

CHAPTER 1: INTRODUCTION

This chapter provides an introduction to the New River Wild and Scenic River Study and to the Wild and Scenic Rivers Act.

Study Background

Purpose and Need

New River Wild and Scenic River Study was authorized by the U.S. Congress to evaluate whether a 19.3-mile section of the New River and adjacent federal lands from the U.S. Route 460 Bridge in Glen Lyn, Virginia, downstream to the maximum summer pool elevation of Bluestone Lake, south of Hinton, West Virginia, should be designated as a national wild and scenic river. This document provides interested parties with the information necessary to make informed choices about whether the river should be designated and how the New River and adjacent federal lands should be managed in the future.

The study report provides information for interested citizens, organizations, and ultimately Congress on alternative approaches for future conservation and use of the New River study area and its significant natural, cultural, and recreational values. While the question of designation as a wild and scenic river is central, the report recognizes that decisions regarding the conservation and management of the study area also must consider the full range of its diverse and significant resources and public uses, as well as the socio-economic realities of the surrounding region such as the continuing need to provide flood control for downstream communities and the potential for the study area to contribute to sustaining the regional economy and quality of life.

Legislative Background

Public interest in a wild and scenic river study of this segment of the New River was motivated in part by a proposal for a new high-voltage electricity transmission line that would have crossed the river in the Virginia portion of the study area. The U.S. Forest Service was given responsibility for conducting an environmental assessment of the proposed transmission line project.

On April 29, 1992, Congressman Nick Rahall, 3rd District West Virginia, introduced H.R. 5021 to authorize a study of this portion of the New River as a potential addition to the National Wild and Scenic Rivers System. Public Law 102-525, which was enacted on October 26, 1992, authorized the study by amending Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) with the following new paragraph:

The segment defined by public lands commencing at the U.S. Route 460 Bridge over the New River in Virginia to the maximum summer pool elevation (one thousand four hundred and ten feet above mean sea level) of Bluestone Lake in West Virginia; by the Secretary of the Interior. Nothing in this Act shall affect or

impair the management of the Bluestone project or the authority of any department, agency or instrumentality of the United States to carry out the project purposes of that project as of the date of enactment of this paragraph. The study of the river segment identified in this paragraph shall be completed and reported on within one year after the date of enactment of this paragraph.

The National Park Service, U.S. Department of the Interior, was given responsibility for conducting the study and preparing a report for the President to submit to Congress.

The Wild and Scenic Rivers Act prohibits the federal government from taking any action that could preclude the river's eligibility for designation during the study period or while the Congress considers whether to actually designate the river. Because of this provision, the environmental impact statement prepared for the proposed transmission line could not identify a preferred alternative that involved crossing the New River within the wild and scenic study area. That process ultimately resulted in a preferred alternative being selected that routed the transmission line outside of the New River study area.

Study History

The National Park Service (NPS) started the New River Wild and Scenic River Study in 1993 and completed several initial steps, including a draft "eligibility and classification report" that was released for public review in 1994. The study was subsequently put on hold in 1997 to allow the NPS and the West Virginia Division of Natural Resources (WVDNR) to focus on developing a new license agreement for the Bluestone National Scenic River (NSR).¹ The NPS and WV DNR came to an agreement on the new license for the Bluestone NSR in the fall of 2002.

Staffing constraints delayed reactivation of the New River Wild and Scenic River Study until the summer of 2003. At that time a new study team was formed, consisting of a project manager from the NPS Northeast Regional Office and two independent planning consultants with extensive experience in wild and scenic river studies.

Public Involvement and Study Scoping

During the summer and fall of 2003, the study team met with public agencies involved in the management of the study area and surrounding areas, as well as with local stakeholders. The purpose of the study was discussed and preliminary issues were identified.

¹ The Bluestone River flows into Bluestone Lake downstream of the New River study area. The lower portion of the Bluestone River was designated as a National Scenic River pursuant to an act of Congress in 1988. A portion of the designated area is within the Bluestone Wildlife Management Area, which also encompasses the West Virginia portion of the New River Wild and Scenic River study area. The legislation that designated the Bluestone River as a national wild and scenic river also re-assigned administrative responsibility for the federal lands along the designated segment from the Army Corps of Engineers to the NPS. The Bluestone NSR is administered by the NPS headquartered in Glen Jean, WV. Consistent with the enabling legislation, the WVDNR continues to manage fish, wildlife and wildlife habitat under the terms of a lease agreement with the NPS. (Additional information on the Bluestone Wildlife Management Area and WVDNR management is presented in Chapter 2).

