

The Oregon Scenic Waterways System: A Review and Assessment

David Bernell

Jeff Behan

Institute for Natural Resources

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O R E G O N S T A T E
U n i v e r s i t y

**THE OREGON SCENIC WATERWAYS SYSTEM:
A REVIEW AND ASSESSMENT**

**DAVID BERNELL
JEFF BEHAN**

**AN ASSESSMENT FOR
THE OREGON PARKS AND RECREATION DEPARTMENT**

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ORIGINS OF THE OREGON SCENIC WATERWAYS SYSTEM

Oregon voters established the Oregon Scenic Waterways System through a successful citizens' initiative petition in 1970. The initiative passed by a two to one margin, triggered in large part by dam construction in the state, and also by rising pressures on Oregon rivers resulting from increased population, greater development, and burgeoning recreational use. The system originally contained all or part of six rivers. Over the next several years, additional rivers or segments of rivers were added through designation by the governor or state legislature.

In 1988 a second citizens' initiative resulted in further expansion of the system, nearly doubling the number of river miles designated as Scenic Waterways. Since that time, there have been no additional designations. The system currently includes approximately 1,150 miles on 19 rivers as well as Waldo Lake.* Sixteen of these rivers are also encompassed by the federal Wild and Scenic Rivers System.

GOALS AND OBJECTIVES OF THE OREGON SCENIC WATERWAYS PROGRAM

The overarching goal of the Oregon Scenic Waterways program is to protect the natural, free-flowing qualities of designated rivers, and associated ecological and social values, while allowing for responsible use and development of neighboring lands. Most existing uses, developments and water rights within the designated waterways were recognized when the Scenic Waterways Act was passed and continue to be permitted. Considering the needs and responsibilities of landowners, tribes, conservationists, multiple government agencies, and a variety of river stakeholders, the program has sought to promote the wise use of these rivers and adjacent lands extending ¼-mile inland from either side of the water's edge.

To that end, the goal of the statute that established the system was protection of designated waterways and adjacent lands that possess "outstanding scenic, fish, wildlife, geological, botanical, historic, archaeologic, and outdoor recreation values of present and future benefit to the public." The statute went on to declare that "the highest and best uses of the waters within Scenic Waterways are recreation, fish and wildlife uses," and to state that the goal of establishing the system would be to "preserve Waldo Lake and selected rivers...in a free-flowing condition and protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes." Consequently, the state has sought to promote the following goals to protect these natural resources:

- maintain free flowing waters in their natural state

* A list of all Oregon Scenic Waterways can be found in Appendix A.

- protect water quality and quantity at a level that is necessary for recreation, fish and wildlife uses
- preserve scenic and esthetic qualities from the river perspective

The program also seeks to carry out those natural resource protection goals in accordance with the following aims:

- promoting the expansion of the Scenic Waterways System
- protecting private property rights
- encouraging other agencies to act consistently with the goals of Scenic Waterways management.

To promote the goals and objectives of the program, the law places limitations on the types of activities that can be undertaken on Scenic Waterways. The Oregon Scenic Waterways Act complements the federal Wild and Scenic Rivers Act by extending protections to adjacent non-federal lands. The Act also protects designated waterways from the construction of dams, reservoirs, and impoundment facilities, as well as dredging and mining, including commercial placer mining.

The statute also places limitations on landowners with respect to cutting trees and constructing buildings, roads, or any other structures that lie within ¼-mile of the designated Scenic Waterway that could potentially disrupt the scenic qualities of the area. Finally, the state requires permits for all activities on Scenic Waterways that affect water quality, or that involve removal or movement of materials from the riverbed.

Oregon Scenic Waterways include some of the state's most prized natural environments, and they contribute to the state's economy and quality of life. To help ensure the effective use and management of these resources, the Oregon State Legislature has requested this assessment of the Oregon Scenic Waterways program.

METHODS

Data collection for this assessment was conducted by means of semi-structured in-depth interviews with stakeholders who, either individually or through their various government agencies or non-governmental organizations, have an interest in or responsibility for the Scenic Waterway System. Interviews were carried out both in person and over the telephone. Preselected topics guided the interviews but enough flexibility remained to provide for open-ended responses. The objective was to accurately represent the views and positions of different stakeholder organizations and individuals, capturing the diversity of viewpoints as opposed to focusing on the frequency of particular responses.

The responses were acquired by means of a referral sampling technique (also known as "snowball" sampling). The researchers began the interview process with "key

informants” in OPRD and other state and federal agencies whose work involves Scenic Waterways. With this group we identified an initial set of potential interviewees with knowledge of, or interest in the Oregon Scenic Waterways program. As these people were interviewed they were asked to provide the names of additional persons who they thought could also provide relevant information. We conducted more than 150 interviews, continuing the process until two goals had been met. The first was that the information gathered became repetitive. Once this began to occur on an increasing basis, we could be confident the number of people interviewed was sufficient to be certain that the major issues had been identified and the major viewpoints had been represented – similar issues, positions, beliefs, and experiences were being expressed. The second goal to be met involved sufficient inclusion of interested individuals, agencies, and organizations. Care was taken to include interviewees from the entire geographic scope of the Oregon Scenic Waterways program and a broad variety of interest groups to minimize the chance of missing significant issues. Just as important to this effort was to be certain that all sectors and types of interest groups had an opportunity to have their voices heard and their concerns and suggestions articulated so they could be presented to the state.

WHAT DOES THE PROGRAM DO? – AGENCIES AND THEIR WORK

Several state agencies have responsibilities for managing and administering different aspects of the Scenic Waterways program. Oregon Parks and Recreation Department (OPRD) is charged with overall administrative responsibility for Scenic Waterways. The Division of State Lands (DSL), the Department of Environmental Quality (DEQ), the Oregon Department of Fish and Wildlife (ODFW) and the Water Resources Department (WRD) are responsible for a variety of more specific aspects that affect Scenic Waterways. These are, respectively, removal and fill activities, water quality, fish and wildlife resources, and water rights. At the state level, these five agencies have the largest responsibilities regarding Oregon Scenic Waterways.

Other state agencies have smaller roles in helping advance the goals of the Scenic Waterways Program. These include the Oregon Department of Forestry (ODF), the Oregon Department of Agriculture (ODA), the Department of Land Conservation and Development (DLCD), the Oregon Marine Board, and the Oregon State Police. OPRD works with these agencies as needed to address specific issues.

Like all other western states, Oregon also contains a large amount of federal land. The U.S. Forest Service (USFS) and Bureau of Land Management (BLM) play major roles in managing a number of Oregon Scenic Waterways, sixteen of which are also contained within the federal Wild and Scenic Rivers system.

The roles that each of these state and federal agencies play in administration and management of the Oregon Scenic Waterways program, as well as a few others whose goals sometimes coincide with the program, are explained in the following sections.

Oregon Parks and Recreation Department (OPRD)

OPRD is the lead agency for the Scenic Waterways program. It maintains overall responsibility for program administration and coordinating with federal, tribal, state and local agencies as necessary to protect and enhance the special attributes of Scenic Waterways. This requires a great deal of interagency communication and cooperation, and OPRD has been successful in establishing good working relationships with numerous agencies to carry out its responsibilities. For example, OPRD works closely with state, federal and local government counterparts, as well as tribal representatives, to carry out its primary responsibility of protecting views from the river perspective. In addition, on part of the Scenic Waterways corridor on the Lower Deschutes, OPRD works closely with state and federal agencies and tribes as part of a special arrangement to help maintain recreational facilities and manage recreational use on lands that are held by ODFW and cooperatively managed by BLM.

The Oregon Scenic Waterways Land Use Change Notification Process

The agency's primary responsibility in administering the Scenic Waterways program involves ensuring compliance with land use regulations within the ¼-mile wide corridors of land on either side of designated waterways. In fact, the lion's share of OPRD efforts concerning Scenic Waterways involves working with landowners to bring land use activities into compliance with regulations. The agency has adopted a series of rules and guidelines to regulate land use activities within the ¼-mile corridors that apply to individual landowners, government agencies, and corporations. OPRD must be notified of certain activities proposed within these corridors such as cutting trees, clearing land, mining, constructing roads, railroads, utilities, buildings, houses or other structures, or other activities that affect scenic qualities from the river perspective.

The notification process works as follows. When a landowner wishes to make any of the aforementioned changes on land adjacent to the waterway, the person or organization making these changes must notify OPRD. Quite often, landowners are not aware of this notification requirement, and only become aware of it when dealing with county building inspectors or any one of a number of state and federal land management agencies that may be involved in a particular project.

Notification is a formal process in which a document that specifies all work being proposed is submitted to OPRD. However, landowners will often consult with OPRD informally prior to submitting the formal notification to determine what types of land use changes will be acceptable and which will not be. Land use changes that are acceptable to the state vary according to the classification of a particular area. Sections of designated waterways are classified, according to their characteristics, from natural (undeveloped and pristine) to river community (densely developed). There are six different classifications, and proposed changes should reflect the conditions of the surrounding area.

As part of this process, a representative from OPRD will usually visit the site and make recommendations if changes to proposed plans are necessary. Examples of recommended changes include the following:

- Setting a structure back from the waterway so that it is not built right at the water's edge.
- Leaving trees in place rather than cutting them down. Sometimes a landowner building a home may want better access to the river or a better view from her/his house, but this will diminish the scenic values from the river perspective.
- Reducing the size of a proposed structure.
- Changing the color of paint to be used so that the structure blends into the natural environment. Greens and browns are preferable to bright colors.

Proposed changes or activities may not be initiated until the landowner's written notification is approved by OPRD. OPRD provides copies of notifications to other agencies as needed in order to solicit their comments. After other agency comments, if any, are received by OPRD, landowners are directed to comply with any limitations or changes the state feels are necessary regarding proposed construction or modifications.

OPRD will provide a formal written document to landowners explaining what is required, but in practice the process is usually a cooperative effort. OPRD staff pointed out that they work to make this process a collaborative effort between themselves and private landowners. In nearly all cases, the agency is able to reach an agreement with the landowner that is acceptable to all interested parties. The idea is to find an agreeable compromise (if necessary) by visiting the site and discussing alternatives with landowners. Other state agencies generally enforce their regulations without providing opportunities for significant input by those who are the object of the regulations, but OPRD does not operate the Scenic Waterway notification process in this manner.

One reason for this more cooperative effort is that landowners have another option besides compliance. Scenic Waterways regulations stipulate that if OPRD and a landowner are unable to reach an agreement about the particulars of a proposed land use change after the notification has been filed, then after one year the landowner may proceed without regard for any modifications recommended by OPRD to protect scenic values. Allowing landowners the option of simply waiting for a year rather than complying is a highly unusual feature within the body of state regulations.

OPRD currently employs four people around the state to handle all notifications and site visits. (Some of this staff has other responsibilities as well.) From 1998 through half of 2002, OPRD received 265 notifications. The vast majority of these involved new home construction, modifications to existing homes, or small construction projects adjacent to existing homes such as building garages, storage sheds or boat docks, improving access roads, or removing trees for forest health or other purposes. Most

notifications were concentrated on the Clackamas, Sandy and Rogue Rivers, and most particularly on the Deschutes (the Middle and Upper Deschutes accounted for almost half of the 265 notifications). A small number of notifications involved timber harvesting. Other types of proposed changes were much less common.

