

D-144

Final Report
FS-NC-1901 (85-07)
NPS IA 4000-4-0002

APPROPRIATE RIVER RECREATION USE STUDY

MAR-42

Analysis of Legislative and Legal
Foundations for Establishing Carrying Capacity

Summary Report for the Delaware Water Gap National
Recreation Area and the Middle Delaware Scenic
and Recreational River

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September, 1989

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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.

In the case of Delaware Water Gap National Recreation Area and the Middle Delaware Scenic and Recreational River, the determination of legislative intent is complicated because the Scenic and Recreational River is also part of the National Recreation Area. The report that follows, therefore, is based upon the legislative history of several acts, the two most important being Sec. 705 of the National Parks and Recreation Act of 1978, which designates the Middle Delaware as a scenic and recreational river, and PL 89-158, the 1965 act which established the Delaware Water Gap as a national recreation area. Other pertinent acts include the Wild and Scenic Rivers Act, PL 92-575, which appropriated additional funds for the acquisition of land, the Delaware River Basin Compact, and the Flood Control Act of 1962. The goal of this report is to

discern the legislative intent concerning recreational resource management and, in particular, recreational carrying capacity and limits of acceptable change.

The results of this report are not dramatic, nor particularly controversial. Rather, they characterize a shift in attitude from the 1960's, a shift where preservation was elevated as a priority. One result of this shift was the designation of the Middle Delaware Scenic and Recreational River.

Format of the Report

The report has three major sections. Section I is a list of general management guidelines and 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 designations of the Middle Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area (DWGNRA). The directives are specific suggestions that managers 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 both the recreation area and the scenic and recreational river. 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.

Section III is a brief comparison of the directives and guidelines of this report with the guidelines of the General Management Plan of the Delaware Water Gap National Recreation Area. Section III will determine whether or not the General Management Plan matches the vision behind the National Recreation Area enabling legislation and Sec. 705 of the National Park and Recreation Act of 1978.

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 several pieces of legislation affect the middle section of the Delaware River, the purpose of this study is more than weighing the legislative history materials of a single law. It is a) discerning the intent of the 1965 enabling legislation and b) determining the effects of subsequent laws upon that original intent (see the reference sections at the end of this report for the specific documents used to accomplish these two objectives).

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, but so long as the interpretation is "reasonable," managing agencies may interpret laws any way that they see fit. Furthermore, a rating of "strong" or "weak" should not be used as a judge of the importance of the directive. 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.

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. Above all else, the purpose for designating the Middle Delaware a scenic and recreational river was to provide a free-flowing river and to halt the Tocks Island Dam.

Guideline 2. Nothing in the Wild and Scenic Rivers designation contradicts the Delaware Water Gap National Recreation Area directive that benefits to outdoor recreation have priority over preservation of scenic, scientific, and historic features.

Directives Relating to Guideline 2

- 2a. -Recreation development within the National Recreation Area should provide a wide variety of opportunities, encourage recreation that is dependent upon the free-flowing river and natural integrity of the area, and disperse the users into many regions of the Recreation Area.
- 2b. -Outdoor recreation opportunities to be encouraged include fishing, hunting, canoeing, hiking, swimming, camping, picnicking, nature study, rafting, rowing, pleasure driving and sightseeing, horseback riding, and cross-country skiing.
- 2c. -Although not be be banned, motorboating and waterskiing should not be strongly encouraged as it may be inconsistent with other recreation and the natural character of the National Recreation Area.
- 2d. -Intensive fish and wildlife management is appropriate for the Delaware Water Gap National Recreation Area.
- 2e. -The Wild and Scenic River designation, especially along stretches designated "scenic", shifts the character of the National Recreation Area from intensive marina development to a rural/pastoral atmosphere.
- 2f. -The emphasis on a rural atmosphere at the National Recreation Area coincides with a desire that the numbers of users be considerably less than what was originally envisioned (The original number was up to 10 million visitor days. By 1978, the maximum acceptable number was 4 million).
- 2g. -Because of the desire for a rural atmosphere, historic interpretation opportunities should be maintained and enhanced.

Guideline 3. The narrow boundaries of the Wild and Scenic River designation allow flexibility in managing the National Recreation Area, but the National Park Service must adhere to the purposes of the Wild and Scenic Rivers Act in managing land adjacent to the river.

Directives Relating to Guideline 3

- 3a. -The management plan will establish the balance between preservation and development along the Scenic and Recreational River.
- 3b. -Management which seeks to establish the balance between preservation and recreation development along the Scenic and Recreational River must protect and enhance 1) water quality, 2) fish and wildlife habitat, and 3) recreation opportunities.
- 3c. -The banks along river segments designated "scenic" should remain largely undeveloped. Segments designated "recreational" may have some development along the banks.

Section II
Substantiation of Guidelines and Directives

Guideline 1. Above all else, the purpose for designating the Middle Delaware a Scenic and Recreational River was to provide a free-flowing river and to halt the Tocks Island Dam. (Substantiation is strong)

Although this may be common knowledge to anyone who is familiar with the history of the Delaware Water Gap National Recreation Area, it is significant to all else that follows in this report. First, it points out that many advocates of Wild and Scenic River designation had no specific vision for the area except that they wanted to halt the dam. Secondly, much of the legislative history materials from the early 1960's will fail to shed light on proper management for today, because the 1960's material assumes there will be a large reservoir as the Recreation Area's centerpiece.

Eight river segments were added to the Wild and Scenic Rivers System by the omnibus National Recreation and Parks Act of 1978. Of the eight, only the Middle Delaware was mentioned in the explanatory remarks of Representative Phillip Burton, when he introduced H.R. 12536 into Congress on May 3, 1978.

