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Exploring Amendments to the Wild and Scenic Rivers Act: An Opportunity to Support Tribal River Management

Concept Paper for Review and Comment (Last Updated October 2023)

Overview

The Wild and Scenic Rivers Act (“Act” or “WSRA”) is one of America’s bedrock public lands laws and has been considered the preeminent tool to protect free-flowing rivers in the United States for more than 50 years. However, the Act does not yet meaningfully provide the legal authority for tribes to participate in the designation, administration, and management of rivers in the National Wild and Scenic River System (NWSRS)—a system with a cooperative federalism model that has been extended to states since inception. This omission deprives tribes of a key river stewardship tool and also prevents the NWSRS from benefiting from tribal river management expertise. From a broader perspective, the exclusion of tribes from federal environmental and public lands laws, including the WSRA, is one of the many legacies of colonialism that tribes continue to face today. Remedying this long-standing problem is critical to advancing equitable management of lands and waters in years to come.

Indeed, tribes have been effectively managing rivers since time immemorial and continue to do so today. Across the United States, tribal nations bring both generations-long knowledge and cutting-edge science that informs river management. From the Northwest to the Great Lakes, tribal leadership in river and fisheries management, whether on-reservation or off, benefits tribal, state, federal, and private parties. Tribes are necessary and value-adding partners in the addition of new segments to the NWSRS, as well as Wild and Scenic River administration overall.

This draft paper outlines a case for discussing amendments to the WSRA that would equitably include tribes. The associated model legislation, which is in draft form in Appendix A, illustrates the shape such amendments could take. The authors intend these two products as a way to *begin discussions* about such amendments and recognize that the road to potentially amending the Act would appropriately be a long one, necessitating deep collaboration with tribes, federal agencies, and non-governmental organizations.

Three categories of potential amendments are discussed below. First, the WSRA could be amended to extend its existing cooperative federalism model to tribes, providing a pathway for tribes to designate and manage rivers in a similar way to how states are currently able to under the Act. Second, the WSRA could be amended to enhance tribal-federal mutuality in decision-making, including legally authorizing tribal co-management¹ of Wild and Scenic Rivers on public

¹ The proposed amendments create a spectrum of management changes focused on tribal-federal mutuality in decision-making that range from enhanced consultation to formal shared governance agreements, such as cooperative and co-management agreements. Co-management, as used in this paper, means a shared governance agreement where tribe(s) hold legal rights and responsibilities for resource management on



AMERICAN
RIVERS



GRAND CANYON
TRUST

lands. Third, amendments could direct funding and technical assistance to tribes as managers and co-managers of Wild and Scenic Rivers in both cases. Further potential amendments that would be complementary to these three broad categories are also discussed, including shielding culturally important and sacred sites from public disclosure, and ensuring that amendments would have no adverse effect on tribal water rights.

A suite of benefits would be offered by these potential amendments. Tribes would benefit from more equitable access to a powerful tool for protecting rivers. The NWSRS would benefit from expert tribal partners contributing to the System's management and administration and a greater total number of river miles available for protection. The federal government would have an additional opportunity to meet its trust responsibility to tribes. Finally, opportunities to extend the use of the WSRA to protect culturally important rivers—a currently underutilized component of the Act—would increase. The remainder of this paper discusses current omissions in the WSRA and opportunities to correct these omissions.

Background

Passed in 1968, the WSRA creates a framework to protect certain outstanding rivers in their free-flowing condition. The Act provides the highest form of protection for free-flowing rivers in the U.S. by prohibiting the construction of dams and other federally authorized projects on designated rivers that could negatively impact a river's free-flowing character, protecting a suite of outstandingly remarkable values unique to each designated river, and requiring that a river's water quality be maintained or enhanced. As of March 2022, the NWSRS system protects 13,413 miles of 226 rivers in 41 states and the Commonwealth of Puerto Rico, or less than one half of one percent of U.S. rivers. At the same time, over 90,000 dams have modified more than 600,000 miles of rivers across the nation.

While the WSRA provides an excellent avenue for river protection for rivers on federal, state, and even private lands, its benefits were not directly extended to tribes. The Act, as currently written, does not include an avenue for tribes to designate rivers on tribal lands nor does it provide an explicit pathway, beyond that offered by standard tribal-federal consultation or informal conference, for tribes to formally engage in the co-management of rivers on public lands. Relatedly, the Act does not offer direct pathways for tribes to receive funding or technical assistance in their role as river managers. Furthermore, there is a need to better acknowledge, designate, and manage Wild and Scenic Rivers for the protection of cultural resources, a skill which tribes have accomplished better than any other entity since time immemorial.

Table 1 shows opportunities in the Act available to states, and even private parties, compared to the opportunities in the Act available to tribes.