OPRD staff may officially approve proposed changes, but only the Oregon Parks and Recreation Commission (a seven-member board appointed by the Governor) can make denials. Out of 265 notifications over the past five years, 249 were approved and only one was denied. Three were withdrawn from consideration, 11 records show that no action was taken by OPRD or the landowner, and one notification is currently pending. The large number of approvals indicates either that 1) OPRD is able to effectively communicate to landowners why scenic values are important and can persuade them to make recommended changes, or 2) OPRD knows it must make some concessions to landowners because they would otherwise simply wait for one year and proceed anyway. Both of these conditions may work simultaneously as well. Within the limitations imposed by the one-year waiting period option, OPRD may often obtain whatever concessions it can from landowners to protect scenic values under the assumption that “half a loaf is better than none.” It is important to note, however, that discussions with OPRD staff and landowners indicate that the first of these – effective communication and persuasion – is very often the case, and that the effort made by OPRD to work cooperatively with landowners is usually successful.

In the event no agreement can be reached between OPRD and a landowner, the agency is also authorized to purchase land at fair market value, trade OPRD property, or buy scenic easements from property owners if necessary to protect the special attributes of a Scenic Waterway. Funding has not been available for this for many years, so the option has been rarely used. In certain cases, OPRD can condemn the land and exercise the state’s right of eminent domain. This is not an option OPRD cares to use, and it has exercised this prerogative only rarely since the program’s inception, and not at all since the early years of the program.

Division of State Lands (DSL)

DSL maintains authority over the beds and banks of Oregon’s waterways, up to the ordinary high water mark, with the goal of effectively managing and conserving the state’s natural resources. State law prohibits any removal, fill or alteration of the beds and banks of all Scenic Waterways except under certain conditions, which are specified in law and regulations. In most cases, activities that involve removal, fill or alteration of the beds and banks require a permit to be issued by DSL.

DSL has provided a set of regulations that are designed to provide extra protections in Oregon Scenic Waterways, due to the fact that these waters have been deemed special by the state. Similar regulations exist for waterways designated as Essential Salmon Habitat. It is this regulatory function – the issuing of permits for

removal/fill activities – that comprises the principal involvement of DSL in connection with the state Scenic Waterways System.

DSL issues permits that cover any activities altering the beds and banks of Scenic Waterways, though the vast majority of permits in Scenic Waterways are for placer mining with a motorized suction dredge. Permits are also issued for suction dredging done in Essential Salmon Habitat. People throughout the state engage in this activity with the goals of recreation and finding gold deposits in the riverbed. The amount of gold available and DSL regulations generally make gold extraction uneconomical, so suction dredging in Scenic Waterways is conducted primarily for recreational purposes. Suction dredging is also conducted on mining claims around the state. With only a few exceptions, these claims tend not to be on Scenic Waterways.

Suction dredge mining involves the movement of sediment and gravel in rivers and streams, and since Scenic Waterways are specially protected areas, very strict standards apply for working in the river or on the banks regardless of how much material is involved. Since 1996, DSL has required suction dredge operators to obtain approval from DSL before any work can take place that moves material or alters the bank in any way. (For an in-depth discussion of recreational placer mining in Oregon Scenic Waterways, see Bernell, Behan, and Shelby “Recreational Placer Mining in the Oregon Scenic Waterways System,” OSU Institute for Natural Resources, 2002.)

Department of Environmental Quality (DEQ)

DEQ is a regulatory agency whose job is to protect Oregon's environment by preserving and improving Oregon's water and air quality, cleaning up spills and releases of hazardous materials, and managing proper disposal of hazardous and some non-hazardous wastes. The water quality division is responsible for protecting state waters, with a mission to ensure that standards for surface and groundwater quality are upheld so that they are safe and clean for all uses.

DEQ is not charged with upholding or enforcing any special requirement for Scenic Waterways, but rather applies its water quality rules and standards uniformly statewide. Nevertheless, DEQ interacts with the Scenic Waterways program in a variety of ways. OPRD may solicit DEQ comments on Scenic Waterways land use notifications. Also, if some activity on a Scenic Waterway may affect water quality through erosion or discharge, DEQ is involved in the permitting and review process. Finally, along with DSL, DEQ issues permits to and regulates individuals who engage in suction dredge mining or other mining activities that affect Scenic Waterways. This is a separate permit from that issued by DSL.

Oregon Department of Fish and Wildlife (ODFW)

ODFW is responsible for managing and protecting Oregon's fish and wildlife, and the habitats these species require. ODFW advises local, state and national agencies on

policies that affect Oregon fish and wildlife, and works with these agencies as well as public and private landowners to improve habitat. It also issues hunting and fishing licenses, and regulates these activities to protect animal populations.

In-Water Work Periods

ODFW is most significantly involved with Scenic Waterways through development of guidelines regarding what are called “in-water work periods.” These are times during the year when certain activities are permitted in waterways, including riparian restoration projects, road or bridge construction and repair, recreational placer mining, and agricultural irrigation or municipal water projects. In-water work period guidelines are intended to minimize impacts to fish, wildlife and habitat resources, and help the public plan their activities around times when streams and rivers are off-limits to certain uses. In-water work periods pertain primarily to protecting fish, and thus are usually developed by agency fish biologists who determine the times of year that species of concern are present in particular river or stream reaches. This involves surveying specific areas for evidence of fish, eggs or fry.

The result is a set of guidelines tailored to conditions in each area covered. As a result, in-water work periods vary from place to place around the state. The idea is to avoid work during the most vulnerable periods of fish life cycles, including migration, spawning and rearing. For all fish-bearing streams and rivers, the work period applies not only to these specific areas, but also to the watershed as a whole, including unlisted upstream tributaries and associated lakes and reservoirs. In some cases, exceptions can be made to extend the work period for a given activity in a given year if it is determined that fish are not present when work would be carried out.

ODFW does not produce guidelines only for designated Scenic Waterways or issue special permits and licenses for these areas – fish, wildlife and habitat receive equal levels of protection throughout the state. The agency is, however, an important part of the Scenic Waterways program and works closely with OPRD and other agencies to manage and protect fish and wildlife. In-work water periods are the most significant part of this contribution. ODFW also reviews all land-use notifications sent to OPRD, and it sometimes reviews DSL removal/fill permits. If ODFW finds that an activity may be harmful, it notes the potential harm and suggests alterations to the work period or the area to be worked in. This review process is the agency’s other major responsibility for the Scenic Waterways program.

Oregon Water Resources Department (WRD)

WRD is the body responsible for permitting and prohibiting various uses of the state’s water by granting water rights to various entities. Under the Scenic Waterways Act, WRD (and the Water Resources Commission, which directs WRD activities) has multiple responsibilities. Within Scenic Waterways, WRD has the authority to deny a number of uses of water, including dams, impoundments, certain mining operations and

many other activities that take or divert water resources. Curbing these activities in certain parts of the state was, in fact, one of the primary reasons for establishing the Scenic Waterways System in the first place, and these types of activities are not eligible to receive water rights on Scenic Waterways.

These restrictions on water usage and the granting of water rights are applicable not only on reaches of rivers designated as scenic, but can also apply to upstream reaches. WRD must determine the likelihood that an upstream activity will significantly affect water quantity. If an activity will ultimately affect the free-flowing character of a Scenic Waterway downstream, then WRD is not supposed to grant a water right for that activity.

WRD will grant new water rights until there is a discernable effect on water quantity, and a standard has been developed to weigh the effects of granting new water rights. This standard is known as the Diack flow, or Scenic Waterway flow, which is the volume of water remaining in a river that is deemed necessary to preserve its free-flowing character. Diack flow standards were the outcome of a lawsuit brought against the state (*Diack vs. City of Portland*, 306 Or 287, 299. 1988), which established that WRD is required to limit water withdrawals if such use will diminish the free flowing character of Scenic Waterways. The State Legislature later required an additional review for groundwater withdrawal applications to determine if the proposed use would impact surface flows in Scenic Waterways.

In 1992, WRD completed the process of quantifying flows necessary to support waterway values specified by the Scenic Waterways Act. These quantified Diack flows are used to evaluate water withdrawal applications both upstream and within Scenic Waterways. The criteria used to determine the Diack flows are based on supporting fish, wildlife and recreation, with the assumption made that esthetics are typically covered if flows for recreation or fish and wildlife are met. Flows for fish and wildlife, recommended by ODFW, are based on the optimum flows for the Thompson's usable width method (this is sometimes referred to as the Oregon method). Flows for recreation are determined by taking an inventory of the recreational activity by location and the time of year a given recreational activity takes place. Flows reflect the way people use the rivers and their natural fluctuations, rather than setting a single flow for the whole year.

Though WRD is charged with making these determinations and granting or denying water rights accordingly, the agency has been routinely criticized for not assuring that Diack flows are met and maintained, and allowing too much water to be withdrawn. WRD points out that no flow amount is perfect for everyone – some non-recreational advocacy groups suggest that the Diack flows are too low, while some consumptive users believe they are too high.

Oregon Department of Forestry (ODF) and Department of Agriculture (ODA)

The Oregon state Departments of Forestry and Agriculture do not have any specific responsibilities for administering the Scenic Waterways program. They are,

however, consulted in any review process of permits and notifications as appropriate. For example, if a landowner on a Scenic Waterway wishes to cut down trees within the ¼-mile protected corridor, ODF will be consulted and may visit the site to make a recommendation on what can and cannot be done. Recommendations may vary according to conditions on a particular site, or on the goal to be attained, such as esthetics, safety issues or the health of particular trees or forested areas.

Some of the land adjacent to Oregon Scenic Waterways is owned by timber companies. In working with these companies, ODF may determine that harvesting is planned that falls within a Scenic Waterway corridor. They will then direct the company to work with OPRD to make certain that work is done properly to comply with regulations. ODF stated that it deals with thousands of notifications by timber companies each year, and only a small handful of these involve Scenic Waterways.

ODA maintains a similar relationship to the Scenic Waterways program with respect to land use and water quality. Work on agricultural lands is subject to a review process, if necessary. Also, in working to develop water quality management plans, ODA will take the Scenic Waterways goals and objectives into consideration as part of the process. In general, however, ODA encounters with the program are limited.

Oregon Department of Land Conservation and Development (DLCD)

DLCD is responsible for land-use planning in Oregon and works with local governments to implement goals identified by the department. With respect to Scenic Waterways, DLCD helps counties implement the level of protection that OPRD has designated for a particular stretch of river. DLCD works with local officials to develop and periodically amend land-use management plans so that local governments are aware of Scenic Waterways designations in their jurisdictions and incorporate these considerations in their own planning. The idea is for counties and the state to coordinate their goals and plans to promote consistent application of Scenic Waterways goals in the plans of different counties statewide.

Ideally, the result of such coordination and communication is that counties know exactly where Scenic Waterways classifications begin and end, and have consideration of Scenic Waterways well-incorporated into larger county plans. Goal 5 of the “Oregon Statewide Planning Goals and Guidelines” specifically references state Scenic Waterways, and promotes these goals as part of a balanced and consistent statewide approach to land use planning. To the extent these goals are met, state Scenic Waterways benefit. One particular benefit is that landowners wishing to modify or develop their property will be directed to contact ORPD and file a notification with the agency before the county will issue the permits necessary to begin any work.

Oregon Marine Board

The Oregon Marine Board is concerned with recreational boating. Its major goals are safety, education, law enforcement, access, and registration of watercraft. Among its responsibilities are to register motorboats and large sailboats, regulate the terms of use at particular places and times, and contract with the Oregon State Police for law enforcement. It also provides grant money for launch sites to provide boaters and rafters greater access. The Board's authority is applicable on all navigable waters, including Oregon Scenic Waterways.

The Marine Board does not maintain a set of special rules for Scenic Waterways. It does, however, adopt rules specific to the conditions present on a given waterway, and on Scenic Waterways, the goals and objectives of the program are taken into account in developing regulations for boaters. One aspect of this authority is that the Marine Board may restrict use when this is deemed appropriate. For example, due to increased use on the Rogue River, the board adopted a permit system to prevent overcrowding on the wild section of the river. The BLM has subsequently taken over responsibilities for permitting on the Rogue.

