

Idaho Panhandle NF Objection Issue Summary

Wild & Scenic River Eligibility Determination

Objectors for This Issue:

- American Whitewater, **Kevin R. Colburn**

Objection Issue Summary:

The lack of supporting documentation to explain eligibility determinations in the FEIS and the basis for changes made to eligibility determinations in the DEIS, violates the National Wild and Scenic Rivers Act (WSRA), NEPA (National Environmental Policy Act), and the APA (Administrative Procedure Act).

Also, the determination that Marble Creek is not eligible for designation based on the presence of historic breached dams in some reaches

Objection Issue Examples:

“The IPNF erred when it found nine rivers to be ineligible for Wild and Scenic designation based on clear deviations from Forest Service policy and a lack of supportive information. The streams were found ineligible because the IPNF asserts the values we cite in our *Wild and Scenic Eligibility Report* are not rare, unique or exemplary. The IPNF offers no evidence, data, or rationale in support of these findings. Streams are dismissed with a single sentence each, based on an improper region of comparison, citing a lack of Outstanding Remarkable Values (ORV’s). The IPNF determined that our proposal for additional eligible streams was an ‘alternative considered but eliminated from detailed study.’

In dismissing consideration of potentially eligible streams, and offering no basis for that dismissal, the IPNF has violated Forest Service Policy, the Wild and Scenic Rivers Act (WSRA), the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA).”

“The IPNF violated USFS and interagency policy by finding an entire stream [Marble Creek] ineligible for WSR designations because historic breached dams slated for full removal exist in some reach(es).”

Summary of Review Findings:

What is required?

To be eligible for inclusion [in the National Wild and Scenic Rivers System], a river must be free-flowing and, with its adjacent land area, possess one or more “outstandingly

remarkable” values [(ORVs)]. FSH 1909.12, 82.1; *see also* WSRA §2(b). The Wild and Scenic River Act’s (WSRA) definition of “free-flowing” states that “[t]he existence...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.” WSRA §16(b).

Forest Service Handbook (FSH) 1909.12, 82.3 – Exhibit 01 further provides that rivers may be found eligible for WSR designation and classified as “recreational” if “some existing impoundment or diversion” is present, and “[t]he existence of low dams, diversions, or other modifications of the waterway is acceptable, provided the waterway remains generally natural and riverine in appearance.”

What the planning record shows

FEIS Appendix E describes the “Process to Identify and Classify Potentially Eligible Wild and Scenic Rivers.” pp. 216-223. While documentation exists in the record to support completion of steps 1-4 (*see* IPNF Wild and Scenic Rivers – Initial Assessment for Potential Eligibility 2005), supporting documentation is noticeably lacking for Step 5, which involved the following inventory review work: “Using the Forest as the comparative scale, review the identified potential ‘outstandingly remarkable values’ and determine whether they meet the criteria of being rare, unique, or exemplary.” FEIS Appendix E 220. As a result, no documentation is in the plan record currently to explain specific discrepancies between the initial assessment of streams for potential ORVs and the final WSR eligibility inventory.

IPNF found that “remnants [of splash dams] create artificial cataracts and blockages that continue to alter the creek’s natural path and flow.” As a result, IPNF concluded that Marble Creek was ineligible for WSR designation “because the flow continues to be altered, the basic screening criteria of ‘free flowing’ is not met.” FEIS, p. 31.

Conclusions

- The objector accurately identified a deficiency in the plan record related to the WSR eligibility inventory. Thus, the record does not adequately support IPNF’s list of eligible wild and scenic rivers or IPNF’s determinations that certain streams were ineligible.
- Splash dam remnants that alter “natural path and flow” do not automatically equate to a waterway that is not “generally natural and riverine in appearance.” Without further explanation or support, IPNF’s current explanation is an inadequate basis for determining WSR ineligibility under the WSRA, Agency policy, and interagency guidelines.

Considerations for Dialogue at the Meeting:

- Provide additional documentation on the review completed at Step 5 of the WSR eligibility process. Highlight any discrepancies between the initial assessment of streams for potential ORVs and the final WSR eligibility inventory. Provide an explanation for the rationale used to make final ORV determinations for all streams, both eligible and ineligible. Also, modify eligible WSR narratives in Appendix E to make an explicit tie to the ORVs identified for those stream segments.
- Either (a) provide additional supporting documentation describing why the diversion impacts to Marble Creek are more extensive than the “acceptable waterway modifications” identified in FSH 1909.12, 82.3 – Exhibit 01, or (b) find Marble Creek to be “free-flowing,” if the splash dam remnant impacts are within the acceptable range permitted under WSRA and Agency policy—and therefore eligible for WSR designation (since IPNF has identified at least one ORV for Marble Creek).