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MID-ATLANTIC REGION

RESEARCH/RESOURCES MANAGEMENT REPORT

APPROPRIATE RIVER RECREATION USE STUDY
MAR-37
Analysis of Legislative and Legal
Foundations for Establishing
Carrying Capacity
Summary Report for the Upper Delaware
Scenic and Recreational River

U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE



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Summary Report for the Upper Delaware
Scenic and Recreational River

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Introduction

A responsibility of the National Park Service is to provide for and protect the scenic, wildlife, historical, and recreational values for which individual units of the National Park System were designated. (16 USC 1) To fulfill this responsibility, it would seem necessary to identify the values and purposes that originally brought about each designation.

Unfortunately the reasons for inclusion into the National Park System often are not stated within the act designating a unit. If the reasons are stated, they may be in extremely general terms. In many cases, the emphasis of an act may be little more than defining the unit's boundaries.

This absence from the act of legislative intent, however, is not unusual. In many cases the motivation behind an act can be determined only by an investigation of the act's legislative history. A legislative history is the compiled documentation of events that led up to the passage of the act. It includes documents of many forms, among them Congressional reports, successive forms of the bills, and transcripts of Congressional hearings.

The report that follows is based upon the legislative history of two acts. The first, and most used, is the legislative history of Sec. 704 of the National Parks and Recreation Act of 1978. Sec. 704 designated the Upper Delaware River as a Scenic and Recreational River and added it to the Wild and Scenic Rivers System. The second act is the Wild and Scenic Rivers Act. This report gleans from the legislative histories information pertaining to recreational resource management. The goal is to discern the legislative intent concerning recreational resource management, and in particular, recreational carrying capacity and limits of acceptable change.

Format of the Report

The report has three major sections. Section I is a list of general

management guidelines and specific management directives derived from the legislative histories. The report is put into this guideline/directive format in order that it might have immediate application to management decision-making. The guidelines represent the major themes that inspired the designation of the Upper Delaware. The directives are specific suggestions that management of the resource might follow in order to adhere to the guidelines.

It is important to note that the directives do not carry the weight of law and should not be viewed as mandates. They are recommendations based on the motives of the people responsible for the designation of the Upper Delaware. These directives are not the letter of the law, but the intent and the spirit of the law.

Section II is substantiation of each guideline and directive. The substantiation serves two purposes. First of all, it offers documented justification for all of the directives stated. Secondly, some of the directives are not clear cut and require careful interpretation of the legislative history. The substantiation allows the resource manager to determine for himself or herself whether the conclusions of the report are valid.

Prioritizing Documents

Legislative histories are comprised of many types of documentation. Because the various documents may contain differing opinions and conflicting material, it is important that the documents be prioritized.

Fortunately legislative histories are a key part of legal research. Not only has this made much of the documentation available to researchers, it has also created a research system that clearly prioritizes the various documents.

The following list presents the components of a legislative history in

order of priority. Information from category one has more priority than that from category two, etc. It is suggested that managers keep this list in mind as they review Section II of this report.

1. Text of Act designating unit.
2. Reports of Congressional Committees.
3. Variations in the texts of bills
4. Congressional hearings
5. Presidential recommendations
6. Congressional debate and discussion (Congressional Record)
7. House and Senate documents
(often reports prepared by the Executive branch)
8. Administrative and Legislative Memoranda and Interdepartmental Statements
9. Newspaper clippings, articles, non-governmental statements

Because of the omnibus nature of the 1978 Act, the Congressional Report of the Legislation offers little detail about the Upper Delaware. The bulk of information in this study comes from records of Congressional hearings, texts of various bills, reports by the Executive branch of US government, and newspaper reports. See reference sections at the end of this report for the specific documents researched for this study.

Rating the Substantiation

The substantiation for each directive is rated as either "strong," "medium," or "weak." Although it is important to know the relative strength of the substantiation, it is equally important to not rely too heavily on this rating system.

It must be emphasized that it is only the law itself that needs to be followed. This report attempts to identify the intent of the enabling legislation. Furthermore, a rating of "strong" or "weak" should not be used as a judge of the importance of the directive. For example, a weak rating for Directive 3d should not be interpreted as meaning that the nodal approach isn't intended to channel and disperse use. The rating merely indicates the amount of support within the legislative history. The rating system is not a substitute for reading the substantiation.

The authors of this report are not attorneys. With a background in recreational resource planning and management, and, basic legal research skills, the following weighting scale has been developed for this report:

Strong Substantiation

- 1) The enabling legislation is specific as to the directive;

OR

- 2) The documents with the greatest legal importance (texts of bills, Congressional Reports, Congressional Hearings, Presidential recommendations) clearly support the directive;

OR

- 3) All of the documents, as a collected body, establish an overwhelming consensus for the directive.

Medium Substantiation

- 1) The legislative history contains conflicting viewpoints, but the higher priority documents tend to support the directive;

OR

- 2) The directive appears in a few documents of medium priority, but is not a key issue in other documents with the Upper Delaware; (i.e., BOR Reports were explicit about some issues that were not addressed elsewhere).

Weak Substantiation

- 1) The directive appears only in a single document of medium priority or a few documents of low priority. The high priority documents neither support, nor discount the directive;

OR

- 2) The substantiation for two sides of an issue are nearly equal. The wording of the directive could arguably go either way. The directive is dependent upon the best judgment of these particular investigators.

Section I
Guidelines & Directives

Guideline 1. The purpose of the Upper Delaware Scenic and Recreational River is both to protect the natural, historic, and cultural values of the river valley and to provide recreation associated with a free-flowing river.

Directives Relating to Guideline 1
On Protection

- 1a. -In attempting to manage for these potentially conflicting purposes, preservation of the river corridor should be given priority over recreation.
- 1b. -The Upper Delaware Scenic and Recreational River should be managed so that the environmental, scenic, recreational, and historic values are maintained near 1978 levels.

On Recreation

- 1c. -Recreational development should have minimal impact on the natural environment and be concentrated in areas already experiencing development.
- 1d. -Recreation activities to be encouraged are canoeing, boating, swimming, picnicking, camping, hiking, fishing, hunting, and ecological study and interpretation.

On Water Flow and Water Quality

- 1e. -The release of water from dams upstream of the Scenic and Recreational River, but built prior to the designation, is largely the determination of agencies other than the National Park Service.
- 1f. -When the National Park Service has input concerning water flow, their recommendations should be intended to enhance the cold water fishery, canoeing, and other water dependent recreational pursuits.
- 1g. -A major reason for the presence of the National Park Service on the Upper Delaware is to maintain the water quality at 1978 levels.

Guideline 2. All planning processes for the Upper Delaware Scenic and Recreational River are to be a cooperative effort.

Directives Relating to Guideline 2

- 2a. -Local residents must be involved in the management planning of the Scenic and Recreational River.
- 2b. -The initial master planning process should determine a carrying capacity for the river. After this determination, on a continuing five-year basis, the area will be reviewed to determine if overuse is occurring.
- 2c. -A permit system to regulate canoe use is encouraged, but its use is left to the discretion of the Secretary of the Interior, working in cooperation with other governmental agencies and the advisory council.
- 2d. -The National Park Service will take the lead role in administering agreed upon management plans.

Guideline 3. The nodal management concept should consist of twenty access and recreation facilities plus two information centers.

Directives Relating to Guideline 3

- 3a. -The National Park Service should not develop new access and recreational sites, but acquire and develop those sites already in recreational use.
- 3b. -With the exception of ongoing business endeavors, the twenty access and recreation sites should be acquired fee simple. The 450 acres of land that can be acquired should be limited primarily to such facilities.
- 3c. -The information centers should be at either end of the unit in order to direct and disperse users.
- 3d. -One purpose of the twenty nodal points is to indirectly control use by channeling public use through a limited number of dispersed points.

