

Appendix 5

WILD AND SCENIC RIVER REVIEW OF WATERWAYS IN THE NEWCASTLE RESOURCE MANAGEMENT PLAN PLANNING AREA

INTRODUCTION

As part of the planning effort for developing the Newcastle RMP, the BLM planning team members reviewed all BLM-administered public land surface along waterways within the Newcastle RMP planning area (Crook, Weston, and Niobrara counties). This review was to determine if any of these BLM-administered public lands met the wild and scenic rivers eligibility criteria and suitability factors, as identified in the Wild and Scenic Rivers Act (WSRA).

PUBLIC INVOLVEMENT AND COORDINATION

The Wyoming BLM staff met with representatives of various Wyoming state agencies, including the Governor's office, in January 1991. These meetings were specifically for the purpose of reaching a mutual understanding of the wild and scenic rivers review process, and of the wild and scenic rivers eligibility criteria and suitability factors to be used in the process. This included some agreement on any needed refinements of these criteria and factors, specific to Wyoming, and their statewide application on BLM-administered public lands. The eligibility criteria and suitability factors, including minor refinements agreed to at that time, are still consistent with the later-released BLM Wild and Scenic Rivers Manual 8351 (May 19, 1992). At the same time, this included disagreement by state government, with giving any consideration for reviewing waterways that do not contain water year-round (for example, intermittent and ephemeral waterways). The Wyoming BLM recognizes that position but is obligated to follow the BLM manual requirement to include intermittent and ephemeral waterways in the review.

The State Director's policy and guidance statement for conducting the BLM wild and scenic rivers review process in Wyoming was issued December 31, 1992. Minor editorial refinements to this policy and guidance

were made on June 29, 1993, to make the wording more consistent with BLM Manual 8351. The policy and guidance statement was again updated to reflect a December 1993 Washington office policy change concerning the inappropriate consideration of jurisdictional concerns as an eligibility criterion instead of a suitability factor.

A September 20, 1989, *Federal Register* notice included the intent to conduct a wild and scenic rivers review in the Newcastle RMP planning area.

On June 20, 1991, an open house was held at the Newcastle Resource Area office in Newcastle. Several topics discussed at the open house covered all identified issues and land use and resource management options to be addressed in the Newcastle EIS, including the wild and scenic rivers review.

On June 28, 1991, a presentation on the Newcastle wild and scenic rivers review was given to the Casper District Multiple Use Advisory Council.

On February 12, 1992, the Newcastle wild and scenic rivers review was discussed with a representative of the Sierra Club.

In July 1992, BLM personnel briefed Wyoming state agencies on the preliminary eligibility and suitability findings of the wild and scenic rivers review in the Newcastle RMP planning area. No BLM-administered public lands along waterways in the planning area were found to meet either the eligibility criteria or the suitability factors. Due to a BLM policy change, some BLM-administered public land parcels along eight waterways in the review area were found to meet the wild and scenic rivers eligibility criteria. However, these BLM-administered public lands were not found to meet the wild and scenic rivers suitability factors. Thus, the policy change did not result in any net change in the ultimate outcome of the wild and scenic rivers review in the Newcastle RMP planning area. This is explained in the "Results of the Wild and Scenic Rivers Eligibility Review" section below.

General mailings were sent to the individuals, interest groups and agencies on the Newcastle Resource Area mailing list, requesting input for the development of the Newcastle RMP, throughout the RMP development process. Individuals and groups that have expressed interest in special designations or special management areas (such as wild and scenic rivers) are included on the list.

Briefings on the eligibility and suitability determinations were also given to the Wyoming Congressional delegation representatives, representatives from local government agencies, and the Crook, Weston and Niobrara County Commissioners.

PROCESS

The following definitions apply to key terms used in the WSRR process:

Waterway: A flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes. For purposes of this review, a waterway is not required to have water in it year-round and may be ephemeral or intermittent.

Public lands: The BLM-administered public land surface along waterways within an RMP planning area. Those "split estate lands," where the land surface is state or privately owned and the federal mineral estate is administered by the BLM, are not involved with these reviews. Other references to segments, parcels, corridors, and waterways, all represent public lands, which is the basis for our review.

