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# Wild and Scenic Rivers: Designation, Management, and Funding

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## Wild and Scenic Rivers: Designation, Management, and Funding

Congress established the National Wild and Scenic Rivers System (NWSRS) in 1968 through the Wild and Scenic Rivers Act (WSRA; P.L. 90-542) to preserve free-flowing rivers for the benefit and enjoyment of present and future generations and to complement the then-current national policy of constructing dams and other river structures that altered flow. Designated rivers usually are referred to as *wild and scenic rivers* (WSRs). The WSRA established three classes of WSRs—wild, scenic, and recreational—reflecting the characteristics of the rivers at the time of designation and affecting the type and amount of subsequently allowable development. The system now includes 226 river units comprising over 13,400 miles in 41 states and the Commonwealth of Puerto Rico.

WSRs may come into the NWSRS either by congressional designation or by state nomination to the Secretary of the Interior. WSRs may be located on federal lands, nonfederal lands, or a combination of both. Some WSRs on nonfederal land are referred to as *partnership wild and scenic rivers* (or partnership WSRs). The WSRA does not define this term; it is an umbrella term used to describe WSRs with generally similar characteristics, such as nonfederal management and land ownership, but partnership WSRs can vary. WSRs on nonfederal land also may be added to the NWSRS through an administrative process, wherein states may apply to the Secretary of the Interior for inclusion of a state-protected river. Rivers added to the system through state nomination, or rivers designated by Congress that run through both federal and nonfederal lands, generally are not referred to as partnership WSRs.

In the case of congressionally designated rivers, Congress may first direct in legislation that a study be conducted to determine whether the river area is suitable for wild and scenic designation. Congress generally specifies in the designating legislation that either the Secretary of Agriculture or the Secretary of the Interior administer the WSR. If the designated WSR contains federal land, the Secretary then manages the river through the federal land management agency of jurisdiction—the Bureau of Land Management, the National Park Service (NPS), or the Fish and Wildlife Service within the Department of the Interior or the Forest Service within the U.S. Department of Agriculture. The relevant local jurisdiction manages partnership WSRs and state-nominated WSRs, with certain administrative functions carried out at the federal level.

WSRs are administered to protect and enhance the values for which the rivers were included in the system and to preserve the rivers' free-flowing condition. The agency, or the relevant local jurisdiction for WSRs on nonfederal land, prepares a *comprehensive resource management plan* (CRMP) to guide management. The WSRA prohibits federally licensed or assisted water resources projects that would have a “direct and adverse” effect on the values for which a river was established and prohibits the Federal Energy Regulatory Commission from licensing projects on or directly affecting a designated river segment. The agency of jurisdiction enforces this provision; on partnership WSRs and state-nominated WSRs, NPS enforces this provision. In addition to the provisions of the WSRA, management of WSRs on federal lands differs based on the statutory management criteria for each agency's lands. Each federal land management agency specifies policies regarding river management at varying levels of detail. Agencies typically provide the most protection to wild rivers.

For congressionally designated rivers on federal lands, Congress provides funds for operations and maintenance through annual appropriations for the relevant agencies. Agencies sometimes provide funding separately for individual rivers or provide funding through broader budget activities, not specific to an individual river. Rivers added to the NWSRS through state nomination typically do not receive federal funding. However, partnership WSRs receive funding through NPS. The WSRA authorizes federal agencies to provide technical assistance to states and their political subdivisions (such as counties, townships, and others), landowners, organizations, or individuals in planning, protecting, and managing WSRs.

Designation of wild and scenic rivers has been controversial in some cases, especially for WSRs containing nonfederal lands. Initially following enactment of the WSRA, Congress designated rivers primarily on federal land. Over the past 20 years, Congress has designated or authorized for study an increasing number of partnership WSRs. Opinions regarding the balance of federal and local control over partnership WSRs have varied. Some have observed that Congress intended the state nomination authority to be the primary means for rivers on nonfederal lands to be included in the system, but this designation method has not been used in recent years. Congress may consider whether it is preferable to encourage use of the state-nominated process, which includes a set of fixed provisions, or to continue to establish partnership WSRs through individual designating statutes, whose provisions vary.

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## Introduction

Congress established the National Wild and Scenic Rivers System (NWSRS) in 1968 through the Wild and Scenic Rivers Act (WSRA).<sup>1</sup> The WSRA established a policy of preserving designated free-flowing rivers for the benefit and enjoyment of present and future generations. It also complemented the then-current national policy of constructing dams and other structures that altered flow along many rivers.<sup>2</sup> Designated rivers usually are referred to as *wild and scenic rivers* (WSRs). The WSRA established three classes of WSRs, reflecting the characteristics of a river at the time of designation and affecting the type and amount of development that may be allowed afterward:<sup>3</sup>

- **Wild rivers** are free from impoundments (dams, diversions, and so forth) and generally inaccessible except by trail. The watersheds are primitive, and the shorelines are essentially undeveloped.
- **Scenic rivers** are free from impoundments and in generally undeveloped areas but are accessible in places by roads.
- **Recreational rivers** are readily accessible by road, with some shoreline development, and may have been subject to some impoundment or diversion in the past.<sup>4</sup>

At the passage of the WSRA in 1968, Congress initially designated 789 miles in eight rivers as part of the NWSRS and began to expand the system in 1972; since then, every Congress has added rivers.<sup>5</sup> Altogether, the system now includes 226 river units comprising over 13,400 miles in 41 states and the Commonwealth of Puerto Rico.<sup>6</sup>

Congress plays an ongoing role in shaping the NWSRS through legislation and oversight. Congress establishes new WSRs within the system, directs the Administration to study potential WSRs, and determines the level of agency funding for WSR administration. For individual WSRs, Congress has made specific provisions concerning river management, land acquisition and use in river corridors, and other matters. Ongoing issues for Congress include whether to designate additional WSRs, how to address local and federal roles on nonfederal river segments, and more.

## Designation and Study

Rivers may come into the NWSRS either by congressional designation or by state nomination to the Secretary of the Interior.<sup>7</sup> In some cases, prior to adding a river to the system, Congress first directs in legislation that a study be conducted to determine whether the river area is suitable for

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<sup>1</sup> Wild and Scenic Rivers Act (WSRA; P.L. 90-542, 16 U.S.C. §§1271 et seq.).