Guideline 4. All management decisions must consider not only the interests of the Scenic and Recreational River, but also the interests of the local residents.

Directives Relating to Guideline 4

- 4a. -Minimum federal land acquisition is the key to serving local interests.
- 4b. -In order that local governments not carry all the financial burdens of increased recreational use, the Secretary of the Interior shall assist these local entities with maintenance and law enforcement on lands not owned by the National Park Service.
- 4c. -Commercial development in existence prior to the designation of the Upper Delaware and not in conflict with the purposes of the designation should be left in private ownership.
- 4d. -Recreation-oriented businesses, if adhering to the goals of the Scenic and Recreational River, may grow as needed.

Guideline 5. The primary land use control mechanism should be adequate zoning, adequately enforced.

Directives Relating to Guideline 5

- 5a. -In instances where land or interest in land is acquired by the federal government because of inadequate zoning or inadequate enforcement of zoning, easements are preferred to fee simple acquisition.
- 5b. -If, after the proper time has elapsed, adequate zoning or adequate enforcement of zoning has not occurred, the Secretary of the Interior may acquire the land or interest in the land clearly and directly required for protection of the objectives of the act. The determination of adequacy is to be made by the Secretary.

Section II
Substantiation of Guidelines and Directives

Guideline 1. The purpose of the Upper Delaware Scenic and Recreational River is both to protect the natural, historic, and cultural values of the river valley and to provide recreation associated with a free-flowing river. (Substantiation for this Guideline was "strong.")

The 1976 Bureau of Outdoor Recreation BOR Report listed seven objectives as the purpose for designating the Upper Delaware a scenic and recreational river. All seven addressed either preservation or low-impact recreation. The seven are as follows:

1. To preserve the river and its immediate environment in its existing natural setting.
2. To preserve the free-flowing condition of the waters.
3. To prevent degradation of the water quality.
4. To provide high quality recreational opportunities associated with a free-flowing river for present and future generations.
5. To provide recreational use of fish and wildlife resources within the framework of appropriate Federal and State laws.
6. To provide for a level of recreation use that minimizes deterioration of land and water resources.
7. To assure preservation of archeological, historic, and cultural values (United States Department of the Interior, 1976, p. 31)

Reports as early as 1971 supported the dual purpose of preservation and recreation. The BOR draft of that year stated,

...development plan for the Upper Delaware is directed toward the goal of 1) preserving and protecting and river environment, while 2) providing suitable recreational facilities for appropriate visitor use and enjoyment of the river (United States Department of the Interior, 1971, p. 32).

The National Wild and Scenic Rivers Act and its legislative history also offer, in general terms, additional substantiation for the dual purpose. Tarlock and Tippy, in their analysis of the Wild & Scenic Rivers Act, noted that outdoor recreation was the initial incentive for a wild and scenic river system,

but ecological considerations continually became a greater and greater factor (Tarlock and Tippy, 1970, p. 710).

The Wild and Scenic Rivers Act itself states;

...remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and ... they and their immediate environment shall be protected for the benefits and enjoyments of present and future generations (Wild and Scenic Rivers Act, 1968, Sec. 1(b)).

The Senate Report on Wild and Scenic Rivers also stated preservation and public use as the two primary goals of the legislation. The report claimed the law was to balance the national policy of dam building with a policy of preserving selected rivers or sections thereof that possess unique conservation, scenic, fish, wildlife and outdoor recreation values (National Wild and Scenic System, 1967).

Furthermore, the report stated (S. Rep. No. 491, 1967, p. 1) the Wild and Scenic Rivers Act would:

promote sound water conservation and promote the public use and enjoyment of the scenic, fish, wildlife, and outdoor recreation values (National Wild & Scenic System, 1967, p. 3).

In 1978, Representative Matthew McHugh claimed the objectives of the legislation mirrored what President Jimmy Carter wanted for the Upper Delaware. These objectives included:

...preservation of the river and its immediate environment in their present natural setting; providing high quality recreational opportunities associated with a free-flowing river for present and future generations; and providing a level of recreational use that would minimize deterioration of land and water resources (McHugh, 1978, p. 2).

Directive 1a

In attempting to manage for these potentially conflicting purposes, preservation of the river corridor should be given the higher priority. (Substantiation for this Guideline was "strong")

Of the seven objectives in the 1976 BOR Report (also listed in the substantiation for Guideline 1), four concentrate specifically on preservation. Three address recreation, and of these, two include protection of the resource. Objective 4 calls for river recreational opportunities to be managed so that they can be enjoyed by both present and future generations. Objective 6 requires a level of recreational use "that minimizes deterioration of land and water resources." (United States Department of the Interior, 1976, p. 31) In short, six out of the seven objectives, even the objectives concerning recreation, emphasize preservation. For example, the 1971 BOR Report stated:

This conceptual development plan for the Upper Delaware is directed toward the goal of 1) preserving and protecting the river environment while 2) providing suitable recreational facilities for appropriate visitor use and enjoyment of the river. Any and all development must be carefully weighed as to the possible consequences on the natural character of the river. (United States Department of the Interior, 1971, p. 70)

In Congressman McHugh's statement accompanying his 1978 bill, he claimed that the Upper Delaware, which was majestic in its natural state, had to be protected from "ignorance, misuse, and greed." He wanted to halt the destruction on the Upper Delaware that had happened elsewhere. McHugh wrote,

Many a river has been polluted through lack of respect for its fragile ecosystem. Many others have been forever diminished through reckless overdevelopment by those whom a river's irreplaceable character was less important than short-term economic gain. (McHugh, 1978, p. 1)

A strong indication as to the priority of preservation in the Upper Delaware is that a 1978 memorandum from the Directors of the National Park Service, the Fish and Wildlife Service, and the Heritage, Conservation, and Recreation Service suggested the deletion of Sec. 4(c) of HR 11743. At first glance, Section 4(c) seems to be a strong preservation measure because Section 4(c) called for immediate interim programs (before a management plan was

developed) "to protect the Upper Delaware and its environs and to protect the public health and safety." (HR 11743, 1978, Sec. 4(c)) But, the Directors' call for deletion was based on the correct interpretation that unless state officials relinquished jurisdiction, the federal government lacked enforcement, regulatory, or maintenance powers on property it did not own or hold an interest. This could have resulted in a less-than-preservation oriented bill. (Director, National Park Service, et al., 1978, p. 5)

The final act, taking this deletion recommendation in mind, omitted a federal responsibility for maintenance activities, but left in the Secretary of Interior's responsibility to develop interim programs within his or her power, which would protect the river area and the public safety (National Parks and Recreation Act of 1978, Sec. 704 (c) (3)) If the evidence specific to the Upper Delaware is not sufficient to show clearly that preservation has priority over recreation, legislative materials concerning the Wild and Scenic Act are explicit on the subject.

As Congressman McDade said at the 1974 Congressional hearings, "Protecting the Delaware River is what the local citizens want, and it is what the members of this committee (Committee on Interior & Insular Affairs) had in mind when they established the Wild and Scenic Rivers System seven years ago." (Wild and Scenic Rivers Act Amendments, 1974, p. 90)

On the subject of balancing preservation and other uses, the Wild and Scenic Rivers Act states:

primary emphasis shall be given to protecting ...
esthetic, scenic, historic, archeologic, and
specific features. Management plans for any such
component may establish varying degrees of intensity
for its protection and development, based on the special
attributes of the area. (Wild and Scenic Rivers Act, 1968,
Sec. 10(a))

The Senate Report on the Wild and Scenic Act River stated that the primary goal of the legislation was preservation. The report claimed the law was to:

balance the National policy of dam building with a policy of preserving selected rivers or sections thereof that possess unique conservation, scenic, fish, wildlife, and outdoor recreation values. (National Wild and Scenic Rivers System, 1967, p. 1)

Directive 1b

The Upper Delaware Scenic and Recreational River should be managed so that the environmental, scenic, recreational, and historic values are maintained near 1978 levels. (Substantiation for this directive was "strong.")