Burton said:

Several new components of the Wild and Scenic River System would be designated, including the Delaware River, thus precluding construction of the Tocks Island Dam. Our unspoiled rivers are a diminishing resource in this nation, and we must act quickly and decisively to protect these priceless resources before our opportunities are lost (Burton, 1978).

Representative Peter Kostmeyer of Pennsylvania also introduced legislation for wild and scenic designation of the Middle Delaware, and in a 1978

Congressional hearing was explicit about his bill's purpose:

Since the Wild and Scenic River cannot be impounded or diverted under Section 7 of the Organic Act (Wild and Scenic Rivers Act), the passage of the legislation will prohibit construction of the dam and preserve the river in its free-flowing state. The reason (for controversy over his bill) is that my proposal on the Middle Delaware would bring to a halt the Tocks Island Dam ... the defeat of which really is the purpose of my legislation. (Wild and Scenic ..., 1978, p. 78)

In another Congressional hearing, Robert L. Herbst, Assistant Secretary of the Interior, read a statement for the Carter Administration which included:

And perhaps the most significant addition (to the Wild and Scenic Rivers System) relates to that of the Middle Delaware segment, because it not only provides for a great free-flowing recreation resource within 100 miles of 30% of the nation's population, it also writes the final chapter of a highly questionable dam proposal. (National Parks and Recreation Act of 1978, Hearings ..., 1979, p. 20)

Even those who supported the dam project stated that the purpose of the Wild and Scenic Rivers designation was to deauthorize the dam. In fact, both Representative Thompson of New Jersey and Representative Eilberg of Pennsylvania stated that this was a misuse of the Wild and Scenic Rivers Act and a sneaky way to stop Tocks Island. (Cong. Rec., Vol. 24, 1978, p. 19963)

Guideline 2. Nothing in the Wild and Scenic River designation contradicts the Delaware Water Gap National Recreation Area directive that benefits to outdoor recreation have priority over preservation of scenic, scientific, and historic features. (Substantiation is strong)

Protection of scenic and historic values within the Delaware Water Gap National Recreation Area was more important in 1978 than it was in 1965. This, more than anything else, is responsible for halting the Tocks Island Dam.

Major efforts were put forth to make preservation more important than recreation, but nothing to that effect was put into law. The reason it did not become law was not that preservation was deemed inappropriate, but that reversing priorities complicated a process that was aimed only at halting the Tocks Island Dam. The proper interpretation, therefore, is that the 1965 Act, which gives recreation priority over preservation, is valid, but the Wild and Scenic Rivers designation symbolizes an elevation of the importance of preservation. Recreational activities to be encouraged are those compatible with a free-flowing river and a natural setting. What follows will explain and substantiate this assertion.

In 1965, the purpose for establishing the Delaware Water Gap National Recreation Area was to provide outdoor recreation opportunities for the millions of people residing in the Mid-Atlantic region of the United States. The enabling legislation adhered to that purpose and, in Section 5, called for:

... a land and water use management plan, which shall include specific provision for, in order of priority:

- 1) public outdoor recreation benefits;
- 2) preservation of scenic, scientific, and historic features contributing to public enjoyment;
- 3) such utilization of natural resources as in the judgment of the Secretary of the Interior is consistent with, and does not significantly impair, public recreation and protection of scenic, scientific, and historic features contributing to public enjoyment.
(PL 89-158, 1965)

In 1976, National Park Service Director Everhardt, at a Congressional hearing on the deauthorization of the Tocks Island Dam, said that

deauthorization afforded the opportunity to reassess priorities for the recreation area. He claimed it was a chance to choose between a standard National Recreation Area with intensive use or an area stressing preservation and interpretation of a traditional rural environment. (Tocks Island Deauthorization..., 1976, p. 64)

In 1978, Assistant Secretary of the Interior Robert Herbst presented the Department's preference on the issue and unsuccessfully pushed for a legislative mandate that preservation be given priority over recreation.

In a Congressional hearing before the Subcommittee on Parks and Recreation, Herbst recommended a three stage plan for the Delaware Water Gap. First, the Middle Delaware River should be designated a Wild and Scenic River. Secondly, the 1965 Delaware Water Gap National Recreation Area Act should be repealed. Thirdly, the Delaware Water Gap National Recreation Area should be reestablished with preservation being the foremost priority. (Wild and Scenic - Santa Monica Mountains..., 1978, p. 96)

Then, in a letter to the Chairman of the Committee on Energy and Natural Resources, dated the same day as his Subcommittee appearance, Herbst suggested two amendments to the Middle Delaware bill which also would give preservation of scenic and historic features priority over recreation.

The first proposed amendment simply restated the purpose of the Recreation Area. A small part of it read:

In the management of the recreation area, the Secretary of the Interior shall utilize the Recreation Area resources in a manner which will preserve its scenic, natural, and historic setting while providing for the recreational and educational needs of the visiting public (Herbst, 1978).

The second proposed amendment quoted the 1965 Act's directive as to priorities, but flipflopped preservation and recreation in the priority list. The proposed amendment read;

In the administration of the Recreation Area, the Secretary shall adopt and implement, and may from time to time revise, a land and water use management plan, which shall include specific provision for, in order of priority:

1. preservation of scenic, scientific, and historic features contributing to public enjoyment;
2. public outdoor recreation benefits ... (Herbst, 1978)

As stated earlier, Herbst's recommendations only complicated what was supposed to be a straightforward piece of legislation intended to stop dam construction. They were not put into law. The only wording in the 1978 river designation that addresses preservation is the stipulation that facilities near the river be compatible with the purpose of the Wild and Scenic Rivers Act.