In the fall of 2003, an interagency work group was formed consisting of representatives from the following:

- NPS New River Gorge National River
- U.S. Army Corps of Engineers' Bluestone Dam and Project Area
- U.S. Army Corps of Engineers' Huntington District
- Virginia Department of Game and Inland Fisheries
- Virginia Department of Conservation and Recreation
- West Virginia DNR Parks and Recreation Section
- West Virginia DNR Wildlife Resources Section

Members of the Interagency Work Group are identified in Chapter 8. The work group served as the forum for discussing technical and policy issues and for developing draft versions of the various components that collectively make up this report. Individual work group members also served as key contacts for their agencies and as facilitators for discussions and information collection within those agencies.

The Interagency Work Group served as the decision-makers for (1) the definition of goals, principles, and assurances related to future management of the study area, (2) the identification of management alternatives, and (3) the definition of management standards that would apply under each alternative. These products are presented in Chapter 5 and associated appendices. The work group also facilitated the agencies' technical review of a preliminary draft of this document.

In December, 2003, public meetings were held in Glen Lyn, Virginia, and Hinton, West Virginia. The purpose of these meetings was to broaden awareness about the study and to identify key issues involving the study area and its management. Several informational handouts were distributed at these meetings, including the following:

- A question-and-answer handout that provided background information on the Wild and Scenic Rivers Act and addressed questions specific to this study.
- A summary of findings related to the study segment's eligibility for wild and scenic river designation and its potential classification under the Wild and Scenic Rivers Act.
- A preliminary summary of issues identified by the study team up to that point.
- A draft summary of preliminary management goals and options.

A second round of public meetings was held in July, 2004, this time in Rich Creek, Virginia, and Hinton, West Virginia. These meetings were intended to further broaden public awareness of, and participation in, the study; and to solicit initial feedback on draft management goals and alternatives. To that end, in addition to an updated version of the question-and-answer handout and the eligibility summary, two other documents were distributed at these meetings:

- A refined draft of management goals, principles, and assurances, prepared in consultation with the Interagency Work Group.
- A summary of a preliminary set of six management alternatives, which also was prepared in consultation with the work group.

Meetings also were held in 2003 and 2004 with city, town, and county officials and with private organizations and citizen groups. The purpose of these meetings was to provide information on the project and identify issues that should be considered. Copies of the handouts distributed at the public meetings were provided to the participants of these other meetings. A complete list of these meetings is presented in Chapter 8.

The National Wild and Scenic Rivers Act

The National Wild and Scenic Rivers System

Enacted in 1968, the Wild and Scenic Rivers Act (WSRA) was created to balance long-standing federal policies promoting construction of dams, levees, and other river development projects with one that would permanently preserve selected rivers, or river segments, in their free-flowing condition. Section 1(b) of the WSRA states:

It is hereby declared to be the policy of the United States that certain selected rivers in 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 original Act designated eight rivers into the National Wild and Scenic Rivers System, and specified two processes by which other rivers could be added to the system. The more frequently used approach involves a legislative designation through an Act of Congress, usually following a formal study process that is also authorized by Congress. The second approach involves an administrative designation by the Secretary of the Interior, following a formal application for designation by the governor of the state through which the river flows and provided that the state has already included the river in its own protected rivers system.

To date, one hundred sixty-two rivers or river segments totaling more than 11,300 miles have been included in the national system. Of these, only one is located in West Virginia – the segment of the Bluestone River described in “Study History and Scoping” on page two of this document. There are no national wild and scenic rivers in Virginia. Beyond the Bluestone, the nearest designated river area is a 26.5-mile segment of the New River near its headwaters in North Carolina. Other designated rivers in adjacent states include the Horsepasture River, Lumber River, and Wilson Creek in North Carolina, the Obed River in Tennessee, the Red River in Kentucky, the Little Miami River, Little Beaver River, and Big and Little Darby Creeks in Ohio, and the Allegheny River, Clarion River, multiple segments of the Delaware River, and the White Clay Creek in Pennsylvania and Delaware.

The Wild and Scenic River Study Process

The Wild and Scenic Rivers Act and associated federal guidelines provide a process for determining whether rivers are “eligible” and “suitable” for inclusion in the National Wild and Scenic Rivers System. To be eligible, a river or river segment must be free-flowing and possess at least one “outstandingly remarkable” scenic, recreational, geologic, fish and wildlife, historical, cultural, or other similar value. If eligible, the river then is given a proposed classification as “wild,” “scenic,” or “recreational,” based on established criteria, including existing water quality, the amount of development along the river corridor, and accessibility. If the river ultimately is designated into the national system, this classification serves as guidance for future management by the administering and managing agency or agencies.