The major concern of the people responsible for the designation of the Upper Delaware was the gradual deterioration of the river environment. They wanted safeguards to protect the river. Repeatedly the legislative history stated that the environmental quality and the level of development at the time of designation was acceptable, but approaching a point where the resource was being threatened. In some instances, it was specifically stated that these "existing" levels should be the standards at which the resource be maintained.

In 1971, a BOR Report stated:

The overall goal of this acquisition program is to provide for the perpetuation of the present land use pattern in a river area whose shoreline and watershed is largely forested and undeveloped. Basic to these recommendations is the realization that the existing recreational use, vacation home and residential development, and commercial and industrial development, while still at a volume that does not immediately endanger the resource, is nearing a point where, without adequate safeguards, significant deterioration could occur. (United States Department of the Interior, 1971, p. 85)

Although after 1971 the goals of those advocating designation moved away from a program where land acquisition was the appropriate action, the concern about continued growth existed through the 1978 designation. In fact, the 1971 report was all but quoted in several subsequent documents and hearings. The 1976 BOR Study, Representative Matthew McHugh's written statement accompanying H.R. 11743, and McHugh's statement before the 1978 Senate hearing all said:

existing recreational use, vacation home and residential development, while still at a volume that does not immediately endanger the resource, is nearing a point where significant deterioration will occur unless adequate safeguards are provided. (United States Department of the Interior, 1976, p. 39, McHugh, 1978, p. 2, and Wild and Scenic - Santa Monica ..., 1978, p. 70)

Also in his statement before the 1978 Senate hearing, McHugh quoted the 1976 BOR Report when he said:

Inclusion of the Upper Delaware in the National System will have an overall effect of preserving existing scenic, recreational, historic, fish and wildlife, and water quality values of the river. (United States Department of the Interior, 1976, p. 39 and Wild and Scenic - Santa Monica, 1978, p. 70)

Still further commitment to maintaining development at "existing" levels appears elsewhere in Department of the Interior and BOR Reports. A 1973 report stated:

The goals sought are preservation of the visual corridor through a relative fixing of land uses and a relative stabilizing of recreational use. (Department of the Interior, 1973, p. 19)

The 1976 BOR report expressed a bit more specificity when it claimed:

While the recommendations [for strong land and water protection measures] do not affect the operation of existing commercial and industrial enterprises, they would prohibit new development which is incompatible with the purposes of the National Wild and Scenic Rivers Act. Thus, the proposal would not affect current economic standards within the river corridor, although it could limit commercial and industrial growth there. (United States Department of the Interior, 1976, p. 37)

Tarlock and Tippy, in their analysis of the legislative history of the Wild and Scenic Rivers Act, confirm that the general aim of the Wild and Scenic Rivers System is to keep rivers from deteriorating beyond the levels existing at the time of designation. They wrote:

recreation development will be allowed, but will be limited to that which will not substantially alter the character of the river corridor and its ecosystems at the time of inclusion within the system. (Tarlock and Tippy, 1970, p. 707)

They also stated that, in part, the classification system (wild, scenic, recreational) of the Wild and Scenic Rivers Act satisfied conservationists'

demands for curbing development on designated rivers. They said that conservation organizations "advocated a classification system for preserved rivers to perpetuate the existing land use patterns in a stream valley."

(Tarlock and Tippy, 1970, p. 711)

Directive 1c

Recreational development should have minimal impact on the natural environment and be concentrated in areas already experiencing development. (Substantiation for this directive is a high "medium.") Although provision of recreational opportunities is a key responsibility of the National Park Service, it is clear that development needed for such opportunities should impact the natural environment as little as possible.

One of the key objectives of the 1976 BOR Report was "to provide for a level of recreation use that minimizes deterioration of land and water resources." (United States Department of the Interior, 1976, p. 31) To this end, the twenty recommended access points were to be at areas already experiencing development (See substantiation for Directive 3a). And at these points, the 1976 BOR Report claimed that:

Extreme care would be taken in the location of facilities, with primary emphasis upon retention of the existing setting at the site being altered. (United States Department of the Interior, 1976, p. 35)

As early as 1971, the BOR Reports recommended development plans with a goal of:

1) preserving and protecting the river environment while 2) providing suitable recreation facilities for appropriate visitor use and enjoyment of the river. Any and all development must be carefully weighed as to the possible consequences on the natural character of the river. (United States Department of the Interior, 1971, p. 70)

And in the House of Representatives Hearings on the Wild and Scenic Rivers legislation, such amenities as access points, campsites, picnic areas, and

interpretative areas were encouraged, but "in the case of rivers through areas in which the natural scene has remained unchanged, development would be minimized to retain the integrity of the natural state." (Hearings on H.R. 8416 ..., 1968, p. 165)

Directive 1d

Recreational activities to be encouraged are canoeing, boating, swimming, picnicking, camping, hiking, fishing, hunting, and ecological study and interpretation. (Substantiation for this directive is "medium.")

There is little discussion in the legislative history about the specific recreational activities deemed appropriate for the Upper Delaware. In many cases, the phrase "recreational opportunities associated with a free-flowing river" was as much detail as was offered. The activities listed in this directive come directly from the 1971 BOR Report. (United States Department of the Interior, 1971, p. 5) Nothing in subsequent hearings on BOR Reports suggests this list is inaccurate. A 1969 BOR study draft did put greater emphasis on sightseeing by automobile along the New York side than appears in subsequent reports. (United States Department of the Interior, 1969, IV H, p. 2) A Delaware River Basin Commission memorandum mentioned strong local concern about canoe campers infringing on the rights and privacy of landowners. But even here, the memo was a desire for a solution of the conflict, not a suggestion that camping be halted (Whital, 1977).

Of the specific recreational activities, only canoeing, fishing, and hunting received much individual attention. Canoeing will not be addressed here, but is covered in Directive 2c.

In the legislative history on the Upper Delaware, hunting and fishing were usually discussed together. For example, one of the few differences in

Representative Matthew McHugh's bill and the eventual enabling legislation is that Sec. 704(h) of the Act does not appear in the bill. Sec. 704(h) reads "nothing in this section shall be construed as limiting the right to fish and hunt on any land or waters within the boundaries of the Upper Delaware River in a manner provided in Section 13 of the Wild and Scenic Rivers Act." (Parks and Recreation Act of 1978, Sec. 704(h)) Briefly, Section 13 of the Wild and Scenic Rivers Act says that fishing and hunting are permitted according to applicable state and federal laws and regulation, but the Secretary of the Interior may restrict hunting if it is deemed necessary "for reasons of public safety administration, or public use and enjoyment..." (Wild and Scenic Rivers Act, 1968, Sec. 13(a))

Congress made special efforts, and this is substantiated by the 1978 House Report, to guarantee the continuation of hunting and fishing. (House of Representatives Report, 1978, p. 86)

Congressman McHugh, at the 1978 hearings, was particularly enthusiastic about fishing, in part because of its high quality on the Upper Delaware, but also because of its contribution to the tourism of the area. (Wild and Scenic - Santa Monica, et al..., 1978, p. 69) The significant species of the fishery are assumed to include not only native fish, but also the introduced rainbow and brown trout. (United States Department of the Interior, 1969, IV I, p. 5, United States Department of the Interior, 1973, p. 12)

Directive 1e

The release of water from dams upstream of the Scenic and Recreational River, but built prior to the designation, is largely the determination of agencies other than the National Park Service. (Substantiation for this directive is "strong.")