Table 1:

	Tribes	States	Private Parties
May Petition Interior for Designation?	N	Y 16 U.S.C. § 1273(a)(ii)	N

federal public lands.

Study Participation Required?	N	Y 16 U.S.C. § 1276(c)	N
Cooperative Agreements Explicitly Authorized?	N*	Y 16 U.S.C. § 1281(e)	Y 16 U.S.C. § 1282(b)(1)
May Receive Funding and Technical Assistance?	N	Y 16 U.S.C. § 1282	Y 16 U.S.C. § 1282(b)(1)
Protection from Land Acquisition?	Y** 16 U.S.C. § 1277(a)(1)	Y 16 U.S.C. § 1277(a)(1),(b),(c)	Y 16 U.S.C. § 1277(b),(c),(g)

**Note that section 10(e) of the WSRA [16 U.S.C. § 1281(e)] has been used to authorize cooperative agreements with tribes, although tribes are not explicitly mentioned in the statute. This has led to an underutilization of cooperative agreements with tribes.*

***Under the legacy language of the WSRA, tribes are only protected from land acquisition if they are managing rivers in ways that do not conflict with the Act. Our amendments suggest striking this outdated and inappropriate legacy language.*

The remainder of this paper describes opportunities to amend the WSRA to equitably include tribes, correcting the omissions and exclusions currently present.

Opportunity #1: Create Legal Authority for Tribes to Designate and Manage Wild and Scenic Rivers

One of the most obvious omissions in the original Act is the failure to provide tribes with a way to use the Act to protect important rivers through tribal designation and management on tribal lands. In Section 2 of the Act, states are given the ability to petition the Secretary of Interior to include state-protected rivers on state land in the NWSRS, thus conferring federal protections on those rivers while retaining management by the state. This option is not currently open to tribes. Furthermore, under the Act as currently written, should tribes choose the only avenue for designating Wild and Scenic Rivers on tribal lands that is currently open to them—an act of Congress, signed by the President—management of the river would default to a federal land management agency rather than the tribe. Amending the Act to create a pathway for tribal designation and management would provide tribes with the option to use the WSRA to protect rivers on tribal land threatened by federally licensed development proposals such as those authorized by the Federal Energy Regulatory Commission (FERC), while maintaining tribal authority over river management.

Amending the Act to correct these omissions would offer the opportunity to extend the WSRA's protections to rivers on tribal lands. Many might assume that tribes are already able to protect and manage their rivers in ways that safeguard them from harmful federally authorized projects, but this is not always the case. Tribes still do not have ultimate say over whether a hydroelectric dam or other project authorized under the Federal Power Act (FPA) can receive a permit on their reservation. Under this law, FERC has authority to license private hydroelectric dams on federal reservations, including Indian reservations. Section 4(e) of the FPA allows the Secretary of the Interior to impose conditions on hydropower licenses that are necessary for the "adequate protection and utilization" of the federal reservation (including Indian reservations) upon which a hydropower project is located. While these conditions can provide some protection for tribes and

potentially decrease the impacts of a licensed hydropower project, if FERC decides to issue a license, the FPA does not provide a legal pathway for a tribe to veto a hydroelectric dam or other FPA project from being constructed on their reservation.

Unfortunately, tribes have been adversely affected by hydroelectric dams—perhaps more than any other segment of the U.S. population. Dams have caused the inundation of tribes' reservation lands, traditional fishing and hunting grounds, and irreplaceable cultural resources. Dams have also blocked hundreds of miles of fish spawning and rearing habitat, bringing many species to the brink of extinction. Yet the WSRA, which is one of the key tools available to protect and preserve rivers' free-flowing characteristics, remains largely unavailable to tribal nations. Given the vast harm that hydroelectric dams have wrought against tribes and tribal resources, tribes need and deserve access to as many tools as possible to protect rivers and resources that are threatened by hydroelectric dams.

Amendments that give tribes legal authority to designate and manage Wild and Scenic Rivers on tribal lands would provide tribes with an optional tool to protect their rivers from unwanted federal projects such as dams, as well as the technical and financial resources to manage those designated rivers. Under this type of framework, tribes, at their discretion, could add protections under the WSRA to their rivers. This would both extend the WSRA's protections to tribal rivers and trigger federal funding and technical assistance to support tribal river managers. This latter point is discussed in Opportunity #3 below. Amendments also offer the opportunity to add language that prevents the designation of a river on tribal land as Wild and Scenic without the tribe's consent; while this situation has not occurred to the authors' knowledge, it has been proposed and is currently possible under the original language of the Act.

