

If Included in Wild & Scenic Rivers System . . .

Who Will Manage The Lower Deschutes River?

Wasco County fears that the Confederated Tribes will. Jefferson County fears that the federal government will. And the Tribal Council, along with numerous state and federal agencies, fears that if the lower Deschutes River is not given the protection of the 1968 National Wild and Scenic Rivers Act, nobody will.

While the recently drafted bill providing for inclusion of the Lower Deschutes in the Wild & Scenic River System awaits congressional sponsorship in D.C., the Tribes, the State of Oregon and the Bureaus of Land Management and Outdoor Recreation are making moves to cooperate on a management plan for the river. The proposed bill, supported in December by Tribal Council resolution, requires federal, state and Tribal authorities to recommend management and administer the river according to criteria set forth in the 1968 act.

Meanwhile, at recent public hearings local counties were apprehensive about further federal involvement, Tribal control of the reservation portion of the river, and threatened rights of private landowners. Even some tribal officials have expressed concern about the freedom of the Tribes and its members to plan the reservation's industrial, domestic and water development should the bill be passed by Congress.

Although the terms of the federal act and the Deschutes amendment clearly spell out jurisdiction of the various parties, the real impact of the legislation will lie in the specifics of the management plans drawn up by the state, the Tribes and the Secretary of Interior. How much of their plan will be dictated by federal criteria accompanying the act? And will local control be forfeited once the management plans are in effect?

These are questions that can be answered in part by examination of the proposed legislation, but time will provide more complete answers.

Evolution of the Deschutes Bill

The current draft of the Deschutes amendment results from years of growing pressure on the lower river and its environment and the concerns of the various landowners in the canyon (the BLM, the Tribes and private owners) about the preservation of the resource.

In 1971 the Deschutes became part of the Oregon Scenic Waterways System and immediately Governor Tom McCall suggested inclusion of the lower river in the national system of wild and scenic rivers.

This system, established in 1968 by the designation of eight rivers as "wild", "scenic" or "recreational," has grown to nineteen rivers by the amendment procedure outlined in the original act.

Wild and Scenic rivers in the western states include: The Rogue (Oregon), Middle Fork of the Clearwater (Idaho), Middle Fork of the Salmon (Idaho), Snake (Idaho and Oregon), Rapid (Idaho), Feather (California), Flathead (Montana), Missouri

(Montana) and the Rio Grande (New Mexico).

Proposed for federal protection are such rivers as the Skagit in Washington, the Colorado in Arizona and the Stanislaus in California, along with the Oregon's Deschutes.

Public use of the Deschutes has grown rapidly. As Scenic Waterways Administrator Bob Potter explained at public hearings in nearby counties last month, recreational use especially by drifters has increased 50 percent annually in the last few years. "As use of the river is approaching 20,000 people per year, this is one of the heaviest used rivers in the U.S.," Potter told the Jefferson County Planning Commission January 26.



As the bill for inclusion in the national system was drafted and redrafted, the Confederated Tribes became involved as a vested interest. The Tribal Council has long maintained that the valuable fish and water resources of the lower Deschutes canyon must be preserved as well as the scenic and aesthetic values. Recognizing the right of non-Indians and Indians alike to enjoy the river's non-motorized boating and trout fishing opportunities, the Tribal Council has sought to provide access to the river while attempting to preserve the river in its natural state.

The Tribal Council has also been careful to preserve the Tribes' treaty rights to the water and land forming the reservation's eastern boundary and to fish therein.

Given these interests, the Tribal Council embraced the final draft of the bill which classifies portions of the lower river as scenic and recreational leaving the Tribes in control of their section of the river and including them in management planning for the whole one hundred-mile stretch.

Under the proposed amendment, the river from ¼ mile below the Pelton Re-regulating Dam to its mouth at the Columbia River (excluding the city of Maupin) would be included in the National Wild and Scenic Rivers System.

Scenic and Recreational Defined

The language of the original 1968 act allows for inclusion of rivers with "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values," to be "preserved in

free-flowing conditions...for the benefit and enjoyment of present and future generations." (P.L. 90-542, Sec. 1 (b), October 2, 1968).

The Deschutes amendment recommends recreational classification for the lower river excluding the city of Maupin. Classified as recreational and administered as such would be the segments of the Deschutes

a) from just below the re-regulating dam to the downriver end of the Warm Springs Forest Products Mill, b) the mouth of the White River, c) around Sherars Falls and d) the last mile above the confluence with the Columbia.

All other segments would be classified as recreational but administered as a scenic river.

In order to qualify as scenic, a river must be "free of impoundments, with shorelines or watersheds still largely primitive and shoreline largely undeveloped, but accessible in places by roads." A recreational river is one that is "readily accessible by road or railroad, that may have some development along (its) shorelines, and that may have undergone some impoundment or diversion in the past."

