

Overview of the Wild and Scenic Rivers Act for Animas River Protection Work Group



Wild & Scenic River Process



Four steps:

1. Eligibility
2. Tentative Classification
3. Suitability
4. Designation

Wild & Scenic River Process

Animas River status:

(2007 draft land use plan)

- Eligible – 30.77 miles from Bakers Bridge to Silverton
- Suitable – 27.1 miles from Bakers bridge to 3.6 miles south of Silverton
- ORVs – recreation, scenery, cultural/historic



Wild & Scenic River Process: Terminology

What is an *Outstandingly Remarkable Value* (ORV)?

- Rare, uncommon, extraordinary
- A superior example of a widespread value
- Outstanding in a statewide, regional, or national context
- Stream-related
- Based on the expertise of professionals who are knowledgeable about that value

Wild and Scenic River Process: Terminology

What is *Classification*? It is the *level of development* in the stream corridor.

- A *Wild* river is free of impoundments, with shorelines or watersheds essentially primitive, and with unpolluted waters.
- A *Scenic* river may have some development, and may have road and railroad access points.
- A *Recreational* river may have more extensive development along its shoreline, including transportation routes, and may have undergone some impoundment or diversion.

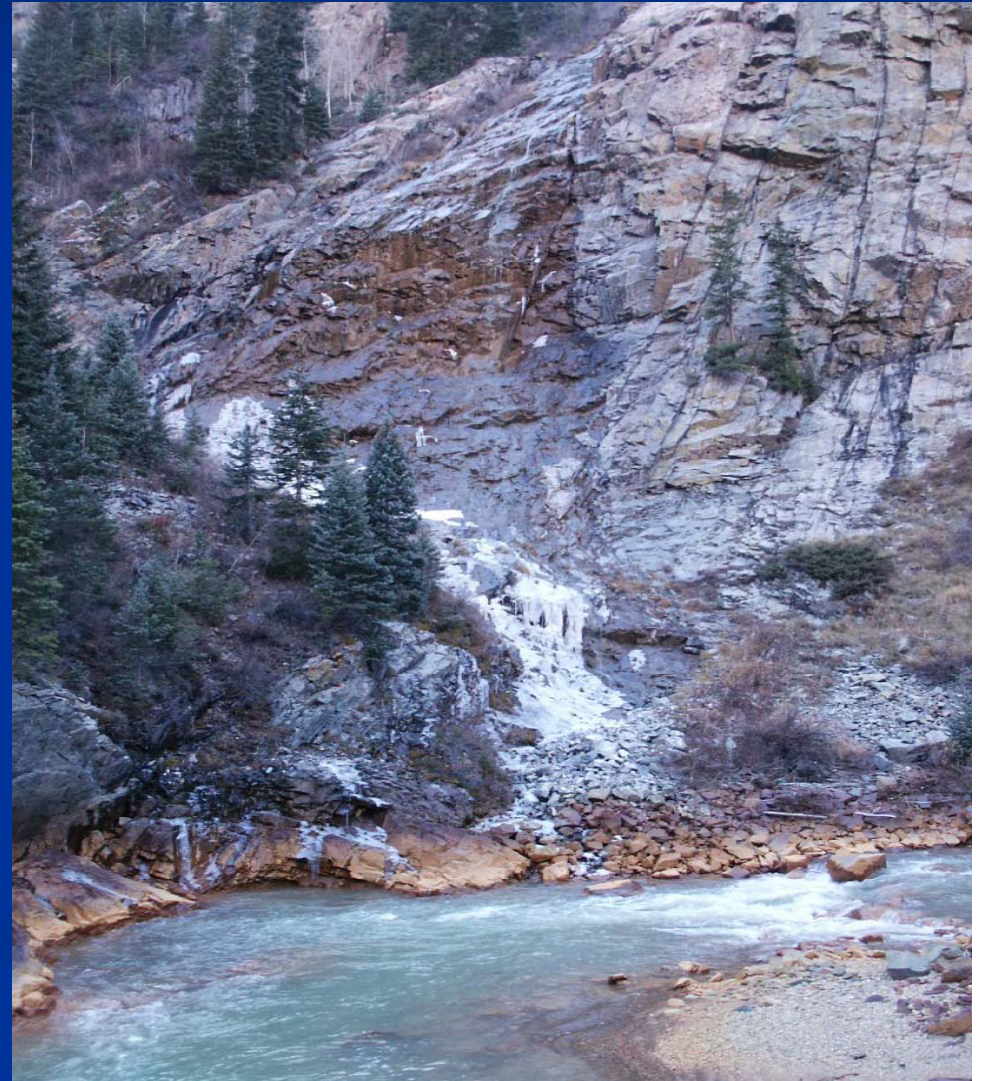
Wild & Scenic River Process: Terminology

What is a *Comprehensive Management Plan* (CMP)?

- Completed by lead federal land management agency
- Must include standard NEPA and public involvement processes
- Must be completed within three years after river designation by Congress into national system
- Requires extensive coordination with state and local governments and with stakeholders
- Tailored to and driven by local conditions and issues

Wild and Scenic Designation As A Management Tool

- What are the management protections created?
- Can the protection be designed to be flexible?
- What are the potential impacts on private landowners?
- What are the impacts on federal land users?