In the model legislation, amendments that create a pathway for tribal designation and management can be found in WSRA Section 2. There, language was added to mirror the state designation and management powers currently present in the Act. The amendments would allow rivers on tribal lands that meet the criteria of the Act to be included in the NWSRS through the following process: (a) the tribe passes a resolution authorizing a river's inclusion therein and then submits an application to the Secretary of Interior for the river to be added to the NWSRS; and (b) the Secretary of the Interior finds that the selected river and the way that it is managed meets the criteria established in the Act by preserving the river's free-flowing character, water quality, and at least one outstanding value. Additionally, the model legislation defines tribal natural resource departments as "managing agencies" under the WSRA; this would ensure that tribes, and not a federal agency, would manage any Wild and Scenic Rivers flowing through tribal lands. The model legislation also includes provisions in Section 14 to protect tribes from disclosure of sensitive, sacred, or cultural sites during the management of Wild and Scenic Rivers.

Finally, the amendments in the model legislation offer the opportunity to strike language in the WSRA that allows the federal government to acquire tribal lands if a tribe is not following a plan for management and protection of a designated river. Although, to our knowledge, this provision of the Act has never been used to acquire tribal land, the Act should be amended to respect tribal sovereignty by removing this outdated and inappropriate language. The model legislation both strikes this legacy language in Section 6 and includes a sentence in Section 2 barring Congress from designating a Wild and Scenic River on tribal land unless the tribe approves the designation.

Potential Remedies:

1. Recognize legal authority of tribes to designate and manage Wild and Scenic Rivers on tribal lands.
2. Ensure that tribes have the necessary resources to manage and protect their tribally designated rivers.
3. Prevent the federal government from acquiring tribal lands if a management plan is not being followed.
4. Protect tribes from disclosure of sensitive, sacred, or cultural sites during the management of Wild and Scenic Rivers.
5. Prevent the designation of a Wild and Scenic River segment on tribal lands in the absence of tribal approval.

Proposed Amendments in the Model Legislation:

1. Amend Section 2 to add Section 2(a)(iii) tribal designation pathway that will allow tribally managed rivers that meet the criteria of the Act to be designated and included in the NWSRS. This would be analogous to existing Section 2(a)(ii) which gives that same power to states.
2. Amend Section 2 to add a provision ensuring that Wild and Scenic Rivers shall not be declared on tribal lands absent tribal resolution approving the designation.
3. Amend Section 6(a)(1) to remove the language that allows the federal government to condemn tribal land without tribal consent.
4. Amend Section 14 to add Section 14B to protect tribes from disclosure of sensitive, sacred, or cultural sites to the public during the designation or management of tribal Wild and Scenic Rivers.
5. Amend Section 16 to add a definition for tribes that includes them as “managing agencies” for purposes of the WSRA.

Opportunity #2: Authorize and Increase the Range of Options for Tribal-Federal Shared Governance of Wild and Scenic Rivers on Public Lands

A second major omission in the Act is the lack of opportunities for tribal-federal shared governance of Wild and Scenic Rivers on public lands. The WSRA currently allows federal agencies and states to enter into cooperative agreements that allow the states to participate in the administration of Wild and Scenic River segments on federal public lands. However, this opportunity is not explicitly available to tribes under the Act, nor does the Act authorize any type of more formal tribal-federal co-management.

There are myriad problems associated with these omissions, both for tribes and the NWSRS. First, it is key to recognize the context of federal public lands and rivers, which were established through the forced removal of Indigenous peoples from their homelands and the acquisition of that land by the federal government. Tribes in the United States remain deeply connected to federally managed lands and rivers by an array of legal, cultural, and historical ties that include treaty rights; tribal reserved fishing, hunting, and water rights; ancestral and cultural traditions; and the ongoing use of lands and waters by tribal citizens. For these reasons and others, tribes stand to bring deep expertise, specialized knowledge, and experienced staff to the management of Wild and Scenic Rivers flowing through federally managed public lands. Tribes’ unique knowledge

sets, including but not limited to Native Knowledge², would provide better outcomes to the management of Wild and Scenic Rivers than federal management alone can provide. Additionally, many river segments already designated under the WSRA, or with the potential to be designated, flow into or directly adjacent to tribal reservations. Enhancing tribal-federal cooperation streamlines management of rivers across jurisdictional borders and expands the ability to protect rivers at a watershed scale.

Amending the WSRA offers the opportunity to create a larger and more equitable role for tribes in the management of Wild and Scenic Rivers flowing through federally managed public lands with historical, cultural, or other importance to tribes. Most importantly, amendments could statutorily authorize tribes and the federal government to enter into co-management and other shared governance agreements regarding the management of Wild and Scenic Rivers flowing through federally managed public lands. Amendments could also enhance tribal-federal consultation and dispute resolution which are responsibilities that have too often taken the form of perfunctory processes.

