

## NATIONAL WILD AND SCENIC RIVERS ACT

### OVERVIEW

Congress enacted the National Wild and Scenic Rivers Act (NWSRA) in 1968. The NWSRA establishes a National Wild and Scenic Rivers System (NWSRS) and prescribes the methods and standards through which additional rivers may be identified and added to the system. The NWSRA authorizes the:

- selection of certain rivers of the nation that possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar resources;
- preservation of the selected rivers' free-flowing condition by providing protection against federally licensed dams, diversions, and other on-river development on designated river segments; and
- protection of the rivers' local environments by setting aside the riparian corridor within one-quarter mile of the ordinary high-water mark, and restricting development on public lands within that corridor.

The NWSRA establishes three classes or sections of rivers:

- “wild” river areas, which are characterized as free of impoundments and generally inaccessible except by trail, with essentially primitive watersheds or shorelines and unpolluted waters;
- “scenic” river areas, which are characterized as free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by road; and
- “recreational” river areas, which are characterized as readily accessible by road or railroad, and which may have some development along their shorelines, and may have undergone some impoundment or diversion in the past.

Selected rivers and streams have been placed into the [National Rivers Inventory](#) by acts of Congress, and are designated “Wild and Scenic Rivers” (WSRs). Other rivers and streams have been congressionally authorized for study as potential additions to the NWSRS, and are designated “Study Rivers” (SRs). Four administering agencies of the U.S. Department of the Interior are responsible for managing designated WSRs or congressionally authorized SRs:

- Bureau of Land Management (BLM),
- National Park Service (NPS),
- U.S. Fish and Wildlife Service (USFWS), and
- U.S. Forest Service (USFS).

Refer to [Appendix C](#) for a list of WSRs in California and their administering agencies.

WSRs and SRs must be considered during project planning, and project impacts must be identified in any environmental assessment (EA) or environmental impact statement (EIS). If there are no impacts on WSRs or SRs, this fact should be noted in a NWSRA summary in the EA or EIS. There is no federal requirement to consider State-listed WSRs and streams or unique areas during project planning or in an EA or EIS. However, it is recommended that any impacts on rivers and streams that are State-listed or proposed for listing and on unique areas be considered and addressed at levels comparable to consideration given to rivers and streams protected by the NWSRA.

### **WHO NEEDS TO COMPLY?**

NWSRA Section 7 requirements apply to all CALFED actions that involve federal assistance in the construction of water resources projects that may affect the free-flowing characteristics, the scenic value, or natural resources of a WSR or SR. Any project or construction located within the bed or banks of a designated WSR or SR, or located below, above, or on any WSR's or SR's stream tributary is considered a water resources project under the NWSRA.

Generally, Section 7 compliance will be required for any CALFED project that will directly and adversely affect a WSR or SR, and:

- will be carried out or at least partially funded by a federal agency;
- will require U.S. Army Corps of Engineers (USACE) authorization (e.g., approval in accordance with Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act [CWA]);
- will require Federal Energy Regulatory Commission authorization (e.g., approval in accordance with Sections 4(e) and 4(f) of the Federal Power Act, 16 USC 797); or
- will require any other federal authorization before, during, or after construction of a water resources project.

### **HOW LONG DOES THE APPROVAL PROCESS TAKE?**

Once a written notice has been submitted to the appropriate administering agency, the agency will attempt to make a determination of compliance for the proposed project within 60 calendar days of receiving the notice. A determination of compliance generally takes only a few weeks. However, the administering agency is authorized to make the determination sooner or later than 60 days depending on the complexity of the project. In addition, the agency's current workload may determine the time needed for the agency to complete the determination process.

## **WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?**

Generally, the federal agency that constructs, authorizes, or provides federal assistance to a CALFED water resources project that is located on or affects any portion of a WSR or SR is responsible for providing a written notice to the appropriate administering agency. For example, if a CWA Section 404 permit were required, USACE would be responsible for notifying the administering agency. If appropriate, the applicant (if different from the federal agency) may facilitate the review process (see “What Are the Opportunities for Streamlining This Process?” below). The written notice must include the following information:

- a full, technically accurate description of the entire proposed activity, including:
  - name and location of the affected designated WSR or SR;
  - project purpose and final project goal;
  - description of the project location and proposed activity or construction; and
  - nature of the permit, assistance, or other authorization proposed to be issued;
- copies of any draft or final federal licenses, permits, and agreements required for actions associated with the proposed activity (e.g., a preconstruction notification for a USACE nationwide permit);
- copies of any plans, maps, and environmental studies, assessments, or EISs;
- a list of agencies participating in the NEPA process as lead or responsible agencies;
- a copy of the NEPA finding of no significant impact or record of decision, if already prepared; and
- a detailed description of any river-specific resources that may be impacted, and proposed mitigation to avoid adverse impacts.

## **WHAT IS THE FEE?**

There is no fee to comply with NWSRA Section 7.

## **WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?**

The administering agency (BLM, NPS, USFWS, or USFS) determines the effects of a proposed water resources project in compliance with NEPA. Therefore, the applicant should request a determination for NWSRA Section 7 compliance while completing the NEPA process, if applicable, and when applying for a federal authorization (e.g., Section 404 or Section 10 authorization) that triggers the need for Section 7 compliance. When the appropriate administering agency receives a request for compliance determination, it will issue either a letter of consent, stating that the project will not have a direct and adverse effect on the resources for which the river was designated, or a letter that denies consent. If consent is denied, the

administering agency may recommend measures to eliminate adverse effects, and the applicant may submit revised plans for consideration.

### **DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?**

Because NWSRA Section 7 compliance determination is a discretionary action, the administering agency must analyze the proposed project in accordance with NEPA. If another federal agency has already completed NEPA compliance when the administering agency receives a request for a Section 7 compliance determination, the administering agency generally uses the previous NEPA document to meet its NEPA review requirement.

### **WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?**

The following are recommended steps to simplify and streamline the process of NWSRA compliance for CALFED actions.

- **Avoid and minimize impacts on WSRs and SRs.** CALFED projects should avoid or minimize direct and adverse effects on the resources for which the rivers have been designated as WSRs or SRs. To the extent possible, CALFED actions should be designed to avoid or minimize activities within one-quarter mile of the ordinary high-water mark of a WSR or SR.
- **Address constraints dictated by the NWSRA.** The applicant should address any limitations to the project design dictated by the NWSRA (e.g., riprap is specifically prohibited).
- **Coordinate the development of the written notice.** As noted earlier, the federal agency that constructs, authorizes, or provides federal assistance to a CALFED water resources project is responsible for providing a written notice to the administering agency. However, with the federal agency's approval, the applicant (if different from the federal agency) may facilitate the review process by doing either of the following:
  - developing a draft of the written notice, which the federal agency would finalize and forward to the administering agency; or
  - developing the draft and final written notice and coordinating the review process between the federal agency and the administering agency.
- **Provide complete, detailed information.** As with many other permitting processes, preparing a complete written notice, including a detailed and relatively final project description and a summary of NEPA compliance coordination, can greatly help expedite the Section 7 review process. When the need for a Section 404 or Section 10 permit triggers the need for a Section 7 compliance determination, the Section 404/Section 10 application package can be used in the written notice as well.

- **Coordinate early with the administering agency and other resource agencies.** The applicant should contact the administering agency early in the project design process to determine which activities may be prohibited by the NWSRA. In addition, the applicant should include the administering agency with the other resource agencies early in the NEPA review process, especially if there are controversial issues.



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