In addition, the Board currently has in place regulations that restrict motorized boats on the Deschutes. During the high-use season, motorboats are not permitted on the Lower Deschutes every other weekend. On this and other rivers, motorized craft are prohibited parts of the year because of low water, safety issues, fish spawning or noise. In some cases, recreational conflict has led to the same restrictions. The most common conflicts have existed between motorized and non-motorized river users, and between boaters and anglers.

The Board tries to make certain that all people who wish to recreate on state waters can do so, and so it works to ensure that instances of restrictions are both limited and well-founded. However, different users have different expectations and preferences on the rivers, and accommodating all users sometimes entails providing for non-motorized areas and periods. These types of conflicts and considerations are especially important where Scenic Waterways are concerned. The values that the Scenic Waterways program seeks to enhance may be increasingly served by regulating boating use, especially if that use increases – a trend that seems to be evident on several designated waterways.

Oregon State Police

The Oregon State Police maintain a significant presence on Oregon Scenic Waterways. Like many agencies, the police make no distinction between Scenic Waterways and others in carrying out their enforcement responsibilities, as the laws and regulations they enforce are applicable statewide. The State Police point out that a significant part of enforcement consists of education so that river users know the rules

that they need to comply with, and monitoring to make sure those in compliance stay that way.

On the Deschutes River, the police maintain an especially large presence during high-use months. They have a special arrangement with OPRD to monitor and patrol with respect to boating passes, fires, smoking, various permits and other concerns.

The State Police keep reports on their activities on Oregon rivers, though they do not keep a systematic database regarding enforcement actions. To provide one example, however, the State Police reported that in 2001 officers spent about 1000 hours on the Rogue River from the mouth up to Galice. Out of more than 1500 contacts with river users, 130 people were found to be in non-compliance with some type of law, regulation, or permit. It is unclear, however, how these enforcement actions may relate to issues of specific concern to managing Scenic Waterways.

Oregon Watershed Enhancement Board (OWEB)

The Oregon Watershed Enhancement Board is a state agency that works to promote and fund voluntary actions that enhance Oregon's watersheds. The Board's aim is to foster collaboration among citizens, agencies, and local interest groups. OWEB programs support efforts to restore salmon runs, improve water quality, and strengthen ecosystems that are critical to healthy watersheds and sustainable communities. To accomplish this, OWEB administers a grant program that awards more than \$20 million annually in support of voluntary efforts around the state to both restore and maintain healthy watersheds.

OWEB's primary mission involves providing grants to voluntary efforts, and at times working directly with state agencies to support these efforts. It has, however, had no direct involvement with the Scenic Waterways program. Nonetheless, some of its grants are occasionally targeted toward watersheds involving rivers in the Scenic Waterways program, and administered by watershed councils active in these areas.

U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS)

The BLM and Forest Service manage a significant portion of federal land in Oregon, and have an especially strong presence in areas that are scenic, wild, forested, or otherwise notable for their special features. As a result, these areas under federal management are highly visited by various recreationists for these special qualities.

It is important to note the highly significant role played by the federal government, in particular the BLM and the Forest Service, which are crucial to the health and protection of a number of state Scenic Waterways. The Forest Service and BLM cooperate with numerous state agencies in a number of areas regarding recreation, land use, enforcing regulations, and protecting fish, wildlife, habitat and water resources. BLM and the Forest Service are often the agencies that inform landowners of the need to

obtain a notification approval for work on Scenic Waterways. These agencies also require that people visiting federal land comply with all applicable state permits and regulations pertaining to various activities on Scenic Waterways, including fishing, hunting, mining and others.

More than this, however, BLM and the Forest Service maintain a presence on vast tracts of land throughout the state, in contrast to state agencies that do not and often cannot. As a result, officials at OPRD and other state agencies often comment that the federal agencies in many ways “carry” the state, taking responsibility for management and supervision of activities – recreation, fishing, boating passes, recreational mining, to name a few – that should involve greater responsibility from Oregon state agencies. Without this federal presence and assistance, effective management of many lands and waterways throughout the state would be severely diminished.

National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (FWS)

These federal agencies are involved with Oregon state agencies in managing and protecting fish and wildlife resources where federal law or funding is involved. Usually their involvement stems from issues arising over the Clean Water Act or Endangered Species Act, or if federal funding goes to the state to administer rules or a program. The Oregon Scenic Waterways program is not one these agencies involve themselves in directly, though their areas of concern may be applicable in Scenic Waterways.

PERSPECTIVES ON SCENIC WATERWAYS

A variety of interest group organizations and government agencies, as well as individual landowners, were contacted to solicit views of the Oregon Scenic Waterways program. Awareness of the program was often limited among stakeholder groups around the state, and confusion of the program with the federal Wild and Scenic Rivers system was common. This ambiguity in perception of the Oregon Scenic Waterways program is understandable given its similarity with the better-known federal program, and the fact that several Oregon rivers are encompassed by both designations. Limited awareness of the state program may also be due to the low level of financial and human resources allocated to it. Lack of knowledge about the program also occasionally led to questions by interest groups about why both administrative “layers” were needed. However, among those more familiar with the program, it was usually considered to be an added layer of protection for valuable natural resources.

Landowners

Citizens who own land situated within ¼-mile of Scenic Waterways have a variety of experiences with the Scenic Waterways program. We contacted several such landowners to get a spectrum of views about how the program affects them. Owners of property that borders Scenic Waterways are stewards of lands that have been deemed to very special to Oregonians. The landowners themselves readily admit this, and usually

concur that owning such land incurs special responsibilities. Many landowners also noted that the reason the state of Oregon designated waterways as scenic is the same reason they purchased land that borders the waterways.

Landowner Perceptions of the OPRD Notification Process

Private landowners often come into contact with both government agencies and river recreationists such as boaters, sportfishers and campers. Landowners on Scenic Waterways are likely to encounter the OPRD, which has responsibility for maintaining the scenic character of the ¼-mile wide corridor on either side of designated waterways. OPRD has adopted rules to regulate land use activities within this corridor. When landowners wish to make modifications or alter parts of their property by building roads, clearing land, or building a house or other structure, they are required to notify OPRD of the proposed changes. OPRD then tries to work with landowners to make these modifications compatible with scenic qualities of the natural landscape. For example, a structure cannot be taller than 30 feet, roofs should be non-reflective, the paint color should blend with the landscape, and trees and vegetation should be left in place to screen buildings and utility poles. Proposed uses or activities may not be started until the written notification is approved, or until one year after the notification is received.

Situations in which private landowners are subject to government approval of private property uses can produce conflict. All landowners contacted agreed with the goals of preserving natural river landscapes and beauty. There was also some agreement that OPRD tries to strike a reasonable balance that respects both private property rights and public objectives for Scenic Waterways. One landowner in particular had high praise for OPRD, stating that of all the agencies he had to deal with for work on his land (OPRD, DSL, NMFS, county government, building inspectors, and others) OPRD was the best. The goals of OPRD were perceived as realistic – the department works cooperatively with landowners to reach agreements that accommodate both state and landowner goals. Other agencies, by contrast, were thought to be inflexible and unwilling or unable to deal with local conditions and individual circumstances. OPRD was also viewed favorably because representatives personally visit sites to see what is happening on the ground, rather than corresponding solely by mail or telephone.

This view was not universal, and there was some disagreement about the manner in which OPRD carries out its responsibilities regarding Scenic Waterways, and also on how effectively it meets its goals. While landowners expressed a general sense that the program has done a decent job at accomplishing what it set out to do – protect natural waterways for their scenic qualities, recreation, fish and wildlife – there were also some criticisms. Some landowners felt that OPRD should be given a broader mandate to better protect Oregon Scenic Waterways. Since these waterways are a precious resource, they felt the state needs to be more mindful of conserving them – protecting water quality and riparian habitat while limiting the impact of development. It was further noted that OPRD does not do all that it is directed to do regarding Scenic Waterway statutes and

regulations, especially with respect to managing recreation and protecting fish and wildlife habitat.

The agency simply does not have the staff to do the job as well as it could and should. Some projects seem to “slip through the cracks,” and some property owners stated that structures are sometimes built that do not conform to agency regulations. OPRD relies on cooperation from landowners, county governments, and federal land managers to learn about proposed or planned land use changes, but readily agrees that its Scenic Waterways staff is stretched thin and does not always find out about changes that require notification. This criticism is not meant to suggest, however, that OPRD unevenly applies scenic standards across the state on projects they evaluate. Comments suggesting such inconsistent application of regulations were rare.

Other criticisms came from the opposite direction. OPRD and the state have done a very good job at preserving the values of Scenic Waterways – the rivers are clean, the riparian areas seem healthier in places, and the views are often spectacular. But this comes at a price to landowners in the form of excessive administration and to waterways themselves in the form of overuse.

To illustrate, one view was that OPRD is achieving program goals, and it was submitted that the excellent condition of much riverfront property is evidence of this. One property owner acknowledged that although the state government was telling him how to build on his property, the project and landscape were better for it in the end. However, criticisms suggested that in order for OPRD to direct landscape development, it has to administer a notification process that can be burdensome, uncooperative, subjective, time-consuming, costly or all of the above. This type of criticism of program administration suggests that some landowners who purchase property adjacent to waterways because of its scenic qualities feel they should have greater latitude in using it because they do not want to degrade esthetic qualities either. Notifications are open to public comment, so other interests can delay the activities of landowners or force them to incur costs, ultimately imposing unnecessary burdens on private property owners.

Use and Overuse of Popular Waterways Affects Private Property Owners

Costs to the waterways themselves are thought to stem from the fact that river users are “loving the rivers to death.” Landowners are continually aware of river users passing by or stopping along their property to rest, prepare and eat a meal, light fires and/or camp. In many parts of the state, visitation to Scenic Waterways is growing, in some cases quite rapidly. Some property owners noted that their role is effectively that of a park or viewshed manager, as they are continually called upon to monitor and clean up not only after their own uses, but also those of the public. Landowners noted that river recreationists will often access private land, either because they do not realize it is private (one person stated that he doesn’t put up a lot of signs along the shoreline because of esthetic concerns), or because there is a sense among river users that Scenic Waterway shorelines, while legally private are also in a sense public. These lands border rivers

designated as special by the state, and in certain cases subject to public regulation and comment, which contributes to at least a vague sense that they belong to everyone.

More Recreation Facilities and Access Points Are Needed

Landowners have suggested, along with numerous other stakeholders and state and federal agencies, that more access and facilities need to be provided for recreation on Scenic Waterways. People are increasingly attracted to these areas, and it is readily agreed that camping and boating facilities, restrooms and access points are necessary to prevent damage to the health of the rivers, overuse, improper use and potential conflict with private landowners. In addition to facilities, it was suggested that OPRD provide additional onsite information and educational materials to recreationists about how to leave no trace and respect the rights and property of landowners and other river users.

Resource Conservation/Environmental Organizations

Program is Valuable, But Goals Not Completely Achieved

When queried about how well the goals of the Oregon Scenic Waterways program were being met, environmental groups often gave the program mixed reviews. Familiarity with the program varied widely, from vague awareness that it even existed, to detailed knowledge of it and its provisions. All groups that were aware of the program were quite appreciative that designations had been made, and felt that overall the program had been beneficial to protection of some of Oregon's most highly valued and best-known river reaches.

Despite near universal support for the Oregon Scenic Waterways program, environmental groups also expressed several criticisms and suggestions about how it could be improved. It was suggested on several occasions that the laws and regulations need to be strengthened, better enforced, expanded, or all of these to accurately represent the will of the people that these waterways should be protected from further degradation by development and extractive uses.

