

January 20, 2011 Upper Missisquoi and Trout Rivers Study Committee Meeting Notes taken by Shana Stewart Deeds on the presentation by Jamie Fosburgh and Jim MacCartney from the National Park Service

Notes

-If Wild and Scenic Designation occurs, then there would be a Wild and Scenic Advisory Committee (Advisory Committee) established similar to the Study Committee set up to oversee the study process.

-Abbreviations

W&S = Wild and Scenic

NPS = National Park Service

env = environmental

-A '?' comes before a question asked my attendees to the Study Committee meeting.

-ORV – Outstandingly Remarkable Value(s) which are identified by the Study Committee. At least one ORV of national, regional, or state significance is necessary for designation

1. Additional protection from WSR designation

2 forms – general protections and section 7

2. General protections

Hereby established to be the policy of the US that certain select rivers will be preserved... congress declares it protected – This verbiage in the Wild and Scenic act is known to all federal agencies. General protection comes into play if a federal agency undertakes any significant action in proximity to a W&S river. These actions need to be evaluated through NEPA – the National Environmental Policy Act (which has been in place since 1970). To meet NEPA requirements federal agencies need to complete EIS – Environmental Impact Statements or environmental assessment (smaller) – to assess the impact of proposed federal action on the environment. Built into all federal agencies are procedures to comply with NEPA. A question is always - are you in vicinity of W&S river? If so then any impacts on the river must be reviewed. Wild and Scenic Designation doesn't change anything about the NEPA process; the Wild and Scenic Advisory Committee must be brought in at some point in the process. (More information about NEPA can be found at <http://www.epa.gov/compliance/basics/nepa.html>).

Ex – cell towers – not river related feature, but Federal Communications Commission (FCC) still must evaluate env impacts through NEPA. Simultaneously, the body overseeing designation (Advisory Committee), with the support of the NPS, would also evaluate the proposed project, point out any adverse impacts to the W&S river or its ORVs, and make suggestions to the FCC.

?Is there a set distance from the river where the W&S Advisory Committee would need to be notified? Not really. Typically the consulting firm for a proposed project lays out a map and contacts the agency if they think it's necessary; most tend to be liberal in making their determination. The Advisory Committee might also be notified through a town board. The notification process isn't foolproof.

Often, many sites are being evaluated. On the 8 mile W&S River, one of the most recreational and scenic features of the river was threatened by a project, but there were 2 other alternatives that didn't have negative effects on the ORV. The Advisory Committee wrote letters supporting the alternatives. As a result, the proposal with ORV impacts was scratched from the list of considerations. NPS might have some influence, but they can't veto a project if it's not water related. The NPS and the Advisory Committee need a reason for their stance on a project. They couldn't say "no projects within the Missisquoi Valley." They might help folks pick the best location, or identify the worst one for a project. They would negotiate options.

?Position on windmills? Windmills are not directly a water related feature, so the NPS can't just say no. Not many, if any, wind projects have come up previously on designated rivers. Their locations are cited at a state and local level, there is not a federal stance, as far as Jamie or Jim know.

?What is the distance from the river that we need to be contacted about, and what are the personal property impacts? Federal agencies need to come to the Advisory Committee when they're doing something related to river because it's a federal mandate for them to do so under NEPA. There are no requirements to come to the NPS or the Advisory Committee for non-federal agencies or individuals (such as land owners, town governments, etc.)

?Who would they (landowners) go to – how to make sure they are acting in the best interest of the W&S designation? After designation, the process for finding out best management practices are the same as they are before designation – farmers review BMPs through state agencies mostly, and some local compliances. Folks would still deal with same agencies. Someone could choose to come to this Advisory Committee to review a project, but the mandates that are currently in place at the town and state level would still be in control. NO NEW REGULATORY AGENCY/BODY WOULD EXIST.

?Would each project under various ag programs need an individual blessing? (Not if the program is specifically addressed in the voluntary management plan the Study Committee is writing). The Study Committee could just to identify these programs that are already doing good work, and give blanket support. That way individual projects wouldn't have extra hoops to jump through after designation. It would be important to promote good programs in the management plan, and say we'd like to see them continue. The Study Committee could give its official blessing in the management plan.)