<sup>2</sup> 16 U.S.C. §1271.

<sup>3</sup> Individual segments of a river may receive different designations under the WSRA. For additional information, see footnote 13.

<sup>4</sup> 16 U.S.C. §1273(b).

<sup>5</sup> For further information, including discussion of additions over time, see CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*, by Sandra L. Johnson and Laura B. Comay.

<sup>6</sup> “River Mileage Classifications for Components of the National Wild and Scenic Rivers System,” April 2019, National Wild and Scenic Rivers, at <http://www.rivers.gov/documents/rivers-table.pdf>.

<sup>7</sup> 16 U.S.C. §1273(a).

wild and scenic designation.<sup>8</sup> Congress also has directed the Secretaries of Agriculture and the Interior to evaluate rivers for inclusion in the NWSRS through agency planning processes.<sup>9</sup> Congress may designate rivers as part of the system without first requiring a study.

The Secretary of the Interior or Agriculture, as appropriate, is responsible for conducting authorized studies and reporting to the President on the suitability of a proposed addition.<sup>10</sup> The President in turn submits recommendations to Congress. The act states that the studies are to discuss, among other things,

- the “outstandingly remarkable values” (ORVs) that make the area worthy or unworthy of addition to the system;
- current land ownership and use;
- potential future uses of the land and water that could be affected by addition to the system;
- the federal agency that would administer the area;
- the cost of acquiring the land, if applicable; and
- the extent to which management costs would be shared by state and local agencies.<sup>11</sup>

The act also directs the administering agency to determine which river classification—wild, scenic, or recreational—best fits the designated river segments.<sup>12</sup> However, Congress may preclude the need for these agency determinations by specifying particular classifications in law.<sup>13</sup>

Although Congress designates most rivers, the Secretary of the Interior also may add WSRs to the NWSRS through administrative action. A state-nominated river may be added to the national system if the river is designated for protection under state law, approved by the Secretary of the Interior, and permanently administered by a state agency (see “State-Administered Wild and Scenic Rivers” for further information).<sup>14</sup> A minority of wild and scenic river designations have been made in this manner.<sup>15</sup>

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<sup>8</sup> 16 U.S.C. §1275(a). Congress may or may not specify who is to conduct the study. For example, 16 U.S.C. §1276(b)(11) specifies that the Secretary of the Interior shall complete the study of the Lamprey River, whereas 16 U.S.C. §1276(b)(8) specifies that the study of the Merrimack River “shall be completed.”

<sup>9</sup> 16 U.S.C. §1276(d)(1).

<sup>10</sup> 16 U.S.C. §1275(a). If the river flows primarily through Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS) land or nonfederal land, the Secretary of the Interior usually conducts the study. If the river flows primarily through Forest Service (FS) land, the Secretary of Agriculture usually conducts the study. Studies may be conducted jointly.

<sup>11</sup> 16 U.S.C. §1275(a). In the congressional declaration of policy in the original WSRA (16 U.S.C. §1271), Congress stated that the purpose of the WSRA was to preserve “certain selected rivers of the Nation which ... possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values.” Agencies often use the term *outstandingly remarkable values* to refer to the values of a study river that merit inclusion in the NWSRS. These values are usually identified in river studies and addressed in plans to manage rivers (see “Agency Role After Designation” for further discussion of river management plans).

<sup>12</sup> 16 U.S.C. §1274(b).

<sup>13</sup> Congress also may specify, or the agencies may determine, that different segments of a single river be designated as different types of wild and scenic river (WSR). See, for example, 16 U.S.C. §1274(a)(23), where Congress designated certain sections of the Saint Joe River in Idaho as wild and certain sections as recreational.

<sup>14</sup> 16 U.S.C. §1273(a).

<sup>15</sup> See CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*, by Sandra L. Johnson and Laura B. Comay.

The WSRA affords rivers designated by Congress for study (known as *study rivers*) the same protections as designated rivers (see “Agency Role After Designation,” below).<sup>16</sup> These protections last through the study process and extend to a three-year period following the transmittal of the final study report by the President to Congress.<sup>17</sup> The act does not protect rivers studied through an agency’s planning process, although the agency may use other authorities to protect attributes such as free flow or ORVs.<sup>18</sup>

## Agency Role After Designation

After Congress designates a river segment as a WSR, the segment falls under the jurisdiction of one of the four major federal land management agencies. The agency’s role depends on the ownership of the land through which the river flows. If the river flows through federal lands (wholly or in part), the agency of jurisdiction manages the river as part of its overall land management activities. The National Park Service (NPS) acts as the federal administrator for rivers entirely on nonfederal lands.<sup>19</sup> For these rivers, NPS may provide technical and financial assistance to relevant jurisdictions; it also ensures compliance with Section 7 of the WSRA, which prohibits certain water resources projects that would adversely affect the values for which the rivers were established (see “Water Resources Projects: Section 7,” below).<sup>20</sup> The WSRA authorizes or prohibits certain activities for all WSRs. However, management of WSRs differs based on the lands where individual rivers lie and other factors.

Various federal agencies administer rivers in the NWSRS designated by Congress. Typically, Congress specifies that either the Secretary of Agriculture or the Secretary of the Interior administer newly designated WSRs.<sup>21</sup> The designated Secretary then administers the river through one of the four federal land management agencies—the Bureau of Land Management (BLM), NPS, or U.S. Fish and Wildlife Service (FWS) within the Department of the Interior or the Forest Service (FS) within the Department of Agriculture. Unless otherwise specified by Congress, rivers administered by the Secretary of the Interior and managed by NPS become part of the National Park System, and those managed by FWS become part of the National Wildlife Refuge System.<sup>22</sup>

Following designation, the agency prepares a management plan (often called a *comprehensive resource management plan*, or CRMP) for the designated segment. The CRMP is to “provide for

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<sup>16</sup> 16 U.S.C. §1278(b). Jackie Diedrich and Cassie Thomas, *The Wild & Scenic River Study Process*, Interagency Wild and Scenic Rivers Coordinating Council, 1999. Hereinafter referred to as Diedrich and Thomas, *Wild & Scenic*.

<sup>17</sup> Diedrich and Thomas, *Wild & Scenic*.