Specificity Concerning "Highest and Best Uses" Is a Major Strength

Several groups indicated that the greatest strength of the program may be the specific language used in the Scenic Waterways Act to delineate the "highest and best uses" of designated waterways – fish, wildlife and recreation, as well as the specific references to habitat, scenery and especially the importance of maintaining their free-flowing character. The effectiveness of the Act in preventing dams in designated waterways is also viewed as a major strength of the program, and one in which it actually exceeds the federal Wild and Scenic Rivers Act.

Specificity about the highest and best uses, as well as maintaining the free-flowing character of designated rivers, eventually resulted in determination of exactly

what this meant concerning instream flow volumes. The Diack lawsuit brought against the City of Portland over water withdrawals from the Sandy River ended with an Oregon Supreme Court decision directing the state to quantify the amount of water needed in designated waterways to assure that mandates to protect fish, wildlife and recreation are met.

Instream flows are clearly a necessary precursor to principal waterway values specified by the Oregon Scenic Waterways Act such as fish, wildlife and recreation. Environmental organizations noted that impacts resulting from population growth and development are now the main threats to Scenic Waterways, but unlike dams these impacts occur incrementally, which makes them harder to address. Because instream water volumes that are necessary to maintain Scenic Waterway values have been quantified, the state and public are now in a better position to understand the degree to which water withdrawals are impacting these values. Interested stakeholders are also much more able to apply pressure on state agencies to do something about it. Diack flows thus provide critically important legal support to environmental groups and citizens with similar views in efforts to stave off cumulative water withdrawals and protect Oregon Scenic Waterways.

Insufficient Funding is a Major Weakness, Limits Scope of the Program

Several groups noted that the Oregon Scenic Waterways program has never received the funding necessary to adequately implement and administer it. Insufficient funding results in limitations to the scope of the program, and environmental organizations frequently expressed concerns about the consequences of this. Despite ongoing threats to ecological values, resources dedicated to Oregon Scenic Waterways are currently targeted primarily on limiting esthetic impacts to river viewsheds. Regional program managers focus almost exclusively on the notification process for development within ¼-mile of designated rivers, while sorely needed recreation access or environmental restoration efforts go wanting.

Moreover, it was noted that the notification process can be skirted by simply waiting for one year to pass, which renders the process essentially toothless. One group stressed that protection and enhancement of fish and wildlife habitats are key purposes waterways were designated, and decried the time spent “arguing about what color a roof should be” while mitigation of the many and serious ecological threats to designated rivers remain inadequately addressed. It makes no sense, they say, to specify fish and wildlife as goals of the program and then be so passive about protecting their habitat. This concern was echoed in less specific terms by other groups.

Recreational Placer Mining Is Inappropriate in Scenic Waterways

Some environmental groups argued that recreational placer mining is an inappropriate activity on Scenic Waterway. They also noted that restrictions on recreational placer mining have eroded over time (such as the change in maximum

allowable dredge motor size from 10 to 16 horsepower), which has weakened protection for Scenic Waterways. The initiative voters passed in 1970 explicitly prohibited placer mining of any kind, and was intended to preserve and improve ecological and esthetic conditions that existed in Scenic Waterways at that time, not simply slow the rate at which conditions decline. Environmental groups noted that threats from growth and development are multifaceted and harder to confront, but argued that threats posed by mining could be easily addressed if activity was simply prohibited, as the Act originally intended.

Current implementation of the Oregon Scenic Waterways Act is not keeping the ecological, recreational and esthetic values in Scenic Waterways from being degraded, according to environmental organizations. The fact that recreational suction dredging is allowed in Scenic Waterways is viewed by environmental groups as a glaring example of this failure.

Disparity in State Agency Goals and Powers

Environmental interests familiar with Oregon state government operations maintained that the Scenic Waterways program has failed to fully achieve its goals partly because agencies charged with administering its provisions often work at cross purposes. This is perhaps due, at least in part, to differences in agency philosophy and mission. Environmental groups also noted disparity in the relative power and influence that different agencies can bring to bear within state government during administrative rulemaking, and argued that land use agencies with a focus on preservation and public use values often lose out to those with a history and mission of facilitating resource use by private interests. Public values have evolved to include greater emphasis on environmental protection, but some agencies do not seem to be heeding legislation that has resulted from this shift. In particular, the WRD and DSL were singled out by some groups as unsympathetic and even actually hindering the goals of the Scenic Waterways Act.

WRD Favors Development at the Expense of Scenic Waterways Values

To support allegations that the WRD is biased toward water development, one group cited, as an example, rules drafted by the agency specifying that impacts from new water diversions in the Deschutes River (a designated Scenic Waterway) need only be “moderated” rather than completely “mitigated.” This group pointed out that ecological and recreational values in several designated rivers are already at risk from inadequate instream flows, and argued that willingness to facilitate continued incremental increases in withdrawals clearly demonstrates that the WRD is not interested in implementing the Scenic Waterways Act to achieve its intended goals.

DSL Does Not Effectively Enforce Recreational Placer Mining Regulations

Environmental groups charged that the DSL is failing to ensure that Scenic Waterways are protected by 1) poorly monitoring suction dredge mining, and 2) stipulating that it does not significantly impact fish and fish habitat. These groups maintain that DSL monitoring of compliance with its regulations pertaining to recreational placer mining has been sporadic at best in the past and is currently non-existent. Without effective oversight of instream work periods, requirements to backfill tailing piles, and prohibitions on bank excavation and removal of large logs and rocks, regulations are meaningless, say these groups.

Monitoring of effects that mining activities are having on stream ecosystems and native species is also considered to be limited to non-existent. Furthermore, because the permits required of miners do not ask them to be specific about where they go, there is no way to know how much mining is occurring in particular watersheds. Roughly 70% of miners with active permits do not comply with the DSL requirement to submit reports at the end of each season detailing where they mined and how much material was moved, and DSL does not penalize permittees for this failure. Thus there is little incentive for miners, many of whom are antagonistic toward regulations anyway, to comply.

Environmental groups also note that scientific knowledge regarding the effects of recreational mining on fish is far from definitive, with major knowledge gaps, especially regarding cumulative and long-term impacts. When determining that recreational placer mining is having no significant impacts in Scenic Waterways, DSL is assuming more than the scientific studies do. DSL is also assuming that all miners have permits and that all regulations are being followed. Even mining groups admit this is not the case, and that impacts are highly dependent on the stream in question, the actual reach being mined, and the behavior of individual miners. Scientific knowledge is incomplete, tracking of where mining occurs is inadequate, and very little monitoring is conducted. Thus environmentalists see little evidence to support DSL assertions that recreational placer mining is having no significant impacts.

OPRD Contributes to Program Ineffectiveness

It was also asserted, by more than one group, that the OPRD shared at least part of the blame for the erosion of special values found in Scenic Waterways, because of its ineffective enforcement, its lack of attention to recreation management, and its lackluster lobbying before government committees with decision-making authority during administrative rulemaking. In general, environmental organizations maintain that the expressed will of the people regarding Oregon Scenic Waterways is currently not being achieved because of failure by state government agencies, including OPRD and other important agencies, to properly implement and enforce applicable laws and regulations.

Boaters

River Floating is Increasingly Popular

River floating by canoe, kayak or raft is among the fastest growing forms of human-powered outdoor recreation in the United States, particularly in the Pacific Northwest. Many Oregon rivers are highly valued for river running, and preservation of recreation opportunities was a primary reason that several were designated as Scenic Waterways. We contacted a range of river managers, kayak and canoe clubs representing private boaters, commercial river trip outfitters and retail boating equipment businesses statewide to solicit their views on boating interests and trends with respect to Oregon Scenic Waterways.

Boating for recreational purposes is very popular in Oregon. Federal managers and commercial outfitters on the Rogue River explained that growth in commercial rafting seemed to have slowed in recent years after a period of rapid expansion, but also noted that the industry is still quite strong. Moreover, private boaters in kayaks and rafts are growing rapidly in number. This was echoed by resident private boaters, who said that river running by individuals on the recreational reach of the Rogue was exploding. Some boaters specifically chose weekdays to float because the weekends are now “too crazy” and “a circus.” Similar trends have been noted on the Deschutes River as well, with the result that BLM and other interested parties are currently assessing whether or not to restrict the number of boating permits on the Deschutes. (See Rebecca Johnson et al., “Analysis of Boater Pass Data on the Deschutes River,” 2002.)

Retail boating equipment businesses have noted rapidly rising sales of kayaks, rafts and other boating gear. A recently opened Grants Pass shop that focused on retail kayak and raft equipment sales reported very strong business, and much faster growth than had been anticipated. The manager of a well-established Willamette Valley shop stated that dollar volume of kayak equipment sales had increased 30% annually over the past three years. Other shops reported similar stories of dramatic increases in sales.

Boaters' Concerns Include Access, Waterflow, and Esthetics

Recreational boaters' perspectives on Oregon Scenic Waterways are similar to other groups in that there is a fair degree of ignorance about the program and confusion of it with the federal Wild and Scenic Rivers program. Boaters obviously depend on free flowing rivers more than many other types of wildland recreationists, and thus to the degree that they are aware of the program, they approve of it highly. Boaters also have a vested interest in maintaining and improving access to designated rivers, and they appreciate any efforts to maintain esthetic qualities along them.

All boaters share some general views about waterways, but more detailed perspectives depend to some extent on whether they represent commercial, for profit outfitters and guides or individual private kayakers, canoeists and rafters. A commercial

rafting representative suggested that separate federal and state scenic river legislation may be redundant, based on concerns that the state might eventually require permits for river access as federal agencies currently do. However, this person also acknowledged that his business supports state goals for protection of natural waterway characteristics, which are key to maintaining the quality of river recreation experiences upon which their business depends.

Overall, private boaters seemed to hold somewhat more strongly developed views concerning protection of ecological values in Scenic Waterways, and were more similar to environmentalists in this regard. This is not say that commercial boaters do not care about environmental qualities, but rather that because they depend on rivers for their livelihood, they may be somewhat more defensive about recreational use, less concerned about overuse, and less likely to take a strong stand on issues perceived as controversial.

Sportfishers

Protecting Fish Habitat is a Primary Concern

Sportfishing groups frequently expressed perspectives on Oregon Scenic Waterways that were similar to those expressed by environmental groups. Unsurprisingly, sportfishers were most appreciative of protections the program affords to conditions for salmon, steelhead and trout. They also expressed more specific concerns about potential impacts on fish than any other group contacted. In short, sportfishing groups often felt that Scenic Waterways were important primarily because of their high value as fish habitat. Fishing groups consistently noted that large amounts of money and effort are being expended to restore fish habitat in streams, and some groups actively participated in this efforts. These groups were understandably strongly opposed to any activity that appeared to be inconsistent with, hindered or decreased the effectiveness of fish habitat restoration in Scenic Waterways.

Sportfishing is Important to Oregon's Economy

Fishing groups also noted that commercial fishing guides depend on healthy waterways to support their livelihoods. If fish populations in waterways decline, then so do outfitter/guides' businesses and incomes. Commercial guides as well as private sportfishers contribute directly and indirectly to Oregon's economy by purchasing boats, fishing gear, clothing and a variety of other items, as well as by spending money on food and lodging. Many sportfishers, especially flyfishers, tend to be affluent. People may come from many other parts of the country to fish in Oregon, on commercially-guided trips as well as on their own.

As with other groups, however, sportfishers were often unaware that the Oregon Scenic Waterways program even existed. One representative of an eastern Oregon flyfishing club indicated that he had spent a considerable amount of time on Oregon rivers over a period of many years, and had never seen any sign of the program.