A review of the Wild and Scenic Rivers Act shows that the stated purpose of the Act is to protect values which caused the river to be included in the system (Wild and Scenic Rivers Act, 1968). As Directives 2a and 3b of this report indicate, recreational opportunities were one of the major values connected with deauthorization of Tocks Island.

Only Sec 10 of the Wild and Scenic Rivers Act offers specific language that might contradict the priority of recreation over preservation. It reads:

In such administration (the administration protecting and enhancing the values which led to designation) primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. (Wild and Scenic Rivers Act, 1968, Sec 10)

Yet even here, the Senate Report on the Wild and Scenic Rivers System makes clear that this statement should be interpreted as including recreation. In the section on administration, Senate Report 491 reads:

The bill has been referred to as an extension or corollary of the Wilderness Act, but its provisions are not nearly as restrictive. A National Wild or Scenic River Area will be administered for its esthetic, scenic, historic, fish and wildlife, archeologic, scientific, and recreational features, based on the special attributes of the area. (National Wild and Scenic Rivers System, 1968, p. 4)

Directive 2a

Recreational development within the National Recreation Area should: 1) provide a wide variety of opportunities; 2) encourage recreation that is dependent upon the free-flowing river and natural integrity of the area; and 3) disperse the users into many regions of the recreation area. (Substantiation for 1 and 2 are strong, for 3 is medium)

Because they assume the existence of a reservoir, most legislative history materials from 1965 offer little useful information about appropriate recreational development. (Tocks Island Bill..., 1965; Pautke, 1965; Cong. Rec, Vol. 111, p. 19658; United States Department of the Interior, 1963)

Rather than totally ignoring this material, however, a few statements that do not run contrary to the Wild and Scenic River Act may contribute information to go with the material from the 1970's. For example, from the 1965 House Report on the National Recreation Area:

Visitor centers will need to be installed, campsites laid out, picnicking facilities installed, trails marked, and roads provided for ready access to certain parts of the area. (Tocks Island..., 1965, p. 5)

On key scenic areas that would have been above the level of the reservoir, the same report said:

With modest developments, these areas (the Water Gap, Kittatinny Mountain Ridge, plateau country back of the mountains, small natural lakes, scenic gorges) can be opened up and made readily available for the use and enjoyment of the public. (Tocks Island..., 1965, p. 5)

It should not be assumed that the 1965 reservoir plan did not take into consideration protection of the natural environment. Protection was the second highest priority. In 1965, the National Park Service proposal said:

Basic recreational values of the area are dependent upon the natural and scenic qualities so a proper balance between improvements and nature must be maintained. The natural values would be identified and subsequent development plans would provide for their protection and use. (United States Department of the Interior, 1965, p. 19)

If anything, the change in attitude from 1965 to 1976 was that the balance between recreation and preservation moved a bit toward preservation. With it

came a small change in the types of recreation to be encouraged.

To summarize the perspective of the mid 70's, the legislative history materials call for recreational development that provides a wide variety of activities, preserves the natural environmental experience, and disperses the users into many areas of the National Recreation Area.

As to the subject of variety, Representative Benjamin Gilman called for developing the area into "a multipurpose parkland." (Tocks Island Deauthorization..., 1976, p. 54) In the same hearing, the Pennsylvania Chapter of the Sierra Club submitted a letter in which they quoted the National Park Service by saying:

... without concentration upon large-scale broadwater activities, the millions of urbanites who would enjoy the valley outdoor pleasure may well discover a far wider range of recreational pursuits - pastimes which foster awareness and understanding of the natural world and which provide satisfaction of high quality. (Tocks Island Deauthorization..., 1976, p. 396)

Monroe County Commissioner Nancy Shukaitus also referred to Park Service statements when she claimed "the recreation potential, quality, and variety would be greater without the dam than with it." (Tocks Island Deauthorization..., 1976, p. 121)

The call for a wide variety of recreational opportunities is consistent with the Wild and Scenic Rivers Act. According to an analysis of the Act:

Scenic River Area sites will provide for some user comfort along with site protection and safety. Sites in the Recreational River Areas will provide a wide range of recreational opportunities consistent with the objectives for these river areas. Some will be accessible by trail or boat and provide facilities primarily for site protection, while others will be accessible by paved roads and provide for considerable use, comfort, and convenience. (Tarlock and Tippy, 1970, p. 720)

Concerning recreational development that preserves the natural environment and free-flowing river experience, this is a theme the dominates the hearings

for deauthorization of Tocks Island Dam. The statement by the National Parks and Conservation Association was specific on this point when it stressed "the value of developing free-flowing river recreational opportunities that preserve the natural environmental experience." (Tocks Island Deauthorization..., 1976, p. 354)

Specific to the river segments designated "scenic", a Monroe County Commissioner spoke of the natural character of the area and said, "Its unchanged, wholesome quality is such that nearly every visitor makes only one request: Don't change it." (Tocks Island Deauthorization..., 1976, p. 104)

Even in 1976, however, preserving the natural character was not a unanimous opinion. Maurice Goddard, representing Pennsylvania Governor Milton Shapp and others who wanted to build the dam, said:

on the question of having (the NRA) as a wild area, ... the upper portion of the Delaware... could complement Tocks Island Dam if it was built complementing a more developed recreation area with a less-developed natural area. (Tocks Island Deauthorization..., 1976, p. 73)

Still this was a minority and losing viewpoint. The consensus was for development that provided for nature-oriented opportunities dependent on a free-flowing river.

Finally the move away from mass marina-type recreation led to a concept that facility development be smaller and more dispersed than 1965 plans. Not only would this encourage wider use of the entire area, it would promote an intimate, natural experience with less chance of user conflicts.