<sup>18</sup> Diedrich and Thomas, *Wild & Scenic*.

<sup>19</sup> Some WSRs contain both federal and nonfederal land. Congress generally specifies that these rivers be managed by the agency that manages the federal land. See “Segments on Nonfederal Lands.”

<sup>20</sup> 16 U.S.C. §1278; P.L. 90-542, §7.

<sup>21</sup> In past legislation designating WSRs, Congress has specified the administering Secretary in various ways. In some cases, legislation specifies the administering Secretary. In other cases, Congress has specified that rivers be administered as agreed upon by the Secretaries of Interior and Agriculture or as directed by the President.

<sup>22</sup> 16 U.S.C. §1281. Exceptions include some of the “partnership” wild and scenic rivers that NPS manages in cooperation with nonfederal entities, such as state and local governments. The authorizing language for some of these units explicitly states that they shall not be added to the National Park System (see 16 U.S.C. §1281 note). Not all partnership rivers are outside the system, however—for example, Great Egg Harbor Scenic and Recreational River, a partnership river in New Jersey, is a unit of the National Park System. See “Wild and Scenic Rivers on Nonfederal Lands” for more information on partnership WSRs.

the protection of the river values” by addressing issues such as development of lands and facilities, user capacities, and other management practices.<sup>23</sup> By law, CRMPs must address

- resource protection,
- development of lands and facilities,
- user capacities, and
- other management practices necessary or desirable to achieve the purposes of the WSRA.<sup>24</sup>

Agencies sometimes provide more specific direction regarding CRMP components. For example, in addition to the components listed, BLM specifies that CRMPs should describe existing resource conditions, including detailed descriptions of ORVs; define the goals for protecting river values and the desired condition of the river; address water quality and instream flow; identify resources requiring compliance with other authorities; identify regulatory authorities of other agencies that relate to river values; and describe a river monitoring strategy.<sup>25</sup>

CRMPs generally are to be completed within three fiscal years after the date of a river’s designation.<sup>26</sup> There is no statutory requirement that CRMPs be updated. In some river study authorizations, Congress has required the study agency to develop a CRMP in concert with the study process.<sup>27</sup> In some cases, Congress has adopted these CRMPs in the legislation designating the river. Agencies have sometimes developed elements of the CRMP while studying the river, even if not directed by Congress to do so.<sup>28</sup>

The agency determines the boundaries of areas along the designated river.<sup>29</sup> The land area included may not exceed an average of 320 acres per mile of river designated (an average quarter-mile-wide corridor of land on each side of the river) or 640 acres per mile in Alaska (an average half-mile-wide corridor of land on each side of the river).<sup>30</sup>

## General Management

Rivers are administered to protect and enhance the values for which the rivers were included in the NWSRS (usually interpreted as being the rivers’ ORVs).<sup>31</sup> Congress directed that the agencies give primary emphasis to protecting aesthetic, scenic, historic, archaeological, and scientific features of designated rivers.<sup>32</sup> Congress also directs that other land uses not be limited unless

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<sup>23</sup> 16 U.S.C. §1274(d).

<sup>24</sup> 16 U.S.C. §1274(d).

<sup>25</sup> For example, resources may require compliance with Section 7 of the Endangered Species Act (P.L. 93-205). Department of the Interior (DOI), BLM, *Wild and Scenic Rivers—Policy and Program Direction for Identification, Evaluation, Planning, and Management*, Manual Chapter 6400.

<sup>26</sup> 16 U.S.C. §1274(d).

<sup>27</sup> Gary Marsh, *A Compendium of Questions & Answers Relating to Wild & Scenic Rivers*, Interagency Wild and Scenic Rivers Coordinating Council, 2018. Hereinafter referred to as Marsh, *Compendium*.

<sup>28</sup> Marsh, *Compendium*.

<sup>29</sup> 16 U.S.C. §1274(b). For rivers running through private land (the federal-state “partnership rivers” and others), the lead agency works with communities to set boundaries.

<sup>30</sup> 16 U.S.C. §1274(b).

<sup>31</sup> 16 U.S.C. §1281(a). The term *outstandingly remarkable values* (ORVs) derives from Section 1(b) of the WSRA (16 U.S.C. §1271). See also Marsh, *Compendium*. In cases where no river study is conducted, ORVs may be identified in the comprehensive resource management plan.

<sup>32</sup> 16 U.S.C. §1281(a).

they “substantially interfere with public use and enjoyment of these values.”<sup>33</sup> The WSRA prohibits water resource projects, such as dams, if they would have a “direct and adverse effect” on the values for which the river was designated (see “Water Resources Projects: Section 7” below, for further discussion).<sup>34</sup>

Management of lands within wild and scenic corridors varies with the class of the designated river, the values for which the river was included in the system, the managing agency, and land ownership in the river corridor. Generally, agencies manage wild rivers with the highest level of restrictions in terms of development and water resource use, scenic rivers with an intermediate level of restrictions, and recreational rivers with the lowest level of restrictions.

## **Minerals**

The WSRA withdraws federal lands within the boundaries of wild WSRs from appropriation under the mining and mineral leasing laws. No new mining claims or leases can be granted on these lands.<sup>35</sup> Existing valid claims or leases within the designated WSR boundary remain in effect, and activities may be allowed subject to regulations designed to protect river values (for example, regulations that minimize sediment, discharge, or visual impacts). NPS and FWS generally prohibit mineral development on their lands; thus, the mineral collection provisions of the WSRA generally only affect activity on FS and BLM lands.<sup>36</sup>

The WSRA does not withdraw federal lands within the boundaries of scenic or recreational WSRs from the mining and mineral leasing laws. Filing of new claims and leases is permitted to the extent allowed by other laws and policies governing the land.<sup>37</sup> Existing valid claims or leases within the designated WSR boundary remain in effect, and activities may be allowed, subject to regulations that minimize surface disturbance, water sedimentation, pollution, and visual impairment. Reasonable access to mining claims and mineral leases is permitted.

