

FINAL RECOMMENDATIONS OF THE SCENIC WATERWAY REVIEW STAKEHOLDER GROUP

The Scenic Waterway Review Stakeholder Group¹ was convened by the Oregon Parks and Recreation Department to develop recommendations to better achieve the objectives and enhance the effectiveness of the Oregon Scenic Waterways System. The Group's conclusions are summarized below, in three parts. The first part is a commentary on the conclusion of a draft report by David Bernell and Jeff Behan, of Oregon State University's Institute for Natural Resources, *THE OREGON SCENIC WATERWAYS SYSTEM, A REVIEW AND ASSESSMENT, 2003* (<http://www.prd.state.or.us/news.php?id=445>). The second is suggested statutory language regarding placer mining in scenic waterways.² And the third is a recreation management vision for Oregon's Scenic Waterways.

I. The Report

The exact language from the OSU report (starting at page 39) is in plain font, the Scenic Waterway Review Stakeholder Group comments are in italics. Unless otherwise noted, these comments have the full support of the group.

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

¹ Scenic Waterway Review Stakeholder Group members were David Wright, Oregon Parks and Recreation Department; Steve Brutscher, Oregon Parks and Recreation Department; Liz Frenkel, League of Women Voters; Mary Fleischman, North West Rafters Association; John Holleman, Mineral Resources Legal Foundation; Katie Fast, Oregon Farm Bureau; John Lilly, Oregon Department of State Lands; Bill Fujii, Oregon Water Resources Department; Scott Manzano, Oregon Department of Environmental Quality; Tom Quintal, Willamette Valley Miners; Patty Snow; Oregon Department of Fish and Wildlife; Micah Wells, Oregon Cattlemen's Association; Wayne Shuyler, Oregon Marine Board. Carie Fox, Fox Mediation, facilitated beginning in November, 2003.

² An early draft of this was forwarded via the Department of Administrative Services to the Governor's Office as a 'legislative concept.' The Governor's Office rejected the legislative concept. The language is presented here for your information.

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.

See recreation management proposal.

- OPRD could increase its focus on recreation, including access points for boaters and sportfishers, mitigation of visitor use impacts, resource protection, and enforcement.

See recreation management proposal.

- 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.

On the whole, this program appears to be working surprisingly well. Posting notifications on the OPRD website would enhance public access to the process.

- The program could expand efforts to purchase or trade for easements or rights of way, perhaps in cooperation with private funding entities.

See recreation management proposal. But note that the Cattlemen's Association and the Farm Bureau do not support the expansion of efforts to purchase easements or rights of way.

- 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.

The Scenic Waterway Review Stakeholder Group agrees that coordination among OPRD, local jurisdictions and (where appropriate) federal land management agencies is essential. It is in the area of permitted and conditional uses within designated scenic waterway areas that the Workgroup has the largest concern. (Zoning changes, by contrast, because

they provide considerable opportunity for public process and administrative deliberation, are of less concern.) Accordingly, the Workgroup recommends that OPRD work closely with local jurisdictions to develop criteria for some of the permitted and conditional uses.

- 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, the river trails program 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.

The Scenic Waterway Review Stakeholder Group agrees it is important to look for ways the Scenic Waterways program can leverage with, and support, watershed efforts from other programs. Moreover, it is likely that if the Scenic Waterways program were being initiated today, there would be an interest in designing the program around a watershed approach, based on the evolving understanding of ecosystem effects cited in this report. However, this program was not designed in that way. The Scenic Waterways program as a standalone is not an appropriate vehicle for a watershed-based approach.

- 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.

There are areas where the local jurisdiction provides stronger protection of the Scenic Waterways than does OPRD's program. In these instances, the Scenic Waterway Review Stakeholder Group recommends that streamlining be supported. This could be done on an informal basis as it is presently in Deschutes County (where the OPRD review happens subsequently to the County's, and since the same standards apply, the latter review is quite rapid), or more formally through Intergovernmental Agreements. See ORS 390.845(10) ("the department may enter into agreement ... for the administration of such lands or interests.") The Scenic Waterway Review Stakeholder Group does not recommend delegation of this program unless the local jurisdiction supports it.

