scenic Rivers Act: Section 7** — This paper describes the standards and procedures used in evaluating the effects of proposed water resources projects.
- **2010 Interim Management and Steps to Develop a CRMP** — This paper provides guidance for interim management of a newly designated wild and scenic river and generalized steps to develop a comprehensive river management plan. It expands the content of Appendix A of the Wild & Scenic River Management Responsibilities paper above.
- **2014 A Compendium of Questions & Answers Relating to Wild & Scenic Rivers** — Everything you wanted to know about wild and scenic rivers in a Q&A format. These Q&As can also be accessed through a searchable data base.

Please refer to the Council's *Wild and Scenic River Management Responsibilities* (2002) technical report for a detailed description of the contents and key elements of a CRMP.

Appendix G. The Wild & Scenic River Study Process: 1999

Interagency Wild & Scenic River Coordinating Council. December 1999. *The Wild & Scenic River Study Process*. [Page references = Study Process]

The following selected portions of the paper *The Wild & Scenic River Study Process* focus on ORV and eligibility requirements for instant W&S rivers and/or W&S rivers designated prior to January 1, 1986. It also takes note of substantive and procedural requirements of the Act.

- Section 1(b) – Congressional Declaration of Policy (protect ORVs) & [Eligibility]
- Section 2 – Eligibility
- Section 5(d)(1) – Direction to Evaluate Rivers, Agency Identified Studies
- Section 5 – Required Eligibility Findings

Foreword [Study Process, p. 1]

Most rivers are added to the National Wild and Scenic Rivers System (National System) through federal legislation, after a study of the river's eligibility and suitability for designation by one or more of the four federal agencies responsible for wild and scenic rivers (WSRs). Congress authorizes a study by adding the river to Section 5(a) of the Wild and Scenic Rivers Act (Act). Agencies are also required to consider and evaluate rivers on lands they manage for potential designation while preparing their broader land and resource management plans under Section 5(d)(1) of the Act.

The steps in the evaluation process are the same regardless of how a river is identified for study; however, there are important differences in statutory protection and in study intensity. This paper compares and contrasts the WSR study process for congressionally authorized and agency identified study rivers as a basis for increasing consistency in agency application and public understanding.

Introduction [Study Process, p. 1]

Congress identified 27 rivers for study with the enabling legislation in 1968; by December of 1999, 136 rivers had been identified for study by either the Secretary of the Interior or the Secretary of Agriculture through Section 5(a). Of this total, 43 have been added to the National System. In recent years, thousands of rivers have been identified for study through a provision of the Act which was little noticed originally. Section 5(d)(1) directs federal agencies to consider the potential of WSRs in their planning processes, and its application has resulted in numerous individual river designations and statewide legislation (e.g., Omnibus Oregon Wild and Scenic Rivers Act, P.L. 100-557; Michigan Scenic Rivers Act, P.L. 102-249). [Study Process, p. 1]

Section 5(d)(1) has also resulted in preparation of the Nationwide Rivers Inventory (NRI) by the Secretary of the Interior. The NRI lists rivers and river segments that appear to meet minimum Act eligibility requirements based on their free-flowing status and resource values, and which are therefore afforded some protection from the adverse impacts of federal projects until such time as they can be studied in detail [Study Process, pps. 1 - 2].

Both 5(a) and 5(d)(1) studies require determinations to be made regarding the candidate river's eligibility, classification and suitability. **Eligibility and classification represent an inventory of existing conditions. Eligibility is an evaluation of whether a candidate river is free-flowing and possesses one or more outstandingly remarkable values (ORVs)** (emphasis added). If found eligible, a candidate river is analyzed as to its current level of development (water resources projects, shoreline development, and accessibility) and a recommendation is made that it be placed into one or more of three classes—wild, scenic or recreational. [Study Process, p. 2]

The final procedural step, suitability, provides the basis for determining whether or not to recommend a river as part of the National System. A suitability analysis is designed to answer the following questions [Study Process, p. 2]:

- 1) Should the river's free-flowing character, water quality, and ORVs be protected, or are one or more other uses important enough to warrant doing otherwise?
- 2) Will the river's free-flowing character, water quality, and ORVs be protected through designation? Is it the best method for protecting the river corridor? In answering these questions, the benefits and impacts of WSR designation must be evaluated and alternative protection methods considered.
- 3) Is there a demonstrated commitment to protect the river by any nonfederal entities who may be partially responsible for implementing protective management?

Statutory Background [Study Process, p. 3]

Direction to Evaluate Rivers [Study Process, p. 3]

Section 5(a): Lists rivers authorized for study as potential additions to the National System.

Section 5(d)(1):

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, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potential. 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.

Policy to Protect Certain Rivers (Eligibility) [Study Process, p. 3]

Section 1(b) in part: *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.*

Study Initiation - Section 5(d)(1) Agency-Identified Studies [Study Process, p. 9]

WSR study under Section 5(d)(1) results in identification and evaluation of potential additions to the National System through agency planning processes. Typically, such study is conducted in agency land use plans (i.e., Bureau of Land Management (BLM) resource management plans, National Park Service (NPS) general management plans, U.S. Forest Service (USFS) land and resource management plans, and U.S. Fish and Wildlife Service (USFWS) refuge plans).

Through land use plans, rivers and streams in the affected planning area are evaluated as to their eligibility and given a preliminary classification if found eligible.

Study Initiation - 5(d)(1) Agency-Identified Studies [Study Process, p. 11]

Although completing WSR studies in agency land use planning does not require a separate budget, the river study component is a significant cost in most plans. A study requires convening an IDT comprised of appropriate subject matter specialists. The IDT is responsible for technical studies, incorporating WSRs into land use planning alternatives, and determining environmental consequences. [Study Process, p. 11]

Land use plans prepared by agencies are revised on either a 10- to 15-year cycle or on an issue basis. **WSR eligibility findings and/or suitability determinations should be reviewed during the revision process; however, absent changed resource conditions and/or trends, or changed levels of local support** (emphasis added), the results of a WSR study are typically incorporated into the plan revision. [Study Process, p. 12]

Required Findings – Section 5 [Study Process, p. 12]

The following findings are required for all river studies conducted under Section 5 of the Act.

Eligibility [Study Process, p. 12]

To be eligible for designation, a river must be free-flowing and possess one or more ORVs. **Thus, the eligibility analysis consists of an examination of the river’s hydrology, including any man-made alterations, and an inventory of its natural, cultural and recreational resources** (emphasis added). There are a **variety of methods to determine whether certain resources are so unique, rare or exemplary as to make them outstandingly remarkable** (emphasis added). The determination that a river area contains ORVs is a **professional judgment** (emphasis added) on the part of the IDT, based on objective, scientific analysis. [Study Process, p. 12]

In order to be assessed as outstandingly remarkable, **a river-related value must be a unique, rare or exemplary feature that is significant at a comparative regional or national scale** (emphasis added). Dictionary definitions of the words “unique” and “rare” indicate that such a value would be one that is a conspicuous example from among a number of similar values that are themselves uncommon or extraordinary. One possible procedure would be to list all of the river’s special values and then assess whether they are unique, rare or exemplary within the state, physiographic province, ecoregion, or the other area of comparison. Only one such value is needed for eligibility.

The area, region or scale of comparison is not fixed, and should be defined as that which serves as a basis for meaningful comparative analysis; it may vary depending on the value being considered. Typically, a “region” is defined on the scale of an administrative unit, a portion of a state, or an appropriately scaled physiographic or hydrologic unit.⁵ [Study Process, p. 12]

5. For more guidance on the selection of appropriate regions in the assessment of a value’s significance, see “*A Systematic Approach to Determining the Eligibility of Wild and Scenic River Candidates*,” Land and Water Associates, 1989.

While the spectrum of resources that may be considered is broad, all values should be directly river-related. That is, they should: [Study Process, p. 13]

- 1) Be located in the river or on its immediate shorelands (generally within 1/4 mile on either side of the river);
- 2) Contribute substantially to the functioning of the river ecosystem; and/or
- 3) Owe their location or existence to the presence of the river.

The following eligibility criteria are offered to foster greater consistency within the federal river-administering agencies. They are intended to set **minimum thresholds to establish ORVs** (emphasis added) and are illustrative but not all-inclusive. If utilized in an agency’s planning process, these criteria may be modified to make them more meaningful in the area of comparison, and additional criteria may be included. [Study Process, p. 13]

- 1) **Scenery:** The landscape elements of landform, vegetation, water, color and related factors result in notable or exemplary visual features and/or attractions. When analyzing scenic values, additional factors—such as seasonal variations in vegetation, scale of cultural modifications, and the length of time negative intrusions are viewed—may be considered. Scenery and visual attractions may be highly diverse over the majority of the river or river segment.[Study Process, p. 13]

2) **Recreation:** Recreational opportunities are, or have the potential to be, popular enough to attract visitors from throughout or beyond the region of comparison or are unique or rare within the region. Visitors are willing to travel long distances to use the river resources for recreational purposes. River-related opportunities could include, but are not limited to, sightseeing, wildlife observation, camping, photography, hiking, fishing, hunting and boating. [Study Process, p. 13]

- Interpretive opportunities may be exceptional and attract, or have the potential to attract, visitors from outside the region of comparison.
- The river may provide, or have the potential to provide, settings for national or regional usage or competitive events.

3) **Geology:** The river, or the area within the river corridor, contains one or more example of a geologic feature, process or phenomenon that is unique or rare within the region of comparison. The feature(s) may be in an unusually active stage of development, represent a “textbook” example, and/or represent a unique or rare combination of geologic features (erosional, volcanic, glacial or other geologic structures). [Study Process, p. 13]

4) **Fish:** Fish values may be judged on the relative merits of either fish populations, habitat, or a combination of these river-related conditions. [Study Process, p. 14]

- *Populations:* The river is nationally or regionally an important producer of resident and/or anadromous fish species. Of particular significance is the presence of wild stocks and/or federal or state listed (or candidate) threatened, endangered or sensitive species. Diversity of species is an important consideration and could, in itself, lead to a determination of “outstandingly remarkable.”
- *Habitat:* The river provides exceptionally high quality habitat for fish species indigenous to the region of comparison. Of particular significance is habitat for wild stocks and/or federal or state listed (or candidate) threatened, endangered or sensitive species. Diversity of habitats is an important consideration and could, in itself, lead to a determination of “outstandingly remarkable.”

5) **Wildlife:** Wildlife values may be judged on the relative merits of either terrestrial or aquatic wildlife populations or habitat or a combination of these conditions. [Study Process, p. 14]

- *Populations:* The river, or area within the river corridor, contains nationally or regionally important populations of indigenous wildlife species. Of particular significance are species considered to be unique, and/or populations of federal or state listed (or candidate) threatened, endangered or sensitive species. Diversity of species is an important consideration and could, in itself, lead to a determination of “outstandingly remarkable.”
- *Habitat:* The river, or area within the river corridor, provides exceptionally high quality habitat for wildlife of national or regional significance, and/or may provide unique habitat or a critical link in habitat conditions for federal or state listed (or candidate) threatened, endangered or sensitive species. Contiguous habitat conditions are such that the biological needs of the species are met. Diversity of habitats is an important consideration and could, in itself, lead to a determination of “outstandingly remarkable.”

6. **Prehistory:** The river, or area within the river corridor, contains a site(s) where there is evidence of occupation or use by Native Americans. Sites must have unique or rare characteristics or exceptional human interest value(s). Sites may have national or regional importance for interpreting prehistory; may be rare and represent an area where a culture or cultural period was first identified and described; may have been used concurrently by two or more cultural groups; and/or may have been used by cultural groups for rare sacred purposes. Many such sites are listed on the National Register of Historic Places, which is administered by the NPS. [Study Process, p. 14]

7. **History:** The river or area within the river corridor contains a site(s) or feature(s) associated with a significant event, an important person, or a cultural activity of the past that was rare or one-of-a-kind in the region. Many such sites are listed on the National Register of Historic Places. A historic site(s) and/or features(s) is 50 years old or older in most cases. [Study Process, p. 15]

8. **Other Values:** While no specific national evaluation guidelines have been developed for the “other similar values” category, assessments of additional river-related values consistent with the foregoing guidance may be developed -- including, but not limited to, hydrology, paleontology and botany resources. [Study Process, p. 15]

Classification [Study Process, p. 15]

The Act and Interagency Guidelines⁶ provide the following direction for establishing preliminary classifications for eligible rivers.

6. “Department of the Interior and Agriculture Interagency Guidelines 6 for Eligibility, Classification and Management of River Areas,” published in the *Federal Register* (Vol. 47, No. 173; September 7, 1982, pp. 39454-39461), provides direction to agencies in the study and administration of WSRs.

Next Step: Recommendation [Study Process, p. 19]

5(d)(1) Agency-Identified Studies [Study Process, p. 20]

The decision whether or not to recommend designation of a Section 5(d)(1) study river is made through the decision document for the unit plan or separate study. Regardless of whether the suitability study is conducted in a land use plan, or analyzed in a separate study, the river recommendation is made through a record of decision (ROD) for an environmental impact statement (EIS). [Study Process, pps. 20 - 21]

Appendix H. Wild & Scenic River Management Responsibilities: 2002

Interagency Wild & Scenic River Coordinating Council. March 2002. *Wild & Scenic River Management Responsibilities*. [Page references = Responsibilities]

The following selected portions of the paper *Wild & Scenic River Management Responsibilities* focus on ORV and eligibility requirements for instant W&S rivers and/or W&S rivers designated prior to January 1, 1986. It also takes note of substantive and procedural requirements of the Act.

- Section 1(b) – Congressional Declaration of Policy (protect ORVs) & [Eligibility]
- Section 2 [Eligibility]
- Sections 3(d)(1) and 3(d)(2) – Management Plans; Review Requirements for Early Designations
- Section 10(a) – Management Direction
- Section 12(a) – Management Policies

FOREWORD (Responsibilities, p. 1)

Managing designated wild and scenic rivers (WSRs) requires a thorough understanding of the provisions of the Wild and Scenic Rivers Act (Act). An interagency interpretation of the Act was completed in 1982—the *Department of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* (Interagency Guidelines). Since issuance of these guidelines, several sections of the Act have been amended to clarify intent, most notably the requirement for the development of a comprehensive river management plan (CRMP). In addition, the courts have provided interpretation of various provisions of the Act as a result of litigation. This paper discusses those sections of the Act that relate to managing WSRs, including a detailed discussion of the contents and key elements of a CRMP.

INTRODUCTION (Responsibilities, p. 1)

The purpose of this paper is to aid in management of designated WSRs and provide a foundation for developing a CRMP commensurate with the requirements of the statute. It presents a section-by-section analysis of the Act relative to management of designated WSRs in the following format:

- Statutory Language
- Discussion of Intent
- Litigation
- Management Implications

Statutory direction is quoted for each section of the Act; each citation from the Act is followed by an interpretation of this direction (*Discussion of Intent*). The *Litigation* subsection summarizes challenges specific to the Act, although cases often include challenges under other statutes (e.g., the National Environmental Policy Act (NEPA)) not analyzed in this paper. Guidance for the river manager in managing a designated WSR or developing (revising) a CRMP is provided in the *Management Implications* subsection. This final subsection is informed by the discussion and legal opinion. For Section 3(d)(1) of the Act—developing a CRMP—the reader is provided a detailed appendix describing the contents and key elements of a CRMP, including requirements for its filing. Where appropriate, other technical papers included in the *Interagency Wild and Scenic Rivers Coordinating Council Reference Guide* are cited (Responsibilities, p. 1).

Section 1(b) – Congressional Declaration of Policy (Responsibilities, p. 2)

Section 1. (b) 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. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

Discussion of Intent The purposes for which WSRs are added to the National Wild and Scenic Rivers System (National System) are made explicit in this section—specifically, to protect a river’s freeflowing condition, water quality, and outstandingly remarkable values (ORVs). Sections 7(a) and 10(a) make reference to these collective “values” for which rivers are added to the National System. A river’s ORVs are identified pre-designation through a study or, **for an “instant river,” post-designation during preparation of a CRMP** (emphasis added) (Responsibilities, p. 2).

Management Implications (Responsibilities, p. 2)

- Focus the CRMP and subsequent river management on protecting a river’s free-flowing condition and water quality in addition to the ORVs.
- **Thoroughly define the ORVs to guide future management actions and to serve as the baseline for monitoring** (emphasis added).

Sections 2(a) and 2(a)(ii) – Composition of System; Requirements for State-Administered Components (Responsibilities, p. 3)

While a CRMP, as specified for congressionally designated rivers in Sections 3(d)(1) and 3(d)(2) (Responsibilities, p. 3)

Management Implications (Responsibilities, p. 4)

- Apply the protections of Sections 7 (water resources projects), 10(a) (nondegradation policy), 12(a) (management policies), and 13(c) (federal-reserve water rights) to state administered WSRs. Section 2(a)(ii) does not require federal land managers to develop a CRMP in conformance with Section 3(d)(1); **however, federal land managers are responsible for protecting river values in all agency planning and management actions** (emphasis added).

Section 2(b) – Classification (Responsibilities, p. 4)

Section 2. (b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in Section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

Discussion of Intent The classification system describes the type and intensity of development in existence at the date of the river’s designation. To be “administered” in a class means defining the river’s initial landscape character and, through development of the CRMP, **establishing standards relative to future in-corridor land uses** (emphasis added). For example, administering a wild river will require more restrictive decisions to protect the river’s character than on a scenic or recreational river. However, it must be emphasized that the intent of the Act, to preserve a river’s free-flowing condition (Section 7(a)) and to

protect and enhance the values for which it was designated (Section 10(a)), applies equally to each of the three classifications (Responsibilities, p. 5).

A river's classification does not represent the values for which it was added to the National System (emphasis added). For example, a "recreational" river segment denotes a level of in-corridor and water resources development and does not necessarily mean that the recreation resource has been determined an ORV. Similarly, a recreational classification does not imply that the river will be managed for recreational activities. For example, there are rivers in the National System paralleled by a road and hence classified as recreational for which the ORV is the fish resource. An appropriate intensity of recreation and other resource use will be allowed subject to an ability to protect and enhance those fish populations/habitats (Responsibilities, p. 5).

Management Implications

- **Describe** a river's classification and **landscape character at the date of designation** (emphasis added) in the CRMP to serve as the **basis for evaluating** proposed land uses and monitoring (Responsibilities, p. 5).
- Use classification to provide a general framework for the type and intensity of land management activities that may take place in the future (Responsibilities, p. 6).
- **Consider allowing uses in existence at the date of designation** (emphasis added) that do not conform to the river's classification and that are not specifically addressed in the enabling legislation to continue, so long as the river's free-flowing condition, water quality, and ORVs are protected (Responsibilities, p. 6).
- **Apply the protections under Sections 7 (water resources projects) and 10(a) (nondegradation policy) independent of classification** (emphasis added) (Responsibilities, p. 6).

Sections 3(b) and 3(c) – Establishment of Boundaries and Classification; Public Availability of Maps and Descriptions (Responsibilities, p. 6).

Litigation Sokol v. Kennedy (8th Cir. 2000) (Responsibilities, pps. 6 - 7).

Management Implications

- A bank-to-bank boundary is unacceptable (refer to *Establishment of WSR Boundaries* for a more detailed discussion) (Responsibilities, p. 7).
- **Use a river's ORVs as the basis for boundary establishment** (emphasis added). They must be sufficiently described and properly referenced in establishing a detailed boundary for the river (Responsibilities, p. 7).

Sections 3(d)(1) and 3(d)(2) – Management Plans; Review Requirements for Early Designations (Responsibilities, p. 7)

Section 3. (d)(2) For rivers designated before January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity within the requirements of this subsection within 10 years through regular agency planning processes.

Discussion of Intent Prior to 1986, Section 3(b) of the Act required the river-administering agency to "prepare a plan for necessary developments in connection with its administration in accordance with such classification." Through a generic amendment of the Act in 1986, Section 3 was amended with a new subsection requiring a "comprehensive management plan . . . to provide for protection of the river values" (Section 3(d)(1)). The CRMP must address (Responsibilities, p. 7):

- Resource protection;
- Development of lands and facilities;
- User capacities; and

- Other management practices necessary or desirable to achieve the purposes of the Act.

Refer to Appendix A for a detailed discussion of the contents and key elements of a CRMP.

Section 3(d)(1) allows the CRMP to be coordinated with, and incorporated into, a river administering agency's resource management plan. The CRMP for rivers designated on or after January 1, 1986, is to be completed within three full fiscal years after the date of designation with a notice of completion and availability published in the *Federal Register*. **For rivers designated before this date, Section 3(d)(2) requires review of the CRMP to determine if it conforms to Section 3(d)(1)** (emphasis added). This provision allowed ten years to update pre-1986 plans through the planning processes of river-administering agencies. Note: This 10-year period expired January 1, 1996 (Responsibilities, p. 7).