The suitability determination involves an evaluation of whether wild and scenic river designation would be an appropriate element of long-term management of the river or, in other words, whether designation makes sense from a public policy perspective. This evaluation includes consideration of several important questions, including:

1. Should the river’s free-flowing character, water quality, and outstandingly remarkable values be protected, or are one or more other river uses important enough to warrant continuing existing management?
2. Would the river’s free-flowing character, water quality, and outstandingly remarkable values be protected through designation?
3. Is there a demonstrated agency commitment and capability to protect the river and its associated values following designation?
4. Is there demonstrated support for or opposition to designation of the river by federal, state, local or tribal governments; national, state, or local non-profit organizations; or local residents?

Beyond the essential eligibility and suitability requirements, it is important that a range of management-related concerns be addressed in the study process. Issues of concern to affected parties and the general public need to be defined, understood, and considered. Goals for management of the river and its significant resources need to be established. Alternative approaches for managing the river and the rest of the study area must be articulated and evaluated to determine if they are realistic and would be effective in achieving stated goals.

Meaningful public involvement is a fundamental part of how the NPS conducts its business as a public agency. It is also wise practice for any study involving important environmental resources. In the case of river management studies, public involvement is essential because rivers invariably have diverse resources, support varied public uses, and flow through multiple jurisdictions with numerous authorities. It is, therefore, all but impossible to achieve effective river management without a participatory process involving a range of players and interests.

While there are several ways for the public to participate in a wild and scenic river study, the opportunity to comment on the study report (this document) provides the most important moment for interested individuals and organizations to make known their views about how the

river and adjacent lands should be managed into the future. The WSRA requires that the study report be made available for public and agency review for a period of at least ninety days.

After the mandatory ninety-day review and comment period, the NPS will respond to any comments and submit a final study report, along with its findings regarding eligibility and suitability for designation, to the Secretary of the Interior. Following departmental review, the final report will be forwarded to the President, who will transmit it with a recommendation to the Congress. It is then up to the Congress to decide whether to designate the study area into the National Wild and Scenic Rivers System through federal legislation. If the Congress decides not to designate the river, no legislative action is required. This is the defined formal process. In practice, Congress sometimes proposes legislative action prior to the completion of a final study report and/or a Presidential recommendation.

Implications of Wild and Scenic River Designation

This section of the report summarizes key aspects of the WSRA that would apply to the New River study area if it were designated into the national system.

Core Protections for River Values. The heart of the WSRA is the permanent protection provided to the free-flowing condition and identified “outstandingly remarkable” resources of all designated rivers through Section 7 of the Act. Specifically, Section 7 prohibits the Federal Energy Regulatory Commission (FERC) from licensing any new “dam, water conduit, reservoir, powerhouse, transmission line, or other project works” on or directly affecting a designated river segment.² In addition, it prohibits other federally-assisted water resources projects that would have a direct and adverse effect on the river’s free-flowing condition and identified special resources. The term “federally assisted” refers to projects requiring any type of license, permit, grant, loan, or other assistance from the federal government. The term “water resources project” refers to any construction within the bed or banks of the river, either within the designated segment or upstream, downstream or on a tributary to that segment if the construction would affect the segment’s free-flowing condition or the special values for which it was designated.³ While new FERC-licensed projects on or directly affecting the designated area are categorically prohibited, other proposed federally assisted water resources projects are not automatically precluded. Instead, they must be evaluated by the federal agency charged with administering the designation to determine whether they would have a “direct and adverse effect” on the river’s free-flowing condition and special features.

Section 7 provides the strongest protection available from the potential adverse effects of specified projects (i.e., new FERC-licensed projects and other water resources projects). This

² The prohibition on FERC-licensed projects in Section 7 does not prohibit the licensing of new projects upstream or downstream of a designated segment if they would not directly affect the designated area, nor the relicensing of existing projects upstream or downstream if they would not have an adverse effect on the free-flowing condition and outstandingly remarkable resources of the designated segment.

³ Examples of water resources projects include dams, diversions, bank stabilization, channelization, and bridge construction/reconstruction if there is activity within the river’s bed and banks; that is, within the ordinary high water mark.

same protection is provided on a temporary basis for rivers that are under formal, legislatively authorized study for potential addition to the national system (including the New River study segment). The interim protection remains in effect from the date of study authorization until Congress makes a decision on whether or not to designate the river into the national system, or until three years after a final study report is transmitted to Congress by the President, whichever comes first.

Other Protections for River Values. In addition to the core protections of Section 7, other aspects of the WSRA further protect the free-flowing condition and outstanding resources of designated rivers. Section 10(a) of the WSRA states the following:

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 it is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.