Native American Tribes

Oregon is home to nine Native American tribes. Only a few of these tribes possess lands that are adjacent to Scenic Waterways, but most were aware of the Scenic Waterways program and its goals, and all contacted expressed an interest in many of the resource conservation values embodied in the program. Moreover, the support articulated for the goals of the program – protecting scenic values, fish and wildlife, and adequate waterflows – was expressed not only for designated Scenic Waterways, but for rivers and streams throughout the state where the interests of tribes are at stake.

The most common concern of the state's native tribes has to do with the proper management and use of waterways to protect, maintain and/or restore fish populations. This is the number one issue and it tended to eclipse other concerns that may be consistent with the Scenic Waterways program, such as recreation or protecting the view from the river perspective. The concern with fish contains a number of elements. First of all, tribes consistently noted the need for instream rights and adequate water quantity to maintain flows that can support fish populations. The granting of water rights to various agricultural and other interests around the state are often thought to exceed the capacity of Oregon waterways, thereby threatening the health or existence of various fish species. One of the tribes whose lands include Scenic Waterways noted their interest in the calculation of the "Diack flows" that determine the amount of water needed to maintain the free-flowing character of the waterway. It was suggested that the manner in which the number is calculated does not adequately take account of the water required to maintain their fisheries. Rather, it was asserted, Diack flows give greater consideration to recreational use, and are better suited to support recreational interests over tribal fishing interests.

Other elements that contribute to maintaining and restoring fish populations involve water quality, water temperature, and the conservation of suitable habitat and spawning grounds. Several tribes expressed their concern that all of these suffer to varying degrees around the state as a result of an overemphasis on development and use of resources for needs other than fish, especially tribal fishing interests. While it was noted that economic development in the state is highly important and must be part of the picture when considering how to allocate finite water resources, it was also suggested that there needs to be a balancing of interests, better taking into account tribal interests so that sustainable development can be achievable, not only for tribes but for all interests who depend on Oregon waterways.

In one instance, recreation management has become an issue for tribal interests on a Scenic Waterway. On the Deschutes River, boating has become increasingly popular. While the state and BLM issue boating passes to those floating the Deschutes, there is no limit on the number of passes issued. The Warm Springs Tribe, whose lands border a long segment of the Deschutes, has expressed its concern that the river has reached its

capacity, and that this is leading to overcrowding on the river, trespassing on tribal lands, and is perhaps even impacting the health of tribal fisheries.

In general, the tribes give reasonably high marks to state and federal authorities that work with them on water resource issues, including the development and implementation of river management plans and fish recovery/restoration plans. Several of the tribes also added that they would support the expansion of the Oregon Scenic Waterways program to include various waterways important to their interests.

Watershed Councils

Awareness of the Oregon Scenic Waterways Program was often quite limited among representatives of watershed councils contacted, just as it was with other interest groups. Some felt that the state designation was a bit redundant for rivers that were already covered by federal Wild and Scenic legislation, but more typically the view was that the program really didn't affect watershed council activities very much.

However, this may be slightly misleading, at least in some cases. One eastside watershed council representative stated that "Scenic Waterway flows" definitely mattered to them in that such flows needed to be maintained and thus significantly affected the range and extent of activities that could go on in that watershed. In this case, like with many other stakeholder groups, understanding of distinctions between federal and state Scenic Waterway provisions was limited. However, this respondent was referring to provisions of the Diack decision requiring that instream flow volumes necessary to meet the provisions of the Oregon Scenic Waterways Act be quantified and maintained. Thus, this decision and the direction it gave to state agencies appeared to directly affect the range of alternatives and policy directions in some watershed councils, despite the lack of clear understanding of the origins of Scenic Waterway flows.

One watershed council spokesperson stated that their council did not really reflect the "politically correct model [of diverse stakeholders] the state had in mind" because residents of the watershed were primarily rural landowners, most of them ranchers. In this case, both the Oregon Scenic Waterways and federal Wild and Scenic legislation were seen as being imposed on locals without their support or consent. This respondent did admit, however, that neither seemed to really affect them all that much and that on the balance there had been "more good to come out of [these statutes] than bad." Specifically, this respondent appreciated funding that was made available for riparian projects, apparently those intended to mitigate impacts from grazing. This watershed council was wary, however, that outside interests and "extreme environmental groups" were increasingly making demands that ranchers remove cows from areas adjacent to Scenic Waterways. This was seen as renegeing on assurances made when the legislation was passed that existing uses could remain.

Agricultural Interests

Agricultural interests are represented by a number of associations in Oregon. One of the primary concerns of all these groups is the use of water resources. Water is the lifeblood of agriculture, and maintaining adequate rights to Oregon's water in order to maintain the health of the farming and ranching sectors is crucial for them. Not all of the organizations contacted were aware of the Scenic Waterways program or its objectives, but they are aware of what they need from Oregon waterways.

Since one of the goals of the Scenic Waterways program is to maintain the free flowing character of rivers, agricultural organizations expressed some concern that sufficient resources will always be available for farming and ranching. They do not want their priorities to be superceded by other priorities should there be shortages (the problems surrounding Klamath resonate considerably). Considering that at certain times of the year, low water flows are common in Oregon rivers, and that flows vary from year to year, there is some question as to whether there is always going to be enough water throughout the year (and over several years) to meet the needs of both agricultural interests and other competing interests.

Designation of waterways as "scenic," or "wild and scenic" in the federal program, is considered to be a useful effort to balance multiple interests and uses, but it is also sometimes viewed by agricultural interests as an opportunity for environmental organizations and recreationists to challenge farming and ranching practices, in particular grazing. On the Owyhee River in southeastern Oregon, cattle grazing along the designated waterway was challenged by other river users, and the result, after much conflict, is that water is sent through a pipeline up the canyon where it can be used by ranchers, eliminating the need for the cattle to be moved to the water. This was a costly and time-consuming dispute, and appears to serve as an example to agricultural interests that their practices are continually under scrutiny and being challenged.

Forestry Interests

There are a number of businesses in the state of Oregon, both large and small, that engage in forestry and the production of forest products, as well as several operators that provide most of the logging and trucking services to them. Most of these businesses are members of trade or industry organizations that represent these business interests, disseminate information to members and the public, and coordinate activities of members as needed. Some of these trade associations were contacted for this assessment. From the point of view of these associations, it appears that the Scenic Waterways program does not factor significantly into their or their members operations. Some organizations had not heard of the program, and none could cite an instance in which their members dealt with them regarding Scenic Waterways. This is due to the fact that most private forest lands in the state do not fall within the ¼ mile corridor covered by the program. It is also a result of the procedures that are usually followed regarding Scenic Waterways.

These operating procedures will put companies directly in contact with the necessary government agencies, not necessarily the trade associations.

Recreational Miners

In some reaches of certain designated Scenic Waterways, small deposits of gold can be found, usually as gold dust. No new mining claims can be made in Scenic Waterways, but some people like to use motorized suction dredges or simply use a gold pan to search for small amounts of gold. This is almost entirely a recreational activity – the people who look for gold in Scenic Waterways do not make a living from what they find, and with the exception of a few mining claims, there are no property rights involved in this activity.

Recreational miners' primary interests in Scenic Waterways involves maintaining access and preventing overregulation or burdensome permitting procedures. Though panning for gold is not a controversial practice, use of a motorized suction dredge has been controversial for many years. This practice is currently being reviewed to see if it should continue to be permitted on Scenic Waterways, or if the goals of the Scenic Waterways are inconsistent with suction dredge mining. (For a more complete discussion of this issue, see Bernell and Behan, "Recreational Placer Mining in the Oregon Scenic Waterways System," OSU Institute for Natural Resources, 2002.)

City and County Governments

County and city governments throughout the state have a significant stake in the management of Scenic Waterways that fall in or near their respective jurisdictions. While areas within city limits are not included in the "scenic" designations, many municipalities have a keen interest in the use and management of Scenic Waterways. (On rivers where there is a federal "Wild and Scenic" designation, it was universally agreed that the federal designation is far more significant than the state Scenic Waterways program.) Their concerns tend to fall into three related but distinct categories. These are tourism and recreation management, land use planning, and fairness in the use of limited water resources. Each of these does not cause the same level or type of concern in each locality, as conditions are so varied around the state.

Tourism and Recreation

All of the jurisdictions contacted pointed out that tourism is a significant part of their local economies, and in some places, it constitutes the overwhelming majority of economic activity. This tourism is very much linked to the scenic rivers, which contribute to drawing thousands, or in some areas tens of thousands of people each year. For example, tourism on the Rogue is substantial, more so than anywhere else in the state, with jet boats out of Gold Beach and Grants Pass alone accounting for tens of thousands of visitors to the river.

One of the major problems city and county governments face is how to properly balance promoting the use of rivers (and other undeveloped areas) with recreational overuse. Scenic Waterways need to be protected, sometimes by all levels of government, but too much regulation can lead to limitations that limit use, and that can be bad for a local economy. Though it is not always clear how much the state “scenic” designation contributes to the attractiveness of an area, it is considered to be another layer of protection that is part of the combination of factors leading people to visit a particular river.

Part of the concern with tourism involves recreation management. Local governments want to encourage the maximum amount of recreation possible, by both tourists and locals, and state designations of scenic rivers contribute to this. However, local governments also do not want too much use, as it not only puts pressure on the natural resources (litter, pollution, degradation of riparian areas and riverbeds), but more importantly to them, it diminishes the recreation experience that people sought in the first place by harming the resources and overcrowding a particular area. Should this happen, officials worry that their cities and counties will suffer from the problem that Yogi Berra once succinctly characterized as “nobody goes there anymore, it’s too crowded.”

Cities and counties expressed that they want to preserve a balance, though what is meant by this term varies from place to place. On the Rogue and Deschutes, far more river users can be accommodated before this balance would be considered upset than would be the case in eastern Oregon on the Willamette or Grand Ronde. Local conditions and preferences account for significant variations in what is acceptable. Those localities that believe either 1) they have not approached their recreation capacity, or 2), they need to maintain the current level of recreation and tourism, tended to express some misgivings about state and federal regulation of Scenic Waterways and Wild and Scenic Rivers. While regulatory protections preserve the resources that people come to visit, they are a double-edged sword because they diminish local control, allowing for potential increased use limitations that could be harmful to the economy.

The two places where this caused the greatest concern are the Rogue and the Deschutes. Boater passes on the “wild” section of the Rogue are already limited by the BLM, and the agency is considering a similar measure in the “recreation” areas to avoid exceeding capacity. City and county officials believe that current restrictions already place limits on economic growth. Further restrictions would be considered unacceptable to many. Boater passes are also currently issued for floating the Lower Deschutes. While they are not limited to a particular level, this proposal is currently under consideration by the BLM. Should numerical limitations be implemented, some officials have suggested it could be quite harmful to the tourist industry and particular jurisdictions.

Managing Land and Water Uses

With respect to land use within the ¼-mile corridor adjacent to Scenic Waterways, OPRD's efforts get mixed reviews. In areas such as Deschutes County, where development pressures are high, the county has adopted land use standards more stringent than the state. Thus, the state program is considered to have little effect on scenic conditions. In addition, in other parts of the state, large amounts of land are managed by BLM and the Forest Service, or subject to federally purchased scenic/conservation easements, leaving the state with little to improve upon.

Depending on local circumstances, OPRD receives criticism for too much interference with property rights or too little protection of scenic values. This latter concern is almost always connected to the fact that OPRD can only enforce its regulations within one year of receiving an official notification. OPRD is also criticized in some areas for uneven application of regulations among different types of landowners, i.e., state and federal agencies are given more leeway than individuals.