The BLM wild and scenic rivers review in the Newcastle RMP planning area will entail a three-step process of:

1. Determining if BLM-administered public lands along waterways meet the eligibility criteria to be tentatively classified as wild, scenic, or recreational.
2. Determining if any of those public lands that meet the eligibility criteria also meet the wild and scenic rivers suitability factors.
3. Determining how any of those public lands that meet the suitability factors will be managed to protect their outstandingly remarkable values and their tentative wild, scenic, or recreational classification.

These steps are further defined as follows:

Step I: Wild and Scenic Rivers Eligibility Criteria and Tentative Classification

To meet the eligibility criteria, a waterway must be "free-flowing" and, along with its adjacent land area, must possess one or more "outstandingly remarkable" values. As part of the eligibility review, BLM planning team members reviewed all waterways in the Newcastle RMP planning area to see if they contained any BLM-administered public lands that meet the eligibility criteria. Only those portions of waterways flowing through BLM-administered public lands were considered. The following are the guidelines used in applying the eligibility criteria on BLM-administered public land surface in the Newcastle RMP planning area.

Free-flowing. Free-flowing is defined in the WSRA as "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway." The existence of small dams, diversion works, or other minor structures at the time the river segment is being considered shall not automatically disqualify it for possible addition to the WSRS. A river need not be "boatable or floatable" in order to be eligible; there is no "minimum flow" requirement.

Outstandingly Remarkable Values. The BLM-administered public land surface along waterways must also possess one or more outstandingly remarkable values to be eligible for further consideration. Outstandingly remarkable values relate to scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar resource values.

The term "outstandingly remarkable value" is not precisely defined in the WSRA. However, these values must be directly waterway related. The criteria for outstandingly remarkable values, used for the review of BLM-administered public land surface in the Newcastle RMP planning area, are as follows:

Scenic: The landscape elements of landform, vegetation, water, color, and related factors result in notable or exemplary visual features and/or attractions. Additional factors such as seasonal variations in vegetation, scale of cultural modifications, and length of time negative intrusions are viewed can also be considered when analyzing scenic values. Scenery and visual attractions may be highly diverse over the majority of the BLM-administered public land surface involved; are not common to other waterways in the area; and must

be of a quality to attract visitors from outside the area.

Recreational: Recreational opportunities on the BLM-administered public land surface are unique enough to attract visitors from outside the area. Visitors would be willing to travel long distances to use the waterway resources on the public lands for recreational purposes. Waterway related opportunities could include, but are not limited to, sightseeing, wildlife observation, camping, photography, hiking, fishing, hunting, and boating.

Interpretive opportunities may be exceptional and attract visitors from outside the area. The waterway may provide settings for national or regional commercial usage or competitive events.

Geologic: The BLM-administered public land surface provides an example(s) of a geologic feature, process, or phenomenon that is rare, unusual, or unique to the area. The feature(s) may be in an unusually active stage of development, represent a "textbook" example and/or represent a unique or rare combination of geologic features (for example, erosional, volcanic, glacial, and other geologic structures).

Fisheries: The fishery values on the BLM-administered public land surface may be judged on the relative merits of either fish populations or habitat, or a combination of these conditions. For example:

- a. **Populations.** The waterway or waterway segment on BLM-administered public land surface is a contributor to one of the top producers of resident, indigenous fish species, either nationally or regionally. Of particular significance may be the presence of wild or unique stocks, or populations of federally listed or candidate threatened or endangered species. Diversity of species is also important.
- b. **Habitat.** The BLM-administered public land surface is contributing to exceptionally high quality habitat for fish species indigenous to the region. Of particular significance may be habitat for federally listed or candidate threatened and endangered species.

Wildlife: Wildlife values on the BLM-administered public land surface may be judged on the relative merits of either wildlife populations or habitat, or a combination of these conditions. For example:

- a. **Populations.** The BLM-administered public land surface is contributing to populations of resident or indigenous wildlife species important in the area or nationally. Of particular significance are species considered to be unique or populations of federally listed or candidate threatened or endangered species. Diversity of species is also important.
- b. **Habitat.** The BLM-administered public land surface is contributing to exceptionally high quality habitat for wildlife species important in the area or nationally, or may provide unique habitat or a critical link in habitat conditions for federally listed or candidate threatened or endangered species. Adjacent habitat conditions are such that the biological needs of the species are met.

Cultural: The BLM-administered public land surface contains examples of outstanding cultural sites which have unusual characteristics relating to prehistoric or historic use. Sites may be important in the area or nationally for interpreting prehistory or history; may be rare and represent an area where a culture or cultural period was first identified and described; may have been used concurrently by two or more cultural groups; or may have been used by cultural groups for rare or sacred purposes.