Examples include:

CREP – fed \$ thru agency of ag. Checking out impacts of projects on W&S rivers is already part of process from CREP (conservation reserve enhancement program).

Farm land prime for conservation in the valley (FRPP – farm and ranchland protection program)

Jim gave an example – On the Lamprey River, numerous projects with land owners along river who have interest in conservation took place, many partially funded with federal \$. Part of the Lamprey management plan talks about land conservation as important tool to protect resources, therefore these projects don't need a section 7 review for each property because it was address in mgmt plan. This endorsement by the Study Committee negates the need to review each project individually. The Plan can be written to avoid being overly burdensome and eliminate the need to review each CREP application in the Missisquoi and Trout Valley.

At its discretion, the Advisory Committee could write letters of support for projects, especially those that are working to benefit the rivers (and if Sylvia was on the Advisory Committee, that would make it easier since she is with Ag.). No previous W&S designation committee reviewed individual CREP-type applications. Bottom line – no extra work, and many are joint projects .

An Advisory Committee set up after designation would be a similar process to how the Study Committee was set up. Membership and details will be set up in our management document. Proposed projects would be reviewed around a table—like tonight's meeting—by the Advisory Committee. NPS can write a letter to the federal lead agency, Committee can write a letter, or both. If it's a town and state project that has come to the Committee's attention, usually the Advisory Committee would write a letter on their position. If it's federal, it might be done through NPS as a federal agency.

? What about FEMA? FEMA projects would come to the Advisory Committee. Any FEMA projects that impact the designated area will come to the Advisory Committee for review because FEMA is federal. The Advisory Committee would be consulted if disaster mediation was necessary in the designated area. Ex – A historic bridge was badly damaged on a designated river. In this ex., because the river was designated more FEMA \$ was given to allow the repairs to be more historically in keeping with the

site (got more \$ because W&S designated, and the historic nature was an ORV for that river) rather than a plain concrete bridge.

The trigger for involving the committee or NPS for the above is general NEPA compliance of a federal agency taking action. Trigger – NEPA compliance required by the federal government/agency. Ex - If there's a project over a federally regulated waterway that requires an Army Corps permit, then the Army Corps contacts NPS. Then the NPS looks to the Advisory Committee for input.

Rail trail projects that are being completed with federal \$ would fall under these general protections. Roads – Advisory Committee would be contacted by the state transportation department if there is federal \$ or permitting involved in project. Sometimes contacted if the road project is near the river or runs parallel to the river, definitely contacted if bridge over the river. If a project doesn't require an Army Corps permit, the Advisory Committee may not be contacted. Federal \$ to repave an existing road, for example, the Advisory Committee is likely not contacted. If redoing all the drainage, for ex, or if there needs to be an env assessment under NEPA, then the Advisory Committee and NPS need to be contacted. If a project doesn't have new, significant issues, the Advisory Committee and the NPS may never even hear about it. If we have a real issue as an Advisory Committee with a project we can bring it up. If it's a stabilization project for ex, we may wish to weigh in.

?Why would designation be in the interest of the town? Does it give away power? Does it add on another layer of approval? How to sell to the town? Towns already have to comply with NEPA if federal projects are involved. Having an Advisory Committee gives a venue for towns (through their official appointees to the Advisory Committee) to comment on projects. The advantage to having the designation in the historic bridge example above is that the end product was better (a more attractive bridge— granite façade—that wouldn't have happened w/o additional funds due to designation). Responsibility for these types of projects doesn't fall to town now, it falls to a federal agency (Army Corps). Perhaps if a covered bridge is flooded out – maybe there would be support or funds for a reconstruction of a covered or historic bridge rather than cement. Historically with bridges, the Advisory Committee and the NPS are almost always on the side of the town. One of few times NPS said no to a project is in Westfield W&S river. The project wasn't town or Advisory Committee supported, so NPS said no to it.

3. Section 7 – strong protection for the watercourse DAMS

FERC shall not license the construction of a new hydro project on or near the W&S river
Exempted Chase's Troy re-licensure project.

The Wild and Scenic Rivers Act states no new dams/hydro projects. It doesn't affect hydro projects already operating. An old dam which doesn't have hydro couldn't be retrofitted for hydro in the future. There is prohibition on new hydro development even at existing dams, though the dams could be retrofitted for other purposes. If there is a question, then cut that dam out of designation – leave it specifically open for hydro development.

