

The California Wild & Scenic Rivers Act

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The California Wild & Scenic Rivers Act (Public Resources Code § 5093.50 et seq.) was passed in 1972 (SB-107, Behr R-Mill Valley) to preserve designated rivers possessing extraordinary scenic, recreation, fishery, or wildlife values. With its initial passage, the California system protected the Smith River and all of its tributaries; the Klamath River and its major tributaries, including the Scott, Salmon, and Trinity Rivers; the Eel River and its major tributaries, including its tributary the Van Duzen River; and segments of the American River. The state system was subsequently expanded by the Legislature to include segments of the East Carson and West Walker rivers in 1989, segments of the South Yuba River in 1999, short segments of the Albion and Gualala Rivers in 2003, and segments of Cache Creek in 2005. In addition, the McCloud River and Deer and Mill Creeks were protected under the Act in 1989 and 1995 respectively, although these segments were not formally designated as components of the system.

The Act provides a number of legal protections for rivers included within the System, beginning with the following legislative declaration (§ 5093.50):

It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution.

Definitions

The Act defines “free-flowing” as “existing or flowing without artificial impoundment, diversion, or other modification of the river.” The existence of minor structures on the river, or even major dams located upstream or downstream of a specific segment, does not preclude a river from designation (§ 5093.52(d)). Several rivers, such as the Klamath, Trinity, Eel, and lower American, are included in the System despite substantial flow modifications by pre-existing upstream dams and impoundments.

The Act defines “river” as “the water, bed, and shoreline of rivers, streams, channels, lakes, bays, estuaries, marshes, wetlands, and lagoons, up to the first line of permanently established riparian vegetation” (§ 5093.52(c)). The latter phrase (“up to the first line of permanently established riparian vegetation”) was added in a 1982 amendment (AB-1349, Bosco).

The Act defines the “immediate environments” contained in the policy declaration (§ 5093.50) as the land “immediately adjacent” to designated segments (§ 5093.52(h)). This definition was added in the 1982 amendments (AB-1349, Bosco).

Classification

Rivers or segments included with the system are classified by the Legislature as “wild,” “scenic,” or “recreational” based on the level of existing development of adjacent land areas when designated (§ 5093.53). The river-segment by river-segment classifications are thus reproduced in the code (§ 5093.545). The Resources Secretary may recommend classifications to the Legislature (§ 5093.546). “Wild” river segments are free of impoundment and generally are inaccessible except by trail, with primitive watersheds or shorelines and unpolluted waters. “Scenic” river segments are free of impoundment, with shorelines or watersheds still largely primitive and shorelines largely undeveloped but accessible in places by roads. “Recreational” river segments are readily accessible by road or railroad, may have some development along their shorelines, and may have been impounded or diverted in the past (§ 5093.53). The classification terms are consistent with the National Wild & Scenic Rivers Act, and represent the existing development, particularly shoreline development, not a description of any particular extraordinary values identified for the potential or designated river. For example, “recreational” river segments may not have any specific recreational extraordinary values. In addition, confusing to some, “recreational” components of the state’s wild & scenic river system are, indeed, components of the state’s wild & scenic river system.

Act Style, or Where is What?

§ 5093.54 is the code section used to list the rivers and river segments designated as components of California’s wild & scenic rivers system. § 5093.545 contains river-segment-by-river-segment classifications. § 5093.548 was previously the code section used to list potential additions (study rivers). § 5093.546, in addition to describing protections afforded to designated rivers, is used to describe interim protections given potential additions to the system. However, it has been Legislative practice to delete § 5093.548 when the Legislature acts on all pending study recommendations. It has also been Legislative practice to delete the interim protections provisions in § 5093.546 when there are no pending potential additions. However, in 2015, § 5093.548 was used instead to provide additional directions for the Secretarial study of portions of the Mokelumne

River, as well as some specific interim protections for this river. § 5093.549 was then created and used to list segments of this river that are potential additions to the system.

Amendment History

Significant amendments to the Act in 1982 were adopted as part of the litigation strategy against the 1981 federal 2(a)(ii) north-coast-river wild & scenic river designations (see “Andrus” Rivers section and 1980–1985 entries in the timeline below) and for other purposes. The amendments eliminated the mandate for management plans of rivers and “adjacent land areas” (§ 5093.48(b) in the 1972 Act) that the 1970s-era Resources Agency management plans considered to be subject to the Act’s management focus. The amendments further defined “river” as various waterbodies “up to the first line of permanently established riparian vegetation” (§ 5093.52(c)) and limited “immediate environment” to the land “immediately adjacent” to designated segments (§ 5093.52(h)). The 1982 amendments also specified that the Legislature rather than the Resources Secretary is responsible for classifying or reclassifying rivers by statute, although the Resources Secretary may recommend classifications or reclassifications (§ 5093.546). The amendments included the classifications for the rivers that stayed in the system (§ 5093.545). The nearly watershed-level Smith River system designations were redefined (§ 5093.54(c)), removing about 2,760 ill-defined miles of river from the State System (AB-1349, Bosco).

An amendment to the Act in 1986 established a study process modeled after the federal act to determine potential additions to the California System (§ 5093.547) (AB-3101-Sher).

Amendments to the Act in 1986 (AB-3101, Sher) eliminated authorization for DWR to investigate and study dams on the Eel River and its tributaries (amended § 5093.56). These amendment also sharpened the responsibilities of state agencies to protect the free-flowing characteristics and extraordinary values of designated rivers under any other provision of law (§ 5093.61). In addition, these amendments ensure that “Special Treatment Areas” under the Forest Practice Rules are applied to river segments classified as “scenic” or “recreational,” as well as river segments classified as “wild” (§ 5093.68).