## **Water Resources Projects: Section 7**

Section 7 of the WSRA prohibits federally licensed or assisted water resources projects, such as dams and reservoirs, that would have a “direct and adverse” effect on the values for which the river was established.<sup>38</sup> Outside the designated segments (such as upstream, downstream, or on a tributary), the WSRA prohibits projects that would “invade ... or unreasonably diminish” the segment’s fish, wildlife, scenic, or recreational resources.<sup>39</sup> The WSRA also explicitly prohibits the Federal Energy Regulatory Commission from licensing any new dam, water conduit, reservoir, powerhouse, transmission line, or other project on or directly affecting a designated river segment.<sup>40</sup> These prohibitions often are referred to as *Section 7* or *Section 7(a)* prohibitions.

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<sup>33</sup> 16 U.S.C. §1281(a).

<sup>34</sup> 16 U.S.C. §1278.

<sup>35</sup> 16 U.S.C. §1280(a).

<sup>36</sup> For units of the National Wildlife Refuge System (NWRS) in Alaska, FWS allows surface collection by hand of gold for recreational purposes; however, collection involving surface disturbance is prohibited (50 C.F.R. 36.31(b)).

<sup>37</sup> 16 U.S.C. §1280(a).

<sup>38</sup> 16 U.S.C. §1278(a).

<sup>39</sup> 16 U.S.C. §1278(a).

<sup>40</sup> 16 U.S.C. §1278(a).

Each managing agency is responsible for determining the impact of a proposed federal or federally assisted water resources project on rivers it administers.<sup>41</sup> NPS is responsible for the implementation of Section 7 on partnership WSRs (see “Partnership Wild and Scenic Rivers”), regardless of the degree to which the agency shares other management functions, and on state-managed WSRs.<sup>42</sup> The determination usually focuses on impacts to identified ORVs and free-flowing condition; it may include analysis of impacts to water quality, upland conditions (such as vegetation and soils), or other values.<sup>43</sup> The baseline for evaluating impacts is the resource condition on the date of designation.<sup>44</sup> If conditions have improved since that date, some agencies specify that Section 7 determinations be based upon the improved condition.<sup>45</sup>

## WSRs on Federal Lands

In addition to the statutory direction discussed above, management of WSRs on federal lands differs based on the statutory management criteria for each agency’s lands. FS and BLM manage their lands for a sustained yield of multiple uses.<sup>46</sup> NPS manages the National Park System under a dual mission: to preserve unique resources and to provide for their enjoyment by the public.<sup>47</sup> FWS manages the National Wildlife Refuge System (NWRS) under a dominant mission to conserve plants and animals for the benefit of future and present generations.<sup>48</sup> These varying missions shape the management decisions the federal land management agencies make regarding WSRs on their lands.

## Forest Service and Bureau of Land Management

WSRs managed by FS and BLM are subject to the provisions of the WSRA and any provisions under which the agencies administer the national forests (for FS) or public lands (for BLM). FS and BLM manage their lands for a sustained yield of multiple uses, including (but not limited to) grazing, timber harvesting, energy and mineral development, fish and wildlife habitat, and recreation.<sup>49</sup> Thus, FS and BLM management of WSRs addresses how lands in or surrounding the WSR corridor may be used. As discussed above, management also varies with the class of the designated river and the values for which it was included in the system.

In accordance with the WSRA, FS and BLM create CRMPs for each river after designation; these plans establish management objectives for the river.<sup>50</sup> Agency guidance (such as policy manuals

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<sup>41</sup> Marsh, *Compendium*. NPS, FS, and BLM have internal policies stating that they are each (respectively) responsible for Section 7 evaluations on rivers they manage; FWS does not have internal policy stating this, and FWS does not have an internal policy regarding WSRs. See “Fish and Wildlife Service.”

<sup>42</sup> DOI, NPS, *Director’s Order #46: Wild and Scenic Rivers*, 2015. Hereinafter referred to as NPS, *Director’s Order #46*.

<sup>43</sup> Jackie Diedrich, *Wild & Scenic Rivers Act: Section 7*, Interagency Wild and Scenic Rivers Coordinating Council, Technical Report, 2004.

<sup>44</sup> 16 U.S.C. §1278(a).

<sup>45</sup> See, for example, NPS, *Director’s Order #46*.

<sup>46</sup> FS: P.L. 86-517, 16 U.S.C. §§528 et seq.; BLM: P.L. 94-579, 43 U.S.C. §§1701 et seq.

<sup>47</sup> 54 U.S.C. §§100101 et seq.

<sup>48</sup> P.L. 105-57, 16 U.S.C. §668dd(2).

<sup>49</sup> FS: P.L. 86-517, 16 U.S.C. §§528 et seq.; BLM: P.L. 94-579, 43 U.S.C. §§1701 et seq.

<sup>50</sup> U.S. Department of Agriculture (USDA), Forest Service (FS), *Trail, River, and Similar Recreation Opportunities*, Forest Service Manual 2350, hereinafter referred to as FS, *Trail*, and DOI, BLM, *Wild and Scenic Rivers—Policy and Program Direction for Identification, Evaluation, Planning and Management*, BLM Manual Chapter 6400, hereinafter

and handbooks) may specify that certain activities be governed by the CRMP. For example, FS policy states that activities such as insect, disease, and invasive species treatment; transportation systems (such as roads, trails, and airfields); and recreation (among others) be managed in accordance with the CRMP for each river.<sup>51</sup>

In other cases, the agencies have given directions regarding various activities for their WSRs more broadly. Both agencies do not generally allow timber harvesting, road building, and structures and improvements (such as campgrounds, boat launches, and administrative sites) in wild river corridors.<sup>52</sup> Both agencies allow more development in scenic and recreational rivers corridors.<sup>53</sup> FS prohibits motorized travel in wild river corridors.<sup>54</sup> BLM discourages new rights-of-way and utility corridors in all WSR areas.<sup>55</sup> Both agencies allow for continued grazing and wildfire management, including through prescribed fire, in WSR areas.<sup>56</sup> FS and BLM manage wildfire, pests, insects, and disease in ways compatible with adjacent lands outside the river corridor.<sup>57</sup>

## **Fish and Wildlife Service**

Rivers managed by the Secretary of the Interior through FWS become part of the NWRS.<sup>58</sup> FWS manages the NWRS under a dominant mission to conserve plants and animals for the benefit of future and present generations.<sup>59</sup> WSRs managed by FWS are subject to the provisions of the WSRA and any provisions under which the NWRS is administered. In the case of any conflict between these authorities, the more restrictive provisions apply.<sup>60</sup> FWS does not otherwise have specific policy or other guidance regarding management of WSRs.<sup>61</sup>

## **National Park Service**

Rivers managed by the Secretary of the Interior through NPS become part of the National Park System.<sup>62</sup> NPS manages the National Park System under a dual mission: to preserve unique resources and to provide for their enjoyment by the public.<sup>63</sup> NPS-managed WSRs are subject to

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referred to as BLM, *Wild and Scenic Rivers*. Similar authorities also are given in USDA, FS, *Recreation River Management*, Forest Service Manual 2354.