In the model legislation, amendments focused on tribal-federal shared governance can be found in Section 10. First, regarding consultation, the model legislation proposes expanding the Secretary of Interior and Secretary of Agriculture's consultation obligations to include jointly developing parameters for meaningful continued consultation with relevant tribes around the potential designation, management, and administration of Wild and Scenic River segments. Second, the model legislation includes a mechanism that would allow federal agencies and tribes to enter cooperative and/or other shared governance agreements that enable tribes to participate in the management of Wild and Scenic Rivers on public lands. Third, regarding both consultation and shared governance agreements, the model legislation includes dispute resolution mechanisms if the Secretary decides not to carry forward a tribal recommendation or request related to river management. Finally, the model legislation includes provisions to protect tribes from disclosure of sensitive, sacred, or cultural sites during the management of Wild and Scenic Rivers on public lands.

In sum, amendments in this category offer the opportunity to equitably integrate tribes into the management of federally managed public lands, while also providing flexibility for both tribes and federal agencies to tailor their level of cooperation to the needs of each tribe, the federal agency, and the river itself.

Potential Remedies:

1. Require robust and enhanced tribal consultation regarding the management of tribally-significant rivers running through federal public lands.

² For the purpose of this draft paper and model legislation, Native Knowledge is defined as found in 36 C.F.R. § 219.19: A way of knowing or understanding the world, including traditional ecological and social knowledge of the environment derived from multiple generations of Indigenous peoples' interactions, observations, and experiences with their ecological systems. Native knowledge is place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

2. Extend the WSRA's existing cooperative federalism model to tribes with regard to the management of rivers running through public lands.
3. Create a statutory framework for response timelines and dispute resolution mechanisms to incorporate into shared governance agreements.

Proposed Amendments in the Model Legislation:

1. Amend Section 10 to require consultation prior to the initiation of any study or analysis under Section 4 or Section 5, or upon component designation under Section 2, to determine if the affected land has sacred, cultural, or other significance to nearby tribes.
2. Amend Section 10 to require the Secretary to develop parameters for early and continued meaningful engagement with tribes in the development and implementation of a management plan for any designated segment and for the incorporation of Native Knowledge into that plan.
3. Amend Section 10 to enable federal agencies to enter into cooperative agreements and co-management agreements with tribes.
4. Amend Section 10 to include dispute resolution mechanisms if the Secretary decides not to incorporate a recommendation brought forth by a tribe or denies a tribe's request to enter into a shared governance agreement.
5. Amend Section 10 to include a tribal consultation recording and reporting requirement for federal agencies.
6. Amend Section 14 to add Section 14B to protect tribes from the public disclosure of cultural sites, Native Knowledge, and any other culturally sensitive information submitted to federal agencies as part of consultation, cooperative agreements, or co-management.

Opportunity #3: Support Tribal Wild and Scenic River Management through the Authorization of Funding and Technical Assistance

Many, if not most, tribes face both immense responsibilities and capacity constraints for natural resource management. Directing funding to tribes for river management is key to actualizing the promise of the opportunities described above. Amendments to the WSRA offer the opportunity to authorize funding and technical assistance for tribes who manage or co-manage Wild and Scenic Rivers. Importantly, amendments could include an authorization for direct funding support to tribal governments engaged in the management of Wild and Scenic Rivers. The amendments could also include mechanisms to provide tribes with technical assistance from federal agencies such as sharing tools and resources, testing water samples, GIS assistance, and other needed support.

Several factors justify direct authorization of funding to tribes for river management under the WSRA. Pursuant to the trust relationship, the United States has a responsibility to provide tribes with a "permanent homeland" and hold tribal lands "in trust" for tribes. As such, the federal government has an obligation to protect tribal lands and rivers for the benefit of tribes. Meeting this obligation requires adequate financial support. In recognition of the unique trust relationship between tribal governments and the United States government, the proposed amendments include authorizations focused on funding tribal management of rivers.

While the trust relationship is unique to tribes, authorization for direct funding is not unprecedented within the WSRA. Partnership Rivers, which are jointly managed by the National Park Service (NPS) and coalitions of state and local governments, NGOs, and private

landowners, are funded through line items in the NPS's annual budget justification³. A similar annual appropriation could be sought for tribal management and co-management of Wild and Scenic Rivers. Partnership Rivers can serve as a model for the funding of rivers with tribal involvement, as discussed in Opportunities #1 and #2.

Regarding technical assistance, the amendments again mirror the original WSRA, which enables federal agencies to partner with state and local governments, as well as private entities, to provide technical assistance. Including tribes in this framework would address capacity constraints and better enable the exchange of knowledge between tribal and federal river management specialists, thus providing more robust protections for rivers. Additionally, dedicating funding for technical assistance provides options for tribes who do not have the capacity or desire to take on the full responsibility of serving as the primary river management agency, but still wish to participate in some components of the administration of rivers in the NWSRS.