In response to studies required by the Legislature (AB-3101, Sher), segments of the East Carson and West Walker rivers were added to the system in 1989 (§ 5093.545(f)(1) & (§ 5093.545(f)(2), and the McCloud River was provided protection although not formally included in the system (§ 5093.542) (AB-1200, Sher). Also in response to studies mandated by Legislature (AB-653, Sher), Deer Creek and Mill Creek were provided protection in 1995, although not formally included in the system (§ 5093.70) (AB-1413, Sher). The Legislature has, in addition to the initial system designations, clearly retained the *de facto* right to designate rivers outright since they added segments of the South

Yuba in 1999 (§ 5093.54(g)(1)) (SB-496, Sher), short segments of the Albion and Gualala Rivers in 2003 (§ 5093.54(h) & § 5093.54(i)) (AB-1168, Berg), and segments of Cache Creek in 2005 (AB-1328, Wolk) to the state system without studies.

Water Impoundment Facilities

In general, no dam, reservoir, diversion, or other water impoundment facility may be constructed on any river segment included in the system, although see Water Diversion Facilities paragraph below. Two exemptions to the dam prohibition are provided. The exemptions include temporary flood storage facilities on the Eel River (§ 5093.57) and temporary recreational impoundments on river segments with a history of such impoundments. The Resources Secretary cannot authorize these temporary recreational impoundments without first making a number of findings (§ 5093.67).

Water Diversion Facilities

No water diversion facility may be constructed on any river segment included in the system unless the Resources Secretary determines that the facility is needed to supply domestic water to local residents and that the facility will not adversely affect the river's free-flowing condition and natural character (§ 5093.55).

Non-Degradation Standard

Agencies of the State of California may not assist local, state, and federal agencies in the planning and construction of any dam, reservoir, diversion, or other water impoundment facility that could adversely affect the free-flowing condition and natural character of river segments included in the system (§ 5093.56) or of rivers otherwise protected under the Act (§ 5093.542, § 5093.70). In addition, state agencies are required to protect the free flowing character and extraordinary values of designated state rivers (§ 5093.61). Local government agencies are required to exercise their duties consistent with the policy and provisions of the California Wild & Scenic Rivers Act (§ 5093.61 and see § 5093.50 for policy).

Water Rights

Designation does not affect existing water rights and facilities. Proposed changes in existing rights and facilities or applications for new water rights and facilities on designated segments are subject to the in-county domestic-use restriction and the non-degradation standard. Designated segments are considered fully appropriated streams by the California State Water Resources Control Board Division of Water Rights.

Agency Responsibilities & Authority

Land Use – State and local agencies must exercise their existing powers consistent with the Act’s policies and provisions (§ 5093.61). This provision ties the requirements of the Act to all other existing authorities. The Act does not, however, change the land use regulatory powers or authorities of State and local agencies granted by other laws (§ 5093.58).

Fish & Wildlife – The Act does not affect the State’s jurisdiction or responsibility over fish and wildlife (§ 5093.62).

Forestry – Special treatment areas identifying significant resource features are established along rivers in the system (§ 5093.68) and are further defined in California’s Forest Practice Rules as a 200-foot wide area on each side of the designated river (14 CCR 895.1). One of the 2004 amendments clarifies that “special treatment areas” are applied to designated rivers that are classified as “recreational” or “scenic,” as well as designated rivers that are classified “wild” (§ 5093.68). Although the Act includes provisions for the temporary suspension of timber operations in special treatment areas, the Forest Practice Rules do not specifically prohibit or restrict forest practices in special treatment areas.

Eminent Domain – The Act specifically prohibits the taking of private property for public uses without just compensation (§ 5093.63). The Act grants no additional eminent domain authority to state or local agencies. The Act has never been used in its 42-year history (at this writing) to condemn or otherwise take land.

Studies – The Legislature may direct the Resources Agency to study and submit recommendations concerning the suitability of designating specified rivers (§ 5093.547). However, the Legislature may directly designate rivers without a study. The Resources Agency may also conduct studies funded by the Legislature and may make recommendations to the Legislature for protection and enhancement of the system (§ 5093.69).

Management – The 1982 amendments eliminated the requirement for Secretarial management plans for designated rivers, including “adjacent land areas” (§ 5093-458 in 1972 Act). However, before the management plan requirement was repealed, the following plans were published by the California Resources Agency and Department of Fish & Game (now the California Natural Resources Agency and Department of Fish & Wildlife): *North Fork American Waterway Management Plan*, July 1977; *lower American River Waterway Management Plan*, July, 1977; *Van Duzen River Waterway Management Plan*, July 1977; *Salmon River Waterway Management Plan*, November 1977; *Scott River Waterway Management Plan*, December 1979; *Salmon River Waterway Management Plan (Revised)*, December 1979; *Smith River Draft Waterway Management Plan*, April 1980. At

the time of preparation of these plans, the Secretary was to submit them to the Legislature for approval, which would give the plans the force of law (see discussion in *North Fork American River Waterway Management Plan*, p. 7) (§ 5093-58(c) in 1972 Act). In contrast to these pre-1982 plans, the Legislature has twice adopted wild & scenic river management plans prepared by Sacramento County for the Lower American River (see *American River Parkway Plan 2008*, Sacramento County, pp. 89-92), most recently in 2009 (AB-889, Jones). The Resources Agency is required to coordinate activities affecting the system with other federal, state, and local agencies (§ 5093.69), and state agencies are required to protect the free-flowing character and extraordinary values of designated rivers, and similar responsibilities exist for local government agencies (§ 5093.61).