The National Park and Conservation Association described it as "Land space for more more dispersed, natural recreational use." (Tocks Island Deauthorization..., 1976, p. 354) Nathaniel Reed, on the subject, claimed:

By having many separate water recreation units, this would provide a greater variety, with family and organizational groups having their own good time together with more privacy, freedom, and seclusion than might ever have been hoped for in large complexes where the danger of differing

recreation attitudes can become competitive. (Cong. Rec, Vol. 118, 1972, p. 36217)

Directive 2b

Outdoor recreation opportunities to be encouraged include fishing, hunting, canoeing, hiking, swimming, camping, picnicking, nature study, rafting, rowing, pleasure driving and sightseeing, horseback riding, and cross-country skiing. (Substantiation varies for individual activities. Fishing, hunting, canoeing, hiking, swimming, camping, picnicking, and nature study are strong. The others are weak because they were seldom mentioned).

Most of these activities were recreational opportunities to be encouraged as far back as 1965. More importantly, they were activities that people against Tocks Island claimed were important, and they were used as reasons for not building the dam. Examples from arguments are as follows:

-Louis Clipper for the National Wildlife Federation, "first class stream fishery, ... hiking, canoeing, hunting, sightseeing hurt by dam." (Tocks Island Deauthorization..., 1976, p. 356)

-Senator Clifford Case, "... famous for canoeing, fishing, swimming, boating, scenic views ..." (Wild and Scenic, Santa Monica ..., 1978, p. 65)

-Nancy Shukaitus, Monroe County Commissioner, "canoeing, boating, fishing, bird-watching, hunting, ..." (Wild and Scenic, Santa Monica ..., 1978)

-Robert Hughes, New Jersey Sierra Club, "heavily used for swimming, boating, fishing, camping, picnicking, hiking and nature study. The river is famous among canoeists, offering whitewater experience to non-experts." (Wild and Scenic, Santa Monica ..., 1978, p. 214)

-Sierra Club, Pennsylvania Chapter "excellent fishing, ... canoeing, rafting, gravity ferries, barges, river swimming and rowing, ... fragile, but unique areas can be set aside for serious study." (Tocks Island Deauthorization, 1976, p. 396)

-Frank Oliver, Director of League for Conservation Legislation "... does not include mass-recreational facilities like golf courses, baseball diamonds, developed playgrounds, and swimming pools. Instead the service has opted for hiking, bicycling, horseback, and cross-country ski trails and primitive camping including, of course, canoe campsites accessible only by water. Similar recommendations have been proposed by the Appalachian Mountain Club." (Wild and Scenic - Santa Monica ..., 1978, p. 200)

Scenic driving was an activity recommended in 1965 proposals, but received

no attention in the 1970's. Unlike motorboating, however, nothing in 1970's hearings suggested this activity was inconsistent with the character of the area. It is assumed, therefore, that it continues to be an appropriate activity for the recreation area.

Directive 2c

Although not to be banned, motorboating and waterskiing should not be strongly encouraged as they may be inconsistent with other recreation and the natural character of the National Recreation Area. (Substantiation is weak)

This was a difficult directive to determine. As noted in the substantiation for Directive 2b, several people against the dam project noted that "boating" was an acceptable form of recreation. They did not, however, state specifically the kind of boating to which they were referring. The determination of this directive comes from the fact that the people in the hearings who specifically addressed motorboats were generally against their use on a large scale.

Still, nothing comes close to claiming motorboats should be banned. Motorized travel is acceptable, at times, even on stretches of river designated as Scenic. (Assistant Regional Director, 1977) Controlling motorized use, however, would be appropriate.

In 1965, Bureau of Outdoor Recreation plans for the reservoir saw it as a place for intensive use which emphasized both motorboating and waterskiing. (United States Department of the Interior, 1965, United States Department of the Interior, "Relationship . . .," 1965) In the mid-70's, however, when recreation dependent upon a free-flowing river was used as a justification for halting the dam, high speed, high impact recreation seldom was mentioned (See substantiation for Directive 2b).

The few times motorboating was mentioned in deauthorization hearings, it

was said to be inconsistent with the desired character of the area. For example, the Pennsylvania Sierra Club recommended the prime recreational lands within the National Recreation Area be of the "quiet rustic atmosphere characteristic of the Minisink region ... without the concentration upon large scale broadwater activities, the millions of urbanities who would enjoy this valley outdoor pleasure may well discover a far wider range of recreational pursuits - pastimes which foster awareness and understanding of the natural world..." (Tocks Island Deauthorization ..., 1976, p. 396) At the same hearing, the National Parks and Conservation Association called for dispersed, natural recreational use, stressing "the value of developing free-flowing river recreational opportunities that preserve the natural environmental experience." (Tocks Island Deauthorization ..., 1976, p. 354) And Representative Maquire, on the floor of the House, claimed that without Tocks Island Dam, "we get real recreation, instead of muddy flats and algae and motorboats." (Cong. Rec, Vol. 124, 1978, p. 19972)

Directive 2d

Intensive fish and wildlife management is appropriate for the Delaware Water Gap National Recreation Area. (Substantiation is strong)

The 1965 Enabling legislation for the National Recreation Area states, in Sec 6, that the Secretary of Interior:

may, in his plan for the area, provide areas for intensive fish and wildlife management ... (PL 89-158, 1965)

The Wild and Scenic River designation does nothing to alter this directive and, in some ways, substantiates it.

First of all, Robert Herbst, serving as Assistant Secretary of the Interior, recommended that the exact same language as just mentioned above be included in the legislation that designated the Middle Delaware a Scenic and

Recreational River (Herbst, 1978).