Historical: The BLM-administered public land surface contains a site(s) or feature(s) associated with a significant event, an important person, or a cultural activity of the past that was rare, unusual, or unique in the area.

Note: Eligibility for inclusion in the National Register of Historic Places, by itself, is not sufficient justification for being considered outstandingly remarkable.

Similar Values: Other values may include significant hydrologic, paleontologic, botanic, scientific, or ecologic resources as long as they are waterway related.

Tentative Classification. At the same time that eligibility determinations are made, BLM-administered public lands that meet the eligibility criteria are also given a tentative classification (either wild, scenic, or recreational), as required by the Act. Tentative classification is based on the type and degree of human developments associated with the BLM-administered public lands involved and adjacent lands at the time of the review. Actual classification is a congressional legislative determination.

The tentative classifications, as used by BLM in Wyoming, are further defined as follows:

Wild Waterway Areas: Wild areas are those where the waterways or sections of waterways on the BLM-administered public land surface 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. Wild means undeveloped; roads, dams, or diversion works are generally absent from a quarter-mile corridor on both sides of the waterway.

Scenic Waterway Areas: Scenic areas are those where the waterways or sections of waterways on the BLM-administered public land surface are generally free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. Scenic does not necessarily mean the waterway corridor has to have scenery as an outstandingly remarkable value; however, it means the waterway or waterway segment may contain more development (except for major dams or diversion works) than a wild segment and less development than a recreational segment. For example, roads may cross the waterway in places but generally do not run parallel to it. In certain cases, however, if a parallel road is unpaved and well-screened from the waterway by vegetation or a hill for example, it could qualify for scenic classification.

Recreational Waterway Areas: Recreational areas are those where the waterways or sections of waterways on the BLM-administered public land surface 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. Parallel roads or railroads, or the existence of small dams or diversions, can be allowed in this classification. A recreational area classification does not imply that the waterway or section of waterway on the public land surface will be managed or have priority for recreational use or development.

Results of the Wild and Scenic Rivers Eligibility Review for the Newcastle RMP Planning Area

The Newcastle wild and scenic rivers review team met on October 9, 10, 11, 22, and 23, 1992, to conduct the preliminary eligibility review for the waterways in the Newcastle RMP planning area.

Because of the broad interpretation of the "free flowing" criterion, all waterways reviewed were assumed to be free-flowing. Using an interdisciplinary approach, these waterways were further reviewed to determine whether any BLM-administered public lands along their courses contained any of the outstandingly remarkable values described in the eligibility criteria. Of the 226 waterways reviewed in the RMP planning area, the BLM-administered lands along 218 of the waterways were found to not have outstandingly remarkable values and were dropped from further consideration.

Pursuant to BLM Manual 8351 (May 19, 1992), an additional eligibility criterion, the "Jurisdictional Considerations" criterion, was established. This new criterion provided that, where the BLM-administered public land surface represents less than 40 percent of the shoreline in a waterway or waterway segment being reviewed, the BLM-administered public land surface involved will be considered to be ineligible for further consideration. In considering this new criterion, 19 BLM-administered public land parcels, scattered along the remaining eight of the waterways reviewed (Beaver Creek, West Plum Creek, Blacktail Canyon, Belle Fourche River, Inyan Kara Creek, Whoopup Creek, Cave Springs Creek, and Bear Run Creek) were found to not meet the eligibility criteria. Subsequently, this jurisdictional eligibility criterion policy was rescinded (BLM Washington Office Instruction Memorandum No. 94-69, December 3, 1993), because jurisdictional considerations (administrative role or presence) are factors of suitability, rather than eligibility criteria, and are more appropriately addressed in the suitability determination phase of the review process. As a result, the 19 parcels of BLM-administered public lands along the remaining 8 waterways mentioned above were found to meet the wild and scenic rivers eligibility criteria.

Attachment A (Wild and Scenic Rivers Eligibility Review) shows the waterways containing BLM-administered public lands that were reviewed and the eligibility determinations made for the public lands involved.

Attachment B and Table B (waterway segment identification and classification) describe the involved public lands in more detail and show the tentative classification (either wild, scenic, or recreational) given to each of the BLM-administered public land parcels that meet the eligibility criteria.