Special Management Provisions for the “Andrus” Rivers

For California’s state wild & scenic rivers added to and currently existing in the national wild & scenic rivers under section §2(a)(ii) of the National Wild & Scenic Rivers Act, the principal wild & scenic river management responsibility is the state’s. However, there are federal management responsibilities as well. Water resources project reviews that are also federal responsibilities are to take place under a November 5, 2007, interagency agreement between the National Park Service, Bureau of Land Management, and Forest Service. Federal lands continue to be managed by the federal land managers. Under federal law, to the extent that a state management plan exists, is relevant, and in force, these plans are intended to provide guidance to federal wild & scenic river managers (see *American River Parkway Plan*, Sacramento County, 2008, p. 91). Corridor management widths are defined by the state for these rivers and can exceed 320-acres per mile, the generic maximum size established for congressionally designated rivers under §3(a) of the federal act. With the creation of the Smith River National Recreation Area in 1990, which redesignated the 2(a)(ii) rivers that were upstream of the Six Rivers National Forest boundary as §3(a) rivers, state responsibilities under the federal act are necessarily reduced in favor of the federal wild & scenic river manager. The federal wild & scenic river plans are to be accomplished in the National Recreation Area plans.

Comparison with the National Wild & Scenic Rivers Act

The California Act was patterned after the 1968 National Wild & Scenic Rivers Act. The state and federal acts share similar criteria and definitions in regard to the purpose of protecting rivers, the identification of free-flowing rivers and extraordinary (state) or outstanding (federal) values suitable for protection, establishing a study process to include rivers in the system, as well as an identical classification system. The primary purpose of both the state and federal acts is to prohibit new water impoundments on designated rivers.

However, the federal act establishes a river corridor for purposes of management focus, which (for congressionally designated rivers) has a maximum average width of 320 acres per mile (approximately ¼ mile on each side of the river). Subject to valid existing rights, it makes mining on federal lands within the boundaries of the corridor subject to rules prescribed by the relevant Secretary (Interior or Agriculture) to effectuate the purposes of the federal act (no mining regulations specific to wild & scenic rivers were ever really done, however). Within the corridor, mine-patenting is not accompanied by a transfer of land title but only mineral rights. The federal act establishes a ½-mile-wide mining withdrawal (no new claims) for federal lands around river segments classified as “wild.” It requires federal agencies to manage the federal lands in the corridor and to a more limited extent outside the corridor to protect the river’s free-flowing character, water quality, and outstanding values, as well as a river’s esthetic, scenic, historic, archeologic, and scientific features. The federal act presumes that corridor boundary establishment, identification or restatement of outstandingly remarkable values, and classification are duties of the wild & scenic river manager.

In contrast, the State Act no longer contains a river-corridor concept, especially one that would extend to adjacent lands, and classification is a duty of the Legislature, not the river manager. And in practice, in the absence of state management plans or Natural Resources Agency study recommendations, extraordinary values tend to be poorly documented or inaccessible for the State system (Friends of the River, however, keeps a database). In contrast, in the federal system, outstandingly remarkable values tend to be documented in agency recommendations (made frequently because of mandates in the federal act to review wild & scenic river potential in the course of regular planning), Congressional committee reports, and, most importantly, the federal wild & scenic river management plans, which can be updated over time.

The federal act also provides for more programs, encouragement, and financial resources to manage corridor and watershed federal lands and to some extent non-federal rivers and adjacent lands. In addition, the managing federal agency for federally designated rivers is required to develop and implement a management plan that will ensure the protection of the river and adjacent lands. In contrast, the State Act no longer requires a management plan or contain procedures for doing so. Thus, in practice, although the Natural Resources Agency is responsible for wild & scenic river management of most state-designated rivers, there is little to no involvement by the Natural Resources Agency in California’s wild & scenic river system.

The study process is substantially the same, although the state process conflates some of the federal assessments and definitions. For example, the Federal study process and definitions are illustrative:

Eligibility and classification represent an inventory of existing conditions. Eligibility is an evaluation of whether a candidate river is free-flowing and possesses one or

more outstandingly remarkable values (ORVs). If found eligible, a candidate river is analyzed as to its current level of development (water resources projects, shoreline development, and accessibility) and a recommendation is made that it be placed into one or more of three classes – wild, scenic or recreational. The final procedural step, suitability, provides the basis for determining whether or not to recommend a river as part of the National System. A suitability analysis is designed to answer the following questions:

- (1) Should the river's free-flowing character, water quality, and ORVs be protected, or are one or more other uses important enough to warrant doing otherwise?
- (2) Will the river's free-flowing character, water quality, and ORVs be protected through designation? Is it the best method for protecting the river corridor? In answering these questions, the benefits and impacts of WSR designation must be evaluated and alternative protection methods considered.
- 3) Is there a demonstrated commitment to protect the river by any nonfederal entities who may be partially responsible for implementing protective management? (*emphasis added*) ("The Wild & Scenic River Study Process," Technical Report Prepared for the Interagency Wild & Scenic River Coordinating Council, *Wild & Scenic River Reference Guide*, 1999, p. 2.)

The State Act study-report language concentrates on suitability and conflates the federal eligibility and suitability questions into one report on suitability.

§ 5093.547. (a) The secretary shall study and submit to the Governor and the Legislature reports on the suitability or nonsuitability for addition to the system of rivers or segments thereof which are designated by the Legislature as potential additions to the system. The secretary shall report to the Legislature his or her recommendations and proposals with respect to the designation of a river or segment.