Litigation

Sierra Club v. U.S. Department of the Interior (N.D. CA 1998) (Responsibilities, p. 7)

Sierra Club v. Babbitt (E.D. CA 1999) (Responsibilities, p. 11)

This case, known as the El Portal Road case, involved a challenge to the reconstruction of this access road to Yosemite National Park. The El Portal Road begins at the park's western boundary and is one of the principal access roads into Yosemite Valley. For much of its length, the road parallels the Merced WSR. The Merced was added to the National System on November 2, 1987. The NPS completed an EA and finding of no significant impact for the road project in 1998, but at the time the project was approved, the NPS did not have a completed CRMP for the river. The NPS had, however, published boundaries and classifications and identified ORVs for the river in the 1996 Draft Yosemite Housing Plan EIS (Responsibilities, p. 11).

The plaintiffs filed their suit well after the road construction project began. By the time the suit was filed, the NPS had already graded and devegetated approximately 3/4 of the project area and had removed large portions of the historic rock wall along the road; the segment where no work had been done was referred to as Segment D. The plaintiffs alleged that the road reconstruction project violated both the Act and the NEPA (Responsibilities, p. 11).

The Court found that the NPS had violated the substantive provisions of Act by failing to predetermine, through the issuance of a CRMP, objective standards for the protection and enhancement of ORVs. In the absence of a CRMP, the Court found that the NPS's determination that ORVs would be protected and enhanced was not entitled to deference, as there was no CRMP against which to evaluate the road project's impacts (emphasis added). However, once the agency had a CRMP, the Court explained that a different standard for reviewing the agency's determinations would apply. The court stated that pursuant to a CRMP, the NPS "might legitimately conclude that the occasional fragmentation of riparian habitat, the slightly extended height of the guard walls, and the increase of the footprint of the road by twenty percent with a small extension of the footprint into the river was acceptable because it was within the parameters of the [CRMP]." Thus, the court reaffirmed in this passage and in other parts of the opinion that the Act invests river-administering agencies with broad discretion, provided that the agency has completed its CRMP (Responsibilities, p. 11).

The Court rejected plaintiffs' challenges under the Act's procedural sections. The Court found that the NPS had complied with the procedural requirements of the Act by making the boundaries, classifications and ORVs available to the public in the Draft Yosemite Valley Housing Plan (Responsibilities, p. 11).

Based on its findings regarding the Act, the Court ordered the NPS to complete a CRMP within one year. However, because most of the road project area had been disturbed by ongoing construction, the Court did not enjoin all remaining work. The Court recognized that it would cause more harm to leave the area in a state of partial construction than to proceed with the slope stabilization, road realignment, and revegetation. The Court therefore allowed the NPS to complete work in all areas where work had begun, but the Court enjoined work in Segment D, where no construction activity had yet begun. (Responsibilities, pps. 11 - 12)

Cases Addressing Management Activities Conducted Prior to Completion of a CRMP (Newton County Wildlife Association v. Rogers, 1997; National Wildlife Federation v. Cosgriffe, 1998; Sierra Club v. U.S. Department of the Interior, 1998; Sierra Club v. Babbitt, 1999) (Responsibilities, p. 11).

In these cases, parties have challenged the appropriateness of site-specific management activities (timber harvest, livestock grazing, road reconstruction) absent a CRMP from which to evaluate effects and judge the agencies' ability to protect river-related values. In these cases, the courts have considered both the procedural and substantive requirements of the Act. The procedural issue is readily resolved on the facts — either the river-administering agency has a CRMP or it does not. While the absence of a CRMP has not been interpreted to prevent site-specific activities by the river-administering agency, **the evaluation of the substantive requirements of the Act (Section 10(a) — nondegradation principle—and Section 12(a) —management policies) may result in the activity being halted or limited through court injunction** (emphasis added) (Responsibilities, p. 11).

Management Implications (Responsibilities, p. 12).

- **A CRMP is required for all congressionally designated WSRs** (emphasis added).
- **Include a detailed description of the ORVs as a platform for development of necessary management direction in the CRMP** (emphasis added).
- **Address the types and amounts of public use the river area can sustain without adverse impact to other values in the CRMP (Interagency Guidelines)** (emphasis added).
- **Review and revise, as necessary, pre-1986 CRMPs to include all elements described in Section 3(d)(1)** (emphasis added).
- Prior to the completion of a CRMP, thoroughly analyze the effects of a proposed activity on the values for which the river was designated.

Section 10(a) – Management Direction (Responsibilities, p. 22)

Section 10. (a) 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 in said system without, insofar as is consistent therewith, 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, archaeologic, 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.

Discussion of Intent The Interagency Guidelines interpret **Section 10(a) as a “nondegradation and enhancement policy for all designated river areas, regardless of classification** (emphasis added).” Existing uses on federal lands may continue where they do not conflict with river protection. **Adverse effects to the values made explicit in Section 1(b)** (emphasis added) of the Act on federal and nonfederal lands must be identified in development of the CRMP, with appropriate strategies detailed for their resolution. To achieve a nondegradation standard, the river-administering agency **must document baseline resource conditions and monitor changes to these conditions** (emphasis added) (Responsibilities, p. 22).

Litigation (Responsibilities, p. 23)

Oregon Natural Desert Association v. Green (D. OR 1997) (Responsibilities, p. 23)

Intervenors in the case argued that the legislative history of the Omnibus Oregon Wild and Scenic Rivers Act grandfathered existing uses, including grazing. The Court found these arguments unpersuasive, stating that cattle grazing may continue “but only in accordance within the strictures of the Act to protect and enhance.” (Responsibilities, p. 23)

Oregon Natural Desert Association v. Singleton (D. OR 1999) (Responsibilities, p. 23)

On November 3, 1998, the U.S. District Court for the District of Oregon ruled “that the BLM had violated the Act by adopting a management plan which fails to consider whether cattle grazing is consistent with [protecting] the river’s ORVs.” Further, the Court continued that the BLM has the authority to eliminate, not just regulate, livestock grazing within the river area and that this alternative should have been considered in an EIS. It therefore ordered the BLM to prepare an EIS considering a full range of alternatives. The Court also found that: 1) the direction in Section 10(a) to protect and enhance “cannot reasonably be interpreted to permit any use so long as it does not substantially degrade the river system’s values;” and 2) **no uses are “grandfathered” unless stated explicitly in river-specific legislation** (emphasis added) (Responsibilities, p. 23)

Hells Canyon Alliance and Hells Canyon Preservation Council v. U.S. Forest Service (9th Cir. 2000) (Responsibilities, p. 24)

In 1975, Congress established the Hells Canyon National Recreation Area (HCNRA), adding 67.5 miles of the Snake River to the National System. In the early 1990’s, the USFS proposed to establish recreation use allocations on the Snake WSR based on user survey information showing a 147 percent increase in visitor use during the primary season in the period 1979 to 1991. Establishing this visitor capacity was tied to protecting the desired recreation experience (recreation is an ORV). The ROD for the Recreation Management Plan (1994) established use levels for private and commercial motorized and nonmotorized boaters. It also included nonmotorized periods in the wild segment of the river during July and August (Responsibilities, p. 24).

The decision was challenged administratively (USFS administrative appeals process) and legally in a number of separate lawsuits by groups primarily representing motorized (Hells Canyon Alliance; HCA) and nonmotorized (Hells Canyon Preservation Council et al.; HCPC) users. While there were various aspects to each party’s complaints, **the principal concern of the HCA was the alleged inadequacy of the USFS’s analysis to support the nonmotorized period in the wild river segment** (emphasis added). The HCPC was **concerned about overall recreation use levels—specifically that such use should approximate 1975 use levels (i.e., the date of the river’s designation)** (emphasis added) and that the wild river segment be closed to motorized rivercraft. The principal issues before the Court were the regulations established for motorized users (nonmotorized use had been regulated through previous decisions) and adequacy of the USFS analysis. (Responsibilities, pps. 24 - 25).

The opinion of the U.S. Court of Appeals for the 9th Circuit upheld the District Court decision and thus supported the USFS. Specifically, the Court recognized (Responsibilities, p. 24):

- Motorized craft as a valid use of the Snake WSR based on the HCNRA Act;
- The direction in the HCNRA Act to promulgate regulations necessary to control the use and numbers of motorized and nonmotorized craft;
- No requirement in the HCNRA or WSRs Acts directing a “particular numeric level or ratio of motorized and nonmotorized uses;” and
- The nondegradation policy of Section 10(a).

Based on a review of the record, the Court concluded the “USFS took a ‘hard look’ at the environmental impacts of motorized water craft on the various values of the Snake River. The Agency devoted 145 pages of the final EIS to exploring the possible environmental consequences of seven alternatives on each of the Snakes ORVs (Responsibilities, p. 24).”

Management Implications (Responsibilities, p. 26)

- This section is interpreted as a nondegradation and enhancement policy for all rivers, regardless of classification (Interagency Guidelines). The river manager must seek to protect existing river-related values and, to the greatest extent possible, enhance those values.
- Provide for public recreation and resource uses that do not adversely impact or degrade the values for which the river was designated (Interagency Guidelines).
- Protect rivers by documenting and eliminating adverse impacts on values (free-flow, water quality, ORVs), including activities that were occurring on the date of designation. Enhance rivers by seeking opportunities to improve conditions.

Section 10(c) – WSRs Administered by the National Park Service or U.S. Fish and Wildlife Service
(Responsibilities, p. 26)

Discussion of Intent The BLM may also **apply its general statutory authorities relating to the public lands in such manner as deemed appropriate to protect WSR values** (emphasis added). Some of the most important laws applicable, in whole or part, to the BLM are the Federal Land Policy and Management Act of 1976 (BLM equivalent of an organic act), and ANILCA (Responsibilities, p. 27).

There are many environmental statutes that apply to all federal land-managing agencies (emphasis added), such as the Endangered Species Act, NEPA, Clean Air and Clean Water Acts, and National Historic Preservation Act. These are sometimes referred to as “**cross-cutting acts**” (emphasis added) and apply in administration of all WSRs (Responsibilities, p. 27).

Management Implications (Responsibilities, p. 27).

- Apply general statutory authorities, in addition to the requirements of the Act, to protect WSR values.

Section 12(a) – Management Policies (Responsibilities, p. 31)

Section 12. (a) The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii). Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

Discussion of Intent This section applies to activities conducted by a federal department or agency that are within or proximate to a WSR designated under Sections 2(a)(ii) or 3(a). It also applies to rivers under study pursuant to Section 5(a) and to rivers being considered pursuant to Section 2(a)(ii). Through the language of this section, **Congress directs other federal agencies to protect river values in addition to meeting their agency mission. Refer to *Implementing the Wild and Scenic Rivers Act: Authorities and Roles of Key***

Federal Agencies (emphasis added), a technical report of the Council (January 1999), for a description of the authorities of other federal agencies in river protection (Responsibilities, p. 32).

Management Implications (Responsibilities, p. 33)

- In addition to preparing a CRMP for lands within the river corridor, the river administering agency must consider actions on lands it administers adjacent to this area and make certain such actions protect WSR values.
- Other federal agencies must protect WSR values in actions for which they are responsible within and adjacent to a WSR corridor.

Section 13(f) – Navigable Rivers (Responsibilities, p. 37)

Section 13. (f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

Discussion of Intent Section 13(f) clarifies that nothing in the Act affects a state’s rights to navigable waterways. A body of water is determined to be navigable under federal law when, at the time of statehood, it was used or was capable of being used as a public highway for transporting goods or for travel in the customary modes of trade and travel on water (the Daniel Ball case, U.S. Supreme Court). State ownership of the underlying riverbed **does not, however, preclude the river-administering agency from regulating uses (e.g., private and commercial boating) on the water column as necessary to meet the purposes of the Act. The need to regulate on-water use includes providing a level of public safety, maintaining a desired recreation experience, and protecting biological and physical values. On-river limitations may include, for example, restrictions on the numbers of private and commercial boaters, timing of use, and type and size of craft** (emphasis added) (Responsibilities, p. 37).

Appendix A: Comprehensive River Management Plans – Contents and Key Elements (Responsibilities, p. 41)

The principal purpose of this section is to describe the recommended contents and key elements of a CRMP. The Act provides specific direction; a CRMP should (Responsibilities, Appendix A, p. 41):

- Describe the existing resource conditions including a detailed description of the ORVs;
- Define the goals and desired conditions for protecting river values;
- Address development of lands and facilities;
- Address user capacities;
- Address water quality issues and instream flow requirements;
- Reflect a collaborative approach, recognizing the responsibilities of, and opportunities for, partnership with all stakeholders;
- Identify regulatory authorities of other governmental agencies that assist in protecting river values; and
- Include a monitoring strategy to maintain desired conditions.

Relationship of a CRMP and the NEPA (Responsibilities, Appendix A, p. 41)

A CRMP is developed in compliance with the NEPA. The purpose and need for the proposed action is to develop a plan to protect and enhance the values for which the river was designated (free-flowing condition, water quality, and ORVs). Issues are identified that prevent or impede the protection and enhancement of river values. Alternative courses of actions are developed and analyzed relative to achieving overall goals and desired future conditions within the WSR corridor. A “no action” alternative, representing the existing situation, is described as the basis for comparison of the action alternatives. Management direction and actions, as more fully described in the section below, typically vary by alternative. The resultant CRMP describes the management direction/actions of the selected alternative at a programmatic level. Identified management actions generally require a site-specific NEPA analysis prior to implementation (Responsibilities, Appendix A, p. 41).

The CRMP amends an agency's broader land management plan (BLM—Resource Management Plan; NPS—General Management Plan (GMP); USFWS—Resource Plan; USFS—Land and Resource Management Plan). For designated rivers that are separate NPS units, the CRMP is the GMP (e.g., St. Croix National Scenic Riverway). In some cases, the CRMP is developed prior to designation as part of the suitability study and adopted via act of Congress. A CRMP typically includes high-intensity public involvement in recognition of the impossibility (and undesirability) of protecting rivers without partners (Responsibilities, Appendix A, pps. 41 - 42).

Key Elements of a CRMP (Responsibilities, Appendix A, p. 42)

The following outline is not a suggested table of contents for a CRMP. Rather, it identifies the key elements specific to river planning that should be developed in the context of each agency's planning framework and under the NEPA. Further, the outline purposely does not include the components specific to the NEPA process, e.g., description of issues, alternatives, environmental consequences, or decision document.

Description of River Setting and Resource Values (Responsibilities, Appendix A, p. 42)

- Regional River Setting
- Description of River Corridor (by resource)
- Basic hydrology
- Type/amount of recreation use (private and commercial)
- Type/amount of other uses permitted uses (e.g., livestock grazing, mineral activities)
- Land Ownership and Land-Use Description
- **Outstandingly Remarkable Values (sufficiently detailed to serve as baseline for desired management direction and monitoring)** (emphasis added)
- River Classification
- Landscape Character (description of existing development level by segment)

Planning Context (Coordination with Others) (Responsibilities, Appendix A, p. 42)

- Legislative Direction Specific to the River
- Relationship to Other Federal Regulatory Agencies
- Relationship to Tribal Governments
- Relationship to Other Federal, State and Local Government Plans
- Relationship to Other Regional Coordinating Bodies

Management Direction (Responsibilities, Appendix A, pps. 42 - 43)

- Goals and Desired Future Conditions
- Standards and Guidelines by Resource
- River Corridor Boundary
- Principles for Land Acquisition (as appropriate)

Management Actions (Responsibilities, Appendix A, p. 43)

This section includes the criteria developed to guide subsequent site-specific agency decisions and a description of probable management actions, including the objectives/intent of an action. For example, this section might include criteria for evaluating proposed river events conducted under agency special-use authorization or, based on management direction, describe priority areas for restoration and likely treatments.

Monitoring Strategy (Responsibilities, Appendix A, p. 43)

- **Standards** (emphasis added)
- **Indicators for Management Actions** (emphasis added)
- **Process** (emphasis added) (intensity, frequency, personnel needs, and other costs)

Potential Appendix Material (Responsibilities, Appendix A, p. 43)

- Annotated WSRs Act and River-Specific Enabling Legislation
- Resources Assessment (ORVs)
- Documented Inventory Information (e.g., water quality)
- Instream Flow Studies
- **Visitor Capacity Studies** (emphasis added)
- Water Resources Project Evaluation Process
- State/Local Regulation Specific to Protecting Resource Values

**Appendix I. A Compendium of Questions & Answers
Relating to Wild & Scenic Rivers: 2014**
(<http://www.rivers.gov/documents/q-a.pdf>)

Interagency Wild & Scenic River Coordinating Council. May 2014. *A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*. [Page references = Compendium]

Overview Of The Wild & Scenic Rivers Act (Compendium, p. 3)

Section 1 – Establishes the National System. States its purpose (declares a national policy), 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 and water quality of rivers (Compendium, p. 3).

Section 2 – Specifies two methods by which a river can be designated, identifies eligibility requirements, and defines criteria for classification (Compendium, p. 3).

Section 3 – Guidance on designated rivers, lists congressionally designated rivers, provides guidance on the establishment of boundaries, requires preparation of comprehensive management plan (CMP) for rivers designated on or after January 1, 1986 (Plans shall address: Resource protection, Development of lands and facilities, User capacities, and Other management practices necessary to achieve purposes of the Act), and for (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 (Compendium, p. 4).

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 (Compendium, p. 4).

Section 5 – Study provisions (Compendium, p. 5).

(d)(1) Directs federal agencies to consider other potential WSRs in their land and water resource planning process (Compendium, p. 5).

Section 6 – Land acquisition procedures and limitations (Compendium, p. 6).

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 (Compendium, p. 6).

Section 8 – Land disposition (Compendium, p. 7).

Section 9 – Mining and mineral leasing laws; valid existing rights and reasonable access to working claims recognized (Compendium, p. 7).

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 (Compendium, p. 8).

(a) Protect and enhance values for which the river was designated, i.e., ORVs, free-flowing condition, and water quality.

Primary emphasis on: Aesthetic, Scenic, Historic, Archaeological, and 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, unless otherwise specified by Congress, 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 (Compendium, p. 9).

Section 12 – Activities on federal lands (Compendium, p. 9).

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 (Compendium, p. 9).

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.

Section 14 – Easements and leases (Compendium, p. 10).

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.

Section 15 – Exceptions for designated rivers in Alaska. (References the Alaska National Interest Lands Conservation Act.) (Compendium, p. 10)

Section 16 – Definition of terms: river, free-flowing, scenic easement (Compendium, p. 11).

Section 17 – Authorization of appropriations for land acquisition (Compendium, p. 11).

The Following Is Selected Information from the Compendium Which Relate to Eligibility, Crmps, and Other Related Sections

WSR EVALUATION

- Inventory and Eligibility
- Classification
- Suitability
- Protective Management
- WSR Study Report and the NEPA Process

RIVER MANAGEMENT PLANNING

MANAGEMENT OF LAND AND WATER

- Responsibilities
 - WSR-Administering Agency
 - Citizens

Introductory Question Applicable to Instant Rivers

Q. For WSRs flowing through federal lands, how does the CRMP relate to the WSR administering agency's unit-wide management plan (e.g., BLM Resource Management Plan, NPS General Management Plan, FWS Comprehensive Conservation Plan, USFS Land and Resource Management Plan)? (Compendium, p. 64)

A. The requirements specified for a CRMP in Section 3(d)(1) are most often developed through a separate-in-time planning process. This can result in either an amendment to the direction in the agency's unit-wide plan or a stand-alone plan, depending on agency practices. For designated rivers that are separate NPS units, the CRMP is the General Management Plan (e.g., St. Croix National Scenic Riverway).

Q. Is there a requirement for periodic updates to a CRMP for a river designated by Congress?

(Compendium, p. 64)

A. No, there is no statutory requirement that a CRMP be revisited in a specified timeframe. However, 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. Agency unit-wide plans that are revised following a CRMP-specific plan amendment will follow individual agency practices for plan revision. In some cases, this may include updating the CRMP during the agency unit-plan revision cycle.

Q. What are the responsibilities of the federal WSR-administering agency (for rivers designated by Congress)? (Compendium, p. 69)

A. The federal WSR-administering 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. It is also responsible to protect and enhance a river's values, through its authorities on federal lands and through voluntary, cooperative strategies developed with other governments, tribal nations and landowners on non-federal lands, and to evaluate water resources projects under Section 7(a).

Q. What is the role of citizens in protecting WSR values? (Compendium, p. 72)

A. Citizen stewards are increasingly important in protecting WSR values, often through river specific or regional stewardship organizations. Individually, or through nonprofit entities, citizens help survey and monitor resource conditions, provide interpretive and education opportunities, contribute to restoration efforts, and support many other protection activities.

OVERVIEW OF THE WILD AND SCENIC RIVERS ACT (Compendium, p. 13)

The Act and the National System

The Study and Designation Process (Compendium, p. 14)

Q. Is citizen involvement in the WSR study process encouraged? (Compendium, p. 15)

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 addresses 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 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, the responsible federal study agency assists 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 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. Why were the Interagency Guidelines for the WSRs program developed? (Compendium, p. 16)

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 developed in 1970.

WSR EVALUATION (Compendium, p. 17)

Inventory and Eligibility

Q. What makes a river eligible for the National System? (Compendium, p. 17)

A. To be eligible for designation, a river must be free-flowing 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? (Compendium, p. 17)

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 inventory and planning processes; or 3) during NPS evaluation of a Section 2(a)(ii) application by a state. River areas identified through the inventory phase are evaluated for their free-flowing condition and must possess at least one ORV.