After designation the federal government typically provides money for the Advisory Committee to use for projects in the designated area. Decisions about what to spend \$ on is made by the Advisory Committee. Not having designation, or cutting an area out to allow for hydro development wouldn't necessarily negate these areas from getting funding for projects in the area – that's an Advisory Committee decision. If there are areas with dams or potential for hydro then that is important to know so that these areas can be cut out of designation if the Study Committee thinks it makes sense to do so. N Troy's dam already has an exemption from FERC to operate. Some dams are already grandfathered in and have exemptions. It is possible to have an operating dam in the designated area if the operating hydro facility was exempted by FERC.

?Why wouldn't we want an already existing dam available to generate power? No blanket answer. On the Lamprey there was an existing dam used for water supply. The town wanted to be sure hydro wasn't built there because they would lose control of the municipal water supply. Town wanted to keep the dam and wanted W&S designation to keep it as a water supply not a hydro project.

?Is a hydro dam worse than any other kind of dam? The Wild and Scenic Act's stance on no new dams is best understood by looking at the Act's origin in 1968. This was a time of large dam building. Some folks in congress were noticing US was losing its free flowing rivers. Part of the intent of the act was to preserve the remaining free flowing rivers in the US. The Federal Power Act gave tremendous power to FERC over other regulations and agencies in licensing for hydro production. The W&S Act tried to create a balance between FERC/hydro production and protecting free flowing rivers. Banning hydro may or not make sense in our area. On the other hand, land, property, and water rights given to a developer when hydro is developed might be in conflict with other things in the town such as fish habitat, etc. There is a logic to look at dams and see if it might be a great retrofit for hydro before designation because once W&S there are no new hydro activities on the designated rivers. The hydro dam in Lowell has a FERC exemption as well. (Chase, NTroy town, and Lowell have exemptions). If the hydro project is less than 5 Megawatts – can apply to FERC for exemption rather than license. If granted, they subject themselves to whatever conditions the state and federal fish and game agencies want to impose at the time the license is granted with respect to fish passage and/or low flows. Many current exemptions don't adequately address these needs, and were made before the resource agencies knew what would be best for fish passage and/or low flows. Agencies are more on top of things today, and a facility may have more restrictions under an exemption.

(Dam sites – our map is produced by the ANR which gives a dam inventory (operating, breached, etc). ANR can provide us with more info. VT Rivers study has a pretty comprehensive assessment of sites.)

Other fed assisted projects that could have adverse effect.

Category of things that the NPS has the final say on – the Veto authority. These projects must:

- be a federally assisted water resource project through funding or permits (for example an Army Corps permit, a clean water act permit (NPDES), etc...)
- and
- be a construction or development project (not just a study)
- and
- be water related
- and
- have a direct relationship to the designated river

These are for new projects after designation. Ask first - is it a federally assisted project? If not, then it doesn't fall under Section 7 review.

For example, the NPS could say no to an Army Corps project when they asked the Advisory Committee for our comments. Most of the time there are little or no comments from the NPS or the Advisory Committee. Every now and then there is something to say about a project. For example, the bridge needs to be wider, a slightly modified site or alignment is required, one could lessen the impact to recreation by _____ (ex-guardrails block access site or mar historic, too short, aesthetic – avoid generic concrete bridge)...

Historic bridges are toughest. What to do? Historic iron truss bridge is not restorable, too expensive. Is it eligible for national register? Sometimes there's nothing to do but document and replace with a more generic bridge or let people help pick design. Historic – state historic preservation office needs to get in as well.

Designation provides more protection to local folks. Don't want to think of it as another layer of bureaucracy. Gives power and voice to communities where there was none. Locally responsive situation. Gaining local control, local committee can weigh in.

Very rare for Advisory Committee/NPS to say no to a project. Typically they go to bat for a project with support of towns. Towns are partners. Almost always any issues are between the town/Advisory Committee and state. Never had situation in New England where Advisory Committee and NPS are at odds (note—designated rivers outside of New England are mostly on federal land, while designated rivers in New England are typically surrounded by private lands and called Partnership W&S Rivers run by partnerships between local stakeholders and the NPS) because common vision is established through the study process. If not, designation shouldn't go through. 12 rivers are designated in the northeast region, 7 in New England.