(b) Each report, including maps and illustrations, shall show, among other things, the area included within the report, the characteristics which do or do not make the area a worthy addition to the system, the current status of land ownership and use in the immediate environment, and the reasonably foreseeable potential uses of the land and water which will be enhanced, foreclosed, or curtailed if the river or river segment were included in the system.

Unless otherwise provided for, State-designated rivers may be added to the federal system upon the request of the state's Governor and the approval of the Secretary of the Interior under (§2(a)(ii)) of the federal act. Adding state wild & scenic rivers to the federal system under this section does not require the approval of the Legislature or Congress. The state has the principal responsibility for wild & scenic river management of rivers added to the federal system under this section of the federal act. Portions of the river segments initially protected in the state system when it was established in 1972 –

the Smith, Klamath, Scott, Salmon, Trinity, Eel, Van Duzen, and American – were added to the federal system in 1981 under this method. But later additions to the state system (including segments of the East Carson, West Walker, South Yuba, Albion, and Gualala Rivers and Cache Creek) have not been subsequently added to the federal system. There is no similar provision in the state system to provide for federal-executive-to-state-executive dual designations, and the Legislature has so far failed to add important congressionally designated rivers to the state’s wild & scenic rivers system.

Brief History of the California Wild & Scenic Rivers Act

1961 – The Department of the Interior’s Outdoor Recreation Resources Review Commission issues *Outdoor Recreation for America* stating, “Certain rivers of unusual scientific, esthetic, and recreation value should be allowed to remain in their free-flowing state and natural setting without manmade alternations.”

1964 – First national wild & scenic river bills are introduced in the U.S. Congress.

1966 – California Senate Concurrent Resolution (SCR-20) requests that California Governor Edmund G. (Pat) Brown’s Resources Agency offer comment and recommendations regarding the concept of reserving wild rivers. The resolution was authored by Senate Natural Resources Chair, Fred Farr and coauthored by Senators Rodda, Short, and Teal. In December 1966, the Agency reported to the Legislature that the concept be broadened to all special waterways: lakes, marshes, coastal lagoons, and estuaries.

1968 – California Governor Ronald Reagan signs into law State Senator Robert Lagomarsino’s (R-Ojai) Protected Waterways bill (SB 830), which required the Department of Water Resources to investigate California’s rivers and develop a list of rivers needing protection and a plan to protect them. In some ways this was a predecessor of the California Wild & Scenic Rivers Act. Four years later, Senator Lagomarsino would co-sponsor Senator Peter Behr’s bill establishing the State wild & scenic rivers system.

On October 2, the National Wild & Scenic Rivers Act (P.L. 90-542) became law.

1971 – The Resources Agency submits its Protected Waterways report to the legislature. Senator Randolph Collier (D-Yreka) introduces SB-1285, accepting the report and requires further development of the Protected Waterways plans. It becomes law.

On January 14, State Senator Peter Behr (R-Marin) introduces SB-107, the California Wild & Scenic Rivers Act. The measure fails by one vote on the Senate floor due to the opposition of Senate Finance Committee Chairman Senator Randolph Collier (D-Yreka).

In December, when asked about the SB-107 in a meeting before a Weaverville professional women's club, Senator Collier promises to introduce a bill to more definitively protect California's north-coast rivers, including the Trinity River than SB-1285.

1972 - State Senator Randolph Collier (D-Yreka) introduces SB-4, a measure to protect the north-coast rivers. On January 24, State Senator Peter Behr (R-Marin) re-introduces SB-107, the California Wild & Scenic Rivers Act.

Fresno State Senator George Zenovich (D-Fresno) introduces SB 1028, a measure to designate the South and Middle Forks of the Kings River between Kings Canyon NP and Pine Flat Reservoir as a "wild" river in any future California "wild" river system. The measure is defeated.

The Environmental Defense Fund, Save the American River Association, and others file a complaint in Alameda Superior Court against East Bay Municipal Utility District's plans to take deliveries of its federal water-supply contract from the Folsom-South Canal upstream of the soon-to-be-designated? lower American wild and scenic river. Sacramento County intervenes supporting plaintiffs.

On December 15, *NRDC v. Stamm* is filed challenging the 16-page EIS for the federal Auburn Folsom-South Unit (Auburn dam and the Folsom South Canal). The canal, located just upstream of the state designated lower American River, would divert a substantial portion of its flows. Joining NRDC were the Environmental Defense Fund and the Save the American River Association.

On December 20, the California Wild & Scenic Rivers System is signed into law by Governor Reagan in a measure carried by State Senator Peter Behr (R-Mill Valley) (SB-107, Behr), and vetoing a similar measure, SB-4 (Collier D-Yreka), which also passed the legislature. The new system includes the Smith River and its tributaries, portions of the Klamath River and its major tributaries, the Eel River and its major tributaries, including the Van Duzen River, the lower American River, and the NF American River from the maximum pool of the proposed Auburn dam reservoir to the headwaters of the north fork.

1973 - In February, Congressman Biz Johnson (D-Roseville) and U.S. Senator Alan Cranston (D-California) introduce HR 4326 and S. 2386, respectively, to designate some of the NF American in the state wild & river system (the segment from the proposed Auburn dam reservoir to "the Cedars") as a federal wild & scenic river study river and for the Secretary of the Interior to conduct the study.

The California Wild & Scenic Rivers Act is amended to prohibit construction of dam projects on the South and Middle Forks of the Kings River and its tributaries on the Sierra and Sequoia National Forests for five years (SB-623, Zenovich).