A final major concern of cities and counties has to do with managing water resources in general, and balancing various recreational interests with resource conservation, as well as municipal, agricultural, firefighting and other needs. These concerns don't necessarily involve the state Scenic Waterways program directly. Sometimes the requirement for maintaining sufficient flows in a Scenic Waterway may be an issue, but city and county officials consistently pointed out the need for the state to take multiple uses into consideration when dealing with management of state water resources.

State and Federal Agencies

Many state and federal agencies have a great degree of familiarity with the Scenic Waterways program, and they often work closely with OPRD administering the Scenic Waterways program or dealing with issues involving Scenic Waterways. All of these agencies, including OPRD, offered a variety of observations regarding the strengths and weaknesses of the program, and provided suggestions about possible ways to improve it.

The Program Has Made Important Accomplishments

The Scenic Waterways program already achieves some of its goals very well. It provides a base level of protection for scenic values and riparian areas in many parts of the state, and an added layer of protection in many other areas that are also subject to strong federal or local laws and regulations. It has limited some of the visual impacts of development, especially in areas with rapid growth, while safeguarding lands adjacent to rivers that are critical to their health. In both of these areas, OPRD is thought to provide better protection than most counties do around the state. ODFW has noted that because

of the Scenic Waterways program, they have the opportunity to review land uses that they might not otherwise, and this helps protect streams and habitat.

The Scenic Waterways program has also accomplished the goal of allowing free flowing waters to remain intact. The program was originally established in large part to address hydropower projects, and in that regard it has been very effective in stopping further construction of dams, impoundments, reservoirs, and other water diversions. The Scenic Waterways program cannot stop all work on the state's prized rivers, but there would be a lot more activity on Oregon waterways – dams, mining, reservoirs, construction – than there otherwise would be without the program. It was suggested that one needs only to compare scenic vs. non-scenic waterways in areas where development is similar around the state to see the effectiveness of the program.

In general, the program is believed to do a decent job of achieving some of its goals. It also receives a great deal of public support for those goals, even if people aren't always aware of the program itself. The public voted to establish and later expand the program, and the sentiment was expressed that the citizens of Oregon would probably vote to expand and strengthen the program again if given a choice today.

Scenic Waterways Program Could Do More, Be More

These accomplishments are notable. However, more often than not, criticism was provided, not to suggest that this was a bad program that ought to be eliminated, but that it was a program with a great deal of unmet potential to accomplish a great deal for Oregon's prized rivers. These weaknesses exist because the Scenic Waterways program is not a priority for any agency, not even OPRD, and funding for the program is limited.

Nearly all agencies commented that the success of the land use function of the Scenic Waterways program is severely limited due to the fact that the notification process lacks any real capacity for enforcement. The law does provide for OPRD to take action to purchase or condemn land, but lack of funding makes this an unusable option. More importantly, these are drastic options that neither OPRD nor landowners wish to have used. The result is that without other statutory or regulatory options, OPRD may suggest changes to proposed uses of the land, but ultimately it cannot enforce its regulations. It can only compel landowners wait one year before making any modifications. Landowners simply do not have to comply with any of the comments made by OPRD on notifications. This is a highly unusual regulatory scheme, unlike others which require compliance rather than merely suggest it. To the extent that the program is meant to foster a cooperative, collaborative effort between OPRD and landowners, it was suggested that OPRD could possibly try other things, as opposed to a weak regulatory structure. One suggestion was an outreach program to landowners to help them meet compliance with state regulations or to address other concerns such as responding to recreational users.

Another problem with the land use function is that OPRD has little capacity to deal with the cumulative impacts of development. Each development or new construction project may conform to agency guidelines, but the cumulative effect of dense, and sometimes not so dense development results in a distinct change over time to the river and the scenic values the program is designed to protect. It should be noted that the Scenic Waterways Act is not a “no development” law, but a mechanism to manage development and mitigate its effects. Still, it was thought by some that OPRD should consider some kind of land use intensification rule or standard that would help to prevent intensive land use patterns such as those occurring around Deschutes County from being repeated elsewhere in the state. (In many parts of the state, it is believed that zoning an area as agricultural or forest land often protects scenic values better than OPRD regulations.)

Finally, with respect to the land use function of the program, it was thought by some that since the program does little more than address land uses, perhaps it would be more suitable to place these responsibilities with DLCD or the counties, whose missions are more consistent with these types of land use goals.

It was repeatedly suggested that the state and OPRD could and should protect additional waters and lands by both making new “scenic” designations, and by taking a more active role in buying lands or conservation easements. If the state desired to make a strong effort to support new designations and acquisitions, it would not only strengthen both state and federal resource protection efforts, but would likely result in the protection of added areas, an outcome seen as desirable by many observers. While the current state budget outlook is unlikely to offer much hope in this regard, other funding for land or easements could possibly be made available by working with third parties dedicated to preserving open spaces and limiting development on particularly special lands. Numerous organizations and individuals around the country are involved in these types of public/private conservation efforts. The federal government, states, and local governments have been pursuing such strategies for years, forging alliances with non-governmental organizations to purchase or take receipt of lands or conservation easements, and it is possible that OPRD could successfully pursue similar efforts.

State and federal agencies also commonly pointed out that OPRD does very little to manage recreation on Scenic Waterways. Recreation was deemed in the Scenic Waterways Act as one of the highest and best uses of these waterways, yet no sustained efforts have been made to address recreational uses. Recreationists, landowners and land managers have all expressed the need for additional access points for sportfishers and launch areas for boaters. In some cases sanitary facilities and law enforcement are also required, yet all these needs go unmet. OPRD is the natural home to a river recreation program, but has not been able to implement such a program because it lacks staff, funding, and the necessary authorities. Recreational uses on Oregon rivers are growing, and public lands around the country are increasingly being used for tourism and recreation and less for resource extraction. Greater recreational use leads to trespassing, crowding, and impacts on water quality, and several agencies recommended that the state

should respond to these trends to help protect natural resources, recreation experiences, and private landowners. People are “loving the rivers to death,” and it was strongly suggested that help is needed. One agency official noted that the public wanted a conservation and recreation program, and instead they got a land use program. This is considered by many to be a major failure of the program.

The Scenic Waterways program could also serve to promote a more active land management role by OPRD, not only for recreation, but to protect the health of rivers in general so that waters are not overused or degraded and scenic values are protected. Once natural conditions are lost, they are often hard to get back. Also, no agency has overall responsibility for managing rivers and dealing with needs and competing interests of various river users and landowners.

Though few details were provided by observers about how OPRD would carry out these expanded efforts, it was believed that a broader OPRD role was possible and desirable, and should by no means be a solitary effort. In areas where BLM or the Forest Service maintains responsibilities, there should be greater land management cooperation, and federal agencies would welcome this. OPRD already has good working relationships with these federal agencies on a variety of issues, and maintains similar strong relationships with tribes, stakeholder organizations and local governments. These efforts could perhaps be expanded upon to meet the growing land and recreation management needs around the state.

Such cooperative efforts are usually welcomed. Some federal Wild and Scenic River managers expressed strong appreciation that the Oregon Scenic Waterways program exists. Specifically, they stated that this “brings the state in” to river management discussions and policymaking, and forces it to play a part. By articulating the state’s interests, the Oregon Scenic Waterways Act buttresses and complements federal Wild and Scenic designation. In addition, capacity for management of rapidly rising recreational use of public lands has declined at both the state and federal levels. Thus, despite occasional tension and divergence of goals, most river managers appreciate help from their state or federal counterparts, as well as any legislation that delineates specific goals and purposes of river management. One specific instance of this was the OPRD cadet program for monitoring river recreation on the Deschutes River.

Finally, it was noted that while Scenic Waterways have been an important part of watershed protection, the focus of the program is limited. Concentrating on major waterways and on the ¼ mile adjacent corridor does cover a lot of important areas for river health. However, in recent decades interest groups and scientists have taken a broader approach to protecting water resources and adjacent lands, emphasizing protection and management of the entire watershed, not only a linear corridor along major rivers. Interests have broadened beyond preserving the view from the river perspective. While this is important, it is also thought to be an overly limited focus, as larger ecological concerns have in many ways eclipsed this more narrow concentration.

This critique essentially asks OPRD and other state agencies: Is maintaining the scenic status quo still the priority or the best use of state resources?

Previous Reports on the Scenic Waterways Program

Circumstances in Oregon have changed considerably over the past 30 years, but Scenic Waterways remain very important to Oregonians for a variety of reasons. Some river issues, such as declining salmon populations, rank near the top of salient land management concerns. Thus, there has been steady interest in management of these waterways through the years, interest that may be increasing. Consequently, the Oregon Scenic Waterways program has been reviewed several times over the past decade, both externally and within OPRD. These reports are summarized below.

1991: "The Citizens' Rivers at Risk: An Assessment of the Oregon State Scenic Waterways Program", by the Oregon Rivers Council.

In 1991 the Oregon Rivers Council (now known as the Pacific Rivers Council) completed an assessment of the Scenic Waterways program that was quite critical of the program, including both the Scenic Waterways Act and its implementation. The report stated that the program had been effective in preventing dams, impoundments and diversions within Scenic Waterways, and that the 1988 Diack decision added strength to the efforts to protect instream flows. However, the report in effect accused the OPRD of failing to carry out the provisions of the Act and meet its goals. The report noted several critical weaknesses in the program, among them were:

- It had failed to effectively protect fish, wildlife and scenic values as mandated by statute.
- It lacked administrative support and was underfunded – Scenic Waterways were a low priority within OPRD.
- The notification policy had insufficient enforcement powers.
- OPRD had only narrowly interpreted its mandate – protecting the view from the river – and had ignored the broader mandate to protect natural and recreational values as well, not to mention the geologic, cultural, historic and other values referenced in the Scenic Waterways Act.
- There was no periodic review of the program to determine its effectiveness or the cumulative impacts from development.

The report went on to offer 18 recommendations on how to improve the program. These included suggestions for increasing enforcement power with respect to land use regulations, devoting attention to management of recreation resources, expanding relationships with natural constituency groups, expanding the rivers covered by the program, and increasing staffing and funding. Several of these suggestions and those

recommended in other reviews continue to be made today and will appear again later in this report.

1993: "Oregon State Scenic Waterway Program Review," by OPRD

OPRD completed a systematic review of the Scenic Waterways program in 1993 in response to both a state directive and the critical review of the agency's administration of the program by the Oregon Rivers Council. The 1993 OPRD report evaluated the program with respect to its protection and enhancement of water quantity, water quality, scenic values, recreation, fish and wildlife. It also evaluated the program's administration and planning efforts. The major issues requiring attention involved several general areas.

- The administrative coordination among agencies was not only inadequate, it was weakened by differing agency missions.
- The standards and guidelines directing agency actions were either inconsistent, vague, or nonexistent.
- The program involved few or no monitoring efforts in any areas of its responsibility.
- The program did a poor job of collecting and managing useful data and information.
- Enforcement was hampered by ineffective penalties.
- Planning procedures were unclear or lacking.

This report offered a total of 25 recommendations, all of them very good. They included developing recreation management standards, beginning a landowner assistance program, strengthening enforcement, compiling data and statistics on uses and resource inventories, and planning to acquire land and easements for access and resource protection, to name a few. Some of these actions could be initiated and pursued with existing resources and authorities, but others required added funding and new rules. The vast majority of the recommendations, however, have not been achieved, much less even attempted.

1999: "A Vision for Scenic Waterways," by OPRD

Another report on the Scenic Waterways program was written by OPRD in 1999, and this one was requested by the State Legislature. Entitled, "A Vision for Scenic Waterways in Oregon," the report succinctly explained how the program works, examined its strengths and weaknesses, and discussed possible futures for the state Scenic Waterways. The report found that the program had significant problems. It had become less of a priority for the state over the past several years and for the agencies that maintain program responsibilities.