First of all, it is important to note that this directive refers only to water rights claimed prior to the designation of the Upper Delaware into the Wild and Scenic Rivers System. The Wild and Scenic Rivers Act clearly allows for the reservation of unclaimed water rights to the extent that the water claimed is needed to carry out the purposes of the Act. (Wild and Scenic Rivers Act, 1968, Sec. 13(b))

The dams that created the Neversink, Peparton, and Cannonsville reservoirs all preceded the designation of the Upper Delaware and were built largely to provide water to New York City. Although Bureau of Outdoor Recreation reports expressed concern with irregular releases from these reservoirs, the designation of the scenic and recreational river did not intend to infringe upon the water rights that existed at the time of designation.

Sec. 13(b) of the Wild and Scenic Rivers Act is explicit on this. It says "the jurisdiction of the States and the United States over waters of any stream in a national wild, scenic, or recreational river area shall be determined by established principles of law." (Wild and Scenic Rivers Act, 1968, Sec. 13(b)) The Senate Report on S.119 explained this section of the law by stating that it was "intended by the committee to preserve the status quo with respect to the law of water rights." (National Wild and Scenic Rivers Systems, 1967, p. 5)

PL 95-625, in designating the Upper Delaware, substantiates the Wild and Scenic Rivers Act by intentionally deleting from an earlier bill a plan for controlled water release. Sec. 4 of HR 10241 called for "a program for the release of water from reservoirs in sufficient quantity and in such manner to protect and enhance biological and recreational value within the area." (H.R. 10241, 1977, Sec. 4) No such section exists in the enabling legislation.

Directive 1f

When the National Park Service has input concerning water flow, their recommendations should enhance the cold water fishery, canoeing, and other water dependent recreational pursuits. (Substantiation for this directive is "medium.")

The enabling legislation provided the National Park Service no authority to regulate water releases from upstream reservoirs built prior to the scenic and recreational designation. Still, the Department of the Interior's numerous river studies encouraged scheduled releases that would 1) maintain water quality, 2) maintain the cold water fishery, and 3) provide good canoeing conditions. (Bureau of Outdoor Recreation, 1977, Upper Delaware ..., 1973, United States Department of the Interior, 1973, p. 21, and United States Department of the Interior, 1969, IV B, p. 1) Some of the reports, but not all, mentioned that summer releases of cold water also affected water contact sports. (United States Department of the Interior, 1973, p. 13)

The legislative history's concern with water flow was that irregular releases from upstream reservoirs caused fluctuations in the depth and temperature of the water. It was feared that extreme temperature variations adversely affected the aquatic environment. (United States Department of the Interior, 1969, IV J, p. 1) The major concern was the effect on a fishery which includes American shad, walleye, smallmouth bass, and trout. (United States Department of the Interior, 1969, IV I, p. 5, IV B, p. 1, Upper Delaware..., 1973, United States Department of the Interior, 1973, pp. 13, 21) At the same time that the reports voiced concern about irregular reservoir releases, it noted that it was actually the dams and their reservoirs which kept the water temperature low enough to support a propagating population of rainbow and brown

trout. (United States Department of the Interior, 1976, p. 9)

Of the recreational pursuits affected by irregular water flows, certainly harm to the fishery was mentioned most often. Nothing, however, said explicitly that is was more important than the others. Whenever flow schedules were mentioned it was stated that the water flow should be adequate for canoe use. (United States Department of the Interior, 1973, pp. 13, 21, Bureau of Outdoor Recreation, 1977, and Sullivan County Planning Board, 1974) The only comment as to what amount of water was considered adequate came from a Bureau of Outdoor Recreation proposal citing a study segment of the river that required 1000 cubic feet per second. (Bureau of Outdoor Recreation, 1977)

Directive 1g

A major reason for the presence of the National Park Service is to maintain the water quality at 1978 levels. (Substantiation for this directive is "strong.")

One of the main reasons that the Department of the Interior became involved with the Upper Delaware was to protect the quality of the water. As with many concerns for the area, the goal of water quality protection, in the late 60's and early 70's, was to guarantee a status quo. The 1969 Bureau of Outdoor Recreation Draft Report stated, "Water quality at present is very good, however, pollution could become more of a problem with increased use, whether industrial, residential or recreational. If the present standards set by the Delaware River Basin Commission can be maintained, it may be possible to keep water quality at its present level." (United States Department of the Interior, 1969, IV J, p. 1)

Representative Matthew McHugh of New York, whose bill ultimately became the enabling legislation for the Upper Delaware, stated in the 1978 Congressional

Hearing on the Upper Delaware that one of the overall effects of the designation was to preserve the existing water quality. (Wild and Scenic - San Monica ..., 1978, p. 70)

The Upper Delaware enabling legislation (PL 95-625) stated only that guidelines for water use control measures be developed and implemented by the states, by the local governmental subdivisions, and by the Delaware River Basin Commission. (Parks and Recreation Act of 1978, Sec. 704 (b) (1)) The enabling legislation on this matter, however, did not need to be explicit because the responsibility to maintain clean water was already clearly stated in the Wild and Scenic Rivers Act.

The Senate Report on the Wild and Scenic Rivers bill stated that a major goal of the legislation was "to promote sound water conservation." (National Wild and Scenic Rivers System, 1967, p. 3) Sec. 12(c) of the Wild and Scenic Rivers Act stated that it is the responsibility of the National Park Service to cooperate with other agencies "for the purpose of eliminating or diminishing the pollution of waters of the river." (Wild and Scenic Rivers Act, 1968, Sec. 12(c))

In the Bureau of Outdoor Recreation Reports on the Upper Delaware, the problem of water pollution centered on inadequately treated sewage and septic tank overflows. (United States Department of the Interior, 1969, IV B, p. 1, United States Department of the Interior, 1971, p. 64, United States Department of the Interior, 1973, p. 13, Bureau of Outdoor Recreation, 1977, and Sullivan County Planning Board, 1974) In particular four communities in New York (Hancock, Callicoon, Narrowsburg, and Barryville) were polluting the river. BOR recommendations called for water pollution abatement efforts to be accelerated. (Bureau of Outdoor Recreation, 1977, Sullivan County Planning Board, 1974)

Guideline 2. All planning processes for the Upper Delaware Scenic and Recreational River are to be a cooperative effort.

(Substantiation for this guideline was "strong.")

As much as possible, in all aspects of the Upper Delaware the spirit of cooperation between agencies and between the National Park Service and the public should be encouraged. In the planning process, however, the spirit is mandated. Every planning step addressed in the enabling legislation, with one exception, requires interagency cooperation and public input.

Concerning land and water use controls, Sec. 704(b)(1) reads:

...the Secretary shall publish in the Federal Register general guidelines for land and water use control measures to be developed and implemented by the appropriate officials of the States of New York and Pennsylvania, by the local political subdivisions, and by the Delaware River Basin Commission.

the Secretary shall provide for participation on the development of the said general guidelines by all levels of State, county, and local government, and concerned private individuals and organizations, and also seek the advice of the Upper Delaware Citizens Advisory Council... In each of the directly affected States, prior to publication of such general guidelines, public hearings shall be conducted by the Secretary or his designee, in the region of the Upper Delaware River...

(National Parks and Recreation Act of 1978, Sec. 804(b)(1))

Concerning the management plan, Sec. 704(c)(1) directs:

the Secretary, in cooperation with the Commission (DRBC), the Advisory Council, the directly affected States and their concerned political subdivisions and other concerned Federal agencies, shall develop, approve, and submit to the Governors of the directly affected states a management plan for the Upper Delaware River.