<sup>51</sup> FS, *Trail*.

<sup>52</sup> FS, *Trail*; BLM, *Wild and Scenic Rivers*.

<sup>53</sup> FS, *Trail*; BLM, *Wild and Scenic Rivers*. FS and BLM policy allows structures and improvements of moderate size in scenic river corridors, provided they harmonize with river settings and are located away from the river edge. FS and BLM policy allows structures and improvements in recreational river corridors, which may be near or on the river edge (though BLM directs they be screened from view).

<sup>54</sup> FS, *Trail*.

<sup>55</sup> BLM, *Wild and Scenic Rivers*.

<sup>56</sup> FS, *Trail*.

<sup>57</sup> FS, *Trail*.

<sup>58</sup> 28 U.S.C. §1281(c)

<sup>59</sup> P.L. 105-57, 16 U.S.C. §668dd(2). For further information on NWRS management, see CRS Report R45265, *U.S. Fish and Wildlife Service: An Overview*, by R. Eliot Crafton.

<sup>60</sup> 16 U.S.C. §1281(c).

<sup>61</sup> Personal communication, FWS Legislative Affairs office, June 3, 2019.

<sup>62</sup> 28 U.S.C. §1281c. Exceptions include some of the partnership wild and scenic rivers that NPS manages in cooperation with nonfederal entities, such as state and local governments. See footnote 22 for more information.

<sup>63</sup> 54 U.S.C. §§100101 et seq.

the provisions of the WSRA and any provisions under which the National Park System and the specific units are administered. In the case of any conflict between these authorities, the more restrictive provisions apply.<sup>64</sup>

## Wild and Scenic Rivers on Nonfederal Lands

WSRs need not flow entirely through federal land. WSRs on nonfederal lands differ based on whether they were designated by Congress or through an administrative process. WSRs designated by Congress may flow wholly through nonfederal land or may have segments on nonfederal land. WSRs on nonfederal land managed at the state, county, or other nonfederal level, and usually congressionally designated, are referred to colloquially as *partnership wild and scenic rivers* (or partnership WSRs).<sup>65</sup>

WSRs also may be designated through an administrative process. States may apply to the Secretary of the Interior for inclusion of a state-protected river in the NWSRS.<sup>66</sup> The relevant state administers WSRs added to the system in this way.<sup>67</sup> These WSRs, as well as those that contain both federal and nonfederal land, generally are not referred to as partnership WSRs.

### Partnership Wild and Scenic Rivers

The WSRA does not define the term *partnership WSRs*; rather, it is an umbrella term used to refer to WSRs with certain similar features. NPS administers all WSRs with these features. In general terms, common features of partnership WSRs are as follows:

- Lands are not federally owned, and federal ownership is not authorized in legislation.
- The river management plan is created at the local level and often locally approved prior to designation. NPS may provide technical assistance.
- A local organization, often open or broadly participatory in nature (called a *council*, *committee*, or other term), oversees implementation of the management plan. These organizations may receive technical assistance from NPS.
- Overall administration is the responsibility of NPS, but land use and management are governed by authorities at the relevant nonfederal level (e.g., township zoning ordinances).
- Costs of managing and protecting the WSR are shared but generally include some federal support (see “Funding,” below).<sup>68</sup>

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<sup>64</sup> 16 U.S.C. §1281(c). For further information on National Park System management, see CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by Laura B. Comay.

<sup>65</sup> NPS, which manages all WSRs entirely on nonfederal land, refers to WSRs with these features using the term *partnership wild and scenic rivers*.

<sup>66</sup> 16 U.S.C. §1273(a).

<sup>67</sup> 16 U.S.C. §1273(a).

<sup>68</sup> Jamie Fosburgh, Joe DiBello, and Fred Akers, “Partnership Wild and Scenic Rivers,” *George Wright Forum*, vol. 25, no. 2 (2008); hereinafter referred to as Fosburgh, DiBello, and Akers, “Partnership.” NPS, “Partnership Wild and Scenic Rivers,” at <https://www.nps.gov/orgs/1912/partnership-wild-and-scenic-rivers.htm>.

- Partnership WSRs usually are congressionally designated, although exceptions exist. For example, NPS refers to the Westfield River as a partnership WSR, but its designation occurred through state nomination.<sup>69</sup>

The WSRA does not describe these features, aside from local jurisdiction over land use. These features have been codified in individual river study legislation or designating legislation or have developed locally during the study or designation process. Because the WSRA does not define the term *partnership WSRs*, not all partnership WSRs have all of these characteristics and not all WSRs with some of these characteristics are referred to in this way.

As with WSRs generally, Congress typically designates partnership WSRs following a congressionally authorized study. Studies on partnership WSRs often are similar to studies of WSRs generally, including identifying ORVs meriting protection (see “Designation”), though Congress sometimes specifies matters studies must address.<sup>70</sup>

Partnership WSR studies also may identify existing forms of protection in the river corridor, such as local zoning laws, and additional options to confer protection within local jurisdictions (such as laws regarding vegetative cutting, sand and gravel removal, placement of new structures and septic systems, and others).<sup>71</sup> In some cases, local governments have chosen to strengthen land use requirements during a WSR study (for example, by passing certain zoning ordinances) to demonstrate the adequacy of local protections prior to requesting congressional designation.<sup>72</sup> Congress has prohibited condemnation in WSR corridors in urban areas with adequate zoning ordinances; therefore, strengthened land use requirements may protect against condemnation in certain areas, strengthen the case for designation, or contribute to other goals.<sup>73</sup>

During the WSR study, stakeholders may develop a river management plan, sometimes using NPS technical assistance and funding.<sup>74</sup> Congress may identify such plans as satisfying the CRMP requirements of the WSRA in designating legislation.<sup>75</sup>

Although not required under the WSRA, NPS administers all partnership WSRs.<sup>76</sup> Congress sometimes has specified which relevant local jurisdictions, such as states and towns, manage designated partnership WSRs through cooperative agreements.<sup>77</sup> To date, locally based river management councils or committees have been formed on each partnership river specifically for

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<sup>69</sup> See Fosburgh, DiBello, and Akers, “Partnership” for further discussion.