Herbst's suggestion was not put into law, but this should not suggest the deletion was a rejection of the concept. No details as to management were specifically included in the law, and all that can be discerned from Herbst's statement is that at the time of Wild and Scenic designation, the Department of the Interior favored intensive fish and wildlife management.

Secondly, the Wild and Scenic Rivers Act states that:

Each component of the National Wild and Scenic River system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system ... (Wild and Scenic Rivers Act, Ser 11a, 1968)

A review of the legislative history of the Middle Delaware designation shows that one of the values which caused it to be included in the Wild and Scenic Rivers system is the protection and maintenance of fish and wildlife habitat. Although no one other than Herbst used the phrase "intensive management", many listed fish and wildlife habitat as a high priority.

For example, John Kyl, Assistant Secretary of the Interior supported deauthorization of Tock's Island because he felt a dam "would eliminate with no possibility of replacement abundant wildlife resources found in the riparian ecosystems both within and downstream from the reservoir site. It would reduce spawning habitat for American shad and other fish in the Delaware River and would cause substantial reductions in the runs of these fish. It would also result in the end of thirty-seven miles of productive stream fishing." (Wild and Scenic - Santa Monica ..., 1978, p. 125)

Kyl's assertions were supported by both Russell Peterson and Tom Eichler. Peterson, Chair of the Council on Environmental Quality, listed the loss of fish and wildlife habitat as one of three reasons he opposed damming. (Wild and

Scenic - Santa Monica ..., 1978, p. 121) Eichler, of New York's Department of Environmental Conservation, saw the dam as the loss of a unique fishery resource for the American shad. (Tocks Island Deauthorization ..., 1976, p. 88)

John Boniface, representing the Delaware Valley Shad Fisherman's Association saw fish and wildlife habit development within the Delaware Water Gap as an opportunity not to be lost. (Wild and Scenic - Santa Monica ..., 1978, p. 195)

Directive 2e

The Wild and Scenic River designation, especially along stretches designated "scenic," shifts the character of the National Recreation Area from intensive marina development to a rural/pastoral atmosphere. (Substantiation is strong)

According to Senate Report 491 on the Wild and Scenic Rivers Act, a segment designated "scenic" is an area ... which should be left in its pastoral or scenic attractiveness, or that should be restored to such condition ..." (National Wild and Scenic Rivers System, 1967, p. 3)

Many who supported the Wild and Scenic Rivers designation felt the rural character was appropriate through much of the National Recreation Area and saw halting the dam as a move toward less intensive forms of recreation.

Representative Millicent Fenwick said:

The recreation component of the original project (the 1965 NRA designation) was a rather heavy part of it. I think we changed our views a little bit about recreation ... We need something new. People are very anxious just to go to quiet places. They want to find a place where they can participate in some kind of activity like churning butter, or watch somebody shoe a horse. ... what they seem to crave is the natural and, if possible, some injection of the antique, the old; they want to discover the way our people used to live. (Tocks Island Deauthorization, 1976, pp. 35-36)

Nathaniel Reed felt that the recreation area without the dam would encourage simpler forms of recreation than envisioned in 1965. He wrote, "under

this revised concept, there would be plenty of swimming and emphasis on the more subdued forms of boating such as canoeing ..." (Cong. Rec Vol. 118, 1972, p. 36217)

Dorothy Batchelder, representing both the Interleague Council of the Delaware River Basin and the League of Women Voters described the change of character for the area by saying:

Without a dam the recreation facility should be established in such a way as to be compatible with the unique features of the area, including the free-flowing river and adjoining lands, historic and archeological sites, and to preserve existing habitat for fish, birds, game, and plants. (Tocks Island Deauthorization ..., 1976, p. 163)

Harold Lockwood, Jr. of the Save the Delaware Coalition, in an earlier Congressional hearing, called for:

a recreation concept which does not depend on mass facilities provided elsewhere but rather a natural system experience which emphasizes the uniqueness of the free-flowing Delaware River and regional culture. (Public Works for Water ..., 1974, p. 4497)

Several counties along the Delaware River passed joint resolutions, and among them was "Federal protection of the rural character of the Delaware river." (Wild and Scenic - Santa Monica ..., 1978, pp. 106-107)

Finally Senator Jacob Javitts summarized the deauthorization of the dam and the move to simpler recreation as "a fresh and thoughtful environmental conscience among citizens and government - a conscience that must be heeded." (Tocks Island Deauthorization ..., 1976, p. 3)

Directive 2f

The emphasis on a rural atmosphere at the National Recreation Area coincides with a desire that the numbers of users be considerably less than what was originally envisioned. (The original number was up to 10 million visitor days per year. By 1978, the maximum acceptable number was 4 million). (Substantiation is strong)

In the early and mid-1960's, proponents of the National Recreation Area stressed that 30 million people lived a few hours drive from the Delaware Water

Gap, and annual visitation could reach 10 million visitor days per year.

(Pautke, 1965; Senate Report No. 598, 1965, p. 2; House of Representatives Report No. 92-1539, 1972; Cong. Rec, Vol. 111, 1965, p. 19760)

The 1965 Bureau of Outdoor Recreation report stated that the National Recreation Area would have a very high carrying capacity:

It is expected that with the development of the Tocks Island Area, as proposed, it will sustain more than 10 million visitor days of outdoor recreation annually, or approximately 140 visitor days per acre of land and water. (Department of the Interior, 1965, p. 2)

In 1972, when deauthorization of the dam originally was discussed, the Department of the Interior stated that carrying capacity (for the mostpart, this seemed to be numbers) could substantially be the same with or without the dam. (Cong. Rec, Vol. 118, 1972, p. 36106, 36217)

The governors of both Pennsylvania and New Jersey, however, called for "multi-purpose conservation development" that would limit use to 4 million visitor-days annually (Cong. Rec. Vol. 118, 1972, p. 36216) By 1974, sentiment moved towards the governors' reductions in numbers as other agencies and individuals echoed these desires.