Generally, according to the act, an included river "shall be administered in such a manner as to protect and enhance the values which caused it to be included...without...limiting other uses that do not substantially interfere with public use and enjoyment of these values."

Jurisdiction and ownership clear

Tribal attorney Dennis Karnopp noted that there would not be "any great change" in jurisdiction should the proposed bill pass. The amendment states that existing or acquired federal lands would be administered by the Secretary of Interior. Reservation lands would be administered by the Tribal Council. All other lands would be under the jurisdiction of the State.

"Very little if any land would be purchased," commented Potter, and it would be a negotiated contract between the government and the owner. However scenic easements (development or access rights) may be acquired by condemnation, or the government's right to eminent domain, with compensation by the government at fair market price.

State-owned lands may be

acquired only by donation, or if purchased by the state after enactment, by exchange.

Tribal lands may not be acquired without the consent of the governing body as long as the Tribes are managing and protecting the lands consistent with the Act. The Deschutes Amendment further prevents the "alienation, encumbrance, condemnation or taxation" of reservation properties including water rights.

Future management not so clear

While jurisdiction and procedures of land acquisition are clear, the restrictions on use of the land are less clear.

Within two years of enactment the land administrators must prepare a comprehensive management plan for the protected lands. As Potter explained, there will actually be two plans: one for the lands under the jurisdiction of the Confederated Tribes, prepared by the Tribal Council with active participation by the Secretary of Interior and the State; and one for those lands not within tribal jurisdiction, prepared by the Secretary of Interior with active participation by the Tribes and the State.

Potter pointed out that county officials and the general public would have the opportunity to offer their input through involvement in public hearings such as those held in the last week of January in Wasco, Jefferson and Sherman Counties and with the Maupin Cattleman's Association.

The Wild and Scenic Rivers Act itself does little to spell out the restrictions on development that are implied in the scenic and recreational classifications. "The law provides the framework for the planning that follows," said Potter. "Planning might be more restrictive," he added.

Will The Tribes Be Giving Up Some Control In Its Future Development?

The only specific prohibition in the act is the Federal Power Commission licensing of construction of any dam, water conduit, reservoir, powerhouse or transmission line unless it is above or below the designated area and would not affect the flow, the scenic value or the resources of the river.

(Both Karnopp and Potter firmly stated that the Tribes' tentative plans to install generators in the Pelton Re-regulating Dam would not be affected by passage of the wild and scenic amendment.)

Existing uses of the land along the river may continue even if they do not conform to the federal criteria.

Regulations accompanying the act are a bit more specific regarding future development. "Management objectives" are listed for both scenic and recreational river areas. To summarize, in a scenic river area motorized vehicles would be allowed on land, some new habitations and public use facilities would be allowed as long as they are screened from view and have no adverse effect on the

natural character of the area and a "wide range of agricultural and other resource uses may be permitted."

In a recreational river area restrictions would be less severe. "Optimum accessibility to motorized vehicle", is assured and dense settlements, public use areas close to the river, structures (for habitation, intensive recreation use, and management practice) and a wide range of agricultural and resource uses would be allowed.

Potter noted that whereas the past the BLM has had insufficient funds and staff to improve recreational facilities, funds would be available under the act for the BLM to develop primitive boater campsites, provide portable toilets, and maintain the sites. Restricting camping to these improved areas would lift some of the environmental pressure caused by drifters and other recreation users, said Potter.

Karnopp spoke to the fear on the part of tribal planners and officials that water development on the reservation may be restricted, by saying "the intent of the act is not to prevent diversion as long as it does not impact the flow of the river." Karnopp also commented on future industrial development noting that expansion of an existing mill would be possible under the act.

Tribal zoning along the Deschutes corresponds closely to the proposed federal classifications. Much of it is agricultural with the exception of an industrial and commercial zone around the mill and bridge. The Tribes have also provided camping areas for recreational use.

While federal protection may aid in the control of recreation by discouraging illegal camping, fires and trespass, the Tribes be giving up some control in its future development?

General Manager Ken Smith is looking "twenty years down the road." What if a future Council decides to develop an industry or a private landowner chooses to build a new structure? It would be easier, Smith suggested, to change a tribal zoning ordinance than to revise or amend a federal act.

"I would rather see a governing body like the Tribal Council or a county commission be given a try in control before the state or federal government," said Smith. "They're the people that live here."

But Smith sees many benefits in the proposed legislation. "I think the bill is good in many respects. I agree with County that the Deschutes River should be kept scenic and not overdeveloped."

"But management does have some specific questions at this point and will make an effort to find the answers."

NEXT EDITION: WILL BENEFIT FROM THE DESCHUTES RIVER BILL?