<sup>70</sup> For example, the study authorizations given for the Beaver, Chipuxet, Queen, Wood, and Pawcatuck Rivers (Rhode Island and Connecticut), Nashua River (Massachusetts), and York River (Maine) in P.L. 113-291 (§3074(b)) specify that the river studies must assess effects of a river designation on existing commercial and recreational activities and energy infrastructure, among others. Study bills vary in how they specify studies be conducted; bills sometimes specify that studies be conducted or submitted by the Secretary of the Interior or establish federal advisory committees. See P.L. 113-291 (§3074(b)) or P.L. 101-628 (§701) for examples.

<sup>71</sup> Cassie Thomas, *Protecting Resource Values on Non-Federal Lands*, Interagency Wild and Scenic Rivers Coordinating Council, Technical Report, 1996. Hereinafter referred to as Thomas, *Protecting Resource Values*.

<sup>72</sup> Marsh, *Compendium*.

<sup>73</sup> 16 U.S.C. §1277(a).

<sup>74</sup> NPS, *Director’s Order #46*.

<sup>75</sup> NPS, *Director’s Order #46*. For example, Congress specified that the Farmington WSR in Connecticut be “managed in accordance with the Upper Farmington River Management Plan.... Such plan shall be deemed to satisfy the requirement for a comprehensive management plan” (16 U.S.C. §1274(a)(156)).

<sup>76</sup> Congress has specified in these designations that these rivers are to be administered by the Secretary of the Interior. Past Secretaries have assigned management of all such rivers to NPS. See NPS, *Director’s Order #46*.

<sup>77</sup> NPS, *Director’s Order #46*. For example, Congress specified that the Taunton WSR be administered “by the Secretary of the Interior in cooperation with the Taunton River Stewardship Council” (16 U.S.C. §1274(a)(207)(A)).

this purpose.<sup>78</sup> Congress may specify the role of management councils or similar local organizations in individual river designating legislation, in written agreements authorized by the river’s designating legislation, or both.<sup>79</sup>

A WSR designation on nonfederal land does not transfer ownership to the federal government; relevant local authorities and jurisdictions continue to govern land use and management of these rivers.<sup>80</sup> After designation, partnership WSRs are managed according to the established CRMP.<sup>81</sup> Local jurisdictions (e.g., the relevant county, township, or city, as appropriate) generally make laws that implement the CRMP, such as land use restrictions and zoning laws, and carry out management actions.<sup>82</sup> The WSRA authorizes federal agencies to enter into cooperative agreements with state and local governments for administering a river area, and NPS may provide technical or financial assistance for managing river resources.<sup>83</sup> NPS remains responsible for implementing Section 7 reviews of proposed water resources projects (see “Water Resources Projects: Section 7”).

## State-Administered Wild and Scenic Rivers

Although Congress designates most rivers, the Secretary of the Interior also can add WSRs to the NWSRS by administrative action. A state desiring WSR designation for a river on nonfederal lands must establish permanent river protections compatible with the WSRA.<sup>84</sup> The state may then apply to the Secretary of the Interior to approve inclusion of the river in the NWSRS.<sup>85</sup> The Secretary of the Interior typically directs NPS to evaluate whether the provisions of the WSRA have been fulfilled—including whether adequate protections are in place, whether the river is in free-flowing condition, and whether it possesses at least one ORV.<sup>86</sup> If the NPS determines that the application meets the requirements and the Secretary of the Interior concurs, the river is added to the NWSRS.<sup>87</sup>

Rivers designated administratively have protections identical to rivers designated by Congress. The WSRA precludes federal management of such rivers; thus, state or local agencies manage WSRA designated this way.<sup>88</sup> (Although these rivers sometimes are called *state-administered rivers*, they need not necessarily be administered by states.) The federal government may not provide funding for state-administered WSRs and may not condemn or acquire lands in the river

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<sup>78</sup> NPS, *Director’s Order #46*.

<sup>79</sup> NPS, *Director’s Order #46*.

<sup>80</sup> Thomas, *Protecting Resource Values*.

<sup>81</sup> NPS, *Director’s Order #46*.

<sup>82</sup> Thomas, *Protecting Resource Values*.

<sup>83</sup> 16 U.S.C. §1281(e), 16 U.S.C. §1282.

<sup>84</sup> 16 U.S.C. §1273(a). These designations are sometimes called “Section 2(a)(ii)” designations, based on the original Wild and Scenic Rivers Act.

<sup>85</sup> 16 U.S.C. §1273(a).

<sup>86</sup> Dan Haas, *Designating Rivers Through Section 2(a)(ii) of the Wild & Scenic Rivers Act*, Interagency Wild and Scenic Rivers Coordinating Council, Technical Report, 2000. Hereinafter referred to as Haas, *Designating Rivers*.

<sup>87</sup> Haas, *Designating Rivers*.

<sup>88</sup> 16 U.S.C. §1273(a).

corridor.<sup>89</sup> NPS reviews proposed water resource projects (see “Water Resources Projects: Section 7”).<sup>90</sup>

## Segments on Nonfederal Lands

Congress may designate WSRs with segments on federal and nonfederal land (for example, Congress could designate a river that begins on FS lands and flows onto private lands). Management of nonfederal segments of these rivers varies, depending on what provisions Congress includes in designating legislation. For example, Congress may specify that nonfederal segments are to be managed by state, county, local, or other nonfederal elements. Some of these rivers are managed through cooperative agreements; in other cases, Congress has specified objectives for nonfederal elements.<sup>91</sup> In still other cases, Congress has not specified how nonfederal areas are to be managed.<sup>92</sup>

## Funding

For rivers administered by the four federal land management agencies, Congress provides funds for operations and maintenance through annual congressional appropriations for the relevant agencies. Each agency approaches river management differently in its budget. Rivers administered exclusively by states typically do not receive federal funding for river administration.<sup>93</sup>

The WSRA authorizes federal agencies to assist states and their political subdivisions (such as counties, townships, and others), landowners, organizations, or individuals in planning, protecting, and managing WSRs; this provision includes financial and technical assistance, except in the case of administratively designated WSRs.<sup>94</sup> NPS administers partnership WSRs and provides technical and financial assistance to manage these rivers.