This section of the WSRA is interpreted in associated federal guidelines (*Federal Register*, vol. 47, no. 173, p. 39454-39461) as establishing a non-degradation and enhancement policy for all rivers in the national system. In other words, each designated river area must be managed so that its free-flowing character and outstandingly remarkable resources are not diminished over time and are enhanced wherever possible. In addition, the non-degradation and enhancement policy implies that each designated area must be managed in a way that will sustain its classification as either a “wild,” “scenic,” or “recreational” river. This does not mean that land use in the designated area cannot change over time, but rather that the overall character of the river and surrounding lands must remain generally consistent with the established criteria for the river’s assigned classification.

Within the non-degradation and enhancement policy, there is an implicit recognition that conditions may not always be ideal. For example, water quality problems resulting from upstream uses may exist. Under the non-degradation and enhancement policy, those upstream uses could continue if the river in question was designated, but water quality would not be allowed to decline below the levels that existed at the time of designation. In addition, enhancement/improvement of water quality would be a management objective (as would be the case under existing water quality statutes, with or without wild and scenic river designation).

It is important to stress that the requirements discussed above apply only to federal actions. The WSRA cannot compel others (for example, states, municipalities, or private entities) acting outside of the purview of federal law to adhere to the same requirements. However, one objective for engaging a broad range of non-federal stakeholders in the wild and scenic river study process is to work collaboratively in defining a proposed course of action that is acceptable to those at all levels who may be involved in management and use of the river.

Management Plan Requirements. Section 3(d)(1) of the WSRA requires that a “comprehensive river management plan” be developed for each designated river area to “provide for the protection of the river values.” The plan should address such issues as resource

protection, development of lands and facilities, user capacities, and other management practices needed to protect the river and its recognized resources. The agency (or agencies) assigned responsibility for administering a given river's designation has lead responsibility for developing the plan. However, the WSRA specifies that the plan must be developed in consultation with the affected states, local governments, and the public.⁴ The Act also requires the plan to be completed within three years of designation. (For specific discussion of management plan considerations that would apply if the New River study area were designated as a wild and scenic river, see Chapter 5, page 86, "Elements Common to All Action Alternatives.")

Cooperative Management. Section 10(e) of the WSRA, augmented by Section 12(a), states that a federal agency charged with administering any component of the national system may enter into a cooperative agreement with a state, a state agency, or a local government that would provide for state or local participation in administration and management. Further, the WSRA does not require that a federal agency be directly involved in on-the-ground management. However, the federal administering agency identified in the designation legislation must retain responsibility for conducting reviews of proposed water resources under Section 7 of the WSRA.

Assurances

Section 13 of the WSRA provides assurances regarding existing uses, authorities, and regulatory functions for rivers designated into the National Wild and Scenic Rivers System. Section 13(a) provides the following assurances regarding state jurisdiction over fish and wildlife:

Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, these lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

Sections 13(b), (c), (d), and (f) provide assurances that the states will continue to have jurisdiction over state water rights, water quality laws, and navigable waterway laws. In addition, Section 12(b) provides assurances to private parties concerning existing rights, privileges, and contracts affecting federal lands. For an expanded discussion of assurances that would apply if the New River study area were designated as a wild and scenic river, see Chapter 5, page 83, "Foundations for Future Management."

Structure of this Document

This section provides an overview of the chapters that make up the remainder of this report.

⁴ In addition, NEPA and associated regulations require substantial involvement of affected federal, state and local agencies in these types of planning efforts, including the possibility of other agencies serving as "joint lead" or "cooperating" agencies for the process.

Chapter 2, *Description of the Study Area*, describes the immediate study area and how it fits into the broader context of the surrounding region. The natural, cultural, and recreational resources of the study area are described, as are land use, management, and socio-economic considerations.

Chapter 3, *Eligibility and Classification*, considers whether the New River study area meets the requirements to be eligible for designation as a national wild and scenic river. It also proposes a classification for the river should it be designated.

Chapter 4, *Issues*, identifies and describes issues raised during the study process related to current and future use and management of the New River study area.

Chapter 5, *Alternatives for Future Management*, identifies goals and other key provisions for the study area and describes a series of alternative approaches for how the area might be managed in the future.

Chapter 6, *Suitability*, considers whether the New River study area meets the requirements to be suitable for designation as a national wild and scenic river.

Chapter 7, *Conclusions*, summarizes what has been learned through the study and indicates the alternative that NPS finds appropriate at this time.

Chapter 8, *Consultation and Coordination*, documents the public involvement efforts conducted during the study and identifies principal participants in the process.

The *Appendices* provide detailed information on specific topics related to several of the chapters.