

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 (HCERS) in the Department of the Interior has been preparing a Nationwide Inventory of river segments that, after preliminary review, appear to qualify for inclusion in the System. It is therefore essential that federal agencies proceed carefully

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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 Intefagency Wild and Scenic Rivers Study Group (Attention: Jack Hauptman, HCRS, 440 G Street, N.W., Washington, D.C. 20243).


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:

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- (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).