In 1974 Senate hearings, a statement of the New Jersey Chamber of Commerce quoted DRBC Resolution No. 73-6 and claimed that "each of the Basin States and the United States unanimously acted to reduce Tocks recreation level to 4 million annually." (Public Works ..., p. 4620) Harold Lockwood, Jr., of the Save the Delaware Coalition, referred to the same Delaware River Basin Commission resolution in his support of reducing user limits to 4 million.

In 1976 Senate hearings, Monroe County Commissioner Nancy Shukaitus stated that the smaller numbers were also in the interest of local communities. She said:

Madigan - Praeger reports that dropping the dam ... would cut the attendance in the recreation area to about one-half. This would then be a number which local municipalities more likely could cope with. (Tocks Island Deauthorization ..., 1976, p. 121)

Directive 2g

Because of the desire for a rural atmosphere, historic interpretation opportunities should be maintained and enhanced. (Substantiation is strong)

Gary Everhardt, Director of the National Park Service, called for interpretation to protect the resource and educate the visitor. In a Congressional hearing, he said:

The present lack of proper orientation facilities contributes to misuse and overuse of some resources and facilities, and underutilization of others. The lack of interpretation contributes to a loss of visitor understanding and appreciation of the area's natural, cultural, and historical resources. (Tocks Island Deauthorization, 1976, p. 64)

Senator Jacob Javits claimed an area so rich in history must be protected for the education of the citizenry. (Tocks Island Deauthorization, 1976, p. 4)

Representative Fenwick, emphatic in the need for historic preservation and interpretation, stressed that deauthorization would see that the area would "... be used for what it is best suited." Atop her list of best suited elements was historic and cultural sites. She said:

Visitor information centers could teach the public about natural and historic beauty ... Farming and demonstration forms of farming methods should be encouraged... [the centers would be] multifaceted recreational and learning experiences designed to promote the area's uniqueness ... old fashioned farming and other techniques native to the place. (Tocks Island Deauthorization ..., 1976, pp. 32-33)

Several others stressed that deauthorization of the dam were an effort to preserve history, including early Native American settlements and Dutch and English colonial history (Tocks Island Deauthorization ..., 1976, p. 163, Wild and Scenic - Santa Monica Mountains ..., 1978, p. 214)

Even in early discussion, when the dam and reservoir was expected to be

built, interpretation was included as part of the National Recreation Area. In 1965, Representative Cahill, on the floor of the House, said:

As part of the interpretation of the National Park Service, education will also be served. Thousands of children and adults will be able to see, hear, and learn about plantlife, wildlife, geology, and the many items of great historical interest. (Cong. Rec, July 12, 1965, p. 15790)

Guideline 3. The narrow boundaries of the Wild and Scenic River designation allow flexibility in managing the National Recreation Area, but the National Park Service must adhere to the purposes of the Wild and Scenic Rivers Act in managing land adjacent the river.
(Substantiation is strong)

As brief as Sec 705 of the National Park and Recreation Act of 1978 is, it manages to leave some question as to the impact of the Wild and Scenic River designation upon the National Recreation Area. Sec 705 reads:

With respect to such segment (Middle Delaware), in lieu of boundaries provided for in such subsection (b) (Sec 3b of the Wild and Scenic Rivers Act), the boundaries shall be the banks of the river. Any visitor facilities established for purposes of use and enjoyment of the river under the authority of the Act establishing the Delaware Water Gap National Recreation Area shall be compatible with the purposes of this Act and shall be located at an appropriate distance from the river. (National Parks and Recreation Act of 1978, Sec 705)

The 1978 Act clearly states that the boundaries of the Wild and Scenic River designation are the banks of the river, but suggests the impact of the designation extends beyond the banks.

The extent of this impact is unclear, and the vagueness within the Act is corrected only slightly by the House Report. The Report does, however, explicitly state that the purpose of the Act is: 1) to allow flexibility in management of the National Recreation Area; while, 2) guaranteeing that the shorelines are managed in a manner compatible with the Wild and Scenic Rivers Act. The exact wording of the Report is as follows:

The Wild and Scenic designation is limited to the banks of the river so that land acquisition restrictions enumerated in Section 6 of the Wild and Scenic Rivers Act do not apply. This will provide the National Park Service with flexibility in managing the river corridor as part of the Delaware Water Gap National Recreation Area. Section 706 (705 in the final act) directs the NPS to manage the lands adjacent to the river in a way compatible with the purposes of the Wild and Scenic Rivers Act. (Providing for Increases ..., 1978, p. 86)

A Bureau of Outdoor Recreation memorandum, which became part of the text of the 1978 Congressional hearing on the Middle Delaware substantiates that Wild

and Scenic River objectives must be addressed in management of the National Recreation Area.

On one occasion, the memo read:

Changes in program authority/responsibility: National Park Service would have to incorporate Scenic River objectives in the planning objectives for the National Recreation Area (Wild and Scenic - Santa Monica Mountains ..., 1978, p. 131)

One page later, it said:

... and the National Park Service, as the management agency, shall incorporate Scenic River objectives in the plan for the National Recreation Area. (Wild and Scenic - Santa Monica Mountains ..., 1978, p. 132)

In short, even if the primary purpose of the legislation was to halt the Tocks Island Dam, using the Wild and Scenic Rivers Act as the tool to do this means management of the area may be altered.

