

MEMORANDUM

Subject: Policy Guidance for Wild and Scenic Rivers

From: Director, Office of Environmental Policy
Washington, D.C.

To: Regional Federal Highway Administrators,
Regions 1-10, and Regional Engineer,
Region 15

Date: October 3, 1980

Reply to
Attn. of: HEV-22

Attached is a memorandum dated August 10 from the Council on Environmental Quality (CEQ) on "Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory." This memorandum discusses the President's concern in his directive of August 2, 1979, which among other items underscores the need to strengthen the National Wild and Scenic Rivers System. Attached to the memorandum itself are "Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory," and in Appendix I, a "Guide for Identifying Potential Adverse Effects."

These procedures will supersede the memorandum of December 20, 1979, by the Chief, Environmental Quality Division; subject: "Wild and Scenic Rivers." The FHWA feels that the CEQ prepared procedures are a restatement of previous FHWA instructions and will serve to clarify and standardize the coordination necessary to avoid or mitigate adverse effects of highway projects on rivers identified in the Nationwide Inventory. Early coordination with the appropriate Regional Office of the Heritage Conservation and Recreation Service (HCRS) remains the most appropriate course of action.

With regard to the effective date of this material, the guidance provided on page 3 of the "Procedures" indicates these procedures should be used for any proposals " . . . for which the NEPA process is not yet completed." We have discussed the effective date of this guidance and other subjects in the "Procedures" with the CEQ and offer the following information for your further guidance.

1. The intent is to implement this guidance in a timely and reasonable manner. For example, a pending FEIS currently before the Secretary of Transportation for action could be considered a project " . . . for which the NEPA process is not yet complete." However, based on discussions with CEQ, we

consider a reasonable application of this guidance is to all projects where the FEIS or FONSI has not been submitted to the Division Administrator for action.

2. The last sentence on page 3 of the CEQ "Procedures" should be interpreted to apply these procedures only to those projects where a supplemental EIS is being developed.
3. The first paragraph on page 3 indicates copies of the environmental assessment (EA) should be provided to HCRS for coordination. Neither the CEQ regulations nor our proposed FHPM 7-7-2 requires the formal circulation of the EA. The CEQ has indicated it was its intention to use existing documents for this coordination process rather than require the development of a new report for that purpose. The CEQ further indicated that if there is another existing report that will adequately serve the purpose, i.e., discusses alternatives, impacts, mitigation, etc., CEQ would be receptive to the use of other reports to achieve the necessary coordination. We do not suggest a separate report be developed for this purpose. However, if the State agency, in the normal course of project development, has other reports that will adequately serve this function, then the necessary consultation may be achieved by providing HCRS with either the EA or the mentioned separate report. In view of the lesser impacts associated with a project proposed to be processed with an EA/FONSI, we believe 30 days is a reasonable time period to allow HCRS to comment on the project proposals processed with EA's.

If you have any questions, contact either Messrs. Charles DesJardins at 426-9173 or Robert Gatz at 426-0106.

/ Original Signed by /

Leon N. Larson

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE. N W.
WASHINGTON. D. C. 20006

August 10, 1980

MEMORANDUM FOR HEADS OF AGENCIES

SUBJECT: Interagency Consultation to Avoid or Mitigate
Adverse Effects on Rivers in the Nationwide
Inventory

In his second message on the Environment, issued in August 1979, the President underscored the need to strengthen the National Wild and Scenic Rivers System and to take particular care not to harm rivers which may qualify for inclusion in the System.

The President issued a directive on August 2, 1979 in conjunction with his Message which required that:

"Each Federal agency shall, as part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory prepared by the Heritage Conservation and Recreation Service in the Department of the Interior. Agencies shall, as part of their normal environmental review process, consult with the Heritage Conservation and Recreation Service prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory."

This memorandum is intended to assist your agency in meeting its responsibilities under the President's directive. A brief set of procedures is attached which provides guidance on how to integrate these responsibilities with your normal environmental analysis process under the National Environmental Policy Act (NEPA). The objective is to ensure that the President's directive is met promptly and efficiently.