In the model legislation, amendments related to funding are found in Section 11. This section authorizes federal funding for the administration and management of rivers on tribal lands declared under Section 2(a)(iii). It also authorizes funding to tribes for the tribal-federal shared governance of rivers on public lands, as structured under Section 10(f)(iii). Section 11 also includes a clear directive from Congress that agencies shall consider entering into contracts with tribes under the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638⁴ (638 contracts), when requested and should, therefore, dedicate funding specifically for these contracts. The authors recognize that federal agencies will likely need to develop regulations and internal policies that ensure new funding sources are targeted in ways that fulfill the dual goals of including tribes' deep river management expertise and increasing opportunities for river conservation.

In sum, amendments that include funding authorizations would recognize the special trust relationship between the federal government and federally recognized tribes. Providing funding and technical assistance to tribes is essential for designation, management, and co-management of Wild and Scenic Rivers to truly be an option for tribes.

Potential Remedies:

1. Provide funding and technical assistance to tribes to manage and/or co-manage Wild and Scenic Rivers, supporting the intent and purpose of the Act to protect the outstandingly remarkable values, water quality, and free-flowing character of culturally and ecologically important rivers.
2. Create funding sources which promote tribal self-governance and self-determination.

Proposed Amendments in the Model Legislation:

1. Amend Section 11 to provide broad funding authorizations for tribal management of designated rivers.

³ Congressional Research Service, *Wild and Scenic Rivers: Designation Management and Funding* (August 8, 2019).

⁴ The Act is formally known as the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638, § 2, 88 Stat. 2203, codified at 25 U.S.C. 450 et seq. and is often informally referred to by its public law number using the term "638 contracts" or "638 contracting."

2. Amend Section 11 to provide a clear directive to agencies to consider 638 contracts with tribes when requested.
3. Amend Section 11 to authorize funding and technical assistance to tribes for river management. This would be analogous to existing Section 11(b)(1), which extends the same privileges to state and local governments.

Appendix A: Model Legislation Proposing Amendments to the Wild and Scenic Rivers Act

The following pages (pp. 10-29) contain the model legislation discussed in the draft Concept Paper. The model legislation is formatted as follows: where the original text of the WSRA remains unchanged, that language is shown in black text. Red text indicates new material to be added to the existing Act. The one suggested deletion from the existing Act is found in Section 6 and is indicated with both red text and dashes through words.

Wild & Scenic Rivers Act

An Act⁵

To provide for a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

SECTION 1.

(a) This Act may be cited as the “Wild and Scenic Rivers Act.”

(b) It is hereby declared to be the policy of the United States that certain selected rivers of 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 Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

SECTION 2.

(a) The national wild and scenic rivers system shall comprise rivers –

(i) that are authorized for inclusion therein by Act of Congress, or

(ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned, that are found by the Secretary

⁵ The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) as set forth herein consists of Public Law 90-542 (October 2, 1968) and amendments thereto.

of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line.

Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation [Fund] Act of 1965 or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(iii): that are authorized for inclusion therein by or pursuant to a resolution of the governing body of the Tribe or Tribes through whose tribal lands they flow, that are to be permanently administered by the Tribe or Tribes, and that are found by the Secretary of Interior, upon application of a Tribe or Tribes concerned, to meet the criteria established in this Act.

Upon receipt of an application under clause (iii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (iii) shall be administered by the Tribe or Tribes through whose tribal lands said river flows with funding provided pursuant to Section 11(c). Nothing in this subsection shall be construed to provide for the transfer to, or administration by a Tribe of any federally owned lands which are within the boundaries of any river included within the system under clause (iii). The Secretary shall make a finding of the application's adequacy within 180 days of receipt. If the Secretary finds the application does not meet the criteria of the Act, the Secretary shall provide the Tribe(s) with a written explanation of the reasoning, an opportunity for in-person consultation, and adequate opportunity to amend the application for reconsideration. A river flowing through tribal land shall only be added to the national wild and scenic rivers system, whether through clause (i) or (iii) of this subsection, if a resolution of the Tribe or Tribes through whose tribal lands the river flows approves such designation.

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in Section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered 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.

SECTION 3.

(a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

[List of designated rivers omitted. Please see following list.]

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of designation of such component under subsection (a) (except where a different date is provided in subsection (a)), establish detailed boundaries therefore (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments. Notice of the availability of the boundaries and classification, and of subsequent boundary amendments shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

(c) Maps of all boundaries and descriptions of the classifications of designated

river segments, and subsequent amendments to such boundaries, shall be available for public inspection in the offices of the administering agency in the District of Columbia and in locations convenient to the designated river.