Directive 3a

The management plan will establish the balance between preservation and development along the Scenic and Recreational River. (Substantiation is strong)

This is explicit in the Wild and Scenic Rivers Act. Sec 10 reads:

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)

As mentioned in Guideline 3, the unusual boundaries of the Scenic and Recreational River are to allow flexibility in management of the Recreation Area. This is consistent with the Wild and Scenic Rivers Act, which is not a preservation-at-all-cost piece of legislation. It does allow for a balance between preservation and development, particularly recreation development, but demands consistency in managing that balance by establishing guidelines within a management plan.

Directive 3b

Management which seeks to establish the balance between preservation and recreation development along the Scenic and Recreational River must protect and enhance: 1) water quality; 2) fish and wildlife habitat; and, 3) recreation opportunities. (Substantiation is strong)

The Wild and Scenic Rivers Act is explicit in stating that management of the river must be consistent with the values that caused the river to be added to the system. Sec 10 reads:

Each component of the National Wild and Scenic Rivers System shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without ... limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. (Wild and Scenic Rivers Act, 1968, Sec 10)

Although the Act designating the Middle Delaware is unclear as to the values that led to designation, the Congressional hearings on deauthorizing Tocks Island are not. Whereas supporters of the dam stressed water supply and flood control as reasons for building the dam, opponents emphasized eutrophication problems, loss of fish and wildlife habitat, loss of recreation opportunities on the river and adjoining open space, and, to a lesser extent, destruction of areas of historic significance as reasons for not building the dam. (Public Works ..., 1974, Tocks Island Deauthorization ..., 1976, Wild and Scenic, Santa Monica ..., 1978) (See also Directives 2b, 2d, and 2e)

Although the hearings fail to prioritize the values behind the designation, they clearly identify them.

Directive 3c

The banks along river segments designated "scenic" should remain largely undeveloped. Segments designated "recreational" may have some development along the banks. (Substantiation is strong)

This directive is explicit in the legislation, but merits mentioning. The 1978 legislation designating the river segment as Scenic and Recreational states:

Any visitor facilities established for purposes of use and enjoyment of the river ... shall be compatible with the purposes of this Act (Wild and Scenic Rivers Act) and shall be located at an appropriate distance from the river. (National Parks and Recreation Act of 1978)

Section 2 of the Wild and Scenic Rivers Act explains what is compatible with the purposes of the Act by defining "Scenic" river segments as:

Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and largely undeveloped, but accessible in places by road. (Wild and Scenic Rivers Act, 1968, Sec 2)

It then follows by defining "Recreational River" areas as:

Those rivers or sections of rivers that are readily accessible by road or railroad that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (Wild and Scenic Rivers Act, 1968, Sec 2)

Section III
Comparison to the River Management Plan

Introduction

The purpose for this final section of the report is to compare briefly the guidelines and directives derived from this legislative history with the written management strategy for the Delaware Water Gap National Recreation Area and the Middle Delaware Scenic and Recreational River. Certainly the long-term management plan for a unit of the National Park System must abide by the law that designated the unit. The intent here is to determine if the plans also adhere to the spirit of the designation.

It is not the intent here to criticize the River Management Plan nor to criticize the managerial decisions that resulted in the recommendations of such a plan. Rather, the intent is to compare the River Management Plan to the guidelines found in the legislative history that led up to designation. It is recognized that a significant amount of time often elapses from the time of designations until a River Management Plan is written and approved. It is also recognized that there are many political and managerial decisions and negotiations that occur during the process of the plan preparation. The resulting plan may differ significantly from the legislative intent because of these political and managerial decisions.

The guidelines and directives of this report will be compared with the General Management Plan: Delaware Water Gap National Recreation Area/Middle Delaware National Scenic and Recreation River (U.S. Department of Interior, 1987). The General Management Plan is, with one exception, very consistent with the guidelines, directives, and general management intent found throughout this analysis of legislative intent. The exception is preferred upper carrying

capacity.

There is only one management plan, but it encompasses both the Recreation Area and the Scenic and Recreational River. The plan recognizes that the National Recreation Area and the Scenic and Recreational River have separate legislative origins, but considers the resource as an integrated whole for the purposes of the plan.

However, the plan puts much more emphasis on the National Recreation Area aspects of the resource. The title on the front cover is "General Management Plan: Delaware Water Gap National Recreation Area," with "Middle Delaware National Scenic and Recreational River" appearing on the first page. Another indication of the emphasis on the Recreation Area is the fact that under the section "Purpose of the Plan," the 1965 establishing legislation for the Delaware Water Gap National Recreation Area is quoted as the management goal of the overall plan for both the Recreation Area and the Scenic and Recreational River. Those legislative requirements which set the tenor for the entire plan are, in order of priority:

1. public outdoor recreation benefits;
2. preservation of scenic, scientific, and historic features contributing to public enjoyment;
3. such utilization of natural resources as in the judgment of the Secretary of the Interior is consistent with, and does not significantly impair, public recreation and protection of scenic, scientific, and historic features contributing to public enjoyment.
(U.S. Department of Interior, 1987, p. 3)

Guideline 1. Above all else, the purpose for designating the Middle Delaware a Scenic and Recreational River was to provide a free-flowing river and to halt the Tocks Island Dam.

The management plan does not contradict this guideline. The plan actually reinforces the guideline because of the absence in the plan of much reference to the Scenic and Recreational River designation. The legislative history shows that the main reason for the designation of the Scenic and Recreational River was to stop the Tocks Island Dam. There was little public or interest group pressure or outcry to establish the Scenic and Recreational River for preservation purposes (outside the call to halt the dam) or for recreational purposes. There was some such pressure, but most of it was tied to the stop-the-dam movement. It is then not unexpected that the management plan would concentrate on the goals and needs related to the previously designed Recreation Area because the public and interest group pressure had centered on developing the recreational potential of the Water Gap resource.