1974 - The Federal District Court rules in *NRDC v Stamm* that the U.S. Bureau of Reclamation's EIS for the Auburn Folsom-South Unit is inadequate. Supplemental EIS is completed, and plaintiffs drop objection the Auburn dam portion of EIS. Court approves agreement between Reclamation and plaintiffs that no additional construction of, or contracts from, the Folsom-South Canal can be undertaken without notice, and the court retains jurisdiction (*Natural Res. Def. Council v. Stamm*, 4 ELR 20463 (E.D.Cal. Apr. 26, 1974)). No construction of the canal has ever resumed. It ends at the closed Rancho Seco nuclear power plant, and only relatively minor deliveries lower American River are made from the canal. The Auburn dam project on the NF American River, delayed because of a seismic-safety redesign, was never completed as a result of later federal cost-sharing requirements. It lost its state water rights in 2008.

On June 27, Friends of the River submits 348,000 valid signatures to the Secretary of State, successfully placing a statewide initiative (Proposition 17, the "Stanislaus River Protection Act of 1974") on the ballot. It would add two segments of the Stanislaus River to the state system (from the bridge at Camp Nine to the Parrot's Ferry Bridge and from 100 yards below Goodwin Dam to the confluence with the San Joaquin River). The initiative is narrowly defeated at the polls in the November election.

1975 - Congress passes S. 1506, an omnibus bill by U.S. Senator Metcalf (D-MT), making a portion of the NF American River a federal wild & scenic study river. § 5(a)(28), PL 94-486 (S. 1506) makes 40 miles of the State-designated North Fork American a "study" river under §5(a) of the National Wild & Scenic Rivers Act from the high-water mark of the proposed Auburn dam reservoir (Iowa Hill Bridge) to where the North Fork canyon broadens near "The Cedars." It does not specify the Secretary responsible for the study. The study is to be completed within two years of the enactment of S. 1506.

1976 - State Senator Behr (R-Mill Valley) introduces legislation to add a portion of the Stanislaus River to the state system. The bill dies (SB-1482, Behr). State Senator Dixon Arnett (R-San Mateo) does the same. The bill dies.

1978 - Much of the state-designated segment of the North Fork American River is added to the National Wild & Scenic Rivers System as a §3(a) river through an act of Congress (S. 791-Church, P.L. 95-625, §706, National Parks and Recreation Act of 1978). Rep. Biz Johnson championed the federal bill in the House of Representatives along with Senator Cranston in the U.S. Senate. In comparison to the longer State designation, the federal designation is truncated on both ends: it goes from 1,000 feet upstream of the Iowa Hill Bridge to 0.3 miles upstream of Heath Springs, near The Cedars (the section line between Sections 15 and 16, T16N, R14E), with a more-than-320-acres-per-mile

bulge to encompass some of the Gold Run hydraulic mining watershed, consistent with the Forest Service study recommendation for the North Fork designation. The State designation goes from the Iowa Hill Bridge to the source, Needle Lake and Mountain Meadows Lake, approximately six or seven miles further upstream than the federal designation. (*North Fork American River Waterway Management Plan*, p. 9, figure 4, and concluding maps).

1980 – Assemblyman Doug Bosco (D-Occidental) introduces measure to amend the Act. The Sacramento Bee reports that his bill “is generally conceded to be the reason Gov. Brown pushed the Carter administration to place portions of five Northern California rivers in the federal Wild and Scenic Rivers Act [sic.] in the final hours of the Carter presidency.”

On July 1, Rep. Robert Matsui (D-Sacramento) introduces a bill (H.R. 7711-Matsui) to make the state-designated lower American River a national wild & scenic river and to authorize acquisitions in the American River Parkway. Opponents seek to guarantee that the Folsom-South Canal upstream can function as conceived in Reclamation’s 1965 Auburn Folsom-South Unit authorization, with large volumes of the lower American River being diverted south upstream of the lower American River, projects effectively enjoined in *NRDC v. Stamm*. This federal bill is later combined with an Omnibus Wild Rivers Bill (H.R. 8096-Burton), which does not become law.

On July 18, California Governor Edmund G. (Jerry) Brown Jr. petitions Secretary of the Interior Cecil Andrus to include California’s state-designated north-coast and lower American wild & scenic rivers into the national wild and scenic rivers system under §2(a)(ii) of the federal act (16 U.S.C. 1273(a)(ii)) (FR August 7, 1980 p. 52549). Lawsuits in state and federal courts are filed. The federal §2(a)(ii) designation draft EIS is prepared and submitted to the EPA on September 16.

On September 17, with a 20–19 vote, the House Interior Committee removed the designation language for the Stanislaus River from San Francisco Democrat Phil Burton’s Omnibus Wild Rivers Bill (H.R. 8096-Burton). The measure had included language from San Jose Democrat Rep. Don Edward’s HR 4223, which would have designated a segment (segments?) of the Stanislaus River as a national wild and scenic river. State wild & scenic river protection for the Stanislaus River had previously failed by ballot initiative and within the legislature. The omnibus bill does not become law.

In the November 4 election, California voters pass Proposition 8, limiting the power of the legislature to reduce environmental, water rights, or water quality protections in SB 200 (peripheral canal authorization). It further prevents appropriations for storage in, or direct diversions from, the then existing California wild & scenic rivers to areas in another hydrologic basin without a vote of the people or a two thirds vote of the

legislature. If Proposition 8 is not ratified in the referendum qualified by voters on SB 200, it would not become effective (and didn't).

On November 14, a temporary restraining order is granted to extend the draft §2(a)(ii) designation EIS comment period. Order dissolved on December 1.

On December 5, State court rules that it did not have the power to require that Governor Brown withdraw his federal designation request (*County of Del Norte v. Brown*, (Super. Ct. Sacramento County, 1981, No. 292019).