Q. What is the definition of “free-flowing?” (Compendium, p. 17)

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. (See more in original)

Q. What is the definition of “outstandingly remarkable value?” (Compendium, p. 18)

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. However, agency resource professionals have developed interpretive criteria for evaluating river values (unique, rare, or exemplary) based on professional judgment on a regional, physiographic, or geographic comparative basis. (Refer to *The Wild & Scenic River Study Process* (1999).)

Q. What are possible “other similar” ORVs? (Compendium, p. 18)

A. Some examples of other similar ORVs include botanical, hydrological, paleontological, scientific, or heritage values.

Q. What is the Nationwide Rivers Inventory (NRI)? (Compendium, p. 19)

A. The NRI is a listing of some 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 ineligibility. Information about use of the NRI is found at www.nps.gov/ncrc/programs/rtca/nri/.

Q. What are some of the steps federal agencies use in their evaluation of potential WSRs in their land management planning process? (Compendium, p. 19)

A. There are a number of steps that federal agencies use in their evaluation process:

- Assessment of free-flowing condition and resource values.
- Finding of eligibility or ineligibility.
- 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? (Compendium, p. 19)

A. It is important to develop and apply standardized criteria through a documented evaluation process that may include a screening for potential WSRs. If there doubt, evaluate the river according to the criteria in the Act, i.e., free-flowing condition and ORVs.

Q. When is a river formally determined eligible or ineligible? (Compendium, p. 19)

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

Q. What documentation is needed for eligibility determinations? (Compendium, p. 20)

A. Agency land use or resource management plan records should include documentation of the eligibility criteria, inventory process, evaluation and outcome. Agency field offices retain the administrative record and documents related to an assessment of the free-flowing condition and identification of ORVs.

Classification (Compendium, p. 20)

Q. What is a river's classification and how are rivers classified? (Compendium, p. 20)

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 at the time of river is found eligible. If designated by Congress, the river's enabling legislation generally specifies the classification.

Q. What is the difference between a "Wild," "Scenic" or "Recreational" river? (Compendium, pps. 20 - 21)

Recreational river areas: Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shoreline and that may have undergone some impoundment or diversion in the past.

Note: This classification, however, does not imply that recreation is an ORV or that the segment must be managed or developed for recreational activities.

Suitability (Compendium, p. 22)

Protective Management (Compendium, p. 26)

WSR Study Report and the NEPA Process (Compendium, p. 28)

EFFECTS OF WSR DESIGNATION (Compendium, p. 31)
Social and Economic Benefits and Impacts

Activities on Federal Lands Within the WSR Corridor (Compendium, p. 32)

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 freeflowing condition, water quality and ORV(s) that 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 (Compendium, p. 32).

Activities on Private Lands Within the WSR Corridor (Compendium, p. 33)

Zoning (Compendium, p. 36)

Access (Compendium, p. 37)

Q. Will designation result in restricted boating access? (Compendium, p. 37)

A. Generally, no. Restrictions on public 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.

Forestry, Agriculture and Livestock Grazing (Compendium, p. 38)

Mining and Mineral Leasing (Compendium, p. 40)

Recreation (Compendium, p. 41)

Q. Will camping be allowed to continue in WSR corridors? Might it also be restricted and, if so, how would such restrictions be enforced? (Compendium, pps. 41 - 42)

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 on federal lands. As a condition of use, consistent with river classification and the 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? (Compendium, p. 42)

A. There are no known studies comparing river use levels before and after WSR designation with changes in use levels of similar non-WSRs. 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. For WSRs, as for other rivers managed by federal agencies, 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? (Compendium, p. 42)

A. No. The public’s right to float a particular river does not change with designation. Neither does designation give river users the right to use, occupy, or cross private property without permission.

RIVER MANAGEMENT PLANNING (Compendium, p. 63)

Q. What is the planning requirement for a river designated by Congress (under Section 3(a) of the Act)? (Compendium, p. 63)

A. Prior to 1986, Section 3(b) of the Act required the river-administering agency to “prepare a plan for necessary developments in connection with its administration in accordance with such classification.” Through a generic amendment of the Act in 1986, Section 3 was amended with a new subsection requiring a “comprehensive management plan . . . to provide for protection of the river values” (Section 3(d)(1)). The CRMP must address:

1. Resource protection;
2. Development of lands and facilities;
3. User capacities; and
4. Other management practices necessary or desirable to achieve the purposes of the Act. Please refer to the Council’s *Wild and Scenic River Management Responsibilities* (2002) technical report for a detailed description of the contents and key elements of a CRMP.

Q. What is the time period for developing a CRMP for a river designated by Congress? (Compendium, p. 63)

A. The CRMP for rivers designated on or after January 1, 1986, is to be completed within three full fiscal years after the date of designation or as otherwise specified, with a notice of completion and availability published in the *Federal Register*. For rivers designated before this date, Section 3(d)(2) requires review of the CRMP to determine if it conforms to Section 3(d)(1). This provision allowed ten years to update pre-1986 plans through the planning processes of river administering agencies. Note: This 10-year period expired January 1, 1996.

Q. Is a CRMP developed in compliance with the NEPA for a river designated by Congress? (Compendium, p. 63)

A. Yes, a CRMP is developed in compliance with the NEPA. The purpose and need for the proposed action is to protect and enhance the values for which the river was designated (free flowing condition, water quality, and ORVs), within its classification(s). The proposed action establishes appropriate goals, objectives, and/or desired conditions to meet those purposes. Alternative courses of actions are developed and analyzed relative to achieving overall goals and desired conditions within the WSR corridor. A “no action” alternative, representing the existing situation, is described as the basis for comparison of the action alternatives. Management direction and actions typically vary by alternative. The resultant CRMP describes the management direction (goals, objectives, desired conditions, allowable uses, and standards under which the activities can be conducted), and probable actions of the selected alternative at a programmatic level. Identified management actions generally require a site-specific NEPA analysis prior to implementation.

Q. For WSRs flowing through federal lands, how does the CRMP relate to the WSR administering agency’s unit-wide management plan (e.g., BLM Resource Management Plan, NPS General Management Plan, FWS Comprehensive Conservation Plan, USFS Land and Resource Management Plan)? (Compendium, p. 64)

A. The requirements specified for a CRMP in Section 3(d)(1) are most often developed through a separate-in-time planning process. This can result in either an amendment to the direction in the agency’s unit-wide plan or a stand-alone plan, depending on agency practices. For designated rivers that are separate NPS units, the CRMP is the General Management Plan (e.g., St. Croix National Scenic Riverway).

Q. Is there a requirement for periodic updates to a CRMP for a river designated by Congress? (Compendium, p. 64)

A. No, **there is no statutory requirement that a CRMP be revisited in a specified timeframe. However, 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.** (emphasis added) Agency unit-wide plans that are revised following a CRMP-specific plan amendment will follow individual agency practices for plan revision. In some cases, this may include updating the CRMP during the agency unit-plan revision cycle.

Q. How are the values of rivers designated by Congress protected prior to completion of the CRMP?

(Compendium, p. 64)

A. Prior to completion of the CRMP, proposed projects and new decisions (e.g., issuance of a special-use permit) on federal lands are evaluated by the WSR-administering agency to ensure they protect and, to the extent possible, enhance river values (free-flowing condition, water quality and ORVs). The necessary evaluation framework is a detailed description of the existing conditions of these values at the time of designation. Absent this information it may not be possible to evaluate the effects of an activity relative to the non-degradation and enhancement policy of Section 10(a) of the Act.

This resource description is not a decision; rather, it is the first step in developing the CRMP. Previous eligibility findings and other pre-designation studies may partially or completely provide adequate detail.

Prior to completion of the CRMP, federally assisted water resources projects are evaluated based on the detailed description of the existing conditions of river values (free-flowing condition, water quality and ORVs). Refer to *Wild and Scenic Rivers Act: Section 7* (2004), a technical report of the Council for additional definition, standards and evaluation procedures.

Q. How are landowners, river users, tribal nations, and all levels of government involved in development of a CRMP for a river designated by Congress? (Compendium, p. 65)

A. The communities of interest are key players in the development of a CRMP. They help with data collection and establishing baseline conditions, identifying issues and opportunities to be addressed in the planning process and, increasingly, in monitoring and implementation of aspects of the CRMP. Sections 10(e) and 11(b)(1) of the Act anticipate the participation of federal, state or local governments, landowners, private organizations and/or individuals in planning, protecting and administering WSRs.

Q. How is a CRMP developed for a river designated by Congress with adjoining segments administered by two or more federal managers? (Compendium, p. 65)

A. Ideally one coordinated CRMP is developed with each WSR-administering agency documenting its respective decisions. In a few cases, separate plans may be required. However, even in this case, the planning process is conducted jointly to the greatest extent possible to ensure consistency of ORVs, classification, standards, and monitoring.

Q. Is a CRMP ever developed during the study? (Compendium, p. 65)

A. Yes. In some river study authorizations Congress has required the study agency to work with state and local governments and the public to develop a CRMP in concert with the study process to assist in determination of the river's suitability. Such pre-designation CRMPs have, in some cases, been adopted in the legislation adding the river to the National System. **In cases where Congress has not authorized a pre-designation CRMP, agencies have taken the initiative to develop elements of the CRMP in the study report (pre-designation).**

Q. What is the planning requirement for a river designated by Secretary of the Interior (under Section 2(a)(ii) of the Act)? (Compendium, p. 65)

A. The requirement for a CRMP, does not apply to state-administered, federally designated rivers. Federal land managers are responsible for protecting river values in all agency planning and management actions for any portion of a 2(a)(ii) river that flows on federal lands. In some cases, the petitioning state has a requirement for a plan. The existence of a state or local plan to protect river values is one of the factors considered by the NPS in its review of the 2(a)(ii) nomination for the Secretary.

MANAGEMENT OF LAND AND WATER (Compendium, p. 67)

Responsibilities - WSR-Administering Agency

Q. Who is responsible to administer a river included in the National System? (Compendium, p. 68)

A. Rivers included in the National System by act of Congress (under Section 3(a) of the Act) are administered by one of four federal agencies: BLM, NPS, USFS, and/or FWS as specified in the legislation. Rivers included in the National System at the request of a governor and designated by the Secretary of the Interior (under Section 2(a)(ii) of the Act) are administered by the respective state(s).

Rivers that flow entirely or largely through non-federal lands require an enduring partnership with state and local government to protect values. This collaborative approach is well-evidenced on several “Partnership” rivers administered by the NPS. On these rivers, NPS staff help communities manage their river-related resources locally by bringing together state, county, and community representatives to preserve the ORVs for which the rivers were designated. This is community-based conservation provides the framework to ensure these rivers will be protected into the future.

Q. What are the responsibilities of the federal WSR-administering agency (for rivers designated by Congress)? (Compendium, p. 69)

A. The federal WSR-administering 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. It is also responsible to protect and enhance a river’s values, through its authorities on federal lands and through voluntary, cooperative strategies developed with other governments, tribal nations and landowners on non-federal lands, and to evaluate water resources projects under Section 7(a).

Q. What is meant by the terms “protect” and “enhance” from Section 10(a) of the Act? (Compendium, p. 69)

A. Section 10(a) of the Wild and Scenic Rivers Act directs that:

*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 in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.*

In its technical report on managing wild and scenic rivers (*Wild and Scenic River Management Responsibilities (2002)*) the Council interprets Section 10(a) as: “Protect rivers by documenting and eliminating adverse impacts on values (free-flow, water quality, ORVs), including activities that were occurring on the date of designation. Enhance rivers by seeking opportunities to improve conditions.”

While the term “protect” is interpreted by the Council above as “eliminating adverse impacts,” it is not interpreted as an *absence* of impacts. Rather, each WSR-administering agency must, based on best available scientific information and reasoned professional judgment, ensure that existing values are protected and, to the extent practical, enhanced. The river-administering agency must also establish a positive trajectory for any value that was in a degraded condition on or after the date of the river’s designation.

This direction by Congress, which has been affirmed in several court cases,³ is why defining **baseline conditions of the values for which the river was designated (free-flow, water quality and ORVs) is critically important. This baseline serves as the basis from which the degree/intensity of existing and future impacts can be measured** (emphasis added). All future activities are to be measured from this **baseline** to ensure continued high quality conditions and to eliminate adverse impacts (*protect*) or improve conditions (*enhance*) within the river corridor. If a thorough resource assessment that includes a **baseline description of the ORVs** is not completed at the time of designation, this assessment should be included in the river management plan. The river management plan then establishes the **baseline conditions at the time of designation** — including a description of any degradation—and proposes management actions that will be taken to improve conditions until they meet the requirement to protect and enhance the river’s values, including free flowing condition, water quality and ORVs.

Q. What is meant by the term “non-degradation” in the Interagency Guidelines? (Compendium, p. 70)

A. The Interagency Guidelines interpret Section 10(a) of Act (the protect and enhance mandate) as “a non-degradation and enhancement policy for all designated river areas, regardless of classification. . . . Specific management strategies will vary according to classification but will always be designed to protect and enhance the values of the river area.” The overarching goal articulated in Section 10(a) is to protect existing high-quality conditions while improving conditions when unacceptable impacts are documented, thus leaving each river to future generations in better condition than when it was designated.

Non-degradation within the Act’s context is not synonymous with no *impact*. *Non-degradation* in the context of a wild and scenic river is assurance that there is no downward trend in conditions that affect ORVs. As stated in the

Council's technical report (Wild and Scenic River Management Responsibilities (March): "To achieve a non-degradation standard, the river administering agency must document baseline resource conditions and monitor changes to these conditions."

Therefore, it is imperative to document baseline conditions (emphasis added), develop management objectives, and establish a monitoring program to ensure that conditions are being met and identify when management action is needed to protect values. The comprehensive river management plan is the appropriate place to articulate the terms and conditions specific to the local conditions/resource values identified for a given river, as well as the solutions needed to mitigate known impacts.

Footnote 3 The following cases are discussed further in the Council's March 2002 technical paper *Wild and Scenic River Management Responsibilities*:

Oregon Natural Desert Association v. Green (D. OR 1997)

Oregon Natural Desert Association v. Singleton (D. OR 1999)

Hells Canyon Alliance and Hells Canyon Preservation Council v. U.S. Forest Service (9th Cir. 2000)

Northwoods Wilderness Recovery v. U.S. Forest Service (W.D. MI 2001)

Responsibilities - Citizens

Q. What is the role of citizens in protecting WSR values? (Compendium, p. 72)

A. Citizen stewards are increasingly important in protecting WSR values, often through river specific or regional stewardship organizations. Individually, or through nonprofit entities, citizens help survey and monitor resource conditions, provide interpretive and education opportunities, contribute to restoration efforts, and support many other protection activities.

Appendix J: Comprehensive River Management Plans – Contents and Key Elements

1. Interagency Wild & Scenic Rivers Coordinating Council. March 2002. **Wild & Scenic River Management Responsibilities**. Appendix A of Technical Report.
2. Interagency Wild & Scenic Rivers Coordinating Council. March 2010. **Newly Designated Wild and Scenic River: Interim Management And Steps to Develop a Comprehensive River Management Plan**. Technical Report.

1. 2002 Interagency Wild & Scenic Rivers Coordinating Council

The principal purpose of this section is to describe the recommended contents and key elements of a CRMP. The Act provides specific direction; a CRMP should:

- Describe the existing resource conditions including a detailed description of the ORVs;
- Define the goals and desired conditions for protecting river values;
- Address development of lands and facilities;
- **Address user capacities;**
- Address water quality issues and instream flow requirements;
- Reflect a collaborative approach, recognizing the responsibilities of, and opportunities for, partnership with all stakeholders;
- Identify regulatory authorities of other governmental agencies that assist in protecting river values; and
- Include a monitoring strategy to maintain desired conditions.

Relationship of a CRMP and the NEPA

A CRMP is developed in compliance with the NEPA. The purpose and need for the proposed action is to develop a plan to protect and enhance the values for which the river was designated (free-flowing condition, water quality, and ORVs). Issues are identified that prevent or impede the protection and enhancement of river values. Alternative courses of actions are developed and analyzed relative to achieving overall goals and desired future conditions within the WSR corridor. A “no action” alternative, representing the existing situation, is described as the basis for comparison of the action alternatives. Management direction and actions, as more fully described in the section below, typically vary by alternative. The resultant CRMP describes the management direction/actions of the selected alternative at a programmatic level. Identified management actions generally require a site-specific NEPA analysis prior to implementation. The CRMP amends an agency’s broader land management plan (BLM—Resource Management Plan; NPS—General Management Plan (GMP); USFWS—Resource Plan; USFS—Land and Resource Management Plan). For designated rivers that are separate NPS units, the CRMP is the GMP (e.g., St. Croix National Scenic Riverway). In some cases, the CRMP is developed prior to designation as part of the suitability study and adopted via act of Congress. A CRMP typically includes high-intensity public involvement in recognition of the impossibility (and undesirability) of protecting rivers without partners.

Key Elements of a CRMP

The following outline is not a suggested table of contents for a CRMP. Rather, it identifies the key elements specific to river planning that should be developed in the context of each agency’s planning framework and under the NEPA. Further, the outline purposely does not include the components specific to the NEPA process, e.g., description of issues, alternatives, environmental consequences, or decision document.

Description of River Setting and Resource Values

- Regional River Setting
- Description of River Corridor (by resource)
 - Basic hydrology
 - Type/amount of recreation use (private and commercial)
 - Type/amount of other uses permitted uses (e.g., livestock grazing, mineral activities)
- Land Ownership and Land-Use Description
- **Outstandingly Remarkable Values (sufficiently detailed to serve as baseline for desired management direction and monitoring)**
- River Classification
- Landscape Character (description of existing development level by segment)

Planning Context (Coordination with Others)

- Legislative Direction Specific to the River
- Relationship to Other Federal Regulatory Agencies
- Relationship to Tribal Governments
- Relationship to Other Federal, State and Local Government Plans
- Relationship to Other Regional Coordinating Bodies

Management Direction

- Goals and Desired Future Conditions
- Standards and Guidelines by Resource
- River Corridor Boundary
- Principles for Land Acquisition (as appropriate)

Management Actions

This section includes the criteria developed to guide subsequent site-specific agency decisions and a description of probable management actions, including the objectives/intent of an action. For example, this section might include criteria for evaluating proposed river events conducted under agency special-use authorization or, based on management direction, describe priority areas for restoration and likely treatments.

Monitoring Strategy

- Standards
- Indicators for Management Actions
- Process (intensity, frequency, personnel needs, and other costs)

Potential Appendix Material

- Annotated WSRs Act and River-Specific Enabling Legislation
- Resources Assessment (ORVs)
- Documented Inventory Information (e.g., water quality)
- Instream Flow Studies
- Visitor Capacity Studies
- Water Resources Project Evaluation Process
- State/Local Regulation Specific to Protecting Resource Values

2. 2010 Newly Designated Wild and Scenic River: Interim Management And Steps to Develop a Comprehensive River Management Plan

This document is comprised of three sections:

1. Direction in the Wild and Scenic Rivers Act (Act) to establish a river corridor boundary and prepare a comprehensive river management plan (CRMP) for a designated wild and scenic river (WSR).
2. Guidance for interim management.
3. Generalized steps to develop a CRMP.¹

1. Statutory Direction

The enabling legislation (the Act of 1968 and its generic amendments) requires the administering agency to:

- Establish a detailed river corridor boundary of an average of not more than 320 acres per river mile within one year from date of designation.²
- Prepare a CRMP within three full-fiscal years after the date of designation.

It also requires a CRMP to:

- **Describe the existing resource conditions including a detailed description of the outstandingly remarkable values (ORVs);**
- **Define the goals and desired conditions for protecting river values;**
- Address development of lands and facilities;
- **Address user capacities;**
- Address water quality issues and instream flow requirements;
- Reflect a collaborative approach with all stakeholders;
- Identify regulatory authorities of other governmental agencies that assist in protecting river values; and
- Include a monitoring strategy to maintain desired conditions.

¹ agency's policy.

² Please note that subsequent legislation that add rivers to National Wild and Scenic Rivers System (National System) may contain specific direction regarding the area to be included in the river corridor and/or guidance for development of the CRMP or for river management.

2. Interim Management

3. Steps to Develop a CRMP

This section is not a stand-alone product; rather, it expands on the content of the Council's technical report, *Wild and Scenic River Management Responsibilities* (2002). The steps in this section are presented sequentially; however, aspects of most will occur concurrently and many are iterative. References are provided to other Council products for further explanation of a step or concept.

Describe Baseline Conditions Establish baseline conditions for the values for which each river is added to the National System—free-flowing condition, water quality and ORVs. Previous eligibility findings and other predesignation studies typically provide much of this information.

