

Chapter 35
WILD AND SCENIC RIVERS

MDT ENVIRONMENTAL MANUAL

October 2010

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Chapter 35

WILD AND SCENIC RIVERS

35.1 OVERVIEW

The National *Wild and Scenic Rivers Act* (*Act*), codified in 16 USC 1271, et seq., was signed into law on October 2, 1968. It recognizes that certain selected rivers, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values. It also establishes a policy that these rivers shall be preserved in free-flowing condition, and that they and their immediate environments be protected for the benefit and enjoyment of present and future generations.

To implement the policy, Congress established a National Wild and Scenic Rivers System. To qualify, a river or river segment must be in a free-flowing condition and deemed to have one or more “outstandingly remarkable” scenic, recreational, geological, fish and wildlife, historic, cultural or other similar values.

The *Act* and implementing rules provide that for any Federally-assisted “water resources project” (i.e., any... construction of developments that would affect the free-flowing characteristics of a Wild and Scenic River or river under study for designation to the Wild and Scenic Rivers System (Study River)), no license, permit or other authorization can be issued without prior notice to the Secretary responsible for administering the river (i.e., the Secretary of the Interior, through the National Park Service (NPS), US Fish and Wildlife Service (USFWS) and the Bureau of Land Management (BLM); or the Secretary of Agriculture, through the US Forest Service (USFS)) and a determination that the project will not have a direct and adverse effect on the values that provide the basis for designation as a Wild and Scenic River or Study River.

This Chapter provides procedures for evaluating and documenting potential effects on designated Wild and Scenic Rivers and Study Rivers and for addressing compliance with applicable policies and regulations (including Section 4(f), if a project would involve use of land from a significant publicly owned public park, recreation area or wildlife and waterfowl refuge or from a significant historic site located in a designated Wild and Scenic River corridor).

The National Wild and Scenic Rivers System website provides the following information for river segments listed as designated Wild and Scenic Rivers and Study Rivers in Montana:

Flathead River

Designated Reach: October 12, 1976. The North Fork from the Canadian border downstream to its confluence with the Middle Fork. The Middle Fork from its headwaters to its confluence to the South Fork. The South Fork from its origin to the Hungry Horse Reservoir.

Classification/Mileage: Wild – 97.9 miles; Scenic – 40.7 miles; Recreational – 80.4 miles; Total – 219.0 miles.

The designation includes the North Fork, Middle Fork and South Fork above Hungry Horse Reservoir and features recreation, scenery, historic sites, unique fisheries and wildlife (e.g., grizzly bears, wolves). The rugged area includes the landscapes of Glacier National Park and the Bob Marshall and Great Bear Wilderness areas.

Contact addresses for the Flathead Wild and Scenic River are as follows:

Flathead National Forest
Hungry Horse Ranger District
Post Office Box 190340
Hungry Horse, Montana 59919

Glacier National Park
Post Office Box 128
West Glacier, Montana 59936

Missouri River

Designated Reach: October 12, 1976. The segment from Fort Benton, 149 miles downstream to Robinson Bridge.

Classification/Mileage: Wild – 64.0 miles; Scenic – 26.0 miles; Recreational – 59.0 miles; Total – 149.0 miles.

The route of Lewis and Clark, the Missouri River flows through a spectacular valley with striking rock formations and diverse flora and fauna. The corridor also includes numerous historical and archaeological sites.

The contact address for the Missouri Wild and Scenic River is as follows:

Bureau of Land Management
Lewistown Field Office
Post Office Box 1160
Lewistown, Montana 59457

35.2 LAWS, REGULATIONS AND GUIDANCE

35.2.1 16 USC 1278 “Wild and Scenic Rivers, Restrictions on Water Resources Projects”

This Section of the *United States Code* (USC) contains the policy that Federal agencies may not assist by loan, grant, license or otherwise, any water resource project that would have a direct and adverse effect on the values for which a river was designated or that would make it eligible for designation.

35.2.2 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making”

For projects involving preparation of an environmental impact statement and for environmental assessments being prepared in accordance with the FHWA “SAFETEA-LU Environmental Review Process Final Guidance,” this part of the USC requires that, at appropriate times during the study process, the lead agency or agencies for the project collaborate with agencies serving as participating agencies to determine the methodologies to be used and the level of detail required for assessing impacts, including Wild and Scenic River and Study River impacts. See [Chapters 11 “Preparing Environmental Documentation,” 13 “Environmental Assessment/FONSI” and 14 “Environmental Impact Statement/ROD”](#) for further guidance on this requirement.