(National Parks and Recreation Act of 1978, Sec. 704(c)(1))

Furthermore

the Secretary shall promote public awareness and participation in the development of the management plan, and shall develop and conduct a concerted program to this end. Prior to final approval of the management plan, the Secretary shall hold two or more public hearings on the Upper Delaware River region of each directly affected State.
(National Parks and Recreation Act of 1978, Sec. 704(c)(5))

The one instance where a plan did not require cooperative effort was the interim plan to be developed immediately after enactment of the Act. The

purpose here was to put into place quickly a means to protect the resource while more permanent plans could be developed. (National Parks and Recreation Act of 1978, Sec. 704(c)(3))

Directive 2a

Local residents must be involved in the management planning of the Scenic and Recreational River. (Substantiation for this directive is "strong.")

This directive is explicit in the enabling legislation. Several times public involvement is required by the Act. For example:

The Secretary shall promote public awareness of and participation in the development of the management plan, and shall develop and conduct a concerted program to this end. Prior to the final approval of the management plan, the Secretary shall hold two or more public hearings in the Upper Delaware River region of each directly affected State. (National Parks and Recreation Act of 1978, Sec. 704 (c)(5))

Furthermore, the Upper Delaware Citizens Advisory Council, which itself is to be composed almost entirely of local residents, has been directed to "report to the Commission (Delaware River Basin Commission) and the Secretary from time to time during preparation of the management plan. Following completion of the management plan, it shall report to the Secretary and the Governors of the directly affected states no less frequently than once each year its recommendations, if any, for improvement in the programs authorized by this act..." (National Parks and Recreational Act of 1978, Sec. 704 (f)(1))

This major involvement by local residents was clearly the intent of Representative McHugh when he introduced the bill that eventually became law. In the written statement accompanying the bill, he said that the bill "provides to the local residents that they can participate in developing the plan under which the river and its corridor will be managed." (McHugh, 1978, p. 4)

In the 1978 Congressional hearings on the Upper Delaware, he reiterated this sentiment by saying:

the second major feature of this bill is the guarantee it provides to local residents that they can participate in developing the plan. (Wild and Scenic - Santa Monica ..., 1978, p. 70)

Directive 2b

The initial master planning process should determine a carrying capacity for the river. After this determination, on a continuing five-year basis, the area will be reviewed to determine if overuse is occurring. (Substantiation for this directive is "medium.")

The 1971 and the 1976 Bureau of Outdoor Recreation Reports both recommended reviews at five year intervals to determine if overuse of the resource was occurring.

The 1971 Report said that the National Park Service, in consultation with the Advisory Council, should

review the use of the area to determine maximum use and prevent deterioration of the resource through overuse. (United States Department of the Interior, 1971, pp. 9, 11)

The 1976 Report refined this idea to suggest that the master plan determine an initial carrying capacity. The Report recommended that there be a

"...determination of an environmentally sound carrying capacity during the master planning process. On a continuing five-year basis, the use of the area will be reviewed to determine if overuse is occurring. (United States Department of the Interior, 1976, Appendix)

If one of the reviews showed that overuse was occurring, steps to reverse the environmental damage must be taken. Although many connected with the designation of the Upper Delaware favored a permit system (See Substantiation for Directive 2c), no single method to curtail overuse was either recommended, discouraged.

The 1971 BOR Report said that the National Park Service should "if necessary, prescribe and enforce any limitation on use deemed necessary to

preserve its (the Upper Delaware) value and character." (United States Department of the Interior, 1971, p. 11) The 1976 Report stated that if overuse was occurring, "management practices would be altered accordingly." (United States Department of the Interior, 1976, Appendix)

The 1971 BOR Report actually supplied a maximum daily capacity of 12,500 persons per day. (United States Department of the Interior, 1971, p. 9, 70) This number includes all recreators, not just canoeists or not just river users. This number is mentioned here only because it is the only number used in all of the legislative history. The number carries little substantiation. It is mentioned only in one, early BOR Report. It is a number that angered local citizens. Locals felt that numbers should be restricted, but 5000 was a more realistic and acceptable limit. (PA Congressman ..., 1977, pp. 1, 12)

Directive 2c

A permit system to regulate canoe use is encouraged, but its use is left to the discretion of the Secretary of the Interior, working in cooperation with the Advisory Council and other governmental agencies. (Substantiation for this directive is a low "medium".)

Although the few comments in the legislative history materials on a permit system all favored its use, the Act designating the Upper Delaware intentionally avoids either requiring or disallowing a permit system for canoes.

A 1977 Delaware River Basin Commission memorandum said that federal involvement in the Upper Delaware was being publicized as a conservation measure, and this included limited public use if necessary "in order to protect the scenic qualities of the area..." The memo also claimed that local interests supported a permit system and "control of excessive river use, and the associated effects would be a key selling point in the region." (Whitall, 1977)

In general, the advocates of a permit system, for canoeists and river use in general, were the DRBC and local residents. (Assistant Region Director, 1977, and PA Congressman..., 1977, p. 1)

The key piece of information on this topic was a section in a 1977 bill that was intentionally deleted from the eventual Act. Pennsylvania Congressman Joseph McDade introduced H.R. 10241. Section 4(a)(5) of the bill called for "a public use plan that includes where appropriate, ... a permit system for regulating boat use..." (H.R. 10241, 1977, Sec. 4(a)(5))

The directive for a permit system never made it to the final legislation, and the language that replaced McDade's proposal was much more general.

The Act of 1978 addresses management of water use twice. Concerning an interim plan to be used between designation and completion of the management plan, the Act said there will be "regulation of recreational use of the river." (National Parks and Recreation Act of 1978, Sec. 704(c)(3)) And as to the management plan that would replace the interim program, the Act directed the Secretary of the Interior to include a program to manage water use by applying "available management techniques." (National Recreation and Parks Act of 1978, Sec. 704(c)(2))

The Act never specifically mentions a permit system, but leaves open all methods of river use management.

Directive 2d

The National Park Service will take the lead role in administering agreed upon management plans. (Substantiation for this directive is "strong.")

This is not as obvious as it seems. As late as 1978, some felt that the managing agency should be the Delaware River Basin Commission (DRBC). (Region Director, 1978, Assistant Region Director, 1977)

Also, in order for an agency of the federal government to have jurisdiction of the land within the Scenic and Recreational River where they have no interest, either the State of New York or the Commonwealth of Pennsylvania would have to relinquish its jurisdiction. (Tays, 1978)

BOR Reports from 1976 and 1977 best summarize the roles of the various agencies involved in the Upper Delaware. The 1976 study report described the National Park Service as the recreation managers, the states, local governments, and the Delaware River Basin Commission as the creators of land use control measures, and the citizen advisory council as advisors in all matters. (United States Department of the Interior, 1976, p. 31)

The 1977 BOR proposal suggested that planning and management be as cooperative an endeavor as possible, with the National Park Service as the manager of recreation and the leader in pushing forward the development of the management plan. (Bureau of Outdoor Recreation, 1977)

The 1978 Act designating the Upper Delaware as Scenic and Recreational clearly gives the Secretary of Interior, therefore indirectly the National Park Service, the authority to implement the management plan and assess local zoning ordinances.

Concerning the management plan, Sec. 704(c)(6) says "The Secretary is hereby granted such authority as may be required to implement and administer said plan." (National Parks and Recreation Act of 1978, Sec. 704(c)(6)) Sec. 704 (e)(1) says "For the purpose of protecting the integrity of the Upper Delaware River, the Secretary shall review all relevant local plans, laws, and ordinances to determine whether they substantially conform to the approved management plan... Additionally, the Secretary shall determine the adequacy of enforcement of plans, laws, and ordinances ..." (National Parks and Recreation Act of 1978, Sec. 704(e)(1))

Guideline 3. The nodal management concept should consist of twenty access and recreation facilities plus two information centers.