## National Park Service

Funding for WSRs administered by the NPS depends on the designated river’s location. NPS WSRs that are part of another National Park System unit are funded through appropriations for that individual unit. A few WSRs are stand-alone units of the National Park System and receive their own line-item appropriations. The National Park Service budget also contains separate line items for the partnership WSRs. Funding for WSRs listed individually in the NPS budget, as well as for overall program administration over the past five years, appears in **Table 1**.

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<sup>89</sup> 16 U.S.C. §1273(b).

<sup>90</sup> NPS, *Director’s Order #46*.

<sup>91</sup> For example, segments of the Obed WSR pass through lands owned by the state of Tennessee, and Congress specified that “lands within the Wild and Scenic River boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency in such a way as to protect the wildlife resources and primitive character of the area, and without further development of roads, campsites, or associated recreational facilities unless deemed necessary by that agency for wildlife management practices” (16 U.S.C. §1274(a)(15)). Segments of the Allegheny WSR pass through nonfederal land, and Congress has specified that they be “administered by the Secretary of Agriculture ... through a cooperative agreement with the Commonwealth of Pennsylvania and counties of Warren, Forest, and Venango” (16 U.S.C. §1274(a)(133)).

<sup>92</sup> For example, more than half of the Skagit WSR system is privately owned, but designating legislation does not address agency management of these areas (16 U.S.C. §1274(a)(18)).

<sup>93</sup> 16 U.S.C. §1273(a) specifies that state-administered rivers “be administered ... without expense to the United States.”

<sup>94</sup> 16 USC §1282(b).

**Table I. National Park Service (NPS) Wild and Scenic Rivers (WSR) Funding, FY2015-FY2020**

(in thousands of dollars)

| <b>Wild and Scenic River</b>          | <b>FY2020 Request</b> | <b>FY2019 CR Baseline<sup>a</sup></b> | <b>FY2018</b> | <b>FY2017</b> | <b>FY2016</b> | <b>FY2015</b> |
|---------------------------------------|-----------------------|---------------------------------------|---------------|---------------|---------------|---------------|
| <i>Bluestone</i>                      | 75                    | 78                                    | 78            | 77            | 76            | 75            |
| <i>Eightmile</i>                      | 163                   | 170                                   | 170           | 170           | 67            | 67            |
| <i>Farmington (West Branch)</i>       | 165                   | 172                                   | 172           | 172           | 172           | 172           |
| <i>Great Egg Harbor</i>               | 165                   | 172                                   | 172           | 172           | 172           | 172           |
| <i>Lamprey</i>                        | 164                   | 171                                   | 171           | 171           | 171           | 171           |
| <i>Lower Delaware</i>                 | 165                   | 172                                   | 172           | 172           | 172           | 172           |
| <i>Maurice</i>                        | 166                   | 173                                   | 173           | 173           | 173           | 173           |
| <i>Missisquoi and Trout</i>           | 163                   | 170                                   | 170           | 170           | 125           | 125           |
| <i>Missouri</i>                       | 845                   | 877                                   | 881           | 870           | 868           | 861           |
| <i>Musconetcong</i>                   | 163                   | 170                                   | 170           | 170           | 111           | 111           |
| <i>Niobrara</i>                       | 983                   | 1,021                                 | 1,026         | 477           | 1,012         | 1,002         |
| <i>Obed</i>                           | 1,027                 | 1,065                                 | 1,071         | 1,053         | 1,049         | 1,031         |
| <i>Rio Grande</i>                     | 192                   | 200                                   | 200           | 196           | 195           | 192           |
| <i>St. Croix and Lower St. Croix</i>  | 3,828                 | 3,996                                 | 3,976         | 3,959         | 3,947         | 3,877         |
| <i>Sudbury, Assabet, Concord</i>      | 166                   | 173                                   | 173           | 173           | 173           | 173           |
| <i>Taunton</i>                        | 163                   | 170                                   | 170           | 170           | 30            | 30            |
| <i>Upper Delaware Middle Delaware</i> | 3,310                 | 3,443                                 | 3,459         | 3,415         | 3,400         | 3,348         |
| <i>Wekiva</i>                         | 163                   | 170                                   | 170           | 170           | 114           | 114           |
| <i>Westfield</i>                      | 163                   | 170                                   | 170           | 170           | 134           | 134           |
| <i>White Clay Creek</i>               | 166                   | 173                                   | 173           | 173           | 173           | 173           |
| <i>Wild and Scenic River Program</i>  | 52                    | 54                                    | 54            | 54            | 54            | 54            |

**Source:** Department of the Interior, "Park and Program Summary," *Budget Justifications and Performance Information: National Park Service, Fiscal Years 2016-2020*.

**Notes:** All partnership WSRs, as defined by NPS, are included in the table above. WSRs on NPS lands listed separately in the cited NPS budget justifications are in italics. NPS generally does not provide funding for state-administered WSRs.

- a. FY2019 continuing resolution (CR) figures may not be final. H.Rept. 116-9, the conference report accompanying the final FY2019 Interior appropriations law (P.L. 116-6), specified that NPS funding for the “Natural Programs” budget activity, which includes WSRs, be maintained at the FY2018 enacted level.

## Bureau of Land Management, Forest Service, and Fish and Wildlife Service

BLM lists the total annual amount enacted for WSRs in the “Cross-Cutting Programs” section of its budget justification, shown below in **Table 2**.

**Table 2. Bureau of Land Management (BLM) Wild and Scenic Rivers (WSR) Funding, FY2015-FY2020**

(in thousands of dollars)

| Fiscal Year              | Funding |
|--------------------------|---------|
| FY2020 Request           | 6,946   |
| FY2019 (CR) <sup>a</sup> | 6,946   |
| FY2018                   | 6,946   |
| FY2017                   | 6,948   |
| FY2016                   | 6,948   |
| FY2015                   | 6,948   |

**Source:** Department of the Interior, “Crosscutting Programs,” *Budget Justifications and Performance Information, Fiscal Year 2020: Bureau of Land Management*.

