



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

M-36989

NOV 12 1997

Memorandum

To: Director
Bureau of Land Management

From: Solicitor

Subject: Managing Areas Eligible for Protection under the Wild & Scenic Rivers Act

I. Introduction

This memorandum provides guidance on implementing BLM's Manual provisions governing management of river segments eligible for protection under the Wild and Scenic Rivers Act ("WSRA"). In 1992, the BLM issued Manual § 8351, which provided guidance on BLM's identification, evaluation, reporting, and management of potential and existing wild, scenic, and recreational rivers in the National Wild and Scenic Rivers ("NWSR") System.¹ This section precipitated inquiries in connection with BLM's preparation of a resource management plan ("RMP") for the Dixie Resource Area, Washington County, Utah, concerning the process for, and timing of, the protection of eligible river segments.²

A March 1, 1994, opinion issued by the Regional Solicitor, Intermountain Region, concluded that if applied literally, the Manual provision would conflict with the Federal Land Policy and Management Act ("FLPMA") and other authorities. I concur in that conclusion. The Regional Solicitor's opinion did not suggest, however, that BLM lacked authority to provide

¹ See 57 Fed. Reg. 46043 (1992) (notice of availability of Manual § 8351); see also 56 Fed. Reg. 27967 (1991) (notice of availability of draft Manual section). BLM slightly modified this section on December 22, 1993. Manual Transmittal Sheet, Release 8-62 (Dec. 22, 1993).

² A river area is "eligible" for inclusion within the NWSR System if the stream is free-flowing and "the related adjacent land area possesses outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." 16 U.S.C. § 1273(b) (incorporating 16 U.S.C. § 1271 by reference). An agency's identification of an eligible river segment reflects the agency's determination that the segment has the potential to be included in the NWSR System. Inclusion in the System requires either congressional or, in some circumstances, Secretarial action. See *infra* note 5.

timely protection to river segments identified as eligible for possible inclusion in the NWSR System. In fact, as discussed below, such authority does exist, although not in the WSRA itself.

II. Analysis

A. BLM Manual Provisions Governing "Eligible" River Segment Areas

The Manual provision at issue (§ 8351.32C) reads as follows:

Protective Management. When a river segment is determined eligible and given a tentative classification (wild, scenic, and/or recreational), its identified outstandingly remarkable values shall be afforded adequate protection, subject to valid existing rights, and until the eligibility determination is superseded, management activities and authorized uses shall not be allowed to adversely affect either eligibility or the tentative classification, i.e., actions that would change the tentative classification from a wild river area to a scenic river area or a scenic river area to a recreational river area. Public notification of protective management shall occur no later than publication and release of the draft RMP, or plan amendment. However, protective management shall be initiated by the authorized officer (Area/District Manager) as soon as eligibility is determined. * * *

This provision, along with subparts .06D and .33A.2 of § 8351 of the BLM Manual, can be interpreted as requiring protection of eligible river segments immediately upon their identification as eligible, whether that identification comes through the RMP or through a separate process.³

The BLM generally evaluates river segments for their eligibility and suitability for WSRA designation during its RMP process. BLM Manual § 8351.06B. But the Manual also makes

³ As § 8351.32C itself provides, the protection remains in effect "until the eligibility determination is superseded." See also § 8351.52C ("Once a river segment has been determined eligible, BLM's policy shall be to protect, and where possible, enhance any identified outstandingly remarkable river values pending a subsequent suitability determination and/or designation decision by Congress."); and § 8351.06D ("BLM shall afford protective management to all river segments as necessary to ensure that the existing qualities upon which their eligibility is based are not degraded."). Eligibility determinations may be superseded (i.e. the river will no longer receive interim management protection) either by a BLM determination of nonsuitability (usually made in the RMP planning process, see, e.g., § 8351.3 and § 8351.33A), or by congressional action to study the river segment further or to include the river within the NWSR System. § 8351.52C.