(d) (1) For rivers designated on or after January 1, 1986, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this Act. The plan shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands. The plan shall be prepared, after consultation with State and local governments and the interested public within 3 full fiscal years after the date of designation. Notice of the completion and availability of such plans shall be published in the Federal Register.

(2) For rivers designated before January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity within the requirements of this subsection within 10 years through regular agency planning processes.

SECTION 4.

(a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or unsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this Act. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in subparagraphs 5(a) (1) through (27) of this Act no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers –

(i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and

(ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 et seq.). Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status

of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system. Each such report shall be printed as a Senate or House document.

(b) Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

(c) Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of the State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register.

(d) The boundaries of any river proposed in section 5(a) of this Act for potential addition to the National Wild and Scenic Rivers System shall generally comprise that area measured within one-quarter mile from the ordinary high water mark on each side of the river. In the case of any designated river, prior to publication of boundaries pursuant to section 3(b) of this Act, the boundaries also shall comprise the same area. This subsection shall not be construed to limit the possible scope of the study report to address areas which may lie more than one-quarter mile from the ordinary high water mark on each side of the river.

SECTION 5.

(a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

[List of study rivers and study periods is omitted. If you need the list, please contact a Council member.]

(c) The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State, and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d) (1) In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.

(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or action on this segment and its immediate environment.

SECTION 6.

(a) (1) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 3 of this Act, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. **Any non-tribal land acquired for any**

component of the national wild and scenic rivers system that is located within the limits of an Indian reservation must be authorized by the Indian tribe through whose tribal lands the component flows. The acquired land shall be held in trust by the federal government for said tribe, and shall be managed by said tribe. Lands owned by a State may be acquired only by donation or by exchange in accordance with the subsection (d) of this section. Lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof ~~as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this Act.~~ Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this Act.

(2) When a tract of land lies partially within and partially outside the boundaries of a component of the National Wild and Scenic Rivers System, the appropriate Secretary may, with the consent of the landowners for the portion outside the boundaries, acquire the entire tract. The land or interest therein so acquired outside the boundaries shall not be counted against the average one-hundred-acre-per-mile fee title limitation of subsection (a)(1). The lands or interests therein outside such boundaries, shall be disposed of, consistent with existing authorities of law, by sale, lease, or exchange.

(b) If 50 per centum or more of the entire acreage outside the ordinary high water mark on both sides of the river within a federally administered wild, scenic or recreational river area is owned in fee title by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefore, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate Secretary jurisdiction over such lands for administration in accordance with the provisions of this Act. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this Act within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g) (1) Any owner or owners (hereinafter in this subsection referred to as “owner”) of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years, or in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such a date retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this Act. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term “improved property,” as used in this Act, means a detached, one-family dwelling (hereinafter referred to as “dwelling”), the construction of which was begun

before January 1, 1967, (except where a different date is specifically provided by law with respect to any particular river), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

SECTION 7.

(a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would effect the component and the values to be protected by it under this Act. Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by

loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval –

(i) during the ten-year period following enactment of this Act or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided*, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such interim period from the date a report is due and the time a report is actually submitted to the Congress; and

(iii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress for, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior under section 2(a)(ii) of this Act, is necessary for the secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

(iv) during such additional period thereafter in the case of any river recommended to the Secretary of the Interior under section 2(a)(iii) of this Act, is necessary for the secretary's consideration thereof, which additional period, however, shall not exceed three years.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of designation of a river for study as provided in section 5 of this Act. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention

so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(c) The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5, subsection (a), of this Act. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resume

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-5 et seq.).

SECTION 8.

(a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is designated in section 3 of this Act or which is hereafter designated for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States. This subsection shall not be construed to limit the authorities granted in section 6(d) or section 14A of this Act.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 5, subsection (a), of this Act are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 7, subsection (b), of this Act. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a) are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the United States for the periods specified in section 7(b) of this Act.

SECTION 9.

(a) Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that –

- (i) all prospecting, mining operations, and other activities on mining claims which, in the case of a component of the system designated in section 3 of this Act, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this Act or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this Act;
- (ii) subject to valid existing rights, the perfection of, or issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior, or in the case of national forest lands, by the Secretary of Agriculture; and
- (iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this Act or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the components in question.

- (b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 5, subsection (a) of this Act are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 7, subsection (b) of this Act. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a), are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 7(b) of this Act.

SECTION 10.

- (i) Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.
- (ii) Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Act of September 3, 1964 (78 Stat. 890; 16 U.S.C., ch. 23), shall be subject to the provisions of both the Wilderness Act and this Act with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of these Acts the more restrictive provisions shall apply.
- (iii) Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this Act and the Acts under which the national park system or national wildlife refuge system, as the case may be, is administered, and in case of conflict between the provisions of these Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this Act.
- (iv) The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this Act.
- (v) The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the

system which include or adjoin State-or county-owned lands.