On December 12, the completed final federal §2(a)(ii) designation EIS is filed with the Environmental Protection Agency. (Final Environmental Impact Statement, *Proposed Designation of Five California Rivers in the National Wild and Scenic Rivers System*, U.S.D.I., Heritage Conservation and Recreation Service, December 1980). On December 17, the publication of the final EIS is noticed in the Federal Register. The final EIS found that 1,246 miles of the state-proposed 4,006 miles were eligible for the federal system and included them in the preferred alternative. (The state's wild & scenic Smith River included every minor tributary – essentially the entire watershed; the federal preferred alternative winnowed the eligible river segments to named tributaries important for anadromous fisheries. Nearly all the excluded river miles were, therefore, on the Smith River system. The rest was fraction of a mile: a 3,300 ft. segment below where the state wild and scenic river designation begins, 300 ft. downstream of Iron Gate Dam.)

Riders are attached to a U.S. Senate continuing resolution to fund the federal government to prevent (by various means) Interior Secretary Andrus from successfully approving the Governor's petition. However, shortly before the December 16 adjournment, a "clean" bill, without riders (including a rider for a controversial Congressional pay raise), is adopted instead. In the end, no rider prevents Secretary Andrus from acting. However, the Secretary was under a restraining order from a Federal District Court preventing him from signing the Record of Decision.

1981 - On January 19/20 the Record of Decision is signed, and the rivers in the federal EIS preferred alternative (minus Hardscrabble Creek) are added to the National Wild & Scenic Rivers System as §2(a)(ii) rivers by approval of Interior Secretary Cecil Andrus (FR Vol 46. No. 14, Friday, Jan. 23, 1981, p. 7484). It was a close thing. Late in the day before the Reagan Inaugural, the Ninth Circuit overruled the District Court restraining order preventing Secretary Andrus from approving the Governor's request. At a final White House cabinet gathering, when Secretary Andrus learned that the restraining order had been dissolved, he went back to his office and signed the Record of Decision, which was filed in the Federal Register a few hours before the President Reagan was sworn in and his time as Secretary of the Interior ended.

Plaintiffs resume litigation, this time against the §2(a)(ii) designation. Cases are consolidated in the Northern District Court for California.

1981 - Legislature amends the state act to correct a typographical error. Assemblyman Richard Lehman (D-Fresno) introduces AB 392, a bill to remove the Eel River from the State System. It dies next year? in the Assembly Energy and Natural Resources Committee. Assemblyman Doug Bosco (D-Occidentale) introduces AB-1349, a measure to amend the California Wild & Scenic Rivers Act.

1982 - Proposition 8, passed by the voters in 1980, providing two-thirds majority protections for the then existing state wild & scenic rivers, becomes null and void when voters reject the peripheral canal, Proposition 9 (SB 200), in a statewide referendum on the June ballot in which the two propositions were linked.

In response to the §2(a)(ii) designations and to support the plaintiff's litigation against the designation, the California Legislature makes changes to the state system, eliminating the mandate for management plans, confining the area to be protected as the river and the land immediately adjacent to the river, eliminating classification by the Resources Agency, and classifying rivers then in the system by statute (AB-1349, Bosco). The watershed-level, every-tributary designations for the Smith River system are eliminated, and named major tributaries are substituted (§ 5093.54(c)). Twelve named western Smith River tributaries (Dominie Creek, Rowdy Creek, SF Rowdy Creek, Savoy Creek, Little Mill Creek, Bummer Lake Creek, EF Mill Creek, WB Mill Creek, Rock Creek, Goose Creek, EF Goose Creek, and Mill Creek) are removed from the system, but the dam prohibition is continued (5093.541) (AB-1349, Bosco). Another Smith tributary, Hardscrabble Creek, is also removed from the state system to provide for the mining of strategic metals AB-2214, Bosco). The National Wild & Scenic Rivers Act does not contain provisions for removing §2(a)(ii) wild and scenic rivers from the federal system in the event of state de-designation.

1983 - A District Court overturns Secretary Andrus's decision to accept Governor Jerry Brown's §2(a)(ii) request *Cnty. of Del Norte v. U.S.*, 19 ERC 1138 (N.D.Cal. 1983). A stay of the order is requested by the Environmental Defense Fund, an intervenor, and granted pending appeal to Ninth Circuit Court of Appeals.

1984 - Ninth Circuit reverses District Court decision that overturned the §2(a)(ii) designation (*Cnty of Del Norte v U.S.* 732 F. 2d. 1462 (9th Cir. 1984).

1985 - U.S. Supreme Court denies Writ of Certiari in the "Andrus decision" case (*Cnty. of Del Norte v. U.S.*, 469 U.S. 1189 (1985)). Litigation against designation ends.

1986 - The National Wild & Scenic Rivers Act is amended (in part) to require federal agencies with lands and rivers designated before 1986 (including 2(a)(ii) rivers) to

review boundaries, classifications, and plans within ten years for conformity with the 1986 comprehensive plan requirement in their regular planning process. This amendment does not affect presumption that the principal management responsibility for 2(a)(ii) rivers is the state's, although the federal land manager retains management responsibilities for federal lands. (*Wilderness Society et. al. v. Tyrell et. al.* 918 F.2d 818 (9th Cir. 1999)).

The State Act is amended to provide for studies of potential additions to the system (§ 5093.547) and to designate portions of the East Carson, West Walker, and McCloud Rivers as potential additions to the system. Provisions to permit and authorize DWR to study dams on the Eel River are repealed. (AB-3101, Sher).