Step II: Wild and Scenic Rivers Suitability Factors

Any BLM-administered public lands that are found to meet the eligibility criteria and that are classified (wild, scenic, or recreational) are further reviewed to

determine if they meet the wild and scenic rivers suitability factors. The suitability determinations are made after the general public, local, state and federal governments and agencies, and other interested parties have reviewed the eligibility and classification determinations.

Some factors to be considered in making the suitability determinations include, but are not limited to:

1. Characteristics which do or do not make the BLM-administered public lands a worthy addition to the WSRS.
2. Status of landownership, minerals (surface and subsurface), use in the area, including the amount of private land involved, and associated or incompatible uses. Jurisdictional consideration (administrative role and or presence) must be taken into account, to the extent that management would be affected. Refer to BLM Manual 8351.33A2 (as amended on December 22, 1993) for additional information and details on the consideration of this suitability factor.
3. Reasonably foreseeable potential use of the BLM-administered public lands and related waters which would be enhanced, foreclosed, or curtailed if they were included in the WSRS, and the values which could be foreclosed or diminished if the BLM-administered public lands are not protected as part of the system.
4. Public, state, local, tribal, or federal interest in designation or nondesignation of any part or all of the waterway involved, including the extent to which the administration of any or all of the waterway, including costs thereof, may be shared by state, local, or other agencies and individuals.
5. Estimated cost of acquiring necessary lands and interests in lands and of administering the area if it is added to the WSRS. Section 6 of the WSRA outlines policies and limitations of acquiring lands or interests in land by donation, exchange, consent of owners, easement, transfer, assignment of rights, or condemnation within and outside established river boundaries.
6. Ability of the BLM to manage and/or protect the BLM-administered public lands involved as a WSR or other mechanisms (existing or potential) to protect identified values other than WSR designation.
7. Historical or existing rights which would be adversely affected. In the suitability review, adequate consideration will be given to rights held

by other landowners and applicants, lessees, claimants, or authorized users of the BLM-administered public lands involved.

8. Other issues and concerns, if any.

Results of the Wild and Scenic Rivers Suitability Review for the Newcastle RMP Planning Area

Due to the jurisdictional considerations policy change mentioned above, a suitability review was conducted on the BLM-administered public lands determined to meet the eligibility criteria (BLM lands along Beaver Creek, West Plum Creek, Blacktail Canyon, Belle Fourche River, Inyan Kara Creek, Whoopup Creek, Cave Springs Creek, and Bear Run Creek) to determine whether or not they meet the wild and scenic rivers suitability factors. The Newcastle WSR preliminary suitability determinations were made based on an internal BLM screening of the above eight factors. Both in-house knowledge and comments received from the general public were used to make these determinations. Much of the public input received during the eligibility phase involved discussion of suitability factors. This input proved very valuable in helping the BLM to make the preliminary suitability determinations. All parties who participated in the eligibility review process were notified of the preliminary suitability determinations by mail and were afforded the opportunity to comment. Specialists determined that none of the BLM-administered public lands involved met the suitability factors; therefore, they will not be considered for inclusion in the WSRS. Attachment C (Wild and Scenic Rivers Suitability Review) summarizes the waterways, containing BLM-administered public lands, that were reviewed and the suitability determinations made for the public lands involved.

Step III: Management of BLM-Administered Public Lands That Meet the Suitability Factors

Because there were no BLM-administered public lands found to meet the suitability factors, step III of the review process (described below) is not applicable to, and was not conducted as part of the wild and scenic rivers review process in the Newcastle RMP planning area. It is described here for informational purposes only. Management of the BLM-administered public lands involved will be included within the provisions of the general planning and management decisions of the Newcastle RMP.

The BLM land use planning decisions are developed and implemented for any BLM-administered public lands along waterways that are determined to meet the suitability factors. These planning decisions are made

in the RMP and include management objectives, management actions, and appropriate allocations of land and resource uses that would maintain the outstandingly remarkable values and tentative wild and scenic waterway classifications identified on the BLM-administered public lands involved.

The BLM-administered public lands that are determined to meet the suitability factors would then be managed under the BLM's land use plan management decisions indefinitely. At some time in the future, it is

possible that the Secretary of the Interior may direct the BLM to participate in the development of wild and scenic river study reports. The results and documentation of the BLM wild and scenic river reviews for the RMP planning area would be used in developing any such reports.

Attachment C summarizes the wild and scenic rivers suitability review conducted for the Newcastle RMP planning area.