Development along our rivers continues to outpace our ability to protect those rivers that might qualify for designation in the National Wild and Scenic Rivers System. The Heritage Conservation and Recreation Service (HCRS) in the Department of the Interior has been preparing a Nationwide Inventory of river segments that, after preliminary reviews appear to qualify for inclusion in the System. It is therefore essential that federal agencies proceed carefully and limit any adverse effects of their actions on rivers identified in the Nationwide Inventory. Otherwise, the Inventory could be depleted before the identified rivers can be fully assessed to determine the desirability of including them as components of the National Wild and Scenic Rivers System.

Although the President's directive does not prohibit an agency from taking, supporting or allowing an action which would adversely affect wild and scenic values of a river in the inventory, each agency is responsible for studying, developing and describing all reasonable alternatives before acting, and for avoiding and mitigating adverse effects on rivers identified in the Inventory. Where agency action could effectively foreclose the designation of a wild, scenic, or recreational river segment, the President has directed the agency to consult with HCRS. It is difficult to restore a river and its immediate environment once its wild and scenic qualities have been lost.

The purpose of this consultation requirement, which is meant to be part of the normal environmental analysis process, is to provide the opportunity for HCRS experts to assist other agencies in meeting program objectives without irreparably damaging potential wild, scenic, and recreational river areas. Consultation with HCRS should encourage better planning at an early stage in order to reduce resource management conflicts or to avoid them altogether. The consultation requirement also provides an opportunity to seek early resolution of problems by policy-level officials if necessary.

Completed portions of the Nationwide Inventory -- those for the Eastern half of the country -- were sent to you from HCRS Director Chris T. Delaporte on November 13, 1979. Forthcoming portions of the Inventory will be transmitted as they are completed. You should ensure that the list of rivers in the Inventory and the attached procedures receive wide distribution in your agency.

Copies of orders, guidance, or memoranda which you use to adopt or to transmit the attached procedures within your agency should be sent to the Council on Environmental Quality (Attention: Larry Williams) and to the Interagency Wild and Scenic Rivers Study Group (Attention: Jack Hauptman, HCRS, 440 G Street, N.W., Washington, D.C. 20243).

/ Original Signed by /

Gus Speth
Chairman

Attachment

Procedures for Interagency Consultation to
Avoid or Mitigate Adverse Effects on Rivers
in the Nationwide Inventory

These procedures are designed to assist federal officials in complying with the President's directive (attached) to protect rivers in the Nationwide Inventory through the normal environmental analysis process. NEPA, E.O. 11514, CEQ's NEPA Regulations, and agency implementing procedures should be used to meet the President's directive.

Although the steps outlined below pertain to wild and scenic river protection, they also fit clearly within agencies' existing environmental analysis processes. Agencies are already required: to identify and analyze the environmental effects of their actions; to consult with agencies with jurisdiction by law or special expertise (in this case, HCRS); to develop and study alternatives; and to use all practicable means and measures to preserve important historic, cultural, and natural aspects of our national heritage.

The procedures outlined below simply link the appropriate elements of the normal environmental analysis process with the President's directive "to take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory." Federal officials should promptly take steps to incorporate the actions specified below into their planning and decisionmaking activities and the conduct of their environmental analyses.

1. Determine whether the proposed action could affect an Inventory river.

Check the current regional Inventory lists to determine whether the proposed action could affect an Inventory river.

If an Inventory river could be affected by the proposed action, an environmental assessment or an environmental impact statement may be required depending upon the significance of the effects.

If the action would not affect an Inventory river, no further action is necessary under these procedures. (The agency is still required to fulfill any other responsibilities under NEPA).

2. Determine whether the proposed action could have an adverse effect on the natural, cultural and recreational values of the Inventory river segment.

Using the Guide for Identifying Potential Adverse Effects, which is appended to these procedures, you should determine whether the proposed action could adversely affect the natural, cultural, or recreational values of the Inventory river segment. Adverse effects on inventoried rivers may occur under conditions which include, but are not limited to:

- (1) Destruction or alteration of all or part of the free flowing nature of the river;
- (2) Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;
- (3) Deterioration of water quality; or
- (4) Transfer or sale of property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.

If you have prepared a document which finds that there would be no adverse effects -- such as a Finding of No Significant Impact under the CEQ NEPA regulations -- you should send a courtesy copy to the HCRS field office in your region.

3. Determine whether the proposed action could foreclose options to classify any portion of the Inventory segment as wild, scenic or recreational river areas.

