

# CELEBRATING 40 YEARS OF THE WILD & SCENIC RIVERS ACT: AN EVOLUTION OF RIVER PROTECTION STRATEGIES SUE JENNINGS AND ABBY MILLER, GUEST EDITORS

## Celebrating Forty Years of the Wild and Scenic Rivers Act

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TWO THOUSAND EIGHT IS AN IMPORTANT YEAR FOR RIVERS, marking as it does four decades of protection provided by the National Wild and Scenic Rivers Act. Given the importance of rivers, both to individuals and the nation, it is an anniversary worth acknowledging.

Growing up in the North Woods of Michigan, I was surrounded by water. From canoeing on the Au Sable River, to hiking along the Tahquamenon, moving waters have been an important influence in my life. These rivers and streams were a consistent source of exploration and discovery—both an open schoolyard and a warehouse of life lessons, in metaphor—that fed my curiosity, nourished my soul, and, at times, served as a refuge. Though I didn't understand it at the time, the rivers and the woods through which they flowed were an important part of my own personal growth, development, and history. I am convinced that the time I spent listening to the birds along the river banks, or watching the life cycles ebb and flow as the seasons progressed, are experiences that contribute to who I am today. The emotional connection and inspiration I felt then are resurrected each time I hear a

red-wing blackbird buzzing along a marsh, frogs singing in chorus, or the thump of a beaver tail hitting the water. I am reminded that these and other such experiences are my touchstone, a grounding point of reference.

Collectively, just as for me individually, rivers are an important part of America's natural and cultural heritage. They have been sources of physical sustenance and spiritual inspiration, provided an impetus for human settlement, and served as paths for exploration, commerce, and travel. If we are to fully understand America's history, it is imperative to fully understand the contributions that rivers have made to our nation's growth, development, and conservation ethic. In many respects, rivers are analogous to our wilderness areas, which, as Roderick Nash (Lawliss and Davis 2004) observes, are our historical documents—

our libraries and a living repository of history and knowledge that cannot be obtained without direct, firsthand experiences. They are integral to who we are as a nation. To allow our waterways to deteriorate is, to paraphrase Nash, equivalent to tearing pages from our most important historical documents.

For four decades, the National Wild and Scenic Rivers Act has protected our nation's most spectacular rivers and serves as an important tool for balancing development and preservation. From the Allagash, Delaware, and Obed, to the Missouri, Merced, Snake, and Trinity, the stories of our nation's signature rivers are preserved by this pioneering law. Championed by Senator Frank Church of Idaho, and signed into law by President Lyndon B. Johnson on October 2, 1968, the act declares that

... certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

Notable for safeguarding the special character of certain rivers, the act purposefully strives to balance development with permanent protection for the country's outstanding free-flowing rivers and their associated values. In doing so, it establishes a visionary template for a collaborative approach to river protection involving federal, state, and local partners.

The act emerged following nearly two decades of bitter controversy over the pro-

posed construction of hydroelectric dams within Hells Canyon along the Snake River. The dispute propelled Senator Church into an 18-year battle that would define his career (Ewert 2001). The drama at Hells Canyon involved one of the largest accidental fish kills in our nation's history, along with an unusual lawsuit where the Department of the Interior sued the Federal Power Commission (asserting a proposed project would have adverse affects on fish and wildlife resources), and resulted in a historic Supreme Court decision where the definition of the public good was expanded to include environmental values (Ashworth 1977; Ewert 2001). During this period, similar controversies were playing out in the West and across the nation. Likewise, increasing levels of education, personal income, and awareness helped spawn a greater inter-

Obed Wild and Scenic River, Tennessee. Photo courtesy of NPS.



est in environmental issues. The nation's environmental conscience was re-emerging into a modern environmental movement, which challenged the premise of sustainable hydropower. The stars could not have aligned more perfectly. The time was ripe for a new direction in managing our nation's river resources.

As we approach the 40th anniversary of the act, it is an appropriate time to reflect on where we have been and where we are today, and to renew our commitment to river protection beyond the next 40 years.

### **The Snake River and the Hells Canyon controversy**

Along the northern border between Oregon and Idaho, the Snake River has carved out sheer vertical cliffs through a rugged landscape, making a stunning gorge deeper than the Grand Canyon. Desolate and seemingly impenetrable, the walls of Hells Canyon rise up an astounding 7,900 feet, and, in some places, are less than five miles apart. The canyon features dramatic changes in vegetation, supports a variety of wildlife, and offers stunning vistas of Idaho and Oregon from the rim. In addition to a diverse array of plants and animals, the Snake was home to extraordinary salmon runs—at one time it produced nearly 40% of all the salmon and steelhead in the Columbia River Basin (Ewert 2001).