(The substantiation for this guideline is a high "medium")

The earliest BOR Report included nodal management as one of several alternatives for the Upper Delaware, but were reluctant to recommend it as the preferred management method. In 1973, the BOR Report did take a stand and recommended that:

The concept of nodal management should be adopted for the protection of the Upper Delaware Scenic and Recreational River. Under this alternative, public full title acquisition of the river corridor lands would be limited primarily to access and recreational facility sites. (United States Department of the Interior, 1973, p. 19)

Local residents and state officials did not necessarily concur with this statement and voiced opinions that ran the range of the BOR alternatives. The majority opinion at a Milford, PA public meeting endorsed total federal management and maximum acquisition, whereas at a Callicoon, New York meeting, the majority opinion was that the National Park Service should stay out completely, and the Upper Delaware not be designated a scenic and recreational river. (Sullivan County Planning Board, 1974) Governor Milton Shapp of Pennsylvania wrote to the Secretary of the Interior and endorsed the total management alternatives. (Shapp, 1974)

The nodal management concept was actually a compromise between extremes, and as such, gained progressive support. The 1976 BOR Report echoed the 1973 recommendation for nodal management, and from 1976 until the Act was passed in 1978, it was the only alternative for management that was seriously considered. (United States Department of the Interior, 1976, p. vi) As Representative Matthew McHugh noted, land acquisition had to be kept to a minimum if a wild and scenic river had any chance for acceptance within his district. (Tays, 1978) The nodal approach required the least land acquisition.

The number of nodes should be kept to a minimum, yet provide adequate public access. The number thought to be sufficient started at 38 in 1971.

(United States Department of the Interior, 1971, p. 78) This dropped to 26 in 1973. (United States Department of the Interior, 1973, pp. 89, 90) In 1976, the number again changed, this time to 20 facility sites and 2 information centers. (United States Department of the Interior, 1976, p. 31) This number, 20 sites plus 2 information centers, was reaffirmed in a 1977 BOR Study Proposal, and it remains the final recommendation prior to designation of the Upper Delaware. (Bureau of Outdoor Recreation, 1977)

Directive 3a

The National Park Service should not develop new access and recreational sites, but acquire and develop those sites already in recreational use.

(Substantiation for this directive is a high "medium")

Only the early BOR Reports, those that called for 37 or 38 different areas, recommended the development of new recreation facilities. (United States Department of the Interior, 1971, p. 78) As early as 1973, discussion on acquisition of recreation facilities centered on obtaining "existing" recreational sites. Revised BOR recommendations said that "emphasis should be placed on improving existing facilities and making better use of those sites." (Upper Delaware, 1973, p. 3) The exact same words were used in a memorandum of the Sullivan County Planning Board and other BOR statements. (Sullivan County Planning Board, 1974, Draft Record..., 1973)

When the BOR finally settled on 20 as the number of sites, all of their reports continued to emphasize that the sites would be those already used as recreational areas. (United States Department of the Interior, 1976, p. 32, Bureau of Outdoor Recreation, 1977)

Directive 3b

With the exception of ongoing business endeavors, the 20 access and

recreation sites should be acquired fee simple. The 450 acres that can be acquired should be limited primarily to such facilities. (Substantiation for this directive is high "medium")

The Act says that land may be acquired for "access, development sites, the preservation of scenic qualities, or for any other purposes." (National Parks and Recreation Act of 1978, Sec. 704(c)(6)(6)) The legislative history points out, however, that the goal is to guarantee protection of the resource through zoning and easements, and to use the 450 acres that might be acquired for access and recreational facilities. This is the recommendation of the 1976 BOR Report. (United States Department of the Interior, 1976, p. 32) It is also the recommendation as far back as 1973, when the BOR said,

"...full title acquisition of the river corridor would be limited to access and recreational facility sites. The emphasis would be on encouraging landowners, through local zoning and easements, to apply land use practices which do not conflict with scenic and recreational river designation." (United States Department of the Interior, 1973, pp. 19, 21)

This was reiterated in the revised Upper Delaware National Scenic and Recreational River Recommendation when it was written,

"The concept of nodal management should be adopted... public full title acquisition of river corridor lands would be limited primarily to access and recreational facility sites." (Upper Delaware..., 1973, p. 1)

Even the acquisition of access and recreation areas, however, is not immune to the goal of protecting local interests. Regardless of the purpose that the National Park Service has for a piece of property, any ongoing business is protected from being bought out against the owner's will. PL 95-625 requires for the Upper Delaware that "Prior to acquisition of any land or interests in land which has been used for business purposes during the annual period immediately preceding the date of the enactment of this Act, the Secretary shall

first make such efforts as he deems reasonable to acquire easements or restrictive covenants..." (National Parks and Recreation Act of 1978, Sec. 704 (b)(6)(d))

As a side note on land acquisition, the Wild and Scenic Rivers Act has several restrictions on the extent to which fee simple acquisition may occur. (Wild and Scenic Rivers Act, 1968, Sec. 6) The Upper Delaware is bound by these restrictions, but the nodal approach requires so little acquisition that the Wild and Scenic Act restrictions should not become a factor.

Directive 3c

The information centers should be at either end of the unit in order to direct and dispense users. (The substantiation for this directive is "weak")

To a large extent this directive is common sense. The BOR proposal of 20 recreational sites and two information centers puts the information centers at the unit's termini. (United States Department of the Interior, 1976, p. 35) It is apparent that the purpose is to inform and direct users as they enter the Scenic and Recreational River.

This was also specifically stated in an outline of pertinent points about the 1973 BOR Report. The outline called for the "establishment of information centers, road control stations, and informational telephone numbers in an effort to control the population as it moves toward use of this area." (General Outline..., 1973)

Directive 3d

One purpose of the 20 nodal points is to indirectly control use by channeling public river use through a limited number of dispersed points. (Substantiation for this directive is "weak")

The substantiation for this directive is weak in comparison to some of the

others in this report. The only specific statements come from an outline explaining the 1973 BOR Report. (General Outline..., 1973) Nothing was found in the legislative history that contradicts this directive.

By encouraging access at the existing access points, several management objectives would be accomplished. First of all, access would largely be limited to areas already realizing the physical impacts of human use. Secondly, it ideally would relieve some river user - private landowner conflicts by restricting river users to the river except at designated areas. Thirdly, it would disperse use if an effective conveyance of user information could spread use out across the many access points. (See Directive 3c)

In the outline of key points about the 1973 BOR Report, the statement went so far as to suggest the prohibition of debarking from the river except at assigned access points. (General Outline..., 1973) A 1978 BOR memorandum supported this concept, but was more realistic in stating that acquiring 450 acres "is not enough to enable us to physically control access to, and thus use of the river. It is, however, probably the best we can get." (Region Director, 1978)

Guideline 4. All management decisions must consider not only the interests of the Scenic and Recreational River, but also the interests of the local residents.

(Substantiation for the guideline is "strong")

The demand for minimum disruption of the lives of local residents was more than lip service in order to get the legislation passed. The nodal management approach was to be a test as to whether a linear recreational unit could exist without displacing the residents of the area.

Representative Matthew McHugh, in this written statement that accompanied his 1978 bill, repeatedly stressed the need to protect the interest of the people who lived along the river.