1989 - In response to studies and recommendations conducted by the Resources Agency, the East Fork Carson from the Hangman's Bridge crossing of State Route 89 to the Nevada border (§ 5093.54(f)(2)) and the West Fork Walker from its source to the confluence with Rock Creek near Walker (along with a short segment of Leavitt Creek, Leavitt Falls to the Walker River confluence) are added to the state system (§ 5093.54(f)(1)). New dams, diversions, and reservoirs are prohibited on the McCloud River (from Algoma to the confluence with Huckleberry Creek, and 0.25 mile downstream from the McCloud Dam to the McCloud River Bridge – the latter boundary protecting 5,440 feet of the upper McCloud River arm of a full Shasta Reservoir) and Squaw Valley Creek (from the confluence with Cabin Creek to the confluence with the McCloud River) but the McCloud River is not formally designated. The legislation also prohibits agencies of the state (for example, special districts and state agencies) from cooperating with any agency of the federal, state, or local agencies to violate these provisions of law. (§ 5093.542) (AB-1200, Sher).

1990 - Judge Richard Hodge rules in *EDF et. al. v. EBMUD et. al.* East Bay Municipal Utility District is enjoined from diverting lower American River via the Folsom-South Canal under its federal Reclamation contract during times of low flows. The decision is based on the state's Public Trust Doctrine and Wild & Scenic River Act. It is not appealed (*Envtl. Def. Fund v. E. Bay Mun. Util. Dist.*, 5 ERC 1295 (Super. Ct. Alameda County, 1973, No. 425955).

The Smith River system §2(a)(ii) segments upstream of the National Forest boundary are redesignated by the Congress as §3(a) federal rivers. Smith River tributary Hardscrabble Creek, not a §2(a)(ii) river, was added as a §3(a) designated river. The §3(d) wild & scenic river management plan is required to be accomplished within plans for accompanying National Recreation Area (NRA) (S. 2566, P.L. 101-612). The Smith was one of the original state wild & scenic rivers that was subsequently added to the national system as a §2(a)(ii) wild & scenic river. The Smith River and Rowdy Creeks segments outside the exterior boundary of the NRA (the Six Rivers NF) remain §2(a)(ii) rivers.

1992 - Legislature makes changes to state forestry provisions of the State Act.

1993 - The State Act is amended to designate Mill, Deer, Antelope, and Big Chico Creeks as potential additions to the system. State studies are initiated. The obsolete dam moratorium on the Kings River is repealed (AB-653, Sher). (In 1987, large portions of the Kings River upstream of Pine Flat Reservoir had been protected by Congress as national wild & scenic rivers or a special management area (H.R. 799, Lehman, P.L. 100-940)).

1995 - In response to legislatively mandated studies, dams on Deer and Mill creeks are prohibited, but the creeks are not formally designated (§5093.70) The code section containing Mill, Deer, Antelope, and Big Chico Creeks as potential additions to the system is repealed. (AB-1413, Sher).

1999 - The Legislature adds the South Fork Yuba River from Lang Crossing to its confluence with Kentucky Creek below Bridgeport to the state system (§ 5093.54(g)(1)). (SB-496, Sher).

2000 - Sacramento Water Forum Agreement is signed. It established limitations on diversions from the lower American River and Folsom South Canal for various local water purveyors, in part based on Judge Richard Hodge's ruling in *EDF et. al. v. EBMUD et. al.* Some of these limitations on diversions are later incorporated into water rights permits and EIR mitigation responsibilities.

2003 - Short segments of the Albion (one fourth mile above confluence with Deadman Gulch downstream to the ocean) (§ 5093.54(h)) and Gualala (confluence with north and south forks to the ocean) (§ 5093.54(i)) Rivers are added to the state system by the Legislature in response to a scheme to divert large amounts of water for export to Southern California (AB-1168, Berg).

2004 -The Act is amended to require state agencies to protect the free-flowing character and extraordinary values of designated rivers and to clarify that Special Treatment Areas under the Forest Practices Rules are applied to rivers classified as "recreational" or "scenic" as well as those classified as "wild" (SB-904, Chesbro).

2005 - The Legislature adds portions of Cache Creek to the state system (AB-1328, Wolk). The designation on Cache Creek is from one-fourth mile below Cache Creek Dam to Camp Haswell. On the North Fork Cache Creek, the designation extends from the Highway 20 bridge to the confluence with the mainstem (§ 5093.54(j)(1) and § 5093.54(f)(2)).

2009 - The Legislature adopts the American River Parkway Plan, the wild & scenic river management plan for the Lower American River prepared by Sacramento County

(AB-889, Jones). In addition to being a detailed plan, the plan includes a wild & scenic river corridor that includes adjacent land areas (the parkway) as envisioned in the 1972 State Act and redocuments the river's extraordinary values.

2011 - The Freeport Regional Water Facility is completed. An East Bay Municipal Utility District (EBMUD) and Sacramento County diversion project on the Sacramento River below its confluence with the American River. The diversion facility enables EBMUD to take deliveries under its revised Reclamation contract (or other contracts) downstream of the state and federal wild & scenic lower American River. Sacramento County is a partner in the facility. EBMUD takes its first deliveries here in 2014.

2012 - In June, the U.S. House of Representatives passes H.R. 2578 (Denham), a measure, in part, to dedesignate a portion of the Merced national wild and scenic river. The measure was intended to allow the Merced Irrigation District to expand McClure Reservoir onto a protected river reach of the Merced. If enacted into law, it would have been the first time a national wild and scenic river would be de-designated for the purposes of putting a reservoir on it. H.R. 2578 was not taken up by the U.S. Senate.

2014 - Senator Loni Hancock (D-Berkeley) introduces legislation to add portions of the North Fork and main stem Mokelumne River upstream of Pardee Reservoir to the state system. The bill dies in the Assembly Appropriations Committee (SB-1199, Hancock).