Values

- **Free-flowing Condition** – Describe the in-channel condition to guide future analyses under Section 7(a), i.e., describe what, if any, structure(s) exists in the river's bed or its banks and general hydrologic function.⁵

- **Water quality** – Work with Environmental Protection Agency and state water quality agency to:
 - » Establish baseline conditions.
 - » Identify water quality-related issues.
 - » Define parameters from which to monitor relative to protecting ORVs.⁶

- **ORVs:**
 - » Describe in detail based on pre-designation study and/or other existing information. As needed, engage subject matter experts for each ORV to develop a contemporary description, working with their peers in local, state and other federal agencies and with others who have information about the significance of the values relative to established criteria.
 - » Include information about the specific or general location of ORVs, to the extent meaningful.
 - » Describe the flow dependency of ORVs in anticipation of future need to quantify instream flow Refer to Appendix A for a template for describing ORVs. For an example of a completed ORV description, see the Upper Deschutes WSR and State Scenic Waterway CRMP (Appendix C at www.fs.fed.us/r6/centraloregon/projects/planning/major-plans/wsr-upperdeschutes.pdf). Please note: This “resource assessment” was completed in 1994 to clarify and provide detail as to the significance of ORVs. The eligibility criteria were a precursor to that adopted and slightly modified by the Council in its study paper. It also includes locally developed criterion for several “other similar values” (e.g., hydrology, vegetation) and identifies the “special attributes” as an Oregon State Scenic Waterway. In contemporary resource descriptions, wilderness is not evaluated separately; rather remoteness is considered as part of recreation setting and opportunities.

5. Refer to *Wild and Scenic Rivers Act: Section 7* (2004), a technical report 5 of the Council.

6. Refer to *Water Quantity and Quality as Related to the Management of Wild and Scenic Rivers* (2003), a technical report of the Council.

In addition to values for which the river was designated, describe resource conditions, infrastructure and activities within the 1/4-mile interim WSR corridor and, as appropriate, in the larger watershed(s).

Resource/Infrastructure/Activity Description

- Prepare an ownership and other base maps.
- Describe resource conditions, which are not ORVs.
- Describe existing infrastructure on federal lands (e.g. transportation, including roads, railroad, trails; power and pipe lines; recreation and administrative facilities).
- Describe existing activities on federal lands (e.g., vegetative management, grazing, mineral activities).
- Describe private and commercial recreation activities, including relative amounts.
- Identify any easements, rights-of-ways or other encumbrances on federal lands.
- Describe private land developments and activities.
- Describe the regional context, i.e., the plans and policies of other entities that influence management in the corridor and watershed.

Planning Context

- Describe plans and policies of other entities (e.g., Endangered Species Act recovery plan).
- Document local, state and federal laws and regulations applicable to river and watershed protection on nonfederal lands.
- Identify local, state and federal incentive programs for river protection on nonfederal lands.⁷

7. Refer to *Protecting Resource Values on Nonfederal Lands* (1996), a technical report 7 of the Council.

Data Collection

- Determine what, if any, additional information is needed to **adequately describe values** (freeflowing condition, water quality, **ORVs**) for use in the planning process.
- Determine what, if any, additional information is needed to adequately describe resource/infrastructure/activities in the corridor and watershed.
- Determine what, if any, information is needed to adequately describe **recreation user capacities**.
- Work with the state to identify existing water rights.
- Work the state and U.S. Geological Survey to determine the location and sufficiency of gages for future water quantity assessment.⁸

Content of CRMP¹¹

- Describe regional river setting.
- Describe resource conditions, including detailed description of river values (free-flow, water quality and ORVs).
- Develop goals and desired conditions to protect river's free-flowing condition, water quality and ORVs.
- Develop direction for visitor use and capacity management.
- Provide framework for future development and activities on federal lands.
- Describe (and thereby assign) responsibility for river protection by local, state, federal agencies, tribal governments and nonprofit partners.¹²
- Provide a voluntary framework for future development and activities on nonfederal lands.¹³
- Develop, if appropriate, criteria for acquisition of private lands from willing sellers.
- Develop a monitoring strategy, specifically related to protecting river's free-flowing condition, water quality and ORVs.
- Identify possible nonprofit stewardship groups to help protect and enhance values (consider the groups who advocated designation).

8. Refer to *Water Quantity and Quality as Related to the Management of Wild and Scenic Rivers* 8 (2003), a technical report of the Council.

11 Refer to the outline presented in *Wild and Scenic River Management Responsibilities* (2002), Appendix A, a technical report of the Council.

12. Refer to *Implementing the WSRA: Authorities and Roles of Key Federal Agencies* (1999), a technical report of the Council.

13. Refer to *Protecting Values on Nonfederal Lands* (1996), a technical report of the Council.

Appendix A – Template for Describing Baseline ORV Conditions

For each ORV, provide the criterion, a description focusing on the factors of the criterion, and a conclusion as to the significance of each value at a regional or national scale. Provided below is a template for two ORVs.

Recreation

Criterion for Recreation ORV: Recreational opportunities are, or have the potential to be, popular enough to attract visitors from throughout or beyond the region of comparison or are unique or rare within the region. River-related opportunities include, but are not limited to, sightseeing, interpretation, wildlife observation, camping, photography, hiking, fishing, hunting, and boating. The river may provide settings for national or regional usage or competitive events.

Description

Conclusion

Fish

Criterion for Fish ORV: Fish values may be judged on the relative merits of either fish populations or habitat, or a combination of these river-related conditions.

a. *Populations.* The river is nationally or regionally an important producer of resident and/or anadromous fish species. Of particular significance is the presence of wild stocks and/or federal or state listed or candidate threatened, endangered, or sensitive species. Diversity of species is an important consideration and could, in itself, lead to a determination of outstandingly remarkable.

b. *Habitat.* The river provides exceptionally high quality habitat for fish species indigenous to the region of comparison. Of particular significance is habitat for wild stocks and/or federal or state listed or candidate threatened, endangered, or sensitive species. Diversity of habitats is an important consideration and could, in itself, lead to a determination of outstandingly remarkable.

Description

Conclusion

Appendix K. BLM Manual 6400 Wild and Scenic Rivers: 2012

USDI, BLM Director. July 13, 2013. BLM Manual 6400 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management. Washington, D.C.

Purpose Manual 6400 contains the BLM’s policy and program direction for the identification, evaluation, and management of eligible and suitable WSRs and the management of designated components of the National Wild and Scenic Rivers System (National System). This program guidance is provided to fulfill obligations contained in the Act (WSRA) of 1968, as amended, and other relevant laws and policies (BLM Manual 6400, p. 1-1).

Interagency Council River managers are encouraged to consult the technical guidance provided by the Interagency Wild and Scenic Rivers Coordinating Council (Interagency Council). The Interagency Council consists of representatives from the four Federal river-administering agencies (Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service) and has the overriding goal of improving interagency coordination in the implementation of the WSRA. The Interagency Council has published a number of technical papers that managers should consult when implementing all requirements of the WSRA (BLM Manual 6400, p. 1-7).

File and Records Maintenance State and field offices will create and maintain case files for WSRs, river segment evaluations, as well as eligibility and suitability determinations, in accordance with BLM Manual Section 1270 - Records Administration. Recordkeeping requirements are also mandated by Executive Orders 12866 and 13353, the Paperwork Reduction Act (44 U.S.C. 3501), and the guidelines of the BLM Paperwork Management System. Case files will include records such as management plans, eligibility determinations, suitability reports with related material, monitoring reports, and maps with boundaries and descriptions, as appropriate (BLM Manual 6400, p. 1-8).

Role of Land Use Planning in the Study River Process The WSRA 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.” Sources for identifying the significance of river-related values include the Nationwide Rivers Inventory; internal agency inventories and state river assessments; identification by tribal governments and other Federal, state, or local agencies; and the public. If a systematic evaluation of eligible rivers or a comprehensive administrative unit-wide suitability study has been previously completed and documented, additional assessment and study through the land use planning process need only be done if: (1) the documentation no longer exists or is incomplete or outdated; (2) **changed circumstances warrant additional review of eligibility** (e.g., **a new outstandingly remarkable value**, see chapter 3.1E); (3) there is a change in the suitability factors; or (4) the authorized officer decides to evaluate suitability for one or more eligible rivers in the land use planning process. Land use plans should address whether existing evaluations of eligible rivers or suitability studies will be revisited (BLM Manual 6400, p. 2-1).

Appendix J The 2012 BLM Manual 6400 is complex and large. Appendix J will focus on Chapter 3 - Evaluation of Study Rivers, Sections 3.1 - Eligibility and 3.2 - Ineligible Rivers.

Chapter 3. Evaluation of Study Rivers (BLM Manual 6400, p. outline)

- 3.1 Eligibility**
- 3.2 Ineligible Rivers**
- 3.3 Classification
- 3.4 Suitability
- 3.5 Management of Eligible and Suitable Rivers as Determined Through BLM-identified Study or Congressionally Authorized Study
- 3.6 Management Guidelines for Eligible and Suitable Rivers as Determined Through BLM-identified Study or Congressionally Authorized Study
- 3.7 Land Use Plan Guidance
- 3.8 Determinations of Impacts under Section 7(B) of the Wsra
- 3.9 Monitoring Free Flow, Water Quality, and Outstandingly Remarkable Values

Chapter 3. Evaluation of Study Rivers (BLM Manual 6400, p. 3-1)

The evaluation of a river(s) for possible inclusion in the National System follows a three-step process: (1) determination of eligibility, (2) tentative classification (wild, scenic, or recreational), and (3) determination of suitability.

3.1 Eligibility (BLM Manual 6400, p. 3-1)

The eligibility of a river for potential inclusion in the National System is determined by applying the following inventory criteria from the WSRA (further described in the Interagency Guidelines). The inventory criteria are: the river must be free flowing and, with its adjacent land area, possess one or more outstandingly remarkable values. No other factors are considered in determining the eligibility of a river. The determination of eligibility is part of the inventory process and does not require a decision or approval document. A sample format of the documentation of eligibility is provided in Illustration 1. Jurisdictional and management constraints are not considered when determining a river's eligibility for designation as a WSR. These types of issues are addressed in the suitability phase of WSR studies. The BLM does not have the authority to evaluate the presence, absence, or quality of values that occur on private lands. However, the boundary of that river may include private lands. In such cases, eligibility determinations should only consider the presence of values on BLM-administered lands and related waters. (BLM Manual 6400, p. 3-1)

A. Segments. In order to determine eligibility and assign a tentative classification (see chapter 3.3), it may be necessary to divide a study river into segments. In defining segment termini, consider: (1) obvious changes in land status or ownership; (2) changes in river condition, such as the presence of dams and reservoirs; (3) significant changes in types or amounts of development; and (4) the presence of important resource values. There is no standard established for segment length. A river segment should be long enough to enable the protection of the outstandingly remarkable values if the area were managed as a wild, scenic, or recreational river. (BLM Manual 6400, p. 3-1)

B. Free flowing. Section 16(b) of the WSRA 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 low dams, diversion works, or other minor structures does not automatically render a segment ineligible for designation. A determination of eligibility is not dependent on the river being "naturally flowing" (i.e., flowing without any manmade upstream or downstream manipulation). The Interagency Guidelines state, "The fact that a river segment may flow between large impoundments will not necessarily preclude its designation. Such segments may qualify if conditions within the segment meet the eligibility criteria." (BLM Manual 6400, p. 3-1)

C. Flows. There are no specific requirements concerning minimum flows for an eligible segment. Flows are considered sufficient for eligibility if they sustain or complement the outstandingly remarkable values for which the river would be designated. Rivers with intermittent flows exist within the National System, and rivers representative of desert ecosystems having outstanding ecological or other values should be considered. A river need not be “boatable or floatable” in order to be eligible. As a general rule, the segment should contain regular and predictable flows (even though intermittent, seasonal, or interrupted). This flow should derive from naturally occurring circumstances (e.g., aquifer discharge, seasonal melting from snow or ice, normal precipitation, or instream flow from spillways or upstream facilities). Caution is advised in applying the free-flow criterion to water courses that only flow during flash floods or unpredictable events. The segment should not be ephemeral (flow lasting only a few days per year in direct response to precipitation). Evaluation of flows should focus on normal water years, with consideration of drought or wet years during the inventory. (BLM Manual 6400, p. 3-2)

D. Outstandingly Remarkable Values. In order to be eligible for inclusion into the National System, the river, and its adjacent land area, must have one or more outstandingly remarkable values. A variety of methods can be used to determine whether certain river-related values are so unique, rare, or exemplary as to make them outstandingly remarkable. The determination that a river area contains outstanding values is a professional judgment on the part of an interdisciplinary team, based on objective analysis. The output of the team’s analysis should include written documentation of values and why they are important and should also consider the following parameters: (BLM Manual 6400, p. 3-2)

1. In order to be assessed as outstandingly remarkable, a river-related value must be a unique, rare, or exemplary feature that is exceptional at a comparative regional or national scale. A unique or rare river-related value is one that would be a conspicuous example of that value from among a number of similar examples that are themselves uncommon or extraordinary. (BLM Manual 6400, p. 3-2)
2. The interdisciplinary team must identify the area of consideration that will serve as the basis for meaningful comparative analysis. This area of consideration is not fixed and may vary by resource; it may be all BLM-administered lands within a state, a portion of a state, or an appropriately scaled physiographic or hydrologic unit. Once the area of consideration is identified, a river’s values can then be analyzed. (BLM Manual 6400, p. 3-2)
3. While the spectrum of resources that may be considered is broad, all features considered should be directly river related. That is, they should: (1) be located in the river or on its immediate shorelands (within ¼ mile on either side of the river), (2) contribute substantially to the functioning of the river ecosystem, and/or (3) owe their location or existence to the presence of the river. (BLM Manual 6400, p. 3-2)
4. Additional guidance on this issue is contained in a technical report by the Interagency Council at www.rivers.gov, entitled “The Wild and Scenic River Study Process,” December 1999. (BLM Manual 6400, p. 3-2)

E. Eligibility Criteria. The following eligibility criteria for outstandingly remarkable values are offered to foster greater consistency within the agency and with other Federal river-administering agencies. The criteria are illustrative and not all inclusive. These criteria may be modified to make them more meaningful in the area of comparison, and additional criteria may be included. (BLM Manual 6400, p. 3-3)

1. **Scenery.** The landscape elements of landform, vegetation, water, color, and related factors result in notable or exemplary visual features and/or attractions. The BLM Visual Resource Inventory Handbook, H-8410-1, may be used in assessing visual quality and in evaluating the extent of development upon scenic values. The rating area must be scenic quality “A” as defined in the BLM Visual Resource Inventory Handbook. When analyzing scenic values, additional factors, such as seasonal variations in vegetation, scale of cultural modifications, and the length of time negative intrusions are viewed, may be considered. Scenery and visual attractions may be highly diverse along the majority of the river or river segment. (BLM Manual 6400, p. 3-3)

2. **Recreation.** Recreational opportunities within the subject river corridor are, or have the potential to be, popular enough to attract visitors from throughout or beyond the region of comparison or are unique or rare within the region. River-related opportunities include, but are not limited to, sightseeing, interpretation, wildlife observation, camping, photography, hiking, fishing, hunting, and boating. Such a recreational opportunity may be an outstandingly remarkable value without the underlying recreational resource being an outstandingly remarkable value (e.g., fishing may be an outstandingly remarkable value without the fish species being an outstandingly remarkable value). The river may provide settings for national or regional usage or competitive events. (BLM Manual 6400, p. 3-3)
3. **Geology.** The river area contains one or more examples of a geologic feature, process, or phenomenon that is unique or rare within the region of comparison. The feature(s) may be in an unusually active stage of development, represent a “textbook” example, and/or represent a unique or rare combination of geologic features (erosional, volcanic, glacial, or other geologic features). (BLM Manual 6400, p. 3-3)
4. **Fish.** Fish values include either indigenous fish populations or habitat or a combination of these river-related conditions. (BLM Manual 6400, p. 3-3)
 - i. **Populations.** The river is nationally or regionally an important producer of indigenous resident and/or anadromous fish species. Of particular significance is the presence of wild stocks and/or Federal or state listed or candidate, threatened, endangered, or BLM sensitive species. Diversity of species is an important consideration and could, in itself, lead to a determination that it is an outstandingly remarkable value. (BLM Manual 6400, p. 3-3)
 - ii. **Habitat.** The river provides exceptionally high-quality habitat for fish species indigenous to the region of comparison. Of particular significance is habitat for wild stocks and/or Federal or state listed or candidate, threatened, endangered, or BLM sensitive species. Diversity of habitat is an important consideration and could, in itself, lead to a determination that it is an outstandingly remarkable value. (BLM Manual 6400, p. 3-4)
5. **Wildlife.** Wildlife values include either terrestrial or aquatic wildlife populations or habitat or a combination of these conditions. (BLM Manual 6400, p. 3-4)
 - i. **Populations.** The river, or area within the river corridor, contains nationally or regionally important populations of indigenous wildlife species dependent on the river environment. Of particular significance are species considered to be unique to the area and/or populations of Federal or state listed or candidate, threatened, endangered, or BLM sensitive species. Diversity of species is an important consideration and could, in itself, lead to a determination that it is an outstandingly remarkable value. (BLM Manual 6400, p. 3-4)
 - ii. **Habitat.** The river, or area within the river corridor, provides exceptionally high-quality habitat for wildlife of national or regional significance and/or may provide unique habitat or a critical link in habitat conditions for Federal or state listed or candidate, threatened, endangered, or BLM sensitive species. Contiguous habitat conditions are such that the biological needs of the species are met. Diversity of habitat is an important consideration and could, in itself, lead to a determination that it is an outstandingly remarkable value. (BLM Manual 6400, p. 3-4)
6. **Historical.** The river, or area within the river corridor, has scientific value or contains a rare or outstanding example of a district, site, building, or structure that is associated with an event, person, or distinctive style. Likely candidates include sites that are eligible for the National Register of Historic Places at the national level or have been designated a national historic landmark by the Secretary of the Interior. (BLM Manual 6400, p. 3-4)

7. **Cultural.** The river, or area within the river corridor, contains rare or outstanding examples of historic or prehistoric locations of human activity, occupation, or use, including locations of traditional cultural or religious importance to specified social and/or cultural groups. Likely candidates might include a unique plant procurement site of contemporary significance. (BLM Manual 6400, p. 3-4)
8. **Other Values.** While no specific national evaluation guidelines have been developed for the “other similar values” category, assessments of additional river-related values consistent with the foregoing guidance may be developed as part of the eligibility process, including, but not limited to, hydrological and paleontological resources or scientific study opportunities. By way of example, the following evaluation guidelines describe possible river-related botanical resources: (BLM Manual 6400, p. 3-4)
 - i. **Botany.** The area within the river corridor contains riparian communities that are ranked critically imperiled by state-based natural heritage programs. Alternatively, the river contains exemplary examples, in terms of health, resilience, species diversity, and age diversity, of more common riparian communities. The river corridor may also contain exemplary and rare types of ecological refugia (palm oases) or vegetation habitats (hanging gardens or rare soil types) that support river-related species. The river may also contain river-related plant species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or appear on the BLM’s sensitive species list. (BLM Manual 6400, p. 3-5)

3.2 Ineligible Rivers (BLM Manual 6400, p. 3-5)

1. **Congressionally Authorized Study.** If a congressionally authorized study river under Section 5(a) of the WSRA is found to be ineligible, the study report should describe the basis for the ineligibility finding. The study report should be submitted to the Assistant Director of the National Landscape Conservation System and Community Partnerships, Washington Office. The Assistant Director will prepare it for submittal to the BLM Director for review and subsequent delivery to the Secretary. The Secretary of the Interior will publish a notice in the Federal Register of the final ineligibility finding. (BLM Manual 6400, p. 3-5)
2. **Bureau of Land Management-Identified Study.** The study of rivers identified by the BLM under Section 5(d)(1) of the WSRA may be discontinued upon a finding of ineligibility. The results of this finding of ineligibility should be retained as part of the inventory record for future consideration in land use planning (see section 4.2 for additional information). The ineligibility finding should be mentioned in the Federal Register notice for the approved land use plan. A separate Federal Register notice is not required. (BLM Manual 6400, p. 3-5)

Comprehensive River Management Plans Section 3(d)(1) of the WSRA requires that a CRMP be prepared to provide for the management and protection of river values (BLM Manual 6400, p. 7-2).

Illustration 1 – Sample Format of Documentation of Eligibility

(See chapter 3.1) (BLM Manual 6400, I-1)
Crooked Creek – Segment Above Fish Barrier

Free Flowing	Outstandingly Remarkable Values								Tentative Classification			Total Segment Length (Miles)	BLM Segment Length (Miles)
	Scenic	Recreation	Geological	Fish	Wildlife	Historic	Cultural	Other	Wild	Scenic	Recreational		
Yes	X	X		X			X		X			6.3	1.59

River Segment Location and General Description: Located in Carbon County, Crooked Creek originates in the southern portion of the Pryor Mountains within the Custer National Forest. In a 1992 Forest Plan amendment, the Custer National Forest determined Crooked Creek as eligible for wild and scenic river study with cultural, fisheries, geologic, and scenic values being outstandingly remarkable. At the forest boundary Crooked Creek flows onto BLM-administered lands for 3 miles before entering private lands. This 3-mile reach on BLM land was segmented at a fish barrier which is located close to the middle of the reach. The Crooked Creek – Above Fish Barrier segment is shown on Map 3, page 22 (BLM Manual 6400, I-1).