I am concerned that we protect this river without compromising other significant values, such as the vital interests of the people who live and work in the river corridor...not only protects the natural resources, but assures the people along the river that their vital concerns will also be protected...

designation can and should take place without undue disruption of those who live along the river. (McHugh, 1978, pp. 3,4)

Representative Howard W. Robison of New York, as early as 1974, suggested changes in the bills to protect local interests from condemnation. In a House hearing, Robison called for an amendment that "would reduce the atmosphere of hostility now existing among certain of the farm, home, and business owners whose properties are situated along the banks of the Upper Delaware who argue that their own past interest and restraint have so served the area involved that it does meet the guidelines for inclusion in wild and scenic rivers." (Wild and Scenic Rivers Acts Amendments..., 1974, p. 92)

In 1978, Patrick Moynihan of New York introduced a bill into the Senate that was the same as McHugh's in the House of Representatives. (S 2611, 1978) Senator Clifford Case, in a Congressional hearing, supported Moynihan's bill in saying,

I understand and support the goals of S 2611. In drafting this bill, Senator Moynihan included special provisions which give explicit attention to preservation of that section of the Delaware with a minimum of intrusion into the lifestyles of the people most directly affected by designation of that portion of the river. (Wild and Scenic - Santa Monica..., 1978, p. 64)

In summary, every Congressman directly involved in the designation supported minimum intrusion upon the lives of the local residents.

Directive 4a

Minimum land acquisition is the key to serving local interests.

(Substantiation for this directive is a low "strong")

The foremost concern of the Congressmen trying to balance national designation with protection of local interests was that private landholders not lose their property. These Congressmen supported acquisition of access points (See Guideline 3). They also wanted the authority to clamp down on landowners who misused the land. (See Directive 5b)

Other than that, however, the guarantee that residents hold onto their property was imperative.

H.R. 11148, presented in 1973, said little other than that land within a township or county that had "valid zoning ordinance that conforms with the purposes of the Act," (Wild and Scenic Rivers Act) would not be condemned. (HR 11148, 1973) As Roy A. Taylor, Representative from North Carolina stated, "the effect which applies only to the Delaware, ... is if appropriate zoning ordinances were in effect, then none of the property on this river could be taken by condemnation." (Wild and Scenic Rivers Act Amendments, 1974, p.93)

Representative Matthew McHugh, in the 1978 Congressional hearings on the Upper Delaware stated, "... since 1968 experience has taught that substantial acquisition is not necessary. In many cases, protection can be afforded through

local action consistent with a management plan which has been thoughtfully developed. This approach not only has the benefit of keeping property in private hands, but it costs the federal government substantially less than outright acquisition." (Wild and Scenic - Santa Monica ..., 1978, p. 70)

Directive 4b

In order that local governments not carry all the financial burdens of increased recreational use, the Secretary of the Interior shall assist these local entities with maintenance and law enforcement on lands not owned by the National Park Service. (Substantiation for this directive is "strong")

This is explicit in the Act. Sec. 704(g) on the Upper Delaware reads:

The Secretary is authorized to enter into contracts with the appropriate State or political subdivisions thereof pursuant to which the Secretary may provide financial assistance to such State or political subdivisions for purposes of - (1) enforcing State and local laws in such areas, and (2) removing solid waste from such areas and disposing of such waste. (National Parks and Recreation Act of 1978, Sec. 704(g))

It merits note that 704(g) is one of very few sections where the Act differs from McHugh's HR 11743. The reason, based on information in the legislature history, was a need to be extremely specific about the federal government's involvement in land it did not own (even though it was to be within the boundaries of the scenic and recreational river).

From 1973 on, the Bureau of Outdoor Recreation continually recommended that the National Park Service be involved in both policing and programs "which assure the integrity of the visual corridor." (UD 21, UD 23) (Bureau of Outdoor Recreation, 1977, Sullivan County Planning Board, 1974) A 1973 outline of pertinent points concerning the proposed scenic and recreational river specifically called for "subsidies to local town governments for the maintenance of police, water, sewage, garbage." (General Outline, 1973)

However, the Director of the National Park Service noted that:

Except for lands which are acquired and lands made subject to cooperative agreements with landowners, the National Park Service could not assert law enforcement or regulatory or maintenance powers on property within the river segment, without a cessation of legislative jurisdiction from the States of New York and Pennsylvania. We believe law enforcement and maintenance activities can be dealt with on a case-by-case basis through the negotiation of cooperative agreements..." (Director, National Park Service, 1978)

McHugh's bill called for interim programs that included maintenance activities along the river (HR 11743, 1978, Sec. (c)) The enabling legislation deleted maintenance from the interim programs, but added the specific section (g). (National Parks and Recreation Act of 1978, Sec. 704(g))

Directive 4c

Commercial development in existence prior to the designation of the Upper Delaware and not in conflict with the purposes of the designation should be left in private management. (Substantiation for this directive is "strong")

Once again, the goal is status quo. As the 1976 BOR Report stated:

"While the recommendations do not affect the operation of existing commercial and industrial enterprises, they would prohibit new development which is incompatible with the purposes of the National Wild and Scenic Rivers Act. Thus the proposal would not affect current economic standards with the river corridor, although it could limit commercial and industrial growth there. (United States Department of the Interior, 1976, p. 37)

The enabling legislation, to some extent, is a compromise between full federal intervention and guaranteed protection of commercial development.

Both the 1971 and 1976 BOR Reports saw government purchase as the means of halting growth and incompatible use at existing commercial developments. The 1971 Report recommended federal purchase of business enterprises, with either lease-back or sell-back with restrictions to the original owners as a means of federal control over these businesses. (United States Department of the Interior, 1971, p. 74) The 1976 Report, by now dedicated to the nodal

management approach, recommended the government use purchase and lease-back with restrictions only as the means of assuring environmental protection at the twenty recreation/access sites. (United States Department of the Interior, 1976, p. 35)

The enabling legislation, however, represents a decision that outright purchase is an unnecessary extreme.

Section 704(d) of the 1978 Act reads:

Prior to the acquisition of any land or interests in land which has been used for business purposes during the annual period immediately preceding the date of the enactment of this Act, the Secretary shall first make such efforts as he deems reasonable to acquire easements or restrictive covenants... (National Parks and Recreation Act of 1978, Sec. 704(d))

Conversely the enabling legislation did not go as far in protecting private landowners as some would have wanted. HR 10241, a 1977 bill introduced by Representative McDade called for a section of the management plan which "recognizes existing economic activities and provides for their protection and enhancement when they are consistent with public values of the area."

(HR 10241, 1977)

The equivalent section in the Act requires only that the plan set forth "an analysis of the economic and environmental costs and benefits of implementing the management plan including any impact of the plan upon revenues and costs of local government." (National Parks and Recreation Act of 1978, Sec. 704 (c)(2)(c))

The goal is neither to remove nor ignore commercial development, but consider economic impacts and allow private development that is not in conflict with the public values of the area. According to Representative McHugh, who introduced the bill that became law, what is needed is a comprehensive

management program, because "uncontrolled development can slowly erode the significant intrinsic values of this area for both the landowner and the occasional visitor." (Wild and Scenic - Santa Monica ..., 1978, p. 70)

Directive 4d

Recreation-oriented businesses, if adhering to the goals of the scenic and recreational river, may grow as needed. (Substantiation for this directive is a low "medium.")

The substantiation for this is not strong. However, the 1973 and 1976 BOR Reports were realistic that increased recreational use would require additional services. The 1973 report stated that the enhancement of recreational services such as camps, campgrounds, and fishing and hunting preserves can be both private and public concerns. (United States Department of the Interior, 1973, p. 12) The 1976 Report encouraged growth to occur in the towns when it wrote,

Presently, recreation-oriented business, catering to the demand of tourists, vacationers, and sportsmen, predominate in many of the small settlements. It is expected that the proposal (scenic and recreation designation) would be an impetus to the continued growth in the recreation and retail trade. (United States Department of the Interior, 1976, p. 37)

The demands for a management program did not necessarily intend to stop development entirely. A memorandum of the Sullivan County Planning Board recommended that management techniques be used to "channel" growth patterns. (Sullivan County Planning Board, 1974) Even Representative Matthew McHugh was careful to limit his attacks to "uncontrolled" development. (Wild and Scenic - Santa Monica..., 1978, p. 70)

Guideline 5. The primary land use control mechanism should be adequate zoning, adequately enforced.