If other towns don't come on board is it still bound by designation? Designation will go to town vote. We wouldn't move forward for designation in a town that doesn't vote for it. The rivers are only designated if the town endorses it. We wouldn't want a ton of gaps in the designation (lots of chunks because many towns did not vote yes or because there are a bunch of areas we would want to leave out for hydro development). If that happened the Study Committee would need to decide as a committee what to do. Sometimes legislation can be amended (one ex - to 2 yrs after designation a town was added to designation; another ex- there was not enough community support initially and the designation was set aside – 15 yrs later the towns came back to NPS and want to revisit it).

?The DOT/VTrans process is already really slow, will this impact it further? We would need to reassure VTrans and the communities that this process won't be further delayed in most cases. "One thing we are is fast," says Jim MacCartney. If a project was submitted for review, it would be discussed at the next monthly meeting. Because the Advisory Committee is locally based- "We like to be responsive if nothing else," says Jamie Fosburgh

?What about water treatment plants? Municipal waste water treatment discharges (like those in Richford and Troy/Jay are being refurbished). Plans are periodically upgraded; plans renewed about every 5 years. State is the lead on these, but they are technically federal permits (EPA). The Advisory Committee would have the opportunity to comment. If we find it would have a direct and adverse impact we could exercise our veto power. By and large these discharges are to produce "no change in water quality standard." If it's a W&S river – high water quality standards are already there. Unless the state was heavily reducing standards or reducing levels of standards there wouldn't be much change.

It was suggested that we talk about large farm operation (CAFO replacement) in our mgmt plan. (Sylvia)

? What about water withdrawal (snow making)? Ex – Jay peak has a weir that feeds their pond for snow making – measure flow. Ask first - is it a federally assisted project? THIS IS THE FIRST TEST. A Massachusetts river wanted designation because for many years Boston had been eyeing the river as intake for water (which would require an Army Corps permit to build the structure for taking out water). This would fall under Section 7 review. A smaller withdrawal, ex- farmers or snow making, wouldn't have federal prevue and therefore would not fall under Section 7 Review.

For any project we would have to ask whether it would have an adverse impact?

We would look over the reasons that segment of river was designated and see if the project would have would have an adverse impact. If not, it would not fall under Section 7 review.

Mike was asked if there was good fishing on Jay Branch, a tributary to the Missisquoi. "I don't know, but I'll find out this summer."

4. Section 7 Review of Water Resource projects upstream, downstream, or on tributaries of the designated rivers.

There is a lesser protection standard for these areas.

Actions/projects should not invade the designation area or unreasonably diminish the designated area

To fall under Section 7 Review you still must look at: 1) Does the project have federal assistance? 2) Is it water related, and 3) does it have an unreasonably adverse impact to the W&S designated area.

These activities are already looked at thru permitting process anyway, and look at effects up and downstream of projects. Modifications or mitigations would already happen in these type of projects through the permitting that already happens.

According to Jamie, with 7 New England designated rivers over 20 yrs – very few projects have raised a flag upstream, downstream, or on tributaries of the designated rivers. One ex – a LNG (liquefied natural gas) facility at mouth of a river and storage facility 2 miles upstream. The project required dredging to get enormous boats up river – the dredging would have been 24hrs/day for 3 yrs. The NPS took issue because this was proposed for the largest anadromous fish runs left in Massachusetts. The condition they put on the project was that dredging couldn't occur during their migration when they swim up or down (this turned the project from 3 to 6 yrs. NPS was sued over this position, but then the company dropped suit).

Typically other requirements already exist and the project's completion doesn't come down to NPS/Advisory Committee ruling – whether it goes forward or in what form depends on what other agencies have to say with respect to projects. **When the NPS/Advisory Committee is involved, rather than exercise a veto, typically they work with the applicant and suggest any modifications that may be needed to arrive at a solution that won't have a direct and adverse impact.** NPS/Advisory Committee work hand in hand with folks to address applicant's needs and look out for the river. Having the NPS help foot the bill for the process is helpful.