Reasons for Tentative Classification: This segment has been tentatively classified as wild. This segment is entirely within the Burnt Timber Canyon Wilderness Study Area (WSA) and has motorized public access to within less than ¼ mile of the canyon rim. It is free of impoundments, and the shoreline is undeveloped and primitive. There is little evidence of livestock grazing. There are no improvements or evidence of humans (BLM Manual 6400, I-1).

Description of Outstandingly Remarkable Values: (BLM Manual 6400, I-1)

Scenic Values: This segment flows through the Burnt Timber Canyon WSA and is rated as Class I for visual resource management. The current management objective is to maintain the existing condition of the landscape. The deeply incised Crooked Creek Canyon cuts through several hundred feet of the Pryor Mountain limestone strata. The combination of the dense riparian vegetation along Crooked Creek and the steep talus slopes of the canyon walls offer unique and outstandingly remarkable scenery (BLM Manual 6400, I-1).

Recreational Values: The Pryor Mountains offer a unique combination of resource values that attract local, regional, and national visitors. This segment offers access to opportunities including fishing for a genetically pure strain of Yellowstone cutthroat trout, hiking in a pristine riparian canyon, viewing Pryor Mountain wild horses at one of their limited watering sources, and exploring for caves and bats in the canyon's limestone walls (BLM Manual 6400, I-1).

Fish Values: The Crooked Creek – Above Fish Barrier segment supports a population of Yellowstone cutthroat trout (YCT) (*Oncorhynchus clarkii bouvieri*) that has been designated a “core population” by the Interstate YCT Coordination Team. A core population is one that exhibits no hybridization and is essentially a genetically pure strain. These pure strain YCT are very valuable in that they can be used to enhance other YCT populations or establish new populations in suitable waters. These fish values are recognized nationally by the fisheries community. The ecological impact of losing a pure strain species is significant in itself. YCT are listed as a species of concern by Montana Fish, Wildlife, and Parks and are listed as a federally sensitive species by the BLM and U.S. Forest Service. The fish barrier at the downstream end of the segment will maintain the genetic purity of this YCT population. Adjacent land uses have had little effect on this segment because the segment is within the wilderness study area. The fish habitat is in good condition. High canyon walls, rock armoring, and limited access combine to provide a setting that is primitive in nature. Although there is public motorized access to within ¼ mile of the canyon bottom, visitors must hike in. The presence of the core population of YCT in Crooked Creek combined with the isolated, primitive setting of the canyon meets the criteria of an outstandingly remarkable value (BLM Manual 6400, I-2).

Cultural Values: The Crooked Creek – Above Fish Barrier segment has a landscape with significant archaeological properties. The Demijohn Flat Archaeological District was listed on the National Register of Historic Places in 1974 as District #74001092 (24CB478). The Demijohn Flat Archaeological District retains archaeologically intact remnants of protohistoric period Crow tipi habitation. The size and relatively pristine nature of the site warrants protection. Beyond the registered archaeological district, other sites include the petroglyphs (24CB205) and other nearby sites (additional tipi rings), which possibly could be considered elements in a broad landscape associated with the archaeological district. Studies and evaluations for nearby sites are needed to extend the district to a landscape designation. This district should be redefined, avoided, and protected. This segment of the Crooked Creek Demijohn Flat Archaeological District retains unique qualities of outstanding scientific value on at least a regional level (BLM Manual 6400, I-2).

1.3 Relevant Authorities (BLM Manual 6400, pps. 1-1 to 1-2).

1. National Historic Preservation Act of 1966 (16 U.S.C. 470)
2. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271-1287)
3. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)
4. Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) (33 U.S.C. 1251 *et seq.*)
5. Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)
6. Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*)
7. Archaeological Resources Protection Act of 1979 (16 U.S.C. 470)
8. Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3101 *et seq.*)
9. Federal Lands Recreation Enhancement Act of 2004 (16 U.S.C. 6804)
10. Omnibus Public Land Management Act of 2009 (16 U.S.C. 7201-7203)
11. Title 43 CFR Subpart 1610.4-9 – Monitoring and Evaluation
12. Title 43 CFR Subpart 8351 - Designated National Areas
13. 1982 U.S. Department of the Interior - U.S. Department of Agriculture Final Revised Guidelines for Eligibility, Classification, and Management of River Areas (Interagency Guidelines) (47 FR 39454)

1.5 References (BLM Manual 6400, pps. 1-6 to 1-7).

1. Departmental Manual, Part 235, Chapter 1, General Program Delegation, Director, Bureau of Land Management – Part 1.1C
2. Departmental Manual, Part 516, National Environmental Policy Act of 1969
3. Departmental Manual, Part 710, National Rivers and Trails Systems
4. BLM Manual Section 1270 – Records Administration
5. BLM Manual Section 1601 – Land Use Planning
6. BLM Manual Section 2930 – Recreation Permits and Fees
7. BLM Manual Section 4180 – Land Health
8. BLM Manual Section 6120 – Congressionally Required Maps and Legal Boundary Descriptions for National Landscape Conservation System Designations
9. BLM Manual Section 6720 – Aquatic Resource Management
10. BLM Manual Sections 8100-8170 – Cultural Resources Management
11. BLM Manual Section 8270 – Paleontological Resource Management
12. BLM Manual Section 8320 – Planning for Recreation and Visitor Services
13. BLM Manual Section 8323 – Recreation Project Planning
14. BLM Manual Section 8400 – Visual Resource Management
15. BLM Manual Section 8561 – Wilderness Management Plans
16. BLM Manual Section 9011 – Chemical Pest Control
17. BLM Manual Section 9014 – Control Use of Biological Control Agents of Pests on Public Lands
18. BLM Manual Section 9015 – Integrated Weed Management
19. BLM Manual Section 9160 – Mapping Sciences
20. BLM Handbook H-1601-1 – Land Use Planning Handbook
21. BLM Handbook H-1740-2 – Integrated Vegetation Management
22. BLM Handbook H-1790-1 – National Environmental Policy Act
23. BLM Handbook H-2930-1 – Recreation Permit Administration
24. BLM Handbook H-8120-1 – Guidelines for Conducting Tribal Consultation
25. BLM Handbook H-8270-1 – General Procedural Guidance for Paleontological Resource Management
26. BLM Handbook H-8410-1 – Visual Resource Inventory
27. Interagency Council’s Technical Guidance. In addition to the aforementioned authorities and references, managers are encouraged to consult the technical guidance provided by the Interagency Wild and Scenic Rivers Coordinating Council (Interagency Council). The Interagency Council consists of representatives from the four Federal river-administering agencies (Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service) and has the overriding goal of improving interagency coordination in the implementation of the WSRA. The Interagency Council has published a number of technical papers that managers should consult when implementing all requirements of the WSRA (BLM Manual 6400, p. 1-7).

Publications Related To Wild & Scenic Rivers

National Wild & Scenic Rivers System

<http://www.rivers.gov/publications.php>

Most of the publications listed here are written and produced by the Interagency Wild & Scenic Rivers Council (Council). Where an additional paper or reference is provided, the source is specifically noted. The Council does not endorse or ensure accuracy of these additional sources. Caveat emptor.

Council White Papers

- An Introduction to Wild & Scenic Rivers — A concise primer on wild and scenic rivers and what designation means to you.
- A Compendium of Questions & Answers Relating to Wild & Scenic Rivers — Everything you wanted to know about wild and scenic rivers in a Q&A format. These Q&As can also be accessed through a searchable data base.
- Designating Rivers Through Section 2(a)(ii) of the Wild and Scenic Rivers Act — This paper describes a process for designating rivers into the National System at the request of a state.
- Establishment of Wild & Scenic River Boundaries
- Evolution of the Wild and Scenic Rivers Act: A History of Substantive Amendments 1968-2013 — This paper looks at all of the amendments to the Wild & Scenic Rivers Act since its inception and explores the impacts of those amendments.
- Implementing the Wild & Scenic Rivers Act: Authorities and Roles of Key Federal Agencies — What responsibilities do other agencies have for wild and scenic rivers? Here's the answer.
- Protecting Resource Values on Non-Federal Lands — How wild and scenic rivers are protected where the federal government doesn't manage the surrounding area.
- Water Quantity and Quality as Related to the Management of Wild & Scenic Rivers — How to protect water quality and instream flows.
- Wild & Scenic River Management Responsibilities — Considerations in managing—and developing management plans for—wild and scenic rivers.
- Interim Management and Steps to Develop a CRMP — This paper provides guidance for interim management of a newly designated wild and scenic river and generalized steps to develop a comprehensive river management plan. It expands the content of Appendix A of the Wild & Scenic River Management Responsibilities paper above.
- The Wild & Scenic River Study Process — This paper explains the wild and scenic river study process for congressionally authorized and agency-identified study rivers.
- The Wild & Scenic Rivers Act: Section 7 — This paper describes the standards and procedures used in evaluating the effects of proposed water resources projects.
- Wild & Scenic Rivers and the Use of Eminent Domain PDF

Appendix L. Content Analysis of Hellgate RAMP

What is the focus of the Hellgate Recreation Area Management Plan (RAMP)?

The Hellgate RAMP is a BLM activity plan (implementation plan) for the Hellgate Recreation Area (HRA), a 27-mile segment of the Wild and Scenic (W&S) Rogue River from the Applegate River to Grave Creek.

Except for its philosophical preface, the 1978 Hellgate RAMP did not provide much to the basic framework and objectives beyond the 1972 Master Plan. It did provide specific “recreational development” details for the BLM HRA, and it did repackage the outstandingly remarkable values (ORVs) and similar river values in a similar yet different way. A page analysis of the 80-page Hellgate RAMP follows to corroborate that point. The main text not counting appendices was 48 pages of which the introduction was 17%, management policies for Zones, sites, land use, and recreation activities was 25%, and development and managing recreation facilities was 58%.

Introduction	8 pages	10%
Management Policies on Zones, Sites, Land Use, & Rec. Activities	12 pages	15%
Development & Managing Recreation (Rec.) Facilities	28 pages	35%
Appendix A. Research & Evaluation.	16 pages	20%
Appendix B. Miscellaneous	<u>16 pages</u>	<u>20%</u>
Totals	80 pages	100%

The Introduction had the following coverage: 2 pages on background and a map, 1/4 page on the purpose of establishing more detailed guides to land use management policies and recreational development, 2 pages on objectives (on recreational need and resource capabilities, and determining necessary development of facilities), and 2 pages on quality recreation experiences.

Detailed Page Analysis

Preface (1/4 page)

Approval page (1 page)

Major Populations Centers & Transportation Map (1 page)

Major Recreation Areas & Rivers (1 page)

Table of Contents (1 page)

Main Body of Hellgate RAMP (80 pages). Percentages are based on 80 pages.

Introduction (pages 1 - 8: 8 total pages/10%)

- 2 pages on background and map.
- 1/4 page on the purpose of establishing more detailed guides to land use management policies and recreational development.
- 2 pages on objectives.
- 2 pages on quality recreation experiences.

Management (Pages 9 - 20: 12 total pages/15%)

- 4 pages on physical management recreational opportunity zones.
- 7 pages on management policies for specific sites, land use, and recreational activities (e.g., home sites, agricultural lands, salmon boards, camping, boating, off road vehicles, wildlife and fisheries habitat (i.e., manage for compatible with aesthetic values), fire protection, safety, law enforcement, scenic easements, forest cover, pump screening, cultural resources).

Development (Pages 21 - 48: 28 total pages/35%)

- 1 page on development: objectives.
- 9 pages on development: fishing access sites and maps of them.
- 5 pages on development: recreation areas and maps of them.
- 2 pages on development: interpretive program.
- 3 pages on development: interpretive facilities.
- 1 page on development: environmental education.
- 1 page on development: implementation schedule.
- 2 pages on development: matrixes for proposed and existing recreation sites.
- 1 page on development: site location map.
- 1 page on development: future potential development areas.
- 1 page on development: seasonal vehicle fishing access.

Appendix A. Research & Evaluation. (Pages 49 - 64: 16 total pages/20%)

- 1/5 page Appendix A: Public Participation.
- 4 pages Appendix A: Visitor Use and Demand Analysis (included a need for visitor use data). [More](#)
- 1 page Appendix A: Projected Visitation for Sightseeing/Driving for Pleasure.
- 3.5 pages Appendix A: Projected Visitation for Fishing.
- 2.5 pages Appendix A: Projected Visitation for Boating.
- 2 pages Appendix A: Projected Visitation for Camping and Picnicking
- 1 page Appendix A: Projected Interpretive Visitor Analysis

Appendix B. (Pages 65 - 80: 16 total pages/20%)

- 1 page Appendix B: Key Items.
- 1 page Appendix B: Applicable Laws and Executive Orders.
- 1 page Appendix B: Legislative and Planning Influences.
- 1/2 page Appendix B: 1977 MFP for Josephine Sustained Yield Unit.
- 1/2 page Appendix B: State Scenic, Waterways.
- 1/2 page Appendix B: County Zoning
- 1 page Appendix B: State of Oregon Scenic Waterways Terms.
- 2 pages Appendix B: Federal Scenic Easements on Private Lands (brochure).
- 1/2 page Appendix B: State Scenic, Waterways.
- 2 pages Appendix B: Letter from BLM MDO District Manager to Interested Publics.
- 1 page Appendix B: Dear Concerned Citizen Letter from BLM MDO District Manager.
- 2 pages Appendix B: Citizen Participation In The Planning Process For Rogue River Recreation Section Activity Plan (Collection Stage).
- 1 page Appendix B: Letter from BLM MDO District Manager to Interested Publics.
- 1 page Appendix B: Letter from from Josephine County Commissioner to BLM MDO District Manager
- 1 page Appendix B: Land Status Map.

TABLES

- Table IIA-1 Comparison of Outstandingly Remarkable Values: 1964 Versus 2004
 Table IIA-2 Comparison of Outstandingly Remarkable Values (ORVs), Other Similar Values, and Other River Values: 1958 - 2014

Table IIA-1. Comparison of Outstandingly Remarkable Values: 1964 Versus 2004	
Michael L. Walker	
Preliminary Draft November 23, 2014	
1964 Draft Study Report¹	Record of Decision: July 2004²
Outstanding Scenic Qualities	Natural Scenic Qualities
Outstanding Salmon and Steelhead Trout Fishery	Fisheries Resources
Boating the Rogue River, in Addition to Providing an Excellent Means of Viewing the Scenic Features, Represents a Recreation Use of Outstanding Quality	Recreational Opportunities

Footnotes

1. July 1, 1964 Draft *Study Report of the Rogue River, Oregon* prepared by the Pacific Southwest Regional Task Group (i.e., representatives of USDI & USDA) for consideration of the Wild Rivers Study Team.
2. Record of Decision. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area. The Hellgate Recreation Area Management Plan (RAMP) is designed to provide for a mix of river recreation uses and users while managing and protecting the environment and the **outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities** (emphasis added). This Record of Decision adopts the RAMP and replaces the Rogue National Wild and Scenic River Activity Plan Hellgate Recreation Section (USDI 1978). The Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan (1972 Plan) (Federal Register Vol. 37, No. 131, 13408-13416) is still valid and is not changed or amended by the Recreation Area Management Plan. The Hellgate RAMP contains the decision selected from Alternative E, as analyzed in the Final

EIS, as well as, guidance and direction from the Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan of 1972, the Prohibited Acts in Rogue National Wild and Scenic River Area of 1992 (Federal Register Vo. 57, No. 110, 24271-24274), and the BLM Medford District Record of Decision and Resource Management Plan of 1995.

Table IIA-2. Comparison of Outstandingly Remarkable Values¹ (ORVs), Other Similar Values, and Other River Values: 1958 - 2014

Michael L. Walker

Preliminary Draft November 23, 2014

HRAMP Planning Document²	Potential ORVs, Other Similar Values, and Other River Values
<p>1958. Public Land Order (PLO) 1726 (applicable to the entire 84 miles of the W&S Rogue River (Entire 84 miles))</p>	<p>Protection and Preservation</p> <ol style="list-style-type: none"> 1. scenic areas. 2. recreation areas.
<p>1964. Study Report of Rogue River³ (Entire 84 miles)</p>	<p>Outstanding Features</p> <ul style="list-style-type: none"> • Nationally, and perhaps world renowned for its outstanding salmon and steelhead trout fisheries. • Extremely unique and picturesque stretches (noteworthy natural features such as flora and fauna, geological formation, scenic tributary streams and other scenic qualities). • Outstanding insofar as white-water boating opportunity • Historical significance of the area - Indian and white skirmishes, and Indian wars.
<p>1964. Study Report of Rogue River³ (Entire 84 miles)</p>	<p>Recreation Use and Opportunities</p> <ul style="list-style-type: none"> • Abundance of Beautiful Scenery – a truly magnificent combination that draws a continuously increasing flow of recreational travelers. • Fishery and Fishing - nationally famous for its excellent salmon and steelhead fisheries. • Boating - The boating opportunities on the Rogue may be termed of an excellent quality (emphasis added). First, it offers a very diversified type of boating opportunity in that rafts, kayaks, specially constructed “Rogue River boats”, and conventional outboards and even innertubes may be safely used on segments of the river. Floating the Rogue River is advertised to be nationally and world famous and truly it me be as it offers an outstanding and unique experience.

<p>1964. Study Report of Rogue River³ (Entire 84 miles)</p>	<p>Statement of BLM Plans for Study Area - Outstanding features of this segment [wild] of the Rogue River and adjacent lands include: [1] excellent salmon and steelhead fishing, [2] unusual opportunities for boating in rapid water, [3] dramatic scenery created by precipitous mountain slopes clothed with coniferous and hardwood timber.</p>
<p>1964. Study Report of Rogue River³ (Entire 84 miles)</p>	<p>The Study Team Conclusions Many features are of an outstanding quality [1] The most significant feature of the Rogue is its outstanding salmon and steelhead trout fishery [2] Four individual stretches exist in the study area which have outstanding scenic qualities [3] Boating the Rogue River, in addition to providing an excellent means of viewing the scenic features, represents a recreation use of outstanding quality</p>
<p>1968. Congress. House Rpt. # 1623 (Entire 84 miles?)</p>	<p>Unknown</p>
<p>1968. Congress. House Rpt. # 1917 (Entire 84 miles?)</p>	<p>Unknown</p>
<p>1968. Public Law 90-542 (WSRA)⁴ (Entire 84 miles)</p>	<p>Public Law 90-542, Section 3(5) - Rogue, Oregon Designated; no information provided on ORVs</p>

<p>1969. BLM Master Plan/HRAMP - Enclosure 1 (Entire 84 miles)^{5a}</p>	<p>Objectives Development of a rationale for protecting and preserving the outstanding scenic, recreational, historic, cultural, and other values</p> <p>Primary Considerations Fisheries Wildlife Resources Natural Features Historical Significance Black-tailed Deer Black Bear Upland Game Species American Mergansers, Mallards, & Wood Ducks Rare & endangered Osprey and Bald Eagle White-water Boating Commercial Jet Boat Private Boating Boat Launching Sites Rogue River Trail Camping & Picnicking Facilities</p> <p>HRAMP - Primary Resources and Activities <u>Recreation</u> • Opportunities for engaging in a wide range of recreation activities. • Other resource uses and activities so long as they do not lower the quality of the recreation experience, degrade the setting, or damage the fishery and wildlife habitat. • Emphasis will be on the development of water-oriented recreation facilities that will provide a wide range of compatible recreation activities.</p>
<p>1969. BLM Master Plan/HRAMP - Enclosure 2 (Entire 84 miles)^{5a}</p>	<p>OUTSTANDING FEATURES</p> <ul style="list-style-type: none"> • Nationally, and perhaps world renowned for the outstanding salmon and steelhead trout fisheries • White-water boating • Commercial jet boat operations • Natural features • Historical significance

<p>1969. BLM Master Plan/HRAMP - Enclosure 2 (Entire 84 miles)^{5a}</p>	<p>Primary Considerations</p> <p>[1] Fishery and Fishing The Rogue River is famed for its steelhead and salmon fishing.</p> <p>[2] Boating (commercial jet boats, professionally-guided float trips, summer raft floats, and private boating)</p> <p>[3] Hiking</p> <p>[4] Wildlife</p> <p>[5] Camping and Picnicking</p>
<p>1972. Joint BLM/FS Rogue River Plan (Entire 84 miles)⁶</p>	<p>Primary View Area Of primary importance was the nature and condition of the land area seen from the river or river bank. Protection of this primary view area is one of the principal management objectives.</p> <p>There are three separate sections of the river which have been classified as recreational river areas. They are (a) Hellgate, (b) Agness, and (c) Skookumhouse. Recreational use centers on water oriented activities, including fishing, boating and swimming. Sightseeing, rockhounding, and camping are also popular.</p> <p>Fish and Wildlife. Wildlife resources contribute greatly to the recreational values of the Rogue River. In addition to their harvest value, these animals are easily viewed in their natural habitat and have substantial aesthetic value.</p> <p>History. The Rogue River region has an exciting history. Exploration, fur trapping, settlement by immigrants, a gold rush. Indian wars, irrigation and lumbering have all helped shape the area into what it is today. Most of these activities have taken place within the past 125 years. Gold was discovered on the Rogue in 1849, and in the ensuing years every area every area along the river with gold in sufficient concentrations was mined. Most of the mining activity on the river is at a standstill, the trails which the miners built provided access to the area and speeded its development. In 1932, Zane Grey patented a mining claim at Winkle Bar. One of his cabins still remains as a memento of his world and the glory of the past.</p>