35.2.3 36 CFR 297 “Wild and Scenic Rivers”

This Part of the *Code of Federal Regulations* (CFR) implements the provisions of 16 USC 1278 for designated Wild and Scenic Rivers and Study Rivers that are administered by the US Department of Agriculture, USFS. It includes definitions of key terms, compliance requirements for Federal agency projects, explanation of the determination required for approving a project affecting a Wild and Scenic River or Study River and explanation of environmental analysis requirements.

35.2.4 FHWA “Policy Guidance for Wild and Scenic Rivers”

This October 3, 1980, document provides FHWA guidance for compliance with the *Wild and Scenic Rivers Act* requirements for proposed transportation projects.

35.2.5 “FHWA Section 4(f) Policy Paper”

This March 1, 2005, paper includes FHWA guidance on applicability of Section 4(f) to designated Wild and Scenic Rivers and Study Rivers.

35.2.6 23 CFR 774 “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))”

This Part of the CFR implements 23 USC 138 and 49 USC 303 which originally were enacted as Section 4(f) of the *US Department of Transportation Act* of 1966 and are still commonly referred to as “Section 4(f).” The regulations in this part include provisions addressing Section 4(f) applicability to Wild and Scenic Rivers.

35.2.7 **FHWA Technical Advisory T 6640.8A**

The Technical Advisory, dated October 30, 1987, includes guidance for addressing effects on a designated Wild and Scenic River or Study River. The guidance indicates the environmental document should address the following:

- identify early coordination undertaken with the agency responsible for managing the designated or Study River (i.e., NPS, USFWS, BLM or USFS);
- for each alternative under consideration, identify potential adverse effects (e.g., alteration of the free-flowing nature of the river, alteration of the setting, deterioration of water quality) on the natural, cultural and recreational values of the designated or Study River;
- reflect consultation with the managing agency on avoiding or mitigating adverse impacts for any alternative that could foreclose options for designating a Study River under the *Wild and Scenic Rivers Act* or that could adversely affect those qualities of a listed river for which it was designated; and
- identify in the final environmental document those measures that will be included in the preferred alternative to avoid or mitigate adverse impacts.

The guidance also notes that publicly owned waters of designated Wild and Scenic Rivers are protected by Section 4(f) and public lands adjacent to a Wild and Scenic River may be subject to Section 4(f). The guidance recommends coordination with the managing agency and examination of any adopted or proposed management plan for a listed river to help in making the determination on applicability of Section 4(f) and any necessary Section 4(f) coordination.

35.2.8 **“National Wild and Scenic Rivers System” Website**

This website provides helpful background information on the National Wild and Scenic Rivers System as well as information on designated rivers, Study Rivers, river classifications, administering agencies, etc.

35.3 PROCEDURES

35.3.1 Information Gathering

The Preliminary Field Review (PFR) is the initial step in the analysis of a proposed project's potential involvement with, and effects on designated Wild and Scenic Rivers and/or Study Rivers. The Design Team (DT) notifies and invites appropriate MDT personnel, including the Project Development Engineer (PDE) within the MDT Environmental Services Bureau (ESB), to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance. The PDE participates in the PFR to make a preliminary evaluation of available information on the project scope and the potential for affecting a designated Wild and Scenic River or Study River. Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the PFR, including Wild and Scenic Rivers issues. The DT distributes the final PFR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief (ESBC).

The PDE consults the information on the National Wild and Scenic Rivers System website to confirm and document the location, designated reach, classification and administering agency for any designated Wild and Scenic River(s) in the project's potential impact area and the location, administering agency and status of any Study River(s) the project may affect.

For projects subject to the requirements of 23 USC 139 "Efficient Environmental Reviews for Project Decision-Making," the PDE, in cooperation with FHWA, collaborates with participating agencies in determining the appropriate methodologies to be used and the level of detail required in the analysis of Wild and Scenic River resource effects of project alternatives.