The result was that the program was only just getting by on minimal resources, and that federal agencies – as a result of the federal “Wild and Scenic” designation on many rivers – were exercising increasing control over Oregon’s Scenic Rivers. These diminished state capabilities were considered problematic since recreational use of the rivers was increasing, as was development along stretches of river not previously developed. These added pressures were taxing agency resources and resulting in greater user conflict.

OPRD outlined its goals for administering the program, and these included being good stewards of state natural resources, protecting the outstanding values of Scenic Waterways, balancing public and private interests, and providing excellent service to property owners and recreationists, among others. The report suggested that certain agency strengths – a statewide focus, effective information management, quality staff, and recreation advocacy – helped to achieve these goals. However, it also concluded that serious deficiencies existed in the program. Among them were:

- Budget limitations that have made the Scenic Waterways Program a low priority in OPRD. It is underfunded and understaffed.
- The emphasis on land use regulation and the inconsistency of this with OPRD’s primary recreation-oriented mission.
- The lack of real regulatory authority to enforce land use provisions.
- The lack of a focus on other river issues and problems outside of land use.
- The fact that the program covers only a small portion of the state’s rivers and that no new rivers have been added since 1988.

The report concluded by suggesting possibilities for the program: strengthening land use provisions, refocusing the program on recreation use and management, placing added program emphasis on fish and wildlife protection, increasing funding to at least help carry out current responsibilities, or eliminating the program. Making no changes was considered to be tantamount to eliminating the program.

Summary of Program Reviews

The same types of comments have been made repeatedly in discussing the strengths and weaknesses of the Scenic Waterways program, and many of the same recommendations have been reiterated as well. They indicate that the Scenic Waterways program has consistently been unable to meet the goals envisioned by the public when it voted for the citizens’ initiative. Nor has it been able to meet the goals that OPRD and others have set out for it. Statutory and regulatory authorities have prevented some of these goals from being met, but so too has the fact that priorities within state government and OPRD itself have not been focused on Scenic Waterways. (The reader will soon notice that the concluding sections of this report look somewhat familiar.)

THE ROLE OF SCENIC WATERWAYS IN OREGON LIFE

As has been suggested elsewhere in this report, the number and diversity of largely undeveloped rivers and lakes contained within Oregon's borders are some of the most prominent distinguishing features of the state. Recognition that the high quality ecological and esthetic values of these waterways might be at risk prompted Oregonians to pass the initiative creating the Oregon Scenic Waterways System over 30 years ago. Since that time, pressures on Oregon waterways and sentiments to preserve them have remained strong, and in many cases increased. Before concluding our assessment of the Oregon Scenic Waterways Program, it is germane to briefly examine why these waterways are important to Oregon, and their roles in Oregon residents' lives.

Economic Contributions of Oregon Scenic Waterways Are Significant

Agriculture and forest products, as well as mining, contribute significantly to Oregon's economy, but the role of these industries in serving as the only anchors to the state's economic well-being has passed. The benefits of a diverse economic base stretching beyond natural resource industries are now well established, and Oregon's recent history is an excellent example of this. The mix of traditional and newer service-based and high-tech industrial businesses and jobs that will best serve Oregon's long-term needs continues to spark debate, and both areas will have roles. Service, technology and/or other sectors of the economy are likely to grow and employ large numbers of people. While the exact nature of these long-term trends is far from certain, it seems clear that the economic base of the state will continue to diversify, and that the state will not rely as heavily on natural resource industries in the future.

One aspect of economic diversification in Oregon is the rise of outdoor recreation and tourism, which draws large and growing numbers of visitors. Recreational boating is very popular and rapidly growing activity in Oregon, and boaters depend directly on adequate instream flows for high quality experiences. Instream volumes are critical, but are not the only attribute of river flows on which recreationists rely. Oregon rivers are renowned for the quality of their salmon and steelhead runs, and visitors who fish for these species depend on maintaining not only flow volumes, but high quality fish habitat as well. It is also the case that commercial salmon fishing is an essential component of Oregon's economy and Oregon life, and that the state's waters must be protected for this industry.

Tourism based on river recreation contributes significantly to local economies (Cordell et al. 1990; English and Bowker 1996). The outdoor recreation sector of the economy is relatively labor intensive, which is significant because jobs are better appreciated by the public than any other measure of economic welfare (Douglas and Harpman 1995). These considerations apply to a number of Oregon communities, where river recreationists support not only a considerable number of outfitters/guides, but also a range of ancillary businesses selling boating, fishing and other outdoor equipment.

Secondary spending by these businesses and river visitors themselves also helps support motels, restaurants, food stores and other service-oriented businesses in these areas.

Economic contributions of recreationists who visit rivers are not limited to boaters. Mountain biking is increasing rapidly in popularity and Oregon is already a destination for out-of-state bikers who visit to take commercial tours, or ride trails on their own. Several designated waterways, including the McKenzie River and Waldo Lake, have world-class biking trails along their perimeters and within the zone encompassed and protected by the Scenic Waterways Act. Like boaters, mountain bikers are often affluent and willing to travel significant distances to high quality settings, and thus contribute substantially to local economies (Fix and Loomis 1997).

Instream flows also have significant economic value to many other members of society because flows maintain ecosystem productivity and resilience and associated fish and wildlife habitats (Duffield, Brown and Allen 1993). Nonconsumptive wildlife recreationists also contribute to local economies (Rockel and Kealy 1991). One such activity, birdwatching, is an increasingly popular form of outdoor recreation and waterways are often a key destination. Campers and hikers are attracted to natural water-based settings as well.

Finally, it should be noted that the economic benefits of Oregon Scenic Waterways are not limited to economic activity related directly to river recreation spending. Oregon is among the states most affected by recent demographic and resettlement patterns in the western United States, in which people migrate to less populated areas to increase their quality of life. Following the people is increased business activity (Rudzitis and Johansen 1989). Recognizing this trend, Oregon business leaders commonly tout natural landscapes and associated recreation opportunities in efforts to entice high-paying employers and businesses to locate in Oregon, which in turn use similar means of persuasion to attract skilled workers. These firms and their employees generate significant economic activity on everything from housing, cars and other physical infrastructure to services such as banking and insurance.

To be sure, not everyone who moves to Oregon to take a new job does so just because of the number and high quality of boating and fishing opportunities. People make such choices based on a combination of any number of factors. Clearly though, people place a high value on quality of life issues, and environmental and outdoor recreation amenities are an important part of this mix. The “livability” of communities is enhanced by proximity and access to Scenic Waterways, which makes them a significant component of this continually evolving situation.

Quality Waterways are Important to Maintaining the High Quality of Life in Oregon

To summarize, Oregon’s diverse matrix of exceptionally high quality natural landscapes and related environmental amenities are indisputably important to state residents for a range of direct economic and broader quality of life reasons. Oregon

Scenic Waterways are some of the most highly valued components of the state's natural landscapes and thus play a major role in the lives of many Oregon residents.

Long time residents and newcomers alike place considerable importance on access to waterways, and businesses follow on the heels of rising numbers of people migrating here to increase their quality of life. To the degree that such trends are seen as benefiting Oregonians, protection of state waterways and adjacent lands may thus be even more important now than ever. Support for administrative institutions and mechanisms for seeing that these mandates are implemented will be critical for the same reasons.

EFFECTIVENESS OF THE SCENIC WATERWAYS PROGRAM

The Oregon Scenic Waterways program was consistently supported by stakeholders contacted, as long as they were aware of the program. However, many individuals and interest group representatives were only vaguely aware of the program, or completely unaware that it existed. Many stakeholders had various criticisms and suggestions for ways that the program could be updated, administered more effectively, or otherwise improved to increase its effectiveness.

Perceived strengths and weaknesses of the Scenic Waterways program that emerged are summarized below, followed by recommendations for improving the effectiveness of the program in meeting the goals specified when it was established. It should be noted that some of the perceived strengths, weaknesses and recommendations may be incompatible with each other. This is due to diversity among stakeholders, who sometimes held quite different views on past and future directions of the program.

Strengths

- The Scenic Waterways Act clearly articulates Oregon's vision and goals for these waterways, specifying the best uses, as well as goals and values, including natural scenery, fish and wildlife, and recreation.
- The program has effectively forestalled dams, large-scale mining and other threats to designated waterways.
- The program continues to enjoy strong public support.
- The notification process is commended for 1) working collaboratively with landowners, 2) mitigating visual impacts, 3) educating landowners about the values being protected, and 4) achieving a good balance between scenic values and property rights. The land use regulatory structure, based on collaboration and cooperation, often works quite well.
- Within the scope of its authority, OPRD does a good job of protecting scenic values. The strategy for mitigating visual impacts has made a difference, and

has protected landscapes much better than would otherwise have occurred without the program.

- The program provides state-level protection to important waterways, providing in many cases an added layer of protection to federal protections, and allowing certain other state and federal agencies to get involved in various decisions affecting Scenic Waterways.
- The program provides better protection to rivers and especially riparian areas than most Oregon counties do.
- The scenic designation provides a level of protection to some waterways that have otherwise not been legally recognized for their natural, free flowing characteristics.
- The program facilitates cooperation among state, federal and local agencies toward the goals of waterway protection, impact mitigation, and recovery.
- OPRD and other agencies are able to educate landowners about the designated waterways and their special values.
- The Diack legal decision directed the state to quantify instream flow volumes necessary for values specified in the Scenic Waterways Act, and is critical in efforts to preserve instream flows.

Weaknesses

- Funding and staff are inadequate to carry out basic program responsibilities, much less purchase easements, improve recreational access or enhance fish and wildlife values.
- OPRD staff focus almost exclusively on scenic values and administration of the notification process for landowners, while recreation, fish and wildlife values are not addressed.
- Focusing primarily on scenic values in certain river reaches is a somewhat outdated approach to river protection.
- Regulations allow landowners to ignore guidelines for mitigating visual impacts in Scenic Waterways after one year. This is contrary to a principal program goal and significantly reduces the ability of OPRD to preserve scenic values.
- Scenic designations are sometimes ineffective at controlling development or mitigating visual impacts along waterways. Zoning laws that provide for strong limitations on development in agricultural or forested areas often provide better protection for scenic values than OPRD regulations.
- The cumulative impacts of development over time are not considered. The program has little capacity to address rapidly increasing building density that continues to occur along some waterways, such as the Deschutes River.

- The Diack flows may not serve to uphold all Scenic Waterway values.
- OPRD is often unable to persuade/compel other state agencies to meet the mandates of the Scenic Waterways program. DSL and WRD sometimes neutralize or inhibit OPRD or other efforts to administer the program effectively.
- OPRD essentially manages a land-use program (notification and review process for landowners), but the public also wants a recreational program. The goals specified in the Scenic Waterways Act for recreation are not being addressed. For example, no agency has responsibility for river recreation throughout the state.
- Some interest groups believe that recreational placer mining is inappropriate for environmental and social reasons. Moreover, monitoring of compliance with recreational mining regulations is spotty to non-existent.
- OPRD and other agencies have a limited presence on most designated rivers, and are often in the dark about what is actually happening on them.
- The Scenic Waterways program is not a high priority at any agency, even OPRD.
- The State of Oregon has no real vision concerning where it wants OPRD and other agencies to go with the program.
- Many currently undesignated Oregon waterways are eminently suitable for inclusion in the Scenic Waterways System, but no additional waterways or reaches have been considered for almost 15 years.