- a. FY2019 continuing resolution figures may not be final.

FS, in its “Recreation, Heritage, and Wilderness” budget activity, includes a combined line item for management of wild and scenic rivers and wilderness areas; it does not report a distinct figure for WSRs.<sup>95</sup> Similarly, FWS does not report a distinct figure for WSRs but incorporates WSR funding into its broader “National Wildlife Refuge System” budget activity.<sup>96</sup>

## Issues for Congress

WSR designation has been controversial in some cases, especially for WSRs containing nonfederal lands. Initially, Congress primarily designated rivers on federal land and rivers on nonfederal land were primarily added to the NWSRS through the state nomination authority.<sup>97</sup> However, the state nomination authority has not been used since 2004, and Congress has designated all WSRs (on federal and nonfederal land) since that time.<sup>98</sup> Congress also has

<sup>95</sup> See, for example, “Four-Year Summary of Appropriations,” Recreation, Heritage, and Wilderness, in USDA, FS, *FY2020 Budget Justification*, 2019.

<sup>96</sup> See, for example, DOI, “National Wildlife Refuge System,” *Budget Justifications and Performance Information, Fiscal Year 2020: Fish and Wildlife Service*, 2019.

<sup>97</sup> See Haas, *Designating Rivers*.

<sup>98</sup> See Haas, *Designating Rivers*. Congress also has authorized a number of river studies on nonfederal lands.

increasingly authorized river studies on nonfederal lands.<sup>99</sup> With this increase in congressional studies and designations of nonfederal lands, concern has centered on local control of relevant lands, including potential for federal acquisition of newly designated lands.

The potential use of condemnation authority to acquire lands on partnership WSRs has been particularly contentious. The WSRRA limits the federal government's condemnation powers for some but not all river areas.<sup>100</sup> According to the Interagency Wild and Scenic Rivers Council, the federal government has rarely used condemnation authority in respect to WSRs, and nearly all uses of condemnation occurred in the early years of the WSRRA.<sup>101</sup> Congress has sometimes prohibited the use of condemnation in designating legislation for individual river segments.<sup>102</sup>

Opinions regarding the balance of federal and local control over partnership WSRs have varied. Some stakeholders contend that the current partnership WSR model is successful.<sup>103</sup> Others have expressed concern that provisions of WSR designation legislation—for example, that partnership WSRs are to be administered as part of the National Park System unless otherwise specified—may lead to an undesirable loss of local control.<sup>104</sup> Still other observers have expressed concern that local laws may not adequately protect partnership WSRs.<sup>105</sup> As discussed previously, the attributes of each partnership WSR are created separately by individual designating laws or by local and federal agency choices before or after designation—as opposed to stemming from a defined category in the WSRRA. Thus, it may be unclear whether these concerns are broadly applicable. Congress and NPS have used varying methods to address concerns about local versus federal control of partnership WSRs and about adequate levels of protection for partnership WSRs, either in individual designating legislation or in agency action prior to or after designation.<sup>106</sup>

In contrast to the partnership WSR model, the state-nominated process for designating WSRs consists of a fixed set of provisions. The process affords rivers the same protection as congressionally designated WSRs but precludes federal management or land acquisition (including by condemnation), and the state must demonstrate that adequate legal protections are in place prior to designation.<sup>107</sup> Some have observed that Congress intended the state nomination

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<sup>99</sup> Since 2000, seven of eight river study authorizations have been for rivers on nonfederal lands. For a complete list, see [Rivers.gov](https://www.rivers.gov), “Section 5(a), Congressionally Authorized Studies,” at <https://www.rivers.gov/study.php>.

<sup>100</sup> The agencies may not acquire any lands by condemnation if 50% or more of the acreage within a federally administered WSR corridor is federally owned, state-owned, or owned by a political subdivision of a state (i.e. county, township). The agencies also may not acquire lands in urban areas by condemnation if the relevant jurisdiction (city, village, etc.) has adopted zoning ordinances conforming to the WSRRA. 16 U.S.C. §1277(b)-(c).

<sup>101</sup> Jackie Diedrich, John Haubert, and Cassie Thomas, *Wild and Scenic Rivers and the Use of Eminent Domain*, Interagency Wild and Scenic Rivers Coordinating Council, 1998.

<sup>102</sup> For example, see §3(d), H.R. 1248, York River Wild and Scenic River Act of 2019.

<sup>103</sup> See, for example, Letter from Joe Courtney, Representative, Donald Norcross, Representative, and Judy Chu, Representative, et al. to Representative Betty McCollum, Chair, Subcommittee on Interior, Environment, and Related Agencies, House Committee on Appropriations, 2019, at <https://courtney.house.gov/sites/courtney.house.gov/files/Wild%20%26%20Scenic.pdf>.

<sup>104</sup> U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Subcommittee Hearing: National Parks, Forests, and Public Lands Legislative Hearing*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., 2019, at <https://naturalresources.house.gov/hearings/national-parks-forests-and-public-lands-legislative-hearing>.

<sup>105</sup> Thomas, *Protecting Resource Values*.

<sup>106</sup> See “Partnership Wild and Scenic Rivers” for discussion. For example, prior to the designation of the Farmington River, CT, local governments requested that NPS draft overlay riverfront zoning districts, which all riverfront towns adopted prior to designation (see Thomas, *Protecting Resource Values*).

<sup>107</sup> See “State-Administered Wild and Scenic Rivers.”

authority to be the primary means for nonfederal river segments to be included in the system and that Congress envisioned the states taking a prominent role in developing the NWSRS.<sup>108</sup> Prior to the 2000s, most nonfederal river segments were designated under the state nomination authority. However, this designation method has not been used since 2004; costs of designation and management at the state level, and state and local politics, may have contributed to this decline.<sup>109</sup> Congress may consider whether it is preferable to encourage use of the state-nominated process, which includes a set of fixed provisions, or to continue to establish partnership WSRs through individual designating statutes, whose provisions vary.

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<sup>108</sup> See Haas, *Designating Rivers*, for summary.

<sup>109</sup> See Haas, *Designating Rivers*.