35.3.2 Analysis and Findings

If the project has potential for affecting a designated Wild and Scenic River or Study River, the PDE provides the DT information (e.g., location, boundaries, classification) for each potentially affected river. The PDE coordinates with the DT to evaluate whether the proposed project would adversely affect the natural, cultural or recreational values of the river segment. Adverse affects may include, but are not limited to the following effects:

- destruction or alteration of all or part of the free flowing nature of the river (i.e., the extent to which it is existing or flowing in natural condition without impoundment, diversion, straightening, riprapping or other modification of the waterway);
- introduction of visual, audible or other sensory intrusions that are out of character with the river or alter its setting;
- deterioration of water quality; or
- transfer or sale of property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.

If the proposed project could have foreseeable adverse effects on a Wild and Scenic River or a Study River, the PDE initiates coordination with the agency responsible for management of the affected river segment (i.e., NPS, USFWS, BLM and/or USFS) and the DT to develop options for avoiding, minimizing and/or mitigating the adverse effects.

The PDE also coordinates with FHWA to evaluate applicability of Section 4(f) to affected Wild and Scenic River or Study River resources.

The analysis of options for avoiding, minimizing and/or mitigating adverse effects of the project is guided by the following criteria that must be satisfied to obtain concurrence from the Secretary of the Interior or the Secretary of Agriculture for approval of the authorization being requested:

- the project must not have a direct and adverse effect on the values for which a Wild and Scenic River or Study River was designated, when any portion of the project is within the boundaries of the designated Wild and Scenic River or Study River;
- the effects of the project must neither invade nor unreasonably diminish the scenic, recreational and fish and wildlife values of a Wild and Scenic River where any portion of the project is located above, below or outside the Wild and Scenic River; or
- the effects of the project must neither invade nor diminish the scenic, recreational and fish and wildlife values of a Study River where the project is located above, below or outside the Study River during the study period.

The PDE prepares a notice for submittal to the FHWA Division Office to obtain consent for project approval from the Secretary of the Interior or, in accordance with 36 CFR 297.4 "Requirements for Federal Agencies" and 36 CFR 297.5 "Determination," from the Secretary of Agriculture. The notice includes the following information:

- name and location of affected river;
- location of the project;
- nature of the authorization being requested for the proposed action;
- a description of the proposed activity; and
- any relevant information (e.g., plans, maps and environmental studies, assessments, environmental impact statements).

The PDE coordinates the notice for signature by the ESBC and then transmits it to FHWA. FHWA submits the notice to the agency responsible for managing the affected river(s) and requests consent from the appropriate Secretary for approval of the authorization being requested for the project.

FHWA provides the response from the appropriate Secretary to the ESB. If consent is denied, the Secretary responsible may recommend measures to eliminate adverse effects and MDT and FHWA may submit revised project plans for consideration. In this case, the PDE coordinates with the DT to examine further options for responding to the recommendations for eliminating

adverse effects and then coordinates a revised notice with FHWA for submittal to the appropriate Secretary.

If consent is granted, the PDE ensures the consent is documented in the project file and environmental documentation.

The PDE ensures the results of the analysis of environmental effects on designated Wild and Scenic Rivers and/or Study Rivers are appropriately reflected in the project environmental documentation (see [Chapters 11 “Preparing Environmental Documentation,”](#) [12 “Categorical Exclusion,”](#) [13 “Environmental Assessment/FONSI”](#) and [14 “Environmental Impact Statement/ROD](#)) and that compliance with Section 4(f) requirements (see [Chapter 15 “Section 4\(f\) Evaluations”](#)) is accomplished, as applicable, for affected Wild and Scenic River resources.

35.3.3 Mitigation and Commitments

The PDE and DT ensure the project plans accurately reflect the measures for avoiding adverse effects to designated Wild and Scenic Rivers and/or Study Rivers that provided the basis for obtaining the consent of the Secretary of the Interior or the Secretary of Agriculture for issuance of the project authorization by FHWA. To the extent possible, the PDE and DT should prepare the contract documents using the *MDT Standard Specifications* to minimize the need for special provisions.

The District Environmental Engineering Specialist monitors project construction to ensure that all measures to minimize harm to designated Wild and Scenic Rivers and Study Rivers are implemented in accordance with the approved project plans.