- 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 Scenic Waterway Review Stakeholder Group agrees that funding is essential. A particular area of concern is monitoring and enforcement. The Scenic Waterway Review Stakeholder Group recommends the creation of a Scenic Waterways resources group, to seek external funding through grants and other means to augment OPRD efforts in monitoring, enforcement, communication, and response protocols, among others.

- The state could consider designating additional waterways and waterway reaches for inclusion in the system.

Additional Recommendation:

In addition, the Scenic Waterway Review Stakeholder Group discussed the idea of a Scenic Waterway Advisory Group. There was consensus among Group members that a 'steering committee' approach would be appropriate as OPRD engages in rulemaking on a river-by-river scale. Several members were keen to see a policy-level group advising on the Scenic Waterways program, OPRD was not. The endpoints in the continuum of possibilities are:

- 'Steering Committees' at the implementation/river or reach level only (all agreed);
- As well as steering committees, a group with formal public notice requirements and clear charge to provide policy-level advice to the Commission regarding Scenic Waterways (OPRD did not support this). This group could also be charged with seeking alternate funding sources.

The interests expressed in the discussion were:

- OPRD's interest in avoiding workload impacts;
- OPRD's concern about creation of Advisory Boards which sometimes may live beyond the span of time originally envisioned, or beyond the time their original purpose remains relevant;
- Concerns about what it means to be "Advisory." Does the existence of an Advisory Board create a possible role confusion in that it is Oregon Park and Recreation Commission's ultimate responsibility to make policy?

- *The SWW program appears consistently to have received relatively little of OPRD's focus; many of the members expressed a hope that the Advisory Board would help maintain a focus on the Scenic Waterways program (fundraising would be a subset of this);*
- *Likewise, the Advisory Board was seen as a forum where positive public focus on the Scenic Waterways program could be fostered, and negative focus could be given a constructive forum via the Board;*

As the Scenic Waterway Review Stakeholder Group was not able to achieve consensus on this, it respectfully request that the Commission consider these factors and make a decision.

II. Statutory Language, Proposed Changes

There are three changes proposed: to paragraph ORS 390.835 (19) (the League of Women Voters did not concur in this change), to ORS 390.845(1) (the League of Women Voters did not concur in this change), and to ORS 390.845(2) (all concurred). With respect to the first two changes, the Northwest Rafters Association declared a willingness "to look at this given that there will be more enforcement and monitoring." These three changes comprise a legislative concept for consideration during the 2005 legislative session.³

ORS 390.835 ...

(19) Recreational placer mining as described in sections (14) through (18) of this section:

(a) Is allowed on the following scenic waterways, unless further limited or prohibited by rule as provided in ORS 390.845:

- (1) Elk Scenic Waterway;
- (2) Illinois Scenic Waterway;
- (3) Rogue Scenic Waterway;
- (4) John Day Scenic Waterway; and
- (5) Klamath Scenic Waterway.

(b) Is prohibited on any other SWW unless allowed by rule as provided in ORS 390.845.

(c) If a new scenic waterway is designated and the designation does not state whether recreational placer mining is prohibited or allowed, OPRD shall engage in rulemaking to make that determination.

390.845 Administration of scenic waterways and related adjacent lands; limitations on use; condemnation; rules. (1) Except as provided in ORS 390.835, scenic waterways shall be administered by the State Parks and Recreation Department, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the esthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

³ The Oregon Parks and Recreation Commission (Commission) approved this concept on April 15, 2004, and submitted it to the Governor's Office for review and pre-session filing for the 73rd Legislative Assembly. The Governor's Office withdrew the concept from consideration on June 8, 2004. The Commission rescinded approval of the concept at its August 5, 2004, meeting at the request of the League of Women Voters of Oregon and in recognition of the Governor's decision.

