

**MEMORANDUM**

Subject: Section 4(f) Involvements,  
Wildlife and Scenic River Corridors

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

To: Mr. W.H. White  
Regional Federal Highway Administrator  
Baltimore, Maryland

Date: June 6, 1978

Reply to  
Attn. of: HEV-11

Your April 27, 1978, memorandum requested our views on the application of Section 4(f) to proposed State wild and scenic river corridors in Pennsylvania. Since we have no details on the proposed State legislation, the discussion that follows is based upon the existing national Wild and Scenic Rivers Act. Similar reasoning would be applicable to any areas which are designated for similar purposes and uses under State law.

Public Law 90-542, the Wild and Scenic Rivers Act, requires that all streams (and their adjacent land areas) which are included in the National Wild and Scenic Rivers System are to be classified and designated in the following categories:

1. Wild river areas,
2. Scenic river areas, or
3. Recreational river areas.

The attributes and management objectives for each of these classifications are different and are predicated upon the intent to preserve the specific values inherent in each category.

Section 4(f) of the DOT Act (23 U.S.C. 138) applies to significant and publicly owned parks, recreation areas, wildlife and waterfowl refuges, and to all significant historic sites. Since wild and scenic rivers are not included in these categories, designation to the Wild and Scenic Rivers System does not, in itself, provide protection under Section 4(f). However, if a stream (and adjacent land areas) is added to the system and designated as a recreational river area, then the land within the designated boundaries must be considered to be a significant recreation area, and all publicly owned land therein would be protected under Section 4(f). Additionally, ownership need not be in fee simple to establish a public property interest. Long-term, irrevocable easements on private property for scenic, access, etc., purposes are sufficient to establish protection

under Section 4(f).

Classification of rivers in the wild river or scenic river area categories does not impose the applicability of Section 4(f) on the properties involved since the definition of these river areas in the National Wild and Scenic Rivers Act does not include or imply any of the Section 4(f) categories. However, within these areas, there may exist properties or land uses to which Section 4(f) will be applicable. For instance, a significant publicly owned recreation area within the boundaries of either of these categories will be subject to Section 4(f). In these cases, the application of Section 4(f) is due to the recreation area and not to the designation under the Wild and Scenic Rivers Act or to the classification as a wild or scenic river area.

We can offer no encouragement that the "land bank" concept described in your memorandum could preclude application of Section 4(f). We believe this approach would require amendment to the legislation because property which was actually designated and used for Section 4(f) purposes would be taken for highway right-of-way. Since the congressional intent is to preserve these properties, a "land bank" type of commitment would have little standing when compared to the weight of the legislation.

We believe the only course of action which could preclude the application of Section 4(f) would involve reservation of future highway right-of-way at the time the wild and scenic river area is designated. By showing the required highway right-of-way on the maps and legal documents supporting the designation, joint development of the property for transportation and Section 4(f) purposes can be established. Subsequently, any highway construction within the previously reserved right-of-way would not be subject to Section 4(f).

Please advise if you wish to discuss this subject in greater detail.

/ Original Signed by Russell E. Machol /  
for Micheal Lash