<p>1972. Joint BLM/FS Rogue River Plan (Entire 84 miles)⁶</p>	<p>River Uses</p> <ol style="list-style-type: none"> 1. Boating. Unique jet boats, Commercially guided float trips, & Private boating 2. Fishing. The Rogue River is internationally renowned for its outstanding salmon and steelhead trout fisheries. 3. Camping from hikers and boaters/floaters 4. Lodging mostly from guided float trips <p>Recreation <i>Entire area.</i> Recreational values which the river possesses are realized in a great variety of activities. They range from an individual pitting only his knowledge and skill against the sometimes hostile forces of nature to recreation uses where the facilities and equipment are so sophisticated that the river can be enjoyed with no special knowledge or skill.</p> <p>Boating, fishing and sightseeing are the main recreational uses.</p>
<p>1972. Joint BLM/FS Rogue River Plan (Three Recreation Areas in 84- mile Wild & Scenic Rogue River)⁶</p>	<p>Three Recreation Areas</p> <p>Three recreation areas will be managed to provide or restore a wide range of: 1. public outdoor recreation opportunities, and 2. water-oriented recreational facilities.</p> <p><i>Recreation area.</i> Recreation facilities may be developed to provide a wide range of opportunities for river-oriented recreation consistent with management objectives and protection of the river environment.</p>
<p>1978. Hellgate RAMP (HRA 27 mile segment from the Applegate River to Grave Creek) [Preface]⁷</p>	<p>[Preface] The HRA is [1] nationally recognized as a river of outstanding beauty and recreational opportunity, [2] world renowned for runs of steelhead trout and salmon, [3] varied character: rugged beauty, pastoral charm, whitewater, and peace, [4] osprey and the stately great blue heron fish, and [5] preserved in natural setting to provide experiences that are becoming rare.</p>

<p>1978. Hellgate RAMP (HRA 27 mile segment from the Applegate River to Grave Creek)⁶</p>	<p>Objectives</p> <p>A. Protect, enhance, and maintain the natural beauty and character of the river corridor through effective visitor and land use management.</p> <p>B. Identify recreation needs and resource capabilities, and determine necessary development of facilities consistent with the intent of the National Wild & Scenic Rivers Act, (as well as other laws and regulations concerning water quality, threatened or endangered species, and cultural resources).</p> <p>Managing the HRA Corridor</p> <p>The BLM is responsible for managing the HRA corridor:</p> <p>[1] to protect our fish and wildlife habitat</p> <p>[2] preserve the environment and cultural values, and</p> <p>[3] provide for the enjoyment of life through outdoor recreation opportunities.</p>
<p>1991. HRAMP Preplan Analysis (HRA 27 mile segment from the Applegate River to Grave Creek)⁷</p>	<p>Open-ended range of ideas from various sources on the historical potential ORVs. The Preplan Analysis focus was the identification of an initial range of ORVs that would be verified and/or revised in the HRAMP planning process (i.e., this planning process stage did not immediately focus on the specific ORVs, but considered the range per the WSRA, SECTION 1(a) - 1(b)).</p>
<p>1992. HRAMP ORVs Memo⁸</p>	<p>Unknown</p>
<p>1994. HRAMP Issues & Alternatives (Entire 84 miles, including HRA)⁹</p>	<p>The 1994 HRAMP Issues & Alternatives document was the first time in the process to revise the HRAMP that the ORVs were identified for the Rogue River, including the HRA</p> <p>Outstandingly Remarkable Values of the HRA</p> <ol style="list-style-type: none"> 1. its natural scenic environment, 2. the fisheries resource, and 3. the recreational opportunities it provides.

<p>1994. Internal Minutes HRAMP ID Team Mtg (HRA 27 mile segment from the Applegate River to Grave Creek)¹⁰</p>	<p>Outstandingly Remarkable Values of the HRA The outstandingly remarkable values for which the HRA of the Rogue River was designated are its:</p> <ol style="list-style-type: none"> 1. natural scenic environment, 2. the fisheries resource, and 3. the recreational opportunities (e.g., motorized boating, non-motorized boat fishing, non-motorized float boating, day use, etc.) <p>Significant Resources</p> <ol style="list-style-type: none"> 1. wildlife 2. cultural resources <p>Other River Values Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on:</p> <ol style="list-style-type: none"> [1] the cultural values, [2] fisheries resource, [3] natural scenic environment, [4] recreation opportunities, or [5] wildlife habitat
<p>2000. Draft HRAMP/DEIS (HRA 27 mile segment from the Applegate River to Grave Creek)¹¹</p>	<p>Did not analyze; see next 2003 Proposed HRAMP/FEIS</p>
<p>2003. Proposed HRAMP/FEIS (HRA 27 mile segment from the Applegate River to Grave Creek)¹²</p>	<p>Outstandingly Remarkable Values</p> <ul style="list-style-type: none"> • Natural Scenic Qualities Recognized for its diversity of scenery due its geology, topography, and relatively undeveloped visual appearance. • Fisheries Resource Recognized for its outstanding salmon and steelhead fishing. • Recreational Opportunities 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. <p>Other Important River-related Values</p> <ol style="list-style-type: none"> [1] Wildlife [2] Cultural Resources

<p>2004. Record of Decision HRA (HRA 27 mile segment from the Applegate River to Grave Creek)¹³</p>	<p>Outstandingly Remarkable Values of the HRA</p> <ol style="list-style-type: none"> 1. ORV Natural Scenic Qualities 2. ORV Fisheries Resources 3. ORV Recreational Opportunities
<p>2004. Hellgate RAMP (HRA 27 mile segment from the Applegate River to Grave Creek)¹⁴</p>	<p>Outstandingly Remarkable Values of the HRA</p> <ul style="list-style-type: none"> • Natural Scenic Qualities along the River, • Fish, and • Recreation. <p>Other Important River-related Values</p> <p>[1] Wildlife</p> <p>[2] Cultural Resources</p>

ENDNOTES

Endnote 1. Wild and Scenic Rivers Act

An Act To provide for a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

SECTION 1.

(a) This Act may be cited as the “**Wild and Scenic Rivers Act.**”

(b) 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 (emphasis added)**, 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 Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

Endnote 2. List of ORVs, Other Similar Values, & Other River Values Publications

- 1958 Public Land Order (PLO) 1726 dated Sept 3, 1958. Oregon;
- 1964 Draft *Study Report of the Rogue River, Oregon*
- 1968 The National Wild and Scenic Rivers System (Public Law 90-542; 16 U.S.C. 1271 et seq.); Wild and Scenic Rivers Act (WSRA)
- 1968 United States Congress. House. 1968. Report No. 1623. Providing for a National Scenic Rivers System and for Other Purposes. 90th Congress. 2d Session.
- 1968 United States Congress. House. 1968. Report No. 1917. National Wild and Scenic Rivers System: Conference Report. 90th Congress. 2d Session.
- 1969 *Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System* October 1969. USDI, Office of the Secretary. Washington, D.C.
- 1972 Department of the Interior, Bureau of Land Management. Rogue National Wild and Scenic River, Oregon Notice of revised development and management plans; Federal Register, Friday, July 7, 1972, Washington, D.C.; Volume 37, Number 131, Part II)
- 1978 Rogue National Wild & Scenic River Activity Plan, Hellgate Recreation Section
- 1991 Preplan Analysis for Revising the Recreational Area Management Plan (Activity Plan: Hellgate Recreation Section) Rogue River Recreation Section: 1991
- 1992 Rogue River’s Outstandingly Remarkable Values (ORVs): 1992 Bibliographic Reference
- 1994 Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River: May 1994
- 1994 Minutes of ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative: September 22, 1994
- 2000 *Rogue National Wild and Scenic River: Hellgate Recreation Area Management Plan/Draft Environmental Impact Statement*. November 2000. USDI, BLM, MDO.
- 2003 *Rogue National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement*. March 2003. USDI, BLM, MDO.
- 2004 Record of Decision. July 2004. *Rogue National Wild and Scenic River: Hellgate Recreation Area*
- 2004 Recreation Area Management Plan. July 2004. *Rogue National Wild and Scenic River: Hellgate Recreation Area*

Endnote 3. 1964 Study Report of Rogue River

Outstanding Features

- nationally, and perhaps world renowned for its outstanding salmon and steelhead trout fisheries
- extremely unique and picturesque stretches (noteworthy natural features such as flora and fauna, geological formation, scenic tributary streams and other scenic qualities)
- outstanding insofar as white-water boating opportunity
- historical significance of the area - Indian and white skirmishes, and Indian wars

Recreation Use and Opportunities

- abundance of beautiful scenery – a truly magnificent combination that draws a continuously increasing flow of recreational travelers
- Fishery and Fishing - nationally famous for its excellent salmon and steelhead fisheries.
- Boating - The boating opportunities on the Rogue may be termed of an excellent quality (emphasis added). First, it offers a very diversified type of boating opportunity in that rafts, kayaks, specially constructed “Rogue River boats”, and conventional outboards and even innertubes may be safely used on segments of the river. Floating the Rogue River is advertised to be nationally and world famous and truly it me be as it offers an outstanding and unique experience

Statement of Bureau of Land Management Plans for Study Area

Outstanding features of this segment [wild] of the Rogue River and adjacent lands include:

- [1] excellent salmon and steelhead fishing
- [2] unusual opportunities for boating in rapid water
- [3] dramatic scenery created by precipitous mountain slopes clothed with coniferous and hardwood timber

The Study Team Conclusions Many of the features of the Rogue are of an **outstanding quality**

- [1] The most significant feature of the Rogue is its outstanding salmon and steelhead trout fishery
- [2] Four individual stretches exist in the study area which have outstanding scenic qualities
- [3] Boating the Rogue River, in addition to providing an excellent means of viewing the scenic features, represents a recreation use of outstanding quality.

Endnote 4. 1968 The National Wild and Scenic Rivers System (Public Law 90-542; 16 U.S.C. 1271 et seq.); Wild and Scenic Rivers Act

Public Law 90-542, Section 3(5)

(A) the following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system: . . .

(5) **ROGUE , OREGON.** – The segment of the river extending from the mouth of the Applegate River downstream downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

Endnote 5a. 1969 BLM Master Plan/HRAMP - Enclosure 1 The Plan

Public Law 90-542, October 1968, the National Wild and Scenic Rivers Act, designates certain selected rivers of the Nation possessing **outstanding scenic, recreational, natural and other similar values** and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. Approximately, 84 miles of Oregon's Rogue River, from the mouth of the Applegate River downstream to Lobster Creek bridge, are included in the Act.

B. Objectives Development of a **rationale for protecting and preserving the outstanding scenic, recreational, historic, cultural, and other values** of the designated rivers and their immediate environments for the benefit of present and future generations is implicit within the Act.

It is the objective of this report to present such a rationale for the portion of the Rogue River included within the national wild and scenic rivers system under administration of the Bureau of Land Management.

C. Summary This report is an analysis of the 84 miles of lower Rogue River included in the national wild and scenic rivers system. The upper 47 miles are to be administered by the Bureau of Land Management.

Primary Considerations

Fisheries
Wildlife Resources
Natural Features
Historical Significance
Black-tailed Deer
Black Bear
Upland Game Species
American Mergansers, Mallards, & Wood Ducks
Rare & endangered Osprey and Bald Eagle
White-water Boating
Commercial Jet Boat
Private Boating
Boat Launching Sites
Rogue River Trail
Camping & Picnicking Facilities

2. Recreational River [Hellgate Recreation Area (HRA)] The following sections discuss the **primary resources and activities** associated with the recreational river area. Necessary **management criteria and constraints** to meet objective for management of the recreational river [HRA] are presented.

These criteria apply only to those lands contained within the recreational river boundary. To understand the total management constraints will have on the recreational river [HRA], the general management criteria presented in Section IIIB must be considered with the **following more specific criteria for the recreational river area [HRA]**.

Recreation Management objectives for the recreational river area [HRA] will be to provide opportunities for engaging in a wide range of recreation activities which are enhanced by its free-flowing nature. Other resource uses and activities will be permitted so long as they do not lower the quality of the recreation experience, degrade the setting, or damage the fishery and wildlife habitat. Emphasis will be on the development of water-oriented recreation facilities that will provide a wide range of compatible recreation activities.

Endnote 5b. 1969 BLM Master Plan/HRAMP - Enclosure 2 Supplemental Information

PART THREE - DESCRIPTION

OUTSTANDING FEATURES [applicable to the entire 84 miles of the Wild & Scenic Rogue River]

- The Rogue River is **nationally, and perhaps world renowned** for the **outstanding salmon and steelhead trout fisheries**. It is a “big fish” river which produces salmon upwards of 40 pounds and steelhead exceeding 15 pounds. In excess of 100,000 salmon and steelhead spawn in the Rogue River basin annually. The character of the Rogue River, its setting, and the characteristics of the anadromous salmon and steelhead provide the fisherman with a diverse fishing opportunity. Angling may be accomplished by wading, trolling, floating, or shore fishing with bait, hardware, or flies.
- **White-water boating**, the ultimate experience for many river users, is available in a 55-mile stretch from Finley to Agness. Around every bend in this stretch a new challenge is encountered. Large rapids, submerged boulders, and shallow water tax the most skilled boatmen in this segment. Rainie Falls, with a vertical drop of some ten feet, is the only spot where it is necessary to portage or rope the boat around the rapids.
- **Commercial jet boat operations** are on a daily scheduled basis from the coast to Agness or Paradise Bar providing a taste of both white-water and natural grandeur for many people.
- **Natural features**, including towering cliffs and large moss-covered boulders, are spellbinding in some of the canyons and chutes. Outstanding, in an area where each succeeding vista is noteworthy, are sights in Hellgate Canyon, Howard Creek Chute, Kelsey Canyon, and Mule Creek Canyon. In the latter two instances the river winds its way through narrow canyons which rise abruptly from the water. Water boils, swirls, and churns as it gushes through these narrow passages, providing the boating enthusiast and unforgettable white-water experience.

The natural features of the Rogue and its surroundings are complimented by the **historical significance of the area**. Indian and white skirmishes, and Indian wars occurred throughout the area in the 1850s. Zane Grey patented a mining claim at Winkle Bar. One of his cabins still remains as a memento of his world, and the past glory of the West.

PART FOUR - PRIMARY CONSIDERATIONS

RECREATION USE OF THE RIVER [applicable to the entire 84 miles of the Wild & Scenic Rogue River] (Enc. 2 Master Plan. pps. 12 - 15)

[1] **FISHERY AND FISHING** The Rogue River is famed for its steelhead and salmon fishing.

[2] **BOATING** Boating experience available include **commercial jet boats** on upper and lower portions, **professionally-guided float trips** in the white-water sections and **private boating** in many areas.

Jet boat excursion trips from Gold Beach annually carry about 40,000 persons to the Agness or Paradise Bar area. These daily scheduled trips provide the only participation in Rogue River recreation for many people. **A similar jet boat operation runs from Grants Pass downstream to Hellgate Canyon** during the summer months.

Guided float trips are generally associated with fishing. Of the approximately 2,000 people drifting the river annually with professional river guides, over 50% are non-resident. They may pay \$200 or more for the 102-mile trip from Grants Pass to the ocean.

A recent innovation in river floating, **summer raft floats**, is receiving considerable favor. These **guided tours** are offered by several commercial operators and provide five to eight day trips. Camping and primitive conditions are stressed to provide an almost wilderness experience.

Private boating is enjoyed to some extent on all portions of the river. Although specially-built Rogue River boats, kayaks, and rafts are the major types of craft employed, conventional outboards and jet boats can be safely used in some portions.

[3] **HIKING**

[4] **WILDLIFE** Wildlife resources contribute greatly to the recreational values of the Rogue River. In addition to their harvest value, these animals are easily observable in their natural habitat and have substantial aesthetic value.

[5] **CAMPING AND PICNICKING**

[6] **RECREATION USER ORIGIN & USE**

Endnote 6. 1972 Rogue National Wild and Scenic River, Oregon

Department of the Interior, Bureau of Land Management. Rogue National Wild and Scenic River, Oregon (Notice of revised development and management plans; Federal Register, Friday, July 7, 1972, Washington, D.C.; Volume 37, Number 131, Part II).

The following is a **proposed combined plan for development, operation and management** of the Rogue National Wild and Scenic River administered by the Bureau of Land Management (BLM) and the U.S. Forest Service (FS) in accordance with Public Law 90-542. That portion of the Rogue River

under the administration of the Bureau of Land Management extends from the mouth of the Applegate River downstream approximately 47 miles to the Siskiyou National Forest boundary near Marial. The Forest Service has administrative responsibilities for that portion of the Rogue River from the Siskiyou National Forest boundary downstream approximately 37 miles to the Lobster Creek Bridge.

This single plan revises and combines the BLM and the FS Master Plans for the Rogue River component of the National Wild and Scenic Rivers system published in the FEDERAL REGISTER October 24 and October 7, 1969, and as "House Document No. 91-175" and "House Document No. 91-170" respectively

INTRODUCTION Public Law 90-542, October 2, 1968, the "Wild and Scenic Rivers Act" hereinafter referred to as "The Act", designates certain selected rivers of the Nation possessing **outstanding scenic recreational, natural, and other similar values** and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations.

RIVER BOUNDARIES Of primary importance was the nature and condition of the land area seen from the river or river bank. Protection of this primary view area is one of the principal management objectives.

RECREATIONAL

Description. There are **three separate sections of the river** which have been classified as **recreational river areas**. They are (a) **Hellgate**, (b) Agness, and (c) Skookumhouse.

Recreational use centers on water oriented activities, including fishing, boating and swimming. Sightseeing, rockhounding, and camping are also popular.

Fish and Wildlife. Wildlife resources contribute greatly to the recreational values of the Rogue River. In addition to their harvest value, these animals are easily viewed in their natural habitat and have substantial aesthetic value.

CULTURAL FACTORS *History.* The Rogue River region has an exciting history. Exploration, fur trapping, settlement by immigrants, a gold rush. Indian wars, irrigation and lumbering have all helped shape the area into what it is today. Most of these activities have taken place within the past 125 years. Gold was discovered on the Rogue in 1849, and in the ensuing years every area every area along the river with gold in sufficient concentrations was mined. Most of the mining activity on the river is at a standstill, the trails which the miners built provided access to the area and speeded its development. In 1932, Zane Grey patented a mining claim at Winkle Bar. One of his cabins still remains as a memento of his world and the glory of the past.

RIVER USES

- Boating (Unique jet boats; Commercially guided float trips; Private boating)
- Fishing. The Rogue River is internationally renowned for its **outstanding** salmon and steelhead trout fisheries.
- Camping from hikers and boaters/floaters
- Lodging mostly from guided float trips

MANAGEMENT OBJECTIVES ENTIRE RIVER 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 in said System without, insofar as is consistent therewith, 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, archeologic, and scientific features** (emphasis added). Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on the **wildlife habitat, river fishery, scenic attractions or recreational value**. 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.

Special efforts will be made to (1) maintain or improve the quality of water which empties in the river, (2) **Improve the fish and wildlife habitat** (emphasis added), and (3) maintain its free-flowing condition.

RECREATIONAL AREA The recreational river area will be **managed to provide or restore a wide range of public outdoor recreation opportunities and water-oriented recreational facilities**.

RECREATION

Entire area. One of the key reasons for including the Rogue River in the National Wild and Scenic Rivers System was to protect and enhance the recreational values which the river possesses. These values are realized in a great variety of activities. They range from an individual pitting only his knowledge and skill against the sometimes hostile forces of nature to recreation uses where the facilities and equipment are so sophisticated that the river can be enjoyed with no special knowledge or skill.

Consistent with the objective of the individual river area, sufficient recreation facilities, on both private and Federal land, will be developed to meet the needs of the recreationists. Care will be taken that use levels do not reach the point where the quality of recreation experience or quality of the stream environment deteriorates. Recreationists using the river in groups of larger than 10 people may be required to camp in developed camping sites.

Since boating, fishing and sightseeing are the main recreational uses on the river, top priority for recreation development will be given to improving the quality of these activities.

Although current levels of all types of boating activity create few problems, uncontrolled future use would probably result in safety hazards and a lowering of the quality of the recreational experience. When the need warrants, this will be prevented by the establishment of regulations limiting size, number, type, speed, etc. to provide optimum boat use. (emphasis added) These regulations will be developed in cooperation with the State and other agencies.

Recreation area. Recreation facilities may be developed to provide a wide range of opportunities for river-oriented recreation consistent with management objectives and protection of the river environment.