Four Key Principles to Remember:

- The W&SR Act directs all federal agencies to have the same goal – protection of designated rivers.
- If a river is designation by Congress, your most direct interaction with the W&SR Act will occur if you need land use authorization, permits, funding, or technical assistance from federal agencies.
- The identification of ORVs and the classification of the river segment can provide flexible management to address local needs and issues.
- The W&SR Act does not create proactive federal regulatory authority over private land.

1. The W&SR Act directs all federal agencies to protect designated rivers.

Agencies involved in river corridor management:

- EPA – water quality
- Army Corps of Engineers – wetland dredge/fill permits
- Federal Energy Regulatory Commission – hydroelectric and thermal facility permits
- Natural Resource Conservation Service - funding / tech assistance for agricultural projects
- Federal Highway Admin.– road funding/permitting



2. Your most direct interaction with the W&SR Act will occur if you need permits from federal agencies.

- Existing permits and uses on federal lands are allowed to continue.
- New permits or renewal of existing permits must protect W&SR values.
- Federal agencies required to protect free-flowing nature, water quality, and outstandingly remarkable values.



3. Many of the protective provisions of the W&SR Act come into play after designation by Congress.

For an eligible or suitable stream:

- BLM or USFS cannot take actions that harm W&SR values.
- Other agencies obligated to disclose potential impacts of projects they authorize.
- Other agencies can take actions that create impacts.

For a designated stream:

- Federal agencies may not take actions that harm free-flowing nature, water quality, or outstandingly remarkable values



4. *Classification* of the river segment provides the needed level of management flexibility.



- *Recreational* classification allows for highways, railroads, bridges, diversions, buildings, and even towns/cities!
- *Scenic* classification provides for natural appearing river corridor with modest development – agricultural operations, access roads, campgrounds, etc.
- The *comprehensive management plan* controls how these classifications are implemented on federal lands.

5. Comprehensive Management Plan Can Provide Possible Benefits

- More unified planning for the river corridor
- Anticipate inevitable changes in population and land use rather than react to inevitable changes
- Increased tourism, recreation, and economic development as values and opportunities become known to public
- Possible increase in property values as river values become more well known



6. The W&SR Act does not create proactive federal regulatory authority over private land.



- Land use control remains with state and local governments.
- The W&SR Act creates no binding control on local governments.
- The federal managing agency will coordinate on zoning /ordinances with local governments.
- The federal managing agency may offer technical assistance to local governments to deal with projects that may affect W&SR values.

6. The W&SR Act does not create proactive federal regulatory authority over private land.

Private landowners have control over :

- Selling or leasing land and improvements
- Leaving property to heirs
- Donating property or easements to third parties
- Subdividing land, pursuant to local government zoning
- Land management practices (agriculture, grazing, weed control, etc.) subject to local zoning and ordinances



7. Wild & Scenic River Designation: Access Implications



- Existing access routes over federal lands to private lands are allowed to continue
- New access routes (or improvements to existing routes) over federal lands can be authorized under recreational and scenic classifications, but must protect W&SR values

7. Wild & Scenic River Designation: Access Implications



- Designation does not create public access to private lands
- State law regarding public access continues to apply – e.g. river access provisions
- Landowners may deny access to private lands and may charge for hunting and fishing access

8. Wild and Scenic River Designation: Recreation Implications

- BLM will evaluate need for active recreation management: designated entry points, maps, signs, law enforcement, camping locations, motorized and non-motorized routes
- Hunting and fishing allowed on federal lands under state laws
- BLM has no authority to compensate private landowners for problems caused by public access, but can work to minimize problems



9. Wild & Scenic River Designation: Border Considerations



- Area evaluated during eligibility is $\frac{1}{4}$ mile on each side of stream
- In suitability analysis and preferred alternatives, BLM/USFS can adjust boundaries to consider private property and natural landforms, such as canyon rims
- If Congress designates a stream, it can make further boundary adjustments

10. Wild and Scenic River Designation: Mining Implications

- Under all classifications, existing mining claims on federal lands can be developed, subject to terms and conditions to minimize impacts on ORVs
- Under *recreational* and *scenic* classifications, new mining claims are allowed, subject to terms and conditions to minimize impacts on ORVs



Wild and Scenic River Designation: Water Rights



Private Water Rights in Eligible, Suitable or Designated Segments:

- Operation, maintenance and access to existing water facilities continues as historically implemented
- Changes to existing facilities and new facilities can be approved if consistent with outstandingly remarkable values, classification, and water quality parameters

Wild & Scenic River Designation: Conditional Water Rights



- May be developed, provided they are consistent with classification and protection of W&SR values
- New water storage projects are not allowed
- Significant new infrastructure not allowed in segments classified as wild

Wild & Scenic River Process: Water Exchanges



- Unless segment is designated and has a water right, BLM has no basis to object to exchanges that deplete flows in segment.
- Once designated, BLM could object to exchanges that deplete flows necessary to support outstandingly remarkable values.

Wild & Scenic River Process: Federal Water Rights



- Congressional designation has historically included a federal reserved water right.
- Agency determination of suitability does not include a water right.

Wild & Scenic River Process: Federal Water Rights

- If Congressional designation occurs, the managing agency quantifies the amount and timing of water necessary to support outstandingly remarkable values.
- Water right adjudicated in state court – BLM has been enjoined under McCarran Amendment in Colorado, and must use state water courts.
- The federal water right receives a priority equal to the date of designation – **junior to all existing rights!**

Any Questions?