Nothing in ORS 390.835 affects the authority of the Parks and Recreation Commission to:

- (a) adopt rules limiting or restricting recreational placer mining;
- (b) allow recreational placer mining where it currently is prohibited; or
- (c) prohibit recreational placer mining where it currently is allowed.

OPRC shall restrict or prohibit recreational placer mining where it:

- (a) Is inconsistent with the policies set forth under ORS 390.805 to 390.925;
or
- (b) Will impair substantially the special attributes of the scenic waterway;
or
- (c) Conflicts with the varying intensities of protection or development established by commission rule to protect and enhance the values which caused the scenic waterway to be included in the system.

(2) After consultation with the State Board of Forestry, the State Department of Agriculture, and the Water Resources Department and the affected counties and ~~with the concurrence of the Water Resources Commission,~~ the department shall adopt rules governing the management of related adjacent land. Such rules shall be adopted in accordance with ORS chapter 183. Such rules shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the esthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:...

III. Addressing a More Comprehensive Approach to Scenic Waterways Management

Scenic Waterways Management: RECREATION MANAGEMENT VISION

WHEREAS

- OPRD is the State of Oregon's chief outdoor recreation advocate.
- OPRD is the primary administering agency for designated scenic waterways, and shares jurisdiction with many state agencies and local, federal, and tribal governments.
- Recreation, fish and wildlife are the highest and best uses of the waters in scenic waterways.
- OPRD recreation management on scenic waterways advances Target 2014 Goals 1, 2, 3, 6, and 7.
- The 2003-2007 Statewide Comprehensive Outdoor Recreation Plan (SCORP) reflects significant growth in public participation in non-motorized boating, boat camping, and fishing from a boat, all popular activities on scenic waterways as well as a growing public interest in canoe, raft and kayak water trails throughout the state.
- OPRD has the opportunity, through recreation management, to cultivate a new constituency of paddle boaters and other river recreationist previously untapped. A river recreationist constituency can provide added support for the department in future endeavors.
- Scenic waterways provide a wide array of passive and active recreation opportunities.

THEREFORE

- OPRD has the opportunity through recreation management to map a proactive course and maximize the recreation opportunities on Oregon's scenic waterways.

Recreation Jurisdiction

- Draw on existing statutory authority in ORS 390.845 granting OPRD primary administrative responsibility for scenic waterways as support for an OPRD recreation management role on scenic waterways.
- Recognize the jurisdictional responsibilities and authorities of other state agencies, and federal, local, and tribal governments, and cooperate and coordinate with pertinent agencies and governments, as appropriate.
- Recognize and enhance leveraging opportunities with other jurisdictions, agencies, clubs, groups, and organizations.

Affected Rivers/schedule

- Establish a set of criteria for assuring appropriate recreational use by river. In establishing this criteria, include:
 - dual designation as a wild and scenic river;
 - existing OPRD/federal agency management agreement;
 - existing recreation management plans;
 - existing state and federal laws and regulations;
 - private vs. public ownership;
 - existing and historical levels and types of recreation on the river;
 - amount of or need for public access;
 - identified recreation related conflicts;
 - existing level of recreation amenities;
 - ownership and management by other governmental and tribal entities;
 - private property issues.
- Enter into cooperative management of individual statutory authority with other administering state, local, federal and tribal agencies setting out separate and joint responsibilities for management of the recreation values and uses of the scenic waterway.
- Establish a schedule of phasing in OPRD recreation management. For example initiate recreation management on three or four scenic waterways each year.
- Establish a data base to track physical conditions and track changes over time.

Education / information

- With agency and non-governmental partners, jointly develop recreation guides and maps for each scenic waterway. Insure maps clearly delineate private landownership from public lands.
- Promote Leave No Trace ethics, respect for private property, and recreation conflict avoidance techniques.
- Develop multimedia presentation for production and distribution to schools, clubs, civic organizations, agencies, etc. Focus message on history and purpose of scenic waterways system, recreation values, appropriate recreation user behavior and respect for the resource, other users and riverfront landowners.
- Develop a website (or web pages and links to other sites) that provides a central location for dissemination of information about river recreation and scenic waterways.