(f) The head of the Federal agency responsible for the administration of an eligible, suitable or designated component of the National Wild and Scenic Rivers System—

(i) shall, upon designation under Section 2, or at the initiation of any Section 4 or Section 5 study, consult with Indian Tribes to determine whether the component includes federal public lands where Tribes have reserved rights or that have sacred, cultural, or other significance to Tribes.

(ii) shall consult with Indian Tribes as early as possible in the process for studying, designating, planning, and administering components of the National Wild and Scenic Rivers System that include or adjoin tribal land, or federal public land identified by the Indian Tribe during the consultation process required by 10(f)(i) of this Act or by any other process as having sacred, cultural, or other significance. Consultation shall include a process of jointly developing parameters for continued meaningful engagement with the Tribes(s) at all stages of component study, designation, management plan development, and the subsequent administration of the component. Consultation only occurs when the agency and Tribal officials mutually agree that consultation is taking place. When authorized by the Tribe, the Tribes and Secretary shall incorporate Native knowledge as defined in 36 CFR § 219.19 to the maximum extent practicable in designation language, comprehensive river management plan development, and the administration of the component.

(iii) may, as a result of the consultation process required in 10(f)(ii), enter into a written shared governance agreement, which may include but is not limited to co-management, with a Tribal Government to provide for Tribal participation in any part of the administration of an eligible, suitable, or designated component, including any part of the development, administration, and implementation of a management plan. Such agreements are recognized to be in accordance with the purposes of this act, and with the agency's treaty and trust obligations to Tribes. If the Secretary denies a Tribe(s) request to enter into a shared governance agreement, the Secretary shall provide the Tribe(s) with a written explanation of the reasoning, an opportunity for in-person consultation, and adequate opportunity to respond and request reconsideration.

(iv) shall, if the Secretary decides not to incorporate specific recommendations for the management plan submitted to them in writing by a Tribe(s), provide the Tribe(s) with a written explanation of their reasoning for disregarding such recommendations within 30 days of the Secretary's decision, and shall provide an opportunity for further consultation with the Tribe(s) prior to finalizing the management plan.

(v) shall, unless otherwise provided in a shared governance agreement pursuant to 10(f)(iii), keep an official tribal consultation record that allows accurate tracking of the process so that agencies and consulting parties can correct any errors or omissions. The

agency shall document all efforts to initiate consultation as well as documenting the process once it has begun. Such documentation, including, but not limited to, correspondence, telephone logs, and emails, shall be included in the agency's official consultation record. The agency shall also keep notes so that the consultation record documents the content of consultation meetings, site visits, and phone calls in addition to information about dates and who participated. If the agency asks an Indian Tribe for specific information or documentation regarding the location, nature, and condition of individual sites, to conduct a survey, or in any way fulfill the duties of the agency in a role similar to that of a consultant or contractor, then the agency must pay for such services, if so requested by the Indian Tribe, as it would for any private consultant or contractor. Each agency shall on a biennial basis submit to Congress a report on its consultation activities.

SECTION 11.

(a) The Secretary of the Interior shall encourage and assist the states to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), needs and opportunities for establishing State and local wild, scenic and recreational river areas.

(b) (1) The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources. Such assistance, advice and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers. Any agreement under this subsection may include provisions for limited financial or other assistance to encourage participation in the acquisition, protection, and management of river resources.

(2) Wherever appropriate in furtherance of this Act, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to utilize the following:

(A) For activities on federally owned land, the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g-j) and the Volunteers in the Forest Act of 1972 (16 U.S.C. 558a-558d).

(B) For activities on all other lands, section 6 of the Land and Water Conservation Fund Act of 1965 (relating to the development of statewide comprehensive outdoor recreation plans).

(3) For purposes of this subsection, the appropriate Secretary or the head of any Federal agency may utilize and make available Federal facilities, equipment, tools and

technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal agency deems necessary or desirable.

(4) No permit or other authorization provided for under provision of any other Federal law shall be conditioned on the existence of any agreement provided for in this section.

(c) FUNDING AND TECHNICAL ASSISTANCE

(i) The federal Indian trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian Tribes. Therefore:

(ii) Authorization – It is hereby authorized to be appropriated and conveyed to the Tribes, the sums required for the administration and management of designated rivers on tribal lands by Tribes, and the sums required for Tribes to jointly administer and manage certain designated rivers on public lands with the Secretary of Interior and Secretary of Agriculture. Such sums shall be conveyed to the appropriate Tribes annually after appropriation.

(iii) Upon request by a Tribe, the appropriate Secretary shall enter into a contract pursuant to Pub. L. 93-638 for the administration of rivers designated under 2(a)(iii) or for rivers managed under a shared governance agreement pursuant to 10(f)(iii).