PROGRAM OPTIONS

The program weaknesses mentioned above are, in many cases, criticisms of the program that have been made in the past and continue to be made. The management options that follow are based on input from a variety of sources concerning what might increase the effectiveness of the Scenic Waterways program and enable it to better meet the wishes of Oregon residents as expressed by its establishment in 1970 and its reaffirmation in 1988. Again, it should be noted that OPRD has indicated it is already aware of many of the weaknesses outlined above, and during internal reviews has recommended some of the same steps outlined below.

- The Scenic Waterways program could expand its efforts beyond protecting scenery to addressing equally important fish, wildlife and recreation values. OPRD could be a more active land manager on Scenic Waterways in promoting these values.
- OPRD could increase its focus on recreation, including access points for boaters and sportfishers, mitigation of visitor use impacts, resource protection, and enforcement.

- The state could eliminate the one-year time limit on the notification process. OPRD could have the authority to enforce land use regulations without regard for time limits. This is a highly unusual regulatory mechanism. It could be replaced with other efforts to work cooperatively with landowners to help them comply with regulations and/or address problems with river recreationists.
- The program could expand efforts to purchase or trade for easements or rights of way, perhaps in cooperation with private funding entities.
- OPRD could consider some kind of land use intensification rule or standard that would help prevent land use patterns such as those occurring around Deschutes County from being repeated elsewhere in the state.
- OPRD and other agencies could capitalize on management partnerships with federal land management agencies that have similar goals for waterways, but more resources and staff.
- The program could increase cooperative efforts with Oregon Watershed Enhancement Board, watershed councils throughout the state, and/or resource conservation interest groups to promote mutual goals, educate people about the program, and seek third party funding support.
- The program could reflect and incorporate a more current ecosystem-based approach that acknowledges ecosystem dynamics and addresses issues comprehensively at a watershed level.
- If OPRD is going to continue to administer only a land use program, perhaps it could consider turning over the program to the Department of Land Conservation and Development or the counties, whose missions are more consistent with this type of land use management.
- OPRD could be given additional funding and staff to successfully carry out its current responsibilities and to accomplish any new goals set for the Scenic Waterways program. While this may not be possible in the current budget climate, it could be addressed when the fiscal outlook for the state improves.
- The state could consider designating additional waterways and waterway reaches for inclusion in the system.

CONCLUSION

The picture that emerged from this review of the Oregon Scenic Waterways System is one of a program with a relatively low profile and level of awareness in the minds of many stakeholders, but that is widely perceived positively by those who are familiar with it. Public support for the goals of the program embodied in passage of citizens' initiatives in 1970 and 1988 continues to this day. The Scenic Waterways program is important because it clearly and specifically articulates the will and vision of Oregon citizens that scenery, fish and wildlife, and recreation are the "highest and best

uses” of designated waterways. It has also made a significant difference by forestalling dams, large-scale mining and other threats to the integrity of some of Oregon’s most highly valued waterways.

On the downside, the program has been only partially effective at preserving scenic values, and to a significant degree has not adequately addressed goals that focus on fish, wildlife and recreation values. These latter values, which enjoy widespread support throughout the state, remain very high in many waterways, but this is primarily due to the efforts of other programs and other state and federal agencies, not the Scenic Waterways program. Moreover, impacts to ecological and social values specified in the Scenic Waterways Act have occurred, and are likely to intensify as population and outdoor recreation in Oregon continue to increase.

To the degree that certain goals of the Scenic Waterways program are not being met, a primary reason is lack of sufficient funding to properly implement several tenets of the Scenic Waterways Act. Conflicting mandates and unequal influence among the various state agencies that oversee activities affecting Scenic Waterways are also important factors. Finally, population growth, development, and associated water withdrawals, as well as rapidly rising visitation by outdoor recreationists tax the abilities of even the most dedicated and effective river managers to forestall declines in ecological and social values of designated waterways.

In the short-term, budgetary realities at both the state and federal levels suggest that improvements in the effectiveness of the Scenic Waterways program will have to come from strategies other than budget increases. Adequate funding is perhaps the best way to address program shortcomings, but it is certainly not the only way. Efforts to increase cooperation among state agencies, and between state and federal land managers might also increase program effectiveness. Outreach and education efforts to make the program and its goals more visible may also provide a lot of “bang for the buck.” Additional efforts could focus on working with private and non-profit entities and with watershed councils to inform them about program purposes and goals, instream flow requirements, ways that state and federal and state legislation governing Scenic Waterway complement each other, and possibilities for expanding the program without relying on additional state funding.

In conclusion, the Oregon Scenic Waterways Act and the program are important and popular with the public for the values they represent concerning Oregon’s ecologically and socially important rivers, streams and one lake. Nevertheless, the program in several ways has not been allowed to live up to its potential, meet all of its intended goals, or evolve to meet current circumstances. To the degree that this is true, the original intent of Oregon citizens regarding these waterways is not currently being met. It seems clear that addressing these shortcomings will take creativity on the part of agencies charged with management of Scenic Waterways, and a renewed commitment by the state to see that the program does not fall by the wayside before the fiscal outlook improves. The Oregon Scenic Waterways program has not outlived its usefulness, and

making it work better could yield large dividends for Oregon's economy, quality of life, and environment.

The popularity of Oregon Scenic Waterways continues to increase, indicating that the public values these waterways more than ever. Oregon's exceptional endowment of undeveloped rivers and lakes contributes in many important ways to the high quality of life that residents and tourists enjoy, and is a key reason why more people continue to move here and vacation here. Pressures resulting from rising growth make it clear that protecting waterways will present many challenges, but our findings strongly suggest that the benefits of meeting these challenges far outweigh the costs.

APPENDIX A

Oregon Scenic Waterways

The following lakes and rivers, or segments of rivers, and related adjacent lands are designated as Scenic Waterways:

1. **Clackamas River**
 - North Fork (12 miles)
 - South Fork (4 miles)
 - Main stem from Ollalie Lake Scenic Area to North Reservoir (54 miles)
 - River Mill Dam to Carver (12 miles)
2. **Deschutes River**
 - Upper Deschutes: parts from Little Lava Lake to Lake Billy Chinook (99 miles)
 - Lower Deschutes: Pelton Dam to Columbia River (100 miles)
3. **Elk River**
 - North Fork (5 miles)
 - South Fork (5 miles)
 - Main stem from confluence of N. and S. Forks to Elk River Hatchery (11 miles)
4. **Grand Ronde River**
 - Confluence with Willowa River to Washington border (42 miles)
5. **Illinois River**
 - Deer Creek to Rogue River (46 miles)
6. **John Day River**
 - North Fork from North Fork John Day Wilderness to River Mile 20.2 (56 miles)
 - South Fork from Post-Paulina Road to Murderers' Creek Wildlife Area (29 miles)
 - Middle Fork from Crawford Bridge to confluence with North Fork (71 miles)
 - Main stem from Parrish Creek to Tumwater Falls (160 miles)
7. **Klamath River**
 - John Boyle Dam powerhouse to California border
8. **McKenzie River**
 - South Fork from Three Sisters Wilderness to main stem (21 miles)
 - Main stem to Paradise National Forest Service Campground (16 miles)
9. **Metolius River**
 - Metolius Springs to Candle Creek (14 miles)
10. **Minam River**
 - Minam Lake to Willowa River (45 miles)
11. **Nestucca River**
 - Main stem from McGuire Dam to Blaine (23 miles)
12. **North Fork of Middle Fork of Willamette River**
 - Waldo Lake to River Mile 1.5 near Westfir (43 miles)
13. **Owyhee River**
 - Crooked Creek to Birch Creek at the boundary of Rogue River National Forest
 - Idaho border to Three Forks (25 miles)

14. Rogue River

- Upper Rogue: Crater Lake National Park to River Mile 172.8
- Lower Rogue: Applegate River to Lobster Creek (88 miles)

15. Sandy River

- Bull Run River to Stark Street Bridge (12 miles)

16. North Santiam River

- Little North Fork: Battle Ax Creek to Willamette NF boundary (7 miles)

17. North Umpqua River

- Mt. Thielsen Wilderness boundary to Lemolo Reservoir (6 miles)
- Soda Springs Dam powerhouse to Rock Creek (34 miles)

18. Walker Creek

- Source to confluence with Nestucca River (3 miles)

19. Wallowa River

- Confluence with Minam to confluence with Grande Ronde (10 miles)

20. Waldo Lake

- 6,672 acres, 13 miles north of Oregon Highway 58

APPENDIX B

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APPENDIX COrganizations Contacted

Oregon State Senate	Water Watch of Oregon
Oregon State House	Conservation Biology Institute
Oregon Parks and Recreation Department	Rogue Flyfishers
Division of State Lands	Southern Oregon Flyfishers
Department of Environmental Quality	Oregon Trout
Oregon Department of Fish and Wildlife	Northwest Steelheaders
Oregon Watershed Enhancement Board	Central Oregon Flyfishers
Water Resources Department	For the Sake of the Salmon
Oregon Department of Forestry	American Rivers
Oregon Department of Agriculture	Northwest Rafters Association
Oregon Marine Board	Willamette Kayak and Canoe Club
Oregon State Police	Oregon Whitewater Association
Department of Land Conservation and Development	Cascade Canoe Club
Oregon Department of Geology and Mineral Industries	Rogue Wilderness Adventures
Commission on Indian Services	Orange Torpedoes, Inc.
Bureau of Land Management	Oregon Guides and Packers
US Forest Service	OSU Fisheries and Wildlife Department
NOAA Fisheries/National Marine Fisheries Service	OSU Forest Science Department
US Fish and Wildlife Service	Deschutes County
US Army Corps of Engineers	Josephine County
Oregon Independent Miners	Wallowa County
Waldo Mining District	City of Maupin
Eastern Oregon Mining Association	City of Redmond
Willamette Valley Miners	City of Grants Pass
Armadillo Mining Shop	City of Gold Beach
Defenders of Wildlife	City of Bend
Native Fish Society	City of Wallowa
Siskiyou Regional Education Project.	Confederated Tribes of Warm Springs
Willamette River Keepers	Confederated Tribes of Coos, Lower Umpqua, and Suislaw
Oregon Environmental Council	Confederated Tribes of Umatilla
Pacific Rivers Council	Burns Paiute Tribe
Nature Conservancy	Confederated Tribes of Siletz
Sierra Club	Coquille Indian Tribe
World Wildlife Fund	Cow Creek Band of Umpqua Indians
Blue Mountains Biodiversity Project	Klamath Tribe
1000 Friends of Oregon	Lower Rogue Watershed Council
Oregon Natural Resources Council	McKenzie Watershed Council
Audubon Society	Umpqua Watershed Council
	Upper Rogue Watershed Council
	Elk/Sixes River Watershed Council

Mid Deschutes Watershed Council
Mid Rogue Watershed Council
North Fork John Day Watershed Council
Upper South Fork John Day Basin
Upper Deschutes Watershed Council
Oregon Farm Bureau
Water for Life

Oregon Cattlemen's Association
Oregon Water Resources Bureau
Oregon Forest Industries Council
Oregon Small Woodlands Association
Associated Oregon Loggers
Individual Landowners

APPENDIX DInterview Questions

What are the major strengths and weaknesses of the Scenic Waterways program?

What does the program need to do better or differently?

What does the program do well?

What should the program stop doing?

What more would you like to see the program do?

Is the program effective in meeting its goals?

Are the land use regulations a burden? Is the implementation of program rules and requirements fair?

How high a priority is the program at your agency?

Who do you (or your agency) interact with in administering the program? In what ways?

What could/should your agency do to improve the program?

APPENDIX E

About the Authors

David Bernell is an Assistant Professor in the Political Science Department at Oregon State University.

Jeff Behan is an Adjunct Faculty member in the Oregon State University College of Forestry and a researcher in the Political Science Department.

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