Enforcement

- Conduct routine river inspections in conjunction with partner agencies to monitor recreation patterns, establish baseline, rule compliance, and resource impacts. Include land use/notification compliance monitoring in these trips as well.
- Establish a system of management, communications, enforcement and response protocols among the partner agencies for each river, while avoiding duplication and overlap.
- Develop agreements and/or contracts with federal, state and local law enforcement agencies for enforcement presence and functions on scenic waterways.
- Provide river rangers with enforcement training and citation authority similar to that given to park rangers in Oregon State Parks.
- Seek compliance through education as well as enforcement.

REGULATORY SCOPE

- Develop generic, and if necessary, river-specific regulations affecting recreation use and resource protection.
- Work within the regulating authorities of other agencies when considering new regulations.
- Example regulations may address, but are not limited to:
 - Allowed/prohibited uses
 - Activity zones – spatial, temporal
 - Motorized/non-motorized areas
 - Group size
 - Camping – length of stay, designated campsites and dispersed camping, leave no trace
 - Litter/Sanitation – portable toilets, pack it in/pack it out
 - Fire – seasons, closures, fuels, fire pans, ash disposal, smoking, fire works and firearms
 - Vehicle restrictions
 - Use permits/passes
 - Use limits
 - Equipment requirements

Facilities

- Pursue, in conjunction with partner agencies, power companies and private foundations, acquisition of public access through purchase, lease or other agreement where necessary to allow ingress and egress to a specific river as well as sites along the river that provide for trail, camping, picnicking, fishing and other outdoor recreation opportunities.
- Establish and staff visitor contact or information stations at key river access locations to provide users and vendors with information, education, equipment compliance checks, safety instruction, emergency contact, etc.
- Install facilities as appropriate for loading, unloading, rigging, launching and recovering boats, parking, sanitation, changing clothes, information displays, signage etc. Emphasize that the addition or enhancement of these facilities are designed for environmental benefits, user safety and better recreation management.

Funding

- Seek stable, long-term, funding for the river recreation management program through a single or multi-source program based on:
 - Dedicated funding through OPRD budget (could be off-set by instituting a fee for filing notifications)
 - Non-motorized boat registration;
 - Launch fees / parking fees;
 - Boater Pass (universal or river specific)
 - River recreation gear tax
 - Sales of waterproof river maps
 - Fees from hydroelectric relicensing
- Establish a Scenic Waterway Foundation similar to or part of an Oregon Parks Foundation. [See also section I of this report.]
- Seek grants for improvements through public and private grant application processes.

Public Involvement

- Establish river recreation working groups to assist OPRD with implementation and management of scenic waterway recreation. Working groups must include partner agencies, and affected recreationists, guides and outfitters, and private landowners.
- Organize and schedule periodic events like clean ups, restoration work, site development, etc. and appeal to the public for volunteers to assist in these efforts.
- Generate interest in and develop “friends” groups for each river to assist with volunteer services, events, projects, education/information dissemination, river patrols, launch site coordination etc.

RESOURCE / RECREATION ADVOCACY

- Use OPRD’s management role to advocate more strongly for resource protection and enhancements benefiting recreational use of scenic waterways (i.e. instream flows and water rights, riparian habitat, fish and wildlife species, water quality)

- Cultivate constituencies among a variety of recreational user groups (i.e. boaters, birders, hikers, campers, fishers, hunters, guides, outfitters) to speak out for scenic waterway resource preservation and support scenic waterway agencies in legislative, hydro licensing and relicensing, federal agency NEPA analyses, state agency rule making, local land use planning and other forums where scenic waterway values are at issue or at stake.

Staffing

- “Operationalize” scenic waterway recreation management at OPRD field level by establishing “river ranger” positions or duties in those park management units including scenic waterway reaches. (Deschutes River is an example)
- Pursue joint “river ranger” staffing with local, state, and federal partner managing agencies. (i.e. multidisciplinary teams with ODFW, DEQ, DSL, OSP, County Sheriffs, USFS, BLM, OMB)