Endnote 7. 1978 Rogue National Wild & Scenic River, Activity Plan Hellgate Recreation Section

[Preface] The Rogue River is **nationally recognized as a river of outstanding beauty and recreational opportunity**. **World renowned for its runs of steelhead trout and salmon**, the Rogue was favored by the notable author and outdoorsman, Zane Grey, who fished, boated, camped, and wrote of her enchanting beauty and charm. Chair Riffle, Rocky Riffle, and Skull Bar near Galice were favorite fishing haunts frequented by this ardent fly fisherman.

[Preface] The **character** of the Rogue in this Recreation Section is varied. Her **rugged beauty** is exposed in the steep-walled rock of Hellgate Canyon. Her **pastoral charm** is reflected in the farm lands and cabins of the rural countryside below the Applegate. Her temper is manifested in the **whitewater** of Dunn Riffle and her peaceful nature in the slow moving stretch through Taylor Creek Gorge. The **osprey and the stately great blue heron fish** in the Rogue as they have for centuries, while visitors drive along the paved road that parallels the river.

[Preface] The Rogue is a national symbol, **a river preserved in its natural setting to provide experiences that are becoming rare in urbanized America**.

Background. Congress recognized the "extraordinarily remarkable qualities" of the Rogue River in 1968 by designating it as one of eight rivers in the nation to form the initial National Wild and Scenic River System. In 1970, the people of Oregon approved an initiative petition which created the Oregon State Scenic Waterways System. The Rogue was one of six rivers to be designated a scenic waterway.

The river is divided into section which are classified as wild, scenic, or recreational, based on the amount of development and accessibility. This Activity Plan concerns only the **BLM Hellgate Recreation Area, a 27 mile segment from the Applegate River to Grave Creek**. In 1972, the U.S. Forest Service and the BLM revised and combined their 1969 Master Plans for the Rogue River component of the National Wild and Scenic Rivers System. This combined Master Plan, together with the directives of the National Wild & Scenic Rivers Act, provided the basic framework of policies and objectives within which the river is to be managed. In addition, the Management Framework Plan for the Josephine Sustained Yield Unit detailed more specific guidelines governing management programs within the corridor. These documents received widespread review and comment by the public and appropriate government agencies through the Bureau's Land Use Planning System.

This Activity Plan will establish more detailed guides to land use management policies and **recreational development** for the BLM Hellgate Recreation Section of the river. It will provide a ten year guide for BLM, owners of interspersed private lands, and the general public. It is not intended at this time to consider recreation development and use of the BLM Wild River Section. A separate plan for this area will be prepared at a later date.

OBJECTIVES The specific objectives of the Activity Plan for the BLM administered Recreation Section of the Rogue National Wild & Scenic River are as follows:

- A. **Protect, enhance, and maintain the natural beauty and character of the river corridor** through effective visitor and land use management.
- B. **Identify recreation needs and resource capabilities, and determine necessary development of facilities** consistent with the intent of the National Wild & Scenic Rivers Act, (as well as other laws and regulations concerning **water quality, threatened or endangered species, and cultural resources**).

The BLM is trying to preserve the special qualities of the Rogue through long-range planning of land and water resources. Toward this goal, the BLM is responsible for managing the Rogue River corridor:

- **to protect our fish and wildlife habitat,**
- **preserve the environment and cultural values, and**
- **provide for the enjoyment of life through outdoor recreation opportunities.**

DETERMINING QUALITY RECREATION EXPERIENCES As stated in the Wild and Scenic Rivers Act, rivers which possess **outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic and cultural values**, shall be preserved in a free-flowing condition, and they and their environments shall be protected for the benefit and enjoyment of present and future generations. In order to carry out the directives of this federal law, it is **necessary to assess what values are present** in the Rogue River corridor, and to what extent they may be utilized.

Endnote 7. 1991. HRAMP Preplan Analysis

The 1991 Preplan Analysis included a range of ideas from various sources on the ORVs. Its focus was the identification of an initial range of ORVs that would be verified and/or sorted out in the HRAMP planning process (i.e., it did not immediately focus on the specific ORVs, but considered the range per the WSRA, SECTION 1(a) - 1(b)).

Endnote 8. 1992 HRAMP ORVs Memo

The question of this endnote involves a 1992 memorandum with the topic of *Rogue River's Outstandingly Remarkable Values (ORVs)*.

United States Department of the Interior, Bureau of Land Management, Medford District Office, Grants Pass Resource Area. 1992c. *Rogue River's Outstandingly Remarkable Values (ORVs)*. Memorandum from Outdoor Recreation Planner, Medford District Office, October 29, 1992. 8351.2 (11785). Medford, OR. (Bibliography p. 8, from *National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement*. March 2003. USDI, BLM, MDO).

The 2003 BLM proposed HRAMP/FEIS identified that **because the Rogue WSR was an instant river, the ORVs were not identified in any designating legislation**. Therefore, the need to identify the ORVs led the BLM to rely on congressional records to determine what the legislation intended. The BLM proceeded to specifically share where the study analysis of legislative intent was located (i.e., Memorandum to Files, 8351.2 (11785) ORV2 (2003 HRAMP/FEIS pps. Chapter 5 - 24 to Chapter 5 - 25). This memo was stated in the EIS to outline the legislative history of the Wild and Scenic Rivers Act of 1968, and included language from legislative discussions relative to the Rogue River and its ORVs.

In summary, the memorandum can not presently be found, and the ORVs, if any, identified in the memorandum are unknown.

Endnote 9. 1994 HRAMP Issues & Alternatives

The 1994 HRAMP Issues & Alternatives document was the first time in the process to revise the HRAMP that the ORVs were identified: 1. its natural scenic environment, 2. the fisheries resource, and 3. the recreational opportunities it provides. The three ORVs were for the entire 84-miles of the Wild and Scenic Rogue River.

The portion of the Rogue River from the mouth of the Applegate River downstream to Marial, a distance of approximately 47 miles, is administered by the Medford District Office (MDO), BLM. The lower 37 miles are located within the boundaries of the Siskiyou National Forest and are administered by the USFS. **The outstandingly remarkable values for which the Rogue River was designated are its natural scenic environment, the fisheries resource, and the recreational opportunities it provides.** While not specifically singled out by Congress, Federal managers of the river also consider the wildlife and cultural resources to be significant.

The outstandingly remarkable values for which the Rogue River was designated are

- **its natural scenic environment,**
- **the fisheries resource, and**
- **the recreational opportunities it provides.**

The issues identified by the public addressed several areas of concern: possible impacts to river resources from visitor use, health and safety concerns, socioeconomic benefits, motorized versus nonmotorized boating, and the social carrying capacity of the river. Social carrying capacity relates to the question of the increased visitor use altering or degrading the recreational experience. The jet boat or motorized tour boat (MTB) service was clearly identified as the major point of controversy among users of the Hellgate Recreation Area. The common interests of all users and/or visitors were the opportunity to view scenery and wildlife, to be in a natural setting, and to enjoy the river.

Endnote 10. 1994 Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative

Minutes of September 22, 1994, ID Team Meeting: Preliminary Draft Recommendation For Preferred Alternative. Memorandum from Jim Leffmann, Rogue River Manager, to Interdisciplinary (ID) Team Members for Hellgate Recreation Area Management Plan (RAMP) Revision. USDI, BLM MDO. Medford, OR.

Relevant portions of the memorandum follow.

INTERNAL BLM DRAFT: THE DEVELOPMENT OF THE PREFERRED ALTERNATIVE

The design criteria of the preferred alternative will be to meet the management criteria of the National Wild and Scenic Rivers Act (i.e., especially the protection and management of the outstandingly remarkable values, and to satisfy the eight overall objectives.

Management common to all alternatives for the Hellgate Recreation Area is found in the Congressional designation decision. A 27-mile stretch of the Rogue River from the confluence of the Applegate River to Grave Creek was found to meet Congress's objective for a recreational segment of a National Wild and Scenic River. The Rogue River possesses outstandingly remarkable values and characteristics to be preserved and protected for the benefit and enjoyment of present and future generations. The Rogue River in the Hellgate Recreation Area is to be preserved in its free-flowing condition to protect its water quality and to maintain its undisturbed condition.

The Hellgate Recreation Area will be administered in such a manner as to protect and enhance the values which caused it to be included in said system without limiting other uses that do not substantially interfere with public use and enjoyment of these values. The outstandingly remarkable values for which the Rogue River was designated are its **natural scenic environment, the fisheries resource, and the recreational opportunities (e.g., motorized boating, non-motorized boat fishing, non-motorized float boating, day use, etc.)** (p. Attachment 1-1) it provides. While not specifically singled out Congress, Federal managers of the river also consider the wildlife and cultural resources to be significant. In such administration, **primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeological, and scientific features** (p. Attachment 1-1). Other resources may be utilized and other activities permitted to the extent that they do not have a direct and adverse effect on the **cultural values, fisheries resource, natural scenic environment, recreation opportunities, or wildlife habitat**.

The identification of the three ORVs comes from the May 1994 document entitled "*Issues and Alternatives for Management of the Hellgate Recreation Area of the Rogue River.*"

1. Natural Scenic Environment
2. Fisheries Resource
3. Recreational Opportunities (e.g., Motorized Boating, Non-motorized Boat Fishing, Non-motorized Float Boating, Day Use, etc.)

Endnote 11. 2000 HRAMP/DEIS

Rogue National Wild and Scenic River: Hellgate Recreation Area Management Plan/Draft Environmental Impact Statement. November 2000. USDI, BLM, MDO.

Endnote 12. 2003 Proposed HRAMP/FEIS

Rogue National Wild and Scenic River: Hellgate Recreation Area - Proposed Recreation Area Management Plan & Final Environmental Impact Statement. March 2003. USDI, BLM, MDO.

The Bureau of Land Management's purpose in preparing this plan is to replace the *1978 Rogue National Wild and Scenic River Activity Plan for the Hellgate Recreation Section* of the Rogue National Wild and Scenic River. The purpose of this plan, the Hellgate Recreation Area Management Plan (RAMP) is to: (1) provide direction and guidance on the management of the Hellgate section pursuant to the Wild and Scenic Rivers Act (Public Law 90-542, October 2, 1968), (2) conform with management direction contained in the *1995 Medford District Record of Decision and Resource Management Plan*, and (3) maintain a mix of river recreation types common to the river since its designation in 1968 as a National Wild and Scenic River.

Need There has been a substantial increase in river use in the Hellgate Recreation Area since the completion of the current Hellgate section management plan in 1978. There has also been a change in the mix of types of river recreation since 1978. This has resulted in increased conflicts among river users, particularly between jet boaters and floaters during the summer months and between jet boaters and anglers during the fall fishing season. An update of the management plan is needed to insure that river management into the future continues to meet the objectives and requirements of the Wild and Scenic Rivers Act (WSRA), and particularly the **protection of the outstandingly remarkable values (ORVs)** that led to its congressional designation.

Outstandingly Remarkable Values 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)** (emphasis added); 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** (emphasis added). Other river-related values that are important, but were not considered outstandingly remarkable at the time include **wildlife and cultural resources**.

Natural Scenic Qualities. Recognized for its diversity of scenery due its geology, topography, and relatively undeveloped visual appearance.

Fisheries Resource. Recognized for its outstanding salmon and steelhead fishing.

Recreational Opportunities. 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.

Endnote 13. 2004 Record of Decision HRA

Record of Decision. July 2004. Rogue National Wild and Scenic River: Hellgate Recreation Area

Applicable portions of July 16, 2004 cover letter to "Dear Friend of the Rogue River," from Abbie Jossie, Field Manager, Grants Pass Resource Area, and Timothy B. Reuwsaat, District Manager, Medford District follows.

The Recreation Area Management Plan sets forth a program design to manage the mix of river recreation uses and users in a developed, recreational setting, while managing and protecting the environment and the **outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities**.

1.0 Introduction

In this Record of Decision (ROD), the BLM Medford District Office, Grants Pass Resource Area, adopts and approves for immediate implementation the Hellgate Recreation Area Management Plan (RAMP).

Management of the Hellgate Recreation Area is guided by numerous legal requirements and by established management direction. This Record of Decision is supported by and consistent with the BLM Medford District Record of Decision and Resource Management Plan (USDI 1995) and the Final Supplemental Impact Statement (FSEIS) on Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (USDA, USFS; USDI, BLM 1994).

The Hellgate Recreation Area Management Plan (RAMP) is designed to provide for a mix of river recreation uses and users while managing and protecting the environment and the **outstandingly remarkable values: natural scenic qualities, fisheries resources, and recreational opportunities** (emphasis added). This Record of Decision adopts the RAMP and replaces the Rogue National Wild and Scenic River Activity Plan Hellgate Recreation Section (USDI 1978). The Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan (1972 Plan) (Federal Register Vol. 37, No. 131, 13408-13416) is still valid and is not changed or amended by the Recreation Area Management Plan. The Hellgate RAMP contains the decision selected from Alternative E, as analyzed in the Final EIS, as well as, guidance and direction from the Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan of 1972, the Prohibited Acts in Rogue National Wild and Scenic River Area of 1992 (Federal Register Vol. 57, No. 110, 24271-24274), and the BLM Medford District Record of Decision and Resource Management Plan of 1995.

The ROD is based on the need to protect and enhance the outstandingly remarkable values of the Rogue River pursuant to the Wild and Scenic Rivers Act of 1968, as amended. All known issues, competing interests, opinions, and values of the public were considered during the planning process. While the ROD decisions will likely not completely satisfy all individuals or groups, we believe the decisions are reasonable and provide the best balance of protecting and enhancing the river and recreational values. The decisions provide a beneficial mix of values for the public within a framework of the existing laws, regulations, policies, public needs and desires, and capabilities of the land, while meeting the stated purpose and need for this river plan.

Additionally, a monitoring plan was developed to track the implementation and effectiveness of the proposed action. The purposes of monitoring are to: ensure the protection and enhancement of the outstandingly remarkable values, provide a mechanism to address user capacities, ensure activities are occurring in conformance with the plan, determine if activities are producing the expected results, and determine if activities produce the effects identified in the RAMP/FEIS.

Endnote 13. 2004 Hellgate RAMP

Recreation Area Management Plan. July 2004. *Rogue National Wild and Scenic River: Hellgate Recreation Area*.

National Wild and Scenic Rivers Act The Wild and Scenic Rivers Act of 1968 established the wild and scenic rivers system (Public Laws 90-542 and 99-590). The Wild and Scenic Rivers Act (WSRA) established a method for providing federal protection for certain remaining free-flowing rivers and preserving them and their immediate environments. Rivers are included in the system so they may benefit from the protective management and control of development for which the WSRA provides (USDI 1992b, Appendix 2-WS-2). Listed below are portions of several sections of the WSRA that provide the overall framework for managing the river or provide the guidance for developing and implementing any proposed management action within the river corridor.

Section 1(b) of the WSRA 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, geological, fish and wildlife, historic, cultural or other similar values** (emphasis added), shall be preserved in a free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”

The outstandingly remarkable values for the Rogue River, as identified by Congress (HR 1917 September 24, 1968 and HR 1623 July 3, 1968) (emphasis added); 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. 131, 13408-13416) include **natural scenic qualities along the river, fish, and recreation**. Other river-related values that are important, but were not considered outstandingly remarkable at the time include cultural and wildlife resources.

Section 3(b) of the WSRA states:

“Every wild, scenic, or recreational river in its free flowing condition...shall be classified, designated, and administered as one of the following: (1) Wild River Areas – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail; (2) Scenic River Areas – Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads; and (3) Recreational River Areas – Those rivers or sections of 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.

The Hellgate Recreation Area was classified as a recreational river.

Section 7(a) of the WSRA states:

“No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the **values for which such river was established...**”

Section 7 of the Wild and Scenic Rivers Act (16 USC 1278) requires a rigorous process to ensure that proposed water resources projects, implemented or assisted by federal agencies within the bed and banks of designated rivers, “do not have a direct and adverse effect” on the **values for which the river was designated** (emphasis added). Water resources projects include any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, or other construction of developments which would affect the free-flowing characteristics of a wild and scenic river. In addition to projects licensed by the Federal Energy Regulatory Commission, water resource projects may also include: dams, water diversions, fisheries habitat and watershed restoration/enhancement projects, bridges and other roadway construction/reconstruction projects, bank stabilization, channelization, levees, boat ramps, and fishing piers that occur within the bed and banks of a designated Wild and Scenic River (IWSRCC 1999) and that affect the river’s free-flowing characteristics. These projects include the types of actions along the Rogue National Wild and Scenic River that could come up for decision, including those projects for which the purposes are to improve the free-flowing condition of the river.

The agency designated as river manager must complete a Section 7 determination to assess whether the project proposed, assisted, or permitted by a federal agency would directly and adversely affect the values for which the river was designated. Water resources projects that have a direct and adverse effect on the **values of a designated river** (emphasis added) must either be redesigned and resubmitted for a subsequent Section 7 determination, abandoned, or reported to the Secretary of Interior and the United States Congress, in accordance with the act.

Emergency projects (such as repairing a broken sewer line in or near the river) may temporarily proceed without Section 7 determination. However, a Section 7 determination must be completed in a timely manner upon completion of the project. Emergency water resources projects that are later determined to have a direct and adverse effect on the river values shall be mitigated based on the findings of the Section 7 determination.

Section 10(a) of the WSRA states that:

“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 without, insofar as is consistent therewith, 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, archeologic, and scientific features** (emphasis added). 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.” This section is interpreted by the Secretaries of the Interior and Agriculture as meaning that all designated river areas, regardless of classification, will be protected and/or enhanced and not degraded.

The WSRA requires that a comprehensive river management plan be prepared to provide for the protection of the river’s outstandingly remarkable values. The plan is required to address resource protection, development of land and facilities, user capacities, and other management practices as needed.

1972 Comprehensive River Management Plan

In 1972, the U.S. Forest Service and the BLM revised and combined their *1969 Master Plans for the Rogue River Component of the National Wild and Scenic Rivers System*. The combined plan is the *Rogue National Wild and Scenic River, Oregon: Notice of Revised Development and Management Plan* (1972 Plan) (Federal Register Vol. 37, No. 131, 13408-13416). The 1972 Plan provides the basic framework of policies, objectives, and direction for managing the river. The 1972 Plan is not changed or amended by the RAMP.

Source

Walker, M. L. Preliminary December 9, 2014. *Scoping Rogue River's Outstandingly Remarkable Values, Other Similar Values, & Other River Values*. Hugo, OR.

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Goal One Coalition

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ACRONYMS & ABBREVIATIONS

1964 draft Study Report	1964 draft <i>Study Report of the Rogue River, Oregon</i> .
1968 Wild & Scenic Act	1968 <i>The National Wild and Scenic Rivers System</i> (Public Law 90-542; 16 U.S.C. 1271 et seq.; may be cited as the “Wild and Scenic Rivers Act”.
1969 BLM Master Plan	1969 <i>BLM Master Plan For The Rogue River Component Of The National Wild & Scenic Rivers System</i> .
1972 Joint FS/BLM Plan	Department of the Interior, Bureau of Land Management. Rogue National Wild and Scenic River, Oregon Notice of revised development and management plans; Federal Register, Friday, July 7, 1972, Washington, D.C.; Volume 37, Number 131, Part II).
1978 BLM Hellgate Plan	MDO Hellgate Activity Plan 1978 Rogue National Wild & Scenic River, Activity Plan Hellgate Recreation Section.
1982 Interagency Guidelines	1982 U.S. Department of the Interior - U.S. Department of Agriculture Final Revised Guidelines for Eligibility, Classification, and Management of River Areas (Interagency Guidelines) (47 FR 39454).
1999 W&S Study Process	The Wild & Scenic River Study Process, Interagency Coordinating Council (IAC).
2002 Responsibilities	Wild and Scenic River Management Responsibilities, Interagency Coordinating Council.
2010 CRMP Steps	Interim Management and Steps to Develop a CRMP, Interagency Coordinating Council.
2012 BLM Manual 6400	BLM Manual 6400 Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (See BLM 2012 Manual 6400)
2014 Q&A Compendium	A Compendium of Questions & Answers Relating to Wild & Scenic Rivers, Interagency Coordinating Council.
16 U.S.C. Act	U.S. Code: Title 16 - Conservation. 1968 Wild & Scenic Rivers Act.
BLM	Bureau of Land Management.
BLM 2012 Manual 6400	BLM Policy and Program Direction for Identification, Evaluation, Planning and Management of Wild & Scenic Rivers - BLM 2012 Manual 6400 – Wild and Scenic Rivers.
ACOE	Army Corps of Engineers.
BMP	Best Management Practices.
BOR	Bureau of Reclamation (occasionally refers to the defunct Bureau of Outdoor Recreation).
CEQ	Council on Environmental Quality.
cfs	Cubic Feet Per Second.
CFR	Code of Federal Regulations.
CMP	Comprehensive Management Plan (same as CRMP).
Council	Interagency Wild and Scenic Rivers Coordinating Council.
CRMP	Comprehensive River Management Plan.
CWA	Clean Water Act (Federal Water Pollution Control Act).
dBA	Decibels “A”scale.
DEIS	Draft Environmental Impact Statement.
DOA	Department of Agriculture.
DOI	Department of the Interior.
DOJ	Department of Justice.
DOT	Department of Transportation.
EnLaw	Environmental Law Journal, Lewis and Clark Law School.
EPA	Environmental Protection Agency.
ESA	Endangered Species Act.
FAA	Federal Aviation Administration.
Features	Esthetic, scenic, historic, archeologic, and scientific features.
FEIS	Final Environmental Impact Statement.
FHWA	Federal Highway Administration Friends.
Friends	Friends of Yosemite Valley.
FLPMA	Federal Land Policy & Management Act.
FPA	Federal Power Act.
FR	Federal Register.