(Substantiation for this guideline is "strong.")

This directive is an exact quote from a 1973 Department of the Interior Report. (United States Department of the Interior, 1973, p. 20) After some controversy on the issue, this early recommendation became law in 1978.

The arguments largely involved two issues. The first was whether protection of the resource should be dependent upon acquisition, easements, or zoning. The second, occurring after zoning was determined as the preferred method, was whether designation of the Scenic and Recreational River should be dependent on having all zoning ordinances in place.

By 1973, the BOR and the Department of the Interior were moving away from any ideas of acquiring all of the land along the Upper Delaware. Some people in Pennsylvania, including Governor Shapp, still wanted maximum federal control, but it was fairly clear New York would not support such a project. (Sullivan County Planning Board, 1974)

The 1973 Department of the Interior report advocated the use of both zoning and easements when it said,

The emphasis would be on encouraging landowners, through zoning and easements, to apply land use practices which do not conflict with scenic and recreational river designation. (United States Department of the Interior, 1973, p. 19)

A page later, however, the report indirectly suggested that zoning, when effective, should be preferred over easements. It said, "The primary land use control mechanism should be adequate zoning, adequately enforced." (United States Department of the Interior, 1973, p. 20) Zoning was also advocated by local residents and Congressman McDade at the two Congressional hearings. (Wild and Scenic Rivers Act Amendments..., 1974, pp. 90-91, Wild and Scenic - Santa

Monica ..., 1978, p. 211)

Not everyone, however, was confident zoning would be adequate protection. Theodore R. Robb, Region Administrator for the Department of Housing and Urban Development doubted that zoning ordinances in rural communities, even if adopted, would ever be enforced.

He said,

...zoning, as the sole means of administratively protecting an area, can be legally and politically fragile... The history of zoning demonstrates quite well, that as a device for permanently protecting scenic or other open space qualities of an area, zoning is generally inappropriate... (Robb, 1974)

Bill Painter of the American River Conservation Council held feelings similar to Robb's, and at the 1973 Congressional hearings said:

if we examine the history of this kind of situation we will find that local government bodies have had little success with holding back the development, especially in areas like this which are very close to urbanized situations. I think we have to look very carefully at how we can shore up efforts of these local zoning bodies and not assume they can resist pressure of development as they move in. (Wild and Scenic Rivers Act Amendments, 1974, pp. 166-167)

Although the advocates of zoning prevailed, the eventual act is actually zoning with teeth. Local entities must zone to the satisfaction of the Secretary of the Interior and enforce that zoning. If local zoning is inadequate for protection of the objectives of the Act, the Secretary can acquire lands clearly and directly required for such protection. (See Directive 5b)

A side note on the question of zoning came up in early 1978 when conflicting bills were introduced into the Senate. The 1973 and 1976 Department of Interior Reports both recommended that designation of the Upper Delaware not take place until the appropriate land use protection measures had been put into place. (United States Department of the Interior, 1973, p. 21,

United States Department of the Interior, 1976, p. 32) S. 2611 agreed with this view. (S. 2611, 1978) According to Robert Herbst, Assistant Secretary for Fish, Wildlife, and Parks, waiting for local authorities to enact local land use measures would, "insure that prior to any major federal investments the Secretary would be satisfied that these measures (land use controls) had in fact been taken. It is our belief that only in this way can there be reasonable protection for the public investment." (Wild and Scenic - Santa Monica..., 1978, p. 95)

A second bill (S. 2653), however, was introduced at about the same time, calling for designation before the details on land use controls were completed. (S. 2653, 1978) S. 2653 was identical to McHugh's bill in the House, and his dislike of delayed designation was that it gave any single community along the river veto power over the river ever being designated scenic and recreational. (Tays, 1978)

And although the Department of the Interior's official stand was for the delayed designation, Interior officials near the river disagreed. A Delaware River Basin Commission memorandum said "...BOR would accede to the state position on designation and would not insist that action by the Secretary be conditional upon prior establishment of a satisfactory land use control program." (Whitall, 1977)

A memorandum from Interior's Mid-Atlantic Region went so far as to say,

This office has never agreed with the proposal to make establishment contingent upon adoption of zoning by all the townships within the boundary, since such a provision would very likely prevent establishment for an extended period, if not permanently. (Stanton, 1978)

McHugh's bill prevailed, and designation preceded the establishment of land use controls.

Directive 5a

In instances where land or interest in land is acquired because of inadequate zoning or inadequate enforcement of zoning, easements are preferred to fee simple acquisition. (The substantiation for this directive is "weak")

The Upper Delaware enabling legislation makes no distinction between easements and fee simple acquisition. Either is equally acceptable under the law, and certainly the threat of being bought out is the greater incentive for encouraging effective zoning.

Also the Wild and Scenic Rivers Act, which grants the authority to condemn, states that condemnation may be either clear title or easement. (Wild and Scenic Rivers Act, 1968, Sec. 1277) Again, either is acceptable under the law.

However, the legislative history remains consistent with the objective of minimum intrusion upon the lives of local residents. Even for those residents that refuse to zone consistent with the purpose of the scenic and recreational designation, the preferred management recourse is to impose an easement.

For example, the 1973 outline of pertinent points about the Upper Delaware designation called for action that would provide "control of river lands under zoning or reasonable easements." (General Outline..., 1973)

Also, in the record of informal understandings reached between the BOR and the local residents it was stated,

"...adequate zoning adequately enforced would be the most important land use control mechanism. It was realized, however, that occasions might arise when preservation could only be assumed through easements... Where such ordinances are not enacted or where enforcement is judged inadequate by the Secretary, the managing agency would be empowered to guarantee preservation through easements. (Draft Record..., 1973)

And finally, in a 1974 letter to the Secretary of the Interior Rogers Morton, Theodore R. Robb, the Region Administrator for the Department of Housing

and Urban Development, expressed his doubts about the effectiveness of zoning in rural communities. His recommendation for long-term protection of the area was "easements, use agreements, etc..." (Robb, 1974)

Directive 5b

If, after the proper time has elapsed, adequate zoning or adequate enforcement of zoning has not occurred, the Secretary of the Interior may acquire the land or interest in the land clearly and directly required for protection of the objectives of the Act. The determination of adequacy is to be made by the Secretary of the Interior. (Substantiation for this directive is "strong.")

All substantiation for this directive comes directly from the Act itself.

The proper amount of time is any period that is thought reasonable, but cannot be any sooner than two years after the approval of the management plan. (National Parks and Recreation Act of 1978, Sec. 704(e)(2))

The land acquired for this purpose is separate from the 450 and 1000 acre limits that were intended for access and recreation points. The limits on acquisition for these additional lands are stipulated in Section 1277(a)(c) of the Wild and Scenic Rivers Act. For extensive explanations of this section see A Look at the Wild and Scenic Rivers Act and the Tarlock and Tippy article on the Wild and Scenic Rivers Act in the Cornell Law Review. (Bock and Thomas, 1974, pp. 13-15, Tarlock & Tippy, 1970, pp. 717-719)

In addition to the restrictions of the Wild and Scenic Rivers Act, the Upper Delaware enabling legislation includes the additional specific restrictions that:

Land and interests in land acquired pursuant to this subsection shall be restricted to the geographical area of the local governmental unit failing to conform with said guidelines or management plan, and shall be limited to those lands clearly and directly required, in the judgment of the Secretary, for

protection of the objectives of this Act. (National Parks and Recreation Act of 1978, Sec. 704(e)(4))

That the Secretary of the Interior is the person responsible for determining the adequacy of the zoning and the enforcement of the zoning is stated in Sec. 704(e)(2) and reiterated in Sec. 704(e)(4). (National Parks and Recreation Act of 1978, Sec. 704(e)(2) and 704(e)(4))

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