(iv) The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with Tribes or their political subdivisions to plan, protect, and manage river resources. Such assistance, advice and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers. Any agreement under this subsection may include provisions for financial, technical, or other assistance to encourage participation in the acquisition, protection, and management of river resources.

SECTION 12.

(a) The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following the date of enactment of this sentence, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary

or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii). Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

(b) Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.

(c) The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.

SECTION 13.

(a) 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, those 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.

(b) The jurisdiction of the States and the United States over waters of any stream included in the national wild, scenic or recreational river area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes. Any water reserved for any component of the national wild and scenic rivers system that is located within the limits of an Indian reservation must be authorized by the Indian tribe through whose tribal lands the component flows. The reserved water right shall be held in trust by the federal government for said tribe, and shall be managed by said tribe.

(d) The jurisdiction of the States over waters of any stream included in a national wild,

scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.

(e) Nothing contained in this Act shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act.

(h) Nothing in this Act shall be construed in any way to quantify, change the priority date, or otherwise adversely affect the water rights, claims, or entitlements to water, including both Federal reserved water rights or any other Indian water claims, of any Indian Tribe.

(i) Nothing in this Act shall affect the jurisdiction or existing rights of any Tribe, including, but not limited to, jurisdiction over waters, rights of access, and the regulation of hunting and fishing on lands and waters located in a national wild, scenic or recreational river area.

SECTION 14.

The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26, United States Code, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift.

SECTION 14A.

(a) Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers system and which has been acquired by the Secretary under this Act. Such lease shall be subject to such restrictive covenants as may be

necessary to carry out the purposes of this Act.

(b) Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States.

SECTION 14B.

(a) In general.—The head of the Federal agency responsible for the administration of a component of the National Wild and Scenic Rivers System shall not disclose to the public information regarding the nature and location of cultural sites, Native Knowledge, or other culturally sensitive information provided to the agency where the agency head determines, in consultation with the Tribe, that the disclosure may—

- (1)** risk harm to cultural resources;
- (2)** cause a significant invasion of privacy;
- (3)** impede the use of a site for traditional cultural activities by the Tribe or members of the Tribe; or
- (4)** is opposed by the Tribe.

(b) Effect.—Information withheld from the public under subsection (a) shall not be considered to be a Federal record for purposes of section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”).

SECTION 15.

Notwithstanding any other provision to the contrary in sections 3 and 9 of this Act, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of section 3(a) of this Act –

- (1)** the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and
- (2)** the withdrawal made by paragraph (iii) of section 9(a) shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act.

SECTION 16.

As used in this Act, the term –

(a) “River” means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) “Free-flowing,” as applied to any river or section of a river, means 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 the national wild and scenic rivers system.

(c) “Scenic easement” means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner’s consent, any regular use exercised prior to the acquisition of the easement. For any designated wild and scenic river, the appropriate Secretary shall treat the acquisition of fee title with the reservation of regular existing uses to the owner as a scenic easement for purposes of this Act. Such an acquisition shall not constitute fee title ownership for purposes of section 6(b).

(d) “Tribe or Tribes” means any of the Tribal Entities recognized by and eligible to receive services from the United States Bureau of Indian Affairs, pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792).

(e) “Tribal land” means all land within the limits of an Indian reservation.

SECTION 17.

There are hereby authorized to be appropriated, including such sums as have heretofore been appropriated, the following amounts for land acquisition for each of the rivers described in section 3(a) of this Act:

Clearwater, Middle Fork, Idaho,
\$2,909,800; Eleven Point, Missouri,
\$10,407,000; Feather, Middle Fork,
California, \$3,935,700; Rio Grande, New
Mexico, \$253,000;
Rogue, Oregon, \$15,147,000
St. Croix, Minnesota and Wisconsin,
\$21,769,000; Salmon, Middle Fork Idaho,
\$1,837,000; and Wolf Wisconsin, \$142,150.

Appendix B: Project History

In 2019 through 2020, a non-native hydropower developer applied and was granted preliminary permits by the Federal Energy Regulatory Commission (FERC) for multiple hydropower projects on the Little Colorado River as it flows through Navajo Nation lands. Notably and importantly, these preliminary permit applications were granted over the filed legal objections of the Navajo Nation itself, as well as numerous other tribes with ancestral and cultural connections to the Little Colorado River. In assessing strategies that would protect the Little Colorado River from these unwanted projects and provide tribes with additional tools to protect their lands and waters, American Rivers and the Grand Canyon Trust identified the major gaps in the Wild and Scenic Rivers Act (WSRA) discussed in this draft Concept Paper. In 2020, the NGOs engaged the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment at the University of Colorado Law School to evaluate the potential for amending the WSRA and to suggest potential structures for such amendments that would more equitably include tribes. This project is the result of that partnership.