In some cases, impacts of a proposed action could be severe enough to preclude inclusion in the Wild and Scenic Rivers System, or lower the quality of the classification (e.g. from wild to recreational). If the proposed undertaking could effectively downgrade any portion of the Inventory segment you should consult with HCRS.

Proposed actions (whether uses or physical changes), which are theoretically reversible, but which are not likely to be reversed in the short term, should be considered to have the effect of foreclosing for all practical purposes wild and scenic river status. This is because a river segment, when studied for possible inclusion in the Wild and Scenic River System, must be judged as it is found to exist at the time of the study, rather than as it may exist at some future time.

If a proposal, including one or more alternatives, could have an adverse effect on a river in the Inventory, an environmental assessment or, if the effects are significant, an environmental impact statement must be prepared. HCRS staff is available to assist you in determining the significance or severity of the effects in connection with your assessment, scoping process, and EIS, if one is needed. A detailed analysis of each of the rivers in the Inventory is available from HCRS for your use.

You should request assistance in writing from HCRS, as early as you can, providing sufficient information about the proposal to allow HCRS to assist you in determining whether any of the alternatives under consideration would foreclose designation. HCRS will in turn provide you with an analysis of the impacts on natural, cultural and recreational values which should enable you to make a determination as to whether or not designation would be

foreclosed. HCRS is available to assist you in developing appropriate avoidance/mitigation measures.

When environmental assessments are prepared on proposals that affect Inventory rivers, copies should be sent in a timely fashion to the HCRS field office in your area before a proposed action is taken and while there is still time to avoid or mitigate adverse effects. When environmental impact statements are prepared on proposals that affect Inventory rivers the lead agency should request, HCRS and the affected land managing agency to be cooperating agencies as soon as the Notice of Intent to prepare an EIS has been published.

If HCRS does not respond to your request for assistance within 30 days, you may proceed with completing preparation and circulation of the environmental assessment or EIS as planned. Even where HCRS has been unable to comment on the environmental assessment or Draft EIS, you are still obligated by the President's directive to "...take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory..."

4. Incorporate avoidance/mitigation measures into the proposed action to maximum extent feasible within the agency's authority.

Any environmental documents prepared on the proposed action should identify the impacts on natural, cultural and recreational values, address the comments submitted by HCRS, and state the avoidance/mitigation measures adopted. Any disagreements will be resolved through existing procedures. For projects requiring environmental impact statements, the record of decision must adopt appropriate avoidance/ mitigation measures and a monitoring and enforcement program as required by the CEQ regulations. (40 CFR Sec. 1505.2(c)).

A Note on the Meaning of "Federal Actions"

The above procedures are meant to apply to all federal actions that could adversely affect a river in the Nationwide Inventory (see Section 1508.18 of CEQ's NEPA Regulations (40 CFR 1508.18) for the meaning of "major federal actions"). For actions which are known in advance to require an environmental assessment or environmental impact statement these procedures would be followed in the normal course of NEPA compliance. If a federal action would not normally require an environmental assessment or an environmental impact statement, but could adversely affect a river in the Nationwide Inventory, the action should either (1) not be "categorically excluded" under agency implementing procedures, or (2) be considered an extraordinary circumstance" in which a normally excluded action must be subjected to environmental analysis (see Section 1508.4 of NEPA Regulations).

The above procedures should be used for any proposals (including

the evaluation of alternative courses of action) for which the NEPA process is not yet completed.. The above procedures should therefore also be applied to a proposed modification or supplement to a previously authorized or implemented action.

For Further Information or Guidance

The HCRS regional office will usually provide the best source of information on rivers in the Nationwide Inventory and on specific ways that these rivers could be protected. For general assistance on policy and procedural matters, please contact the Chairman of the Interagency Wild and Scenic Rivers Study Group (202/343-4793), or contact the Council on Environmental Quality (202/395-4540).

APPENDIX 1. Guide for Identifying Potential Adverse Effects

The impact of a proposed action should be assessed in relation to the eligibility and classification criteria of the Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287, as amended.