FSEIS	Final Supplemental Environmental Impact Statement.
FWS	(United States) Fish & Wildlife Service.
GAO	Government Accounting Office.
GPRA	Grants Pass Resource Area.
HRA	Hellgate Recreation Area.
HRA Background Paper	Background Paper for Revising the Hellgate Recreation Area Management Plan.
HRAMP	Hellgate Recreation Area Management Plan.
IBLA	Interior Board of Land Appeals.
IDT	Interdisciplinary Team, usually a wild and scenic river study team.
Interagency Council	Interagency Wild & Scenic Rivers Coordinating Council.
Interagency Guidelines	1982 <i>Department of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas.</i>
LAC	Limits of Acceptable Change.
MDO	Medford District Office.
MFB	Motorized Fishing Boat.
MTB	Motorized Tour Boat.
National System	National Wild and Scenic Rivers System.
NF	National Forest.
NFIP	National Flood Insurance Program.
NHPA	National Historic Preservation Act.
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resources Conservation Service (Formerly the Soil Conservation Service)
NWSRS	National Wild and Scenic Rivers System.
NEPA	National Environmental Policy Act of 1969.
NEPA Standards	See Significant and Threshold.
Ninth District	United States Court of Appeals for the Ninth Circuit.
NPS	United States National Park Service.
NRI	National Rivers Inventory.
OAR	Oregon Administrative Rules.
OEPC	United States Department of the Interior Office of Environmental Policy and Compliance.
OMB	Office of Management and Budget.
ORS	Oregon Revised Statutes.
ORV(s)	Outstandingly Remarkable Value(s).
p.	Page.
P.L.	Public Law.
pps.	Pages.
Q&A	Question and Answer.
RAMP	Recreation Area Management Plan.
Reference Guide	Interagency Wild & Scenic River Coordinating Council Reference Guide.
RMP	River or Resource Management Plan
ROS	Recreation Opportunity Spectrum.
ROD	Record of Decision.
ROS	Recreation Opportunity Spectrum.
Scoping ORVs	<i>Scoping Rogue River's Outstandingly Remarkable Values, Other Similar Values, & Other River Values</i> (i.e., this Scoping ORVs paper).
SCORP	Statewide Comprehensive Outdoor Recreation Plan.
SDWA	Safe Drinking Water Act.
SEIS	Supplemental Environmental Impact Statement.
SHPO	State Historic Preservation Officer
Similar Values	Scenic, Recreational, Geologic, Fish and Wildlife, Historic, Cultural, or Other Similar Values (16 U.S.C. § 1271).
SRMA	Special Recreation Management Area.
Standards	Minimum acceptable condition of indicator variables.
T&E	Threatened and Endangered Species
TMDL	Total Maximum Daily Load

USC	United States Code.
USCG	United State Coast Guard.
USDA	United States Department of Agriculture.
USDI	United States Department of the Interior.
USBCF	United States Bureau of Commercial Fisheries.
USBLM	United States Bureau of Land Management.
USBOR	United States Bureau of Outdoor Recreation.
USBCF	United States Bureau of Commercial Fisheries.
USBSF	United States Bureau of Sport Fisheries.
USDOT	United States Department of Transportation.
USGS	United States Geological Survey.
USFS	United States Forest Service.
USF&WS	United States Fish and Wildlife Service.
USNPS	United States National Park Service.
VERP	Visual Experience and Resource Protection.
VRM	Visual Resource Management.
WSR	Wild and Scenic River
WSRA	Wild and Scenic River Act of 1968. Sometimes used in place of “Act” to avoid confusion with other legislation.
W&SR	Wild and Scenic River.
W&S Rogue River	National Wild & Scenic Rogue River.
WSRS	Wild and Scenic Rivers System.
W&S River Values	Wild and Scenic River Values.
W&S Study River	Wild and Scenic Study River.

Additional acronyms and abbreviations, sometimes with different meanings the author would use if this paper is every rewritten.

§	Section
1968 Act	Original Wild and Scenic Rivers Act (October 2, 1968) prior to subsequent amendments
Act	Wild and Scenic Rivers Act with amendments (or, where necessary, “WSRA” to avoid confusion)
H. Rep.	United States House of Representatives Report
H.R.	United States House of Representatives Bill
House	United States House of Representatives
National	System National Wild and Scenic Rivers System
S.	United States Senate Bill
S. Rep.	United States Senate Report
WSRA	Wild and Scenic Rivers Act with Amendments (or, where necessary, “Act” to avoid confusion)

GLOSSARY

Activity Plan	A site-specific BLM plan written to implement decisions made in a land use plan (e.g., RMP, CRMP, etc). An activity plan usually selects and applies best management practices to meet land use plan objectives. Activity plans are synonymous with “implementation” plans. Examples of implementation plans include, habitat management plans, recreation management plans, and allotment management plans.
Actual Use	Actual level of visitor (W&S Rivers Act).
Applegate Reach	The upper river stretch in the Hellgate Recreation Area from the confluence of the Applegate River to Hog Creek (2003 Hellgate RAMP/FEIS).
Baseline	Outstandingly Remarkable Values, sufficiently detailed to serve as baseline for desired management direction and monitoring (2002 <i>Wild & Scenic River Management Responsibilities</i> ; Appendix H).
Baseline Conditions	Baseline conditions are the values for which the river was designated (free-flow, water quality and ORVs). This baseline serves as the basis from which the degree/intensity of existing and future impacts can be measured. All future activities are to be measured from this baseline to ensure continued high quality conditions and to eliminate adverse impacts (<i>protect</i>) or improve conditions (<i>enhance</i>) within the river corridor (Appendix H).
Benchmark	WSRs are designated based on specific “outstandingly remarkable values” which both justify the initial designation of a river as a WSRS component, 16 U.S.C. §1271, and provide the benchmark for evaluating a proposed project affecting a designated river.
Carrying Capacity	Secretarial Guidelines discuss "carrying capacity," a term that does not appear in the WSRA and is defined as "the quantity of recreation use which an area can sustain without adverse impact on the ORVs and free-flowing character of the river area, the quality of recreation experience, and public health and safety.
Carrying Capacity	The amount and type of use that can be accommodated without unacceptable impacts to resources and/or the quality of the visitor experience. Research on carrying capacity suggests that it can be defined and managed through formulation of indicators and standards of quality.
Carrying Capacity	Studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Management for the river areas can then be planned accordingly (1982 Interagency Guidelines; FR p. 39459).
Carrying Capacity	The quantity of recreation use which an area can sustain without adverse impact on the ORVs and free-flowing character of the river area, the quality of recreation experience, and public health and safety (1982 Interagency Guidelines; FR p. 39455).
Classification Criteria	Criteria specified in Section 2(b) of the Act for determining the classification (wild, scenic, recreational) of eligible river segments (1982 Interagency Guidelines).
Classification	The process of determining which of the classes outlined in Section 2(b) of the Act (wild, scenic, recreational) best fit the river or its various segments (1982 Interagency Guidelines).
Component	A river area designated as a unit of the National Wild and Scenic Rivers System (1982 Interagency Guidelines).
CEQ	Council of Environmental Quality (CEQ) - An advisory council to the President established by the National Environmental Policy Act of 1969. It reviews federal programs for their effect on the environment, conducts environmental studies, and advises the President on environmental matters (2003 Hellgate RAMP/FEIS).
CRMP	Comprehensive River Management Plan. A plan required by Section 3(d)(1) of the Wild and Scenic Rivers Act “...to provide protection for river values...” This plan must address: resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of the Wild and Scenic Rivers Act.

Cultural Resources	Remains of human activity, occupation, or endeavor reflected in archaeological or historic districts, sites, structures, buildings, objects, artifacts, ruins, works of art, and architecture; and natural features of importance in past human activities and cultural practices. Cultural resources consist of: (1) physical remains; (2) locations of significant human events in the past, or locations for traditional cultural practices, even though physical evidence of those events and practices may not exist; and (3) those elements of the natural setting that contribute to a site's historic cultural significance (2003 Hellgate RAMP/FEIS).
Designation	Inclusion of a river area in the national system either by act of Congress or by authority of the Secretary of the Interior (1982 Interagency Guidelines).
Development	Any manmade structure or modification of the natural or existing river environment (1982 Interagency Guidelines).
Dunn Reach	The portion of the Rogue River within the Hellgate Recreation Area from Hog Creek to Grave Creek (2003 Hellgate RAMP/FEIS).
Eligibility	To be eligible for designation, a river must be free-flowing and possess one or more ORVs.
Eligibility	Qualification of a river for inclusion in the national system through determination that it is free-flowing and with its adjacent land area possesses at least one ORV (1982 Interagency Guidelines).
Eligibility Findings	The eligibility analysis consists of an examination of the river's hydrology, including any man-made alterations, and an inventory of its natural, cultural and recreational resources. The analysis includes a determination of whether certain resources are so unique, rare or exemplary as to make them outstandingly remarkable. The determination that a river area contains ORVs is a professional judgment on the part of the IDT, based on objective, scientific analysis. Input from organizations and individuals familiar with specific river resources should be sought and documented as part of the process (1999 WSR Study Process).
Eligible River	A river or river segment found to meet criteria found in Sections 1(b) and 2(b) of the Wild and Scenic Rivers Act of being free flowing and possessing one or more outstandingly remarkable value.
Flow	The volume of water in a river passing a given point in a given period of time, usually expressed in terms of cubic feet per second or cubic meters per second (1982 Interagency Guidelines).
Grandfathered Uses	Uses at the time of the Act, may be non-conforming uses,
Impoundment	A body of water formed by any manmade structure (1982 Interagency Guidelines).
Indicators	Measurable, manageable variables that define the quality of visitor experiences and natural/cultural resources.
Indicator species	A prevalent species which can be used for the purpose of observing impacts to that one species and similar species (2003 Hellgate RAMP/FEIS).
Interagency Guidelines	1982 <i>Department of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas</i> .
Instant River	One of the first eight rivers designated in 1968 part of the W&S Rivers Act. The eight instant rivers were: 1. Clearwater, Middle Fork, 2. Eleven Point, 3. Feather, 4. Rio Grande, 5. Rogue, 6. Sant Croix, 7. Salmon, and 8. Wolf.
Kinds & Amounts	The CMP be in the form of a single, comprehensive document, which addresses all the required elements, including both the "kinds" and "amounts" of use.
Level of Service	LOS - A qualitative measure describing operational conditions within a traffic stream, generally described in terms of such factors as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.
Management Plan	The detailed development plan required under section 3(b) of the Act, which states the boundaries and classification of the river area and presents a plan for its public use, development and administration (1982 Interagency Guidelines).
Monitoring	Once indicators and standards of quality have been formulated, indicator variables are monitored, and management action is undertaken to maintain standards of quality.
Motorboat sound levels	Levels of sound (measured in decibels by a stationary test) that are emitted during operation of motorboat engines. The maximum allowed is 90 dBA for engines manufactured prior to January 1, 1993 and 99 dBA for engines manufactured that date or later (see Sound level/loudness), with exemptions possible for special activities, such as regattas, boat races, or speed trials.

Motorized boating	Boating that involves motorized watercraft, regardless of the motor's horsepower rating. The "kicker" (a small horsepower motor) presently used by some drift boat anglers is considered motorized (2003 Hellgate RAMP/FEIS).
Motorized fishing boat	Motorized fishing craft for commercial use. The boat operator is usually an "operator of an uninspected passenger vessel" (OUPV). A "six pack" or an OUPV license is required of fishing guides or charter vessel operators to carry six or fewer paying passengers. The U.S. Coast Guard issues the licenses (2003 Hellgate RAMP/FEIS).
Motorized Tour Boat	Any motorized boat carrying seven or more paying passengers. An MTB operator must have at least a "limited master's" license issued by the U.S. Coast Guard. All MTBs have been issued a certificate of inspection (COI) by the Coast Guard. The COI lists conditions that MTBs must satisfy to comply with applicable laws, rules, and regulations relating to safe construction, equipment, manning, and operation. The COI also requires MTBs be in a seaworthy condition for the services they are operated (2003 Hellgate RAMP/FEIS).
NWSRS	National Wild and Scenic Rivers System. A system of nationally designated rivers and their immediate environments that have outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values and are preserved in a free-flowing condition.
NEPA Standards Nondegradation.	See Significance and Thresholds. Management Direction (Section 10(a)) - This section is interpreted as a nondegradation and enhancement policy for all rivers, regardless of classification. "Each component will be managed to protect and enhance the values for which the river was designated, while providing for public recreation and resource uses that do not adversely impact or degrade those values" (Interagency Guidelines).
NRI	National Rivers Inventory. A listing of more than 3,400 free-flowing river segments in the United States that are believed to possess one or more outstandingly remarkable natural or cultural values judged to be of more than local or regional significance. All Federal agencies, as part of ongoing planning, management, and environmental review activities, must assess whether rivers on their lands that are identified in the NRI are suitable for inclusion in the National System. Until this determination is made, all Federal agencies must seek to avoid or mitigate actions that would adversely affect one or more NRI segments.
ORVs	Outstandingly Remarkable Values. Values among those listed in Section 1(b) of the Wild and Scenic Rivers Act: "scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values." Other values that may be considered include, but are not limited to, ecological, biological or botanical, paleontological, hydrological, traditional cultural uses, water quality, and scientific values. The Wild and Scenic Rivers Act does not further define outstandingly remarkable values. 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. (16 U.S.C. § 1271).
Other Uses	Other uses are uses that do not substantially interfere with public use and enjoyment of designated ORVs.
Primary Contact Rec.	Primary Contact Recreation: Activities in which there is prolonged and intimate contact with the water (e.g., swimming, water skiing, surfing, kayaking, "tubing," and wading or dabbling by children (1982 Interagency Guidelines).
ROS	Recreation Opportunity Spectrum. A framework for stratifying and defining classes of outdoor recreation environments, activities, and experience opportunities. The settings, activities, and opportunities for experiences are arranged along a continuum or spectrum divided into six classes: primitive, semiprimitive nonmotorized, semiprimitive motorized, roaded natural, rural, and urban. The resulting analysis defines specific geographic areas on the ground, each of which encompasses one of the six classes (2003 Hellgate RAMP/FEIS).
River Area	For a river study, that portion of a river authorized by Congress for study and its immediate environment comprising an area extending at least one-quarter mile from each bank. For designated rivers, the river and adjacent land within the authorized boundaries (1982 Interagency Guidelines).

SCORP	Statewide Comprehensive Outdoor Recreation Plan. A plan prepared by the Oregon State Parks and Recreation Department that describes and analyzes the organization and function of the state’s outdoor recreation system, including an analysis of the roles and responsibilities of major outdoor recreation suppliers; an analysis of demand, supply, and needs; issue discussions; an action program to address the issues; and a project selection process (2003 Hellgate RAMP/FEIS).
Similar Values	Scenic, Recreational, Geologic, Fish and Wildlife, Historic, Cultural, or Other Similar Values (16 U.S.C. § 1271).
Secondary Contact Rec.	Secondary Contact Recreation: Activities in which contact with the water is either incidental or accidental, e.g., boating, fishing and limited contact with water incident at shoreline activities (1982 Interagency Guidelines).
Significance	Factors to consider in determining significance are set forth in 40 CFR 1508.27. To determine significance, impact prediction may be compared to some parameter or maximum/minimum level of effect beyond which the impacts become significant (i.e., a significance threshold). Law, regulation, prior commitments, professional expertise, the manager's best judgement, and public opinion can affect the setting of significance thresholds. The ID team is responsible for the identification and use of thresholds of context and intensity for use in determining impacts.
Standard	A description of the physical and biological conditions or degree of function required for healthy, sustainable lands (2003 Hellgate RAMP/FEIS).
Standards	Minimum acceptable condition of indicator variables. The terms standards and thresholds are interchangeable.
SHPO	State Historic Preservation Officer - The state official designated to coordinate state historic preservation programs, including identification and nomination of eligible properties to the National Register and cooperation with federal agencies to ensure implementation of the National Historic Preservation Act of 1966 (2003 Hellgate RAMP/FEIS).
SRMA	Special Recreation Management Area. Areas which require explicit recreation management to achieve recreation objectives and provide specific recreation opportunities. The BLM-administered portion of the National Wild and Scenic Rogue River is a SRMA (2003 Hellgate RAMP/FEIS).
Study Agency	The agency within the USDOA or USDI delegated the responsibility for a wild and scenic river study (1982 Interagency Guidelines).
Study Report	The report on the suitability or nonsuitability of a river for inclusion in the National System, which Sections 4(a) and 5(a) of the Wild and Scenic Rivers Act require the Secretary of the Interior, or the Secretary of Agriculture, or both jointly to prepare and submit to the President. The President transmits the report with his or her recommendation(s) to Congress.
Study River	Rivers identified for study by Congress under Section 5(a) of the Wild and Scenic Rivers Act or identified for study by the Secretary of Agriculture or the Secretary of the Interior (BLM-identified study rivers) under Section 5(d)(1) of the act. These rivers will be studied under the provisions of Section 4 of the Wild and Scenic Rivers Act.
Study Team	A team of professionals from interested local, State, and Federal agencies invited by the study agency and participating in the study (1982 Interagency Guidelines).
Suitability	Each eligible river segment must be further evaluated to determine whether it is suitable for inclusion in the National System.
Threshold	Factors that limit use over time or space, including ecological or resource, physical or space, facility, or social constraints—all of which can fluctuate as social and environmental factors change (2003 Hellgate RAMP/FEIS).
Thresholds	Thresholds (goals or desired conditions). The terms “threshold” and “standard” are interchangeably, although the use the generic term “threshold” is used most often. As noted earlier, thresholds are not to be exceeded.

Thresholds	NEPA, Section 102(2)(C) — Threshold Determinations. All agencies shall include an EIS with any proposal which is a major federal action significantly affecting the quality of the human environment. Therefore, all agencies must make a threshold determination concerning any proposal as to whether it is a major federal action, and if so, whether it significantly affects the quality of the human environment (Appendix C; Appendix D).
User Capacities	The plan [CMP] shall address resource protection, development of lands and facilities, user capacities, and other management practices. Section 16 U.S.C. § 1274(d).
Use Limits	The amount and type of recreational use an area can accommodate without altering either the environment or the user's experience beyond the degree of change deemed acceptable by management objectives for the area (2003 Hellgate RAMP/FEIS).
Visitor Capacity	Visitor capacity is defined in the CRMP and is the actual level of visitor use that will not adversely impact the free-flowing condition, water quality, or outstandingly remarkable values of designated rivers. Visitor capacity is established for the river, river segment, sites, areas, and/or activities. See User Capacities.
Visitor Services	Methods of providing information to the public on outdoor recreation opportunities, local natural and cultural history, regulations, use guidelines, and safety. Services emphasize protecting and maintaining resources, protecting visitors, promoting wise use, reducing conflicts between users or types of use, encouraging visitor cooperation and involvement in managing public lands, and increasing visitor understanding and support of multiple-use management (2003 Hellgate RAMP/FEIS).
Visitor Use (VU)	Number and type of visitors, both commercial and private, classified as activity and lodging types: 1. Activity types - Motorized tour boats, private floats, guided floats, private bank anglers, private boat anglers, guided anglers, day-use, BLM and Josephine County campgrounds, lodging, and miscellaneous, and 2. Lodging types - Hotel/motel, campsite, family/friends, and day-use only (2003 Hellgate RAMP/FEIS).
Visitor Use Day	Use of all or part of a day by a visitor (2003 Hellgate RAMP/FEIS).
VU, Primary Season	Time of year when most visitor days or watercraft days occur; May 1-September 30 in the Hellgate Recreation Area (2003 Hellgate RAMP/FEIS).
VU, Secondary Season	Time of year outside of the primary visitor use season; October 1-April 30 in the Hellgate Recreation Area (2003 Hellgate RAMP/FEIS).
W&S River Values	The purposes for which wild and scenic rivers are added to the National System as explicated in Section 1(b) of the Wild and Scenic Rivers Act. They include the river's free-flowing condition, water quality, and outstandingly remarkable values. Section 7(a) and 10(a) of the Wild and Scenic Rivers Act make reference to these collective values.
W&S Study River	Rivers identified for study by Congress under Section 5(a) of the Wild and Scenic Rivers Act or identified for study by the Secretary of Agriculture or the Secretary of the Interior under Section 5(d)(1) of the Wild and Scenic Rivers Act. These rivers will be studied under the provisions of Section 4 of the Wild and Scenic Rivers Act.
Withdrawal	An action that restricts the use of public lands by removing them from the operation of some or all of the public land or mining laws (2003 Hellgate RAMP/FEIS).