In February, the U.S. House of Representatives passes HR 3964 (Valadao), a measure, in part, to dedesignate a portion of the Merced national wild and scenic river. This provision adopted the language of H.R. 934 (McClintock). H.R. 3964 was not taken up by the U.S. Senate.

The U.S. Bureau of Reclamation completes its final EIS for raising Shasta Dam. A preferred alternative is selected, an 18.5 foot dam raise resulting in a 20.5 foot higher reservoir. They concede that "[t]he impact [of the dam-raise alternatives] will be significant" on the free-flowing characteristics of the McCloud River above current gross pool and periodically when the reservoir is above the bridge but below gross pool – and "in conflict with the PRC" (Public Resources Code, California Wild and Scenic Rivers Act chapter) (*SLWRI FEIS 25-40*). There is no record of decision or recommended alternative because of unresolved issues.

2015 - Assemblyman Frank Bigelow (R-O'Neals) introduces, the Legislature amends and passes, and Gov. Jerry Brown signs legislation to add 37 miles of the Upper Mokelumne River from Salt Springs Dam on the North Fork downstream to Pardee Reservoir on the main stem, with gaps where PG&E hydroelectric facilities exist on the river, as potential additions the state system (AB-142, Bigelow) and study their suitability for designation. The bill provides temporary protections for the river that will last until the end of 2021 or until the recommendations from the study are

implemented, whichever occurs first. There was no formal opposition to the bill after it passed its first committee.

2017 – A.B. 975 is introduced by Assemblyperson Laura Friedman (D-Glendale). It is a measure to expand and clarify wild & scenic river extraordinary values and re-include the river corridor concept in the state system. The bill meets wide opposition led by the California Forestry Association, passes the Assembly Natural Resources Committee, but is shelved (moved to the inactive file).

2018 – In January the California Natural Resources Agency publishes a draft wild and scenic river study report for the North Fork of the Mokelumne River. It recommends designation and proposes classification for five river segments from 0.5 miles downstream of Salt Springs Dam to the surcharge pool of Pardee Reservoir. Public hearings are held, and the final study report released in mid-April. The study was required by AB-142 in 2015. With broad support, the recommendations were taken up in a budget trailer bill, SB 854, passed by the Assembly and Senate on June 14 and signed into law on June 27. As traditional, the measure also repeals the provisions of AB 142, the 2015 study bill, so dated statutory language no longer clutters the code.

AB 2975 (Friedman) is introduced. It would include in the California wild and scenic river system any national wild and scenic river not already in the California system if Congress de-designates such river or the Congress or the President by statute or executive order weakens the protections in the National Wild and Scenic Rivers Act enjoyed by these rivers from adverse effects of water resources projects. Amendments on the Assembly floor make the Secretarial designation discretionary, applies the statute only to national wild and scenic rivers designated before January 1, 2018, and sunsets such Secretarial designations and the power to do so on December 31, 2025. Passed out of the Assembly on May 31. Passes Senate Natural Resources on June 26.

In January, under authority of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), the Trump Administration issued a “Secretarial Determination for Commencement of Construction” regarding the Shasta Dam raise and proposed to sign up cost-sharing partners for the Shasta Dam raise (the raise is illegal under provisions of the California Wild and Scenic Rivers Act) and begin construction in 2019. WIIN projects are required to comply with state and federal law. The Administration does not notify Congress that such construction would be out of compliance with these WIIN provisions, although, as noted earlier in this chronology, the U.S. Bureau of Reclamation’s final EIS has determined that the project would be “in conflict” with state law.

In February, the Board of Directors of the Westlands Water District “authorize[d] the General Manager or his designee to submit a request to the Secretary of the Interior for the enlargement of Shasta Dam and Reservoir, indicating a willingness to potentially

share the costs of the enlargement.” On March 9, the San Luis and Delta Mendota Water Authority (SLDMWA) board of directors authorized staff to send a letter to Reclamation stating the following, in part, “the Water Authority is willing to consider becoming a local partner, entering into an MOU and ultimately a formal agreement for the sharing of costs for the Shasta Dam and Reservoir Enlargement.”

In March, House of Representatives Majority Leader Kevin McCarthy attempts to insert a rider in the federal FY 2019 Omnibus Appropriations bill exempting Reclamation from the provisions of the WIIN waiving non-federal cost-sharing requirements for the Shasta Dam raise. California Natural Resources Secretary Laird objects, noting that “the Shasta Dam enlargement project would violate California law due to the adverse impacts that project may have on the McCloud River and its fishery.” There are successful objections from the Democratic Congressional leadership. However, the FY 2019 Omnibus Appropriations bill provides Reclamation \$20 million in pre-construction design funds (and funds the final EIS for the Temperance Flat Dam on the San Joaquin River Gorge, where the Bureau of Land Management has recommended the river be added to the national wild and scenic rivers system).

Also in March, NRDC, Friends of the River, Defenders of Wildlife, Sierra Club California, Golden Gate Salmon Association, the Bay Institute, the Pacific Coast Association of Fishermen’s Associations, and the Institute for Fisheries Research send SLDMWA a letter stating that the “proposed cooperation with the Bureau of Reclamation (‘Reclamation’) regarding the expansion of Shasta Dam violates California law” and requests the Authority “notify Reclamation that SLDMWA will not cooperate or provide any assistance with Bureau’s proposal to raise Shasta Dam.”

In April in a Fresno Bee op. ed., the Authority disputes Secretary Laird and the groups’ conclusion that the dam raise would violate the California Wild and Scenic Rivers Act.