In order to be eligible for inclusion in the National System, a river must:

1. Be "free-flowing," i.e., "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of national wild and scenic rivers system." (16 U.S.C. Sec. 1286)
2. Possess "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." (16 U.S.C. Sec. 1271)

Eligible river segments are classified according to the extent of evidence of man's activity 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, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America."
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."
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." (16 U.S.C. Sec. 1273(b))

Any action which could alter the river segment's ability to meet the above eligibility and classification criteria should be considered an adverse impact. Actions which diminish the free-flowing characteristics or outstandingly remarkable values of a river segment could prevent the segment from qualifying for inclusion in the national system. Actions which increase the degree of evidence of man's activity, i.e., level of development, could change the classification of the river segment.

The effect of all proposed developments within the river corridor should be assessed in terms of severity of effect and extent of area affected. Developments outside the corridor which would cause visual, noise, or air quality impacts on the river corridor should also be examined.

Only proposed new construction or proposed expansion of existing developments need be considered in assessing impacts. Repair or rehabilitation of existing structures would not have a negative impact except if the action would result in significant expansion of the facility or if the construction process itself would cause an irreversible impact on the environment.

Placement of navigation aids such as buoys and channel markers will not be considered as causing adverse effects.

The following are examples of types of developments which would generally require consultation with HCRS because of the potential for adverse effects on the values of a potential wild, scenic, or recreational river. This list is not exhaustive.

Small dock	Road
Small bull-head	Railroad
Clearing and snagging	Building (any type)
Drainage canal, culvert or outfall	Pipeline, transmission line
Irrigation canal	Bridge or ford
Levee or dike	Gas, oil or water well
Rip-rap, bank stabilization or erosion control structure	Sub-surface mine opening
Small reservoir	Quarry
Increase in commercial navigation	Power substation
Dredging or filling	Recreation area
Run-of-the-river dam or diversion structure.	Dump or junkyard
	Change in flow regime
	Clear-cut timber harvest
	Radio tower, windmill

The following are examples of types of development which appear most likely to cause serious adverse effects if they are constructed adjacent to or in close proximity to an Inventory river. Such development proposals will almost always require consultation with HCRS because their effects are likely to conflict with the values of a potential wild, scenic or recreational river. These effects could be severe enough to foreclose designation of the affected river segment. This list is not exhaustive.

Impoundment	Railroad yard
Channelization	Power plant
Instream or surface mining	Sewage treatment plant
Lock and dam	Housing development
Airport	Shopping center

Landfill
Factory
Gas or oil field
Major highway

Industrial park
Marina
Commercial dock

Wild and Scenic Rivers and National Trails

Memorandum From the President
August 2, 1979

Memorandum for the Heads of Departments and
Agencies

In my Environmental Message of August 2, 1979, I recognized the important natural, historic, and recreational values of our Nation's river corridors. It is important for the federal agencies to set an example of sound management for state, local, and private landowners by taking an aggressive role in protecting Wild and Scenic Rivers which flow through public lands.

In addition, I recognized that the 1968 National Trails System Act is designed to promote the development of recreational, scenic, and historic trails for persons of diverse interests and abilities--including the young, the handicapped, and the aged--and that the National Trails System is in its fledgling stage. The Act provides for designating trails on state, local and private lands, but only 130 trails have been established since enactment of the Act. In my Environmental Message I stresses the importance of expanding the National Trails System.

Therefore, I am directing that each of you take the following actions:

Each federal agency shall encourage states, localities and private land holders to designate trails on their lands and to participate with federal agencies and trail users in designing and creating an overall National Trails System which will provide more fully for the trail needs of America.

Each federal agency shall as part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory, prepared by the Heritage Conservation and Recreation Service in the Department of the Interior. Agencies shall, as part of their normal environmental review process, consult with the Heritage Conservation and Recreation Service prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory.

Each Federal agency with responsibility for administering public lands shall, as part of its ongoing land use planning and management activities and environmental review processes, make an assessment of whether the rivers identified in the Nationwide Inventory and which are on their lands are suitable for inclusion in the Wild and Scenic Rivers System. If an agency determines that a river would be suitable for inclusion in the System, the agency shall, to the extent of the agency's authority, promptly take such steps as are needed to protect and manage the river and the surrounding area in a fashion comparable to rivers already included in the Wild and Scenic Rivers System. In addition, the agency is encouraged, pursuant to the revised Guidelines, to work with the Agriculture and Interior Departments to prepare legislation to designate the river as part of the Wild and Scenic Rivers System if appropriate.

Please give these assignments your immediate attention.

JIMMY CARTER