Guideline 2. Nothing in the Wild and Scenic Rivers designation contradicts the Delaware Water Gap National Recreation Area directive that the benefits to outdoor recreation have priority over preservation of scenic, scientific, and historic features.

The management plan is very consistent with this directive. The plan stresses the provision of outdoor recreation as the first goal in management; but, the plan also calls for preservation of the scenic, scientific and historic features. The plan recognizes the unique aesthetic and historic qualities of the Delaware Water Gap; the fact that it is this unique undeveloped character that makes it a sought after outdoor recreation resource; and, that the plan should preserve the resource so it can continue to provide this undeveloped, aesthetic and heritage-filled experience.

The provision of a wide variety of outdoor experiences that are dependent

upon a free-flowing river in a natural setting is the primary emphasis of the plan. The outdoor recreation activities encouraged through existing and planned facilities and programs match those found in the legislative history. These include: fishing, hunting, canoeing, biking, swimming, camping, picnicking, nature study, rafting, rowing, pleasure driving and sightseeing, horseback riding, and cross-country skiing. Motorboating and waterskiing, important aspects in the original Recreation Area plan due to the anticipated lake created by the dam, are not prohibited in the current plan, but they are also not encouraged by facility development. The Scenic and Recreational designation has shifted the character of the Recreational Area from intensive marina-type development to a rural/pastoral atmosphere.

Historic preservation and interpretation were strongly substantiated goals found in the legislative history. They are also strongly emphasized in the management plan. The plan proposes the preservation and restoration of a number of historic structures and sites, extensive interpretive programs and methods, cooperation with existing historic and educational organizations in the area, and the continued sponsorship of artistic and living-history programs in and adjacent to the Water Gap resource. The strong interest in a connection to the cultural and environmental heritage of the Water Gap was very evident in the legislative history materials. The management plan is quite consistent with these heritage interests.

Carrying Capacity - A Contradiction

The main area where the management plan is not consistent with Guideline No. 2 concerns visitor use, specifically projected and assumed visitation figures. The legislative history indicates that the intended carrying capacity for the original National Recreation Area was more than 10 million visitor days.

Later in the deauthorization hearings for the Tocks Island Dam, the Department of Interior stated that the carrying capacity would be 10 million even without the dam.

Those active in having the area designated as a Scenic and Recreational River believed the 10 million figure to be much too high for the undeveloped, rural, aesthetic opportunities on such a resource. The legislative history indicates strong and specific substantiation for lowering the carrying capacity to 4 million visitor days a year. The 4 million figure comes from the governors of Pennsylvania and New Jersey, the New Jersey Chamber of Commerce, the Delaware River Basin Commission, County Commissioners, and preservation groups. However, there are no carrying capacity figures in the actual legislation designating the Delaware Water Gap and the Middle Delaware Scenic and Recreational River.

The management plan, however, states 1996 projected recreation visits of 5-6.9 million (three times the estimated 1986 visitation) and gives an "... assumed upper carrying capacity of 10 million visits ..." in the decade 2030-2040 (U.S. Department of Interior, 1987 p. 88) The plan does propose:

- 1) to ease traffic problems in surrounding communities by developing key entrance points;
- 2) to ease environmental impacts by developing facilities; and,
- 3) to ease crowding and associated impact problems by dispersing use throughout the area.

The plan outlines visitor use management measures to be taken if use results in adverse impacts beyond standards set by the manager. But, the measures stress indirect methods of visitor control. The last statements in the management of visitor use section state:

Visitor use will not usually be limited, but it could be readjusted or redirected because of visitor crowding or the overuse of particular facilities. By providing a variety of visitor facilities and activity areas, it is hoped that instances of overcrowding will be minimized. (U.S. Department of Interior, 1987, p. 46)

The legislative history favors indirect methods of visitor control, as does

the management plan. But one wonders if the management plan and its proposed facility developments may eventually encourage so much visitation that the aesthetic, rural, undeveloped, and historic qualities of the resource might be eroded. The assumed upper carrying capacity stated in the management plan is 2½ times the upper carry capacity proposed in the legislative history (10 million vs. 4 million). This inconsistency may create management problems in the future.

Guideline 3. The narrow boundaries of the Wild and Scenic River designation allow flexibility in managing the National Recreation Area, but the National Park Service must adhere to the purposes of the Wild and Scenic Rivers Act in managing land adjacent to the river.

This guideline and the management plan are very consistent. The plan does establish a balance between preservation and development along the Scenic and Recreational River. The plan provides for the protection and enhancement of water quality, fish and wildlife habitat, and recreational opportunities that are dependent on a free-flowing river in a rural, undeveloped condition. Most of the proposed developments (85%) are at pre-existing developed sites. The plan stresses the preservation of the scenic and historic qualities of the Water Gap resource, and proposes the restoration of a number of historic sites near the river.

The management plan actually scales down some development that was proposed in the draft plan (to correspond more closely to the goals of a Scenic and Recreational River vs. a National Recreation Area). As examples, the current plan decreases the level of proposed development of two beaches, limits the number and size of concession developments, and expands the non-motorized trail segments.

In summary, the general management plan is quite consistent with the guidelines found in the legislative history with one exception. The management plan has a projected annual recreation visitation of 5-6.9 million visits by 1996 and an assumed upper carrying capacity of 10 million visits by the decade 2030-2040, while the legislative history indicated a preferred upper capacity of 4 million.

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