The canyon has an equally rich cultural history. Home to Native Americans and the subject of Nez Perce legend, the gorge is a storehouse of prehistoric artifacts, petroglyphs, and other important archeological relics. In more recent times, several explorers came through the area in search of transportation routes. Captain Meriwether Lewis, as part of the Lewis and Clark expedition, described the area as a “high broken moun-

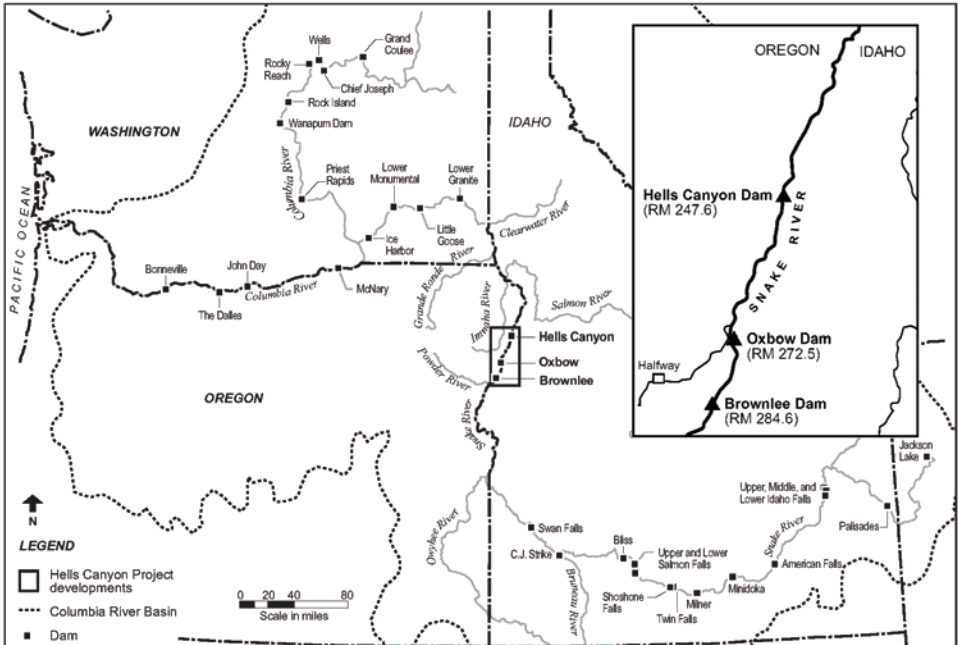
tainous country” where the river banks were “in most places solid and perpendicular rocks, which rise to a great high [sic]” (Lewis et al. 2002). Further attesting to the canyon's difficult landscape, members of this historic expedition were convinced by a Shoshone chief that the river and mountains were inaccessible (Ashworth 1977). Later, in the 1830s, after arriving at Hells Canyon as part of an expedition to the American West, U.S. Army Captain Benjamin Bonneville observed: “Nothing we had ever gazed upon in any other region could for a moment compare in wild majesty and impressive sternness with the series of scenes which here at every turn astonished our senses and filled us with awe and delight” (Ewert 2001). Unsettled, rugged, and remote, Bonneville and other explorers were forced to abandon the gorge time and again. It wasn't until gold was discovered in Idaho in the 1860s that a renewed interest in accessing the canyon emerged. Homesteaders, prospectors, and ranchers came to establish mining towns and small communities. With the conclusion of the Nez Perce War of 1877, rapid development followed. It was not long after that plans were in place to harness the immense hydroelectric potential of the Snake.

By the late 1940s and early 1950s, federal dam construction was sweeping the nation. Large rivers were dammed, and eventually this remote gorge, with its fast-flowing waters, was seriously considered by the federal government for its development potential. During this period, the U.S. Army Corps of Engineers and other federal agencies had completed feasibility studies in the Columbia River basin, which included the Middle Snake River (Ashworth 1977). Two federal dams, one at the Hells Canyon site and another downstream near

the confluence of the Salmon River, were proposed. In 1952, yet another proposal emerged that advocated building a massive federal dam at Hells Canyon Creek. This proposal would have been six feet shy of the Hoover Dam in height and would have maintained a reservoir storage capacity of 4.4 million acre-feet of water, effectively stagnating 93 miles of river behind the dam (Ewert 2001). Likewise, Idaho Power, a private company, was securing private ownership claims within Hells Canyon. By 1953, permit hearings were underway for a series of three privately owned dams within the gorge: the Brownlee, the Oxbow, and the Hells Canyon. The controversy was beginning to boil. In the early 1950s, the concern was not *should* the dams be built; rather, the issue pertained to ownership. Should the dams and their hydroelectric generating potential be publicly or privately owned?

Church, at the time of his election to the Senate in 1956, supported federal dam development. He felt strongly that the federal government had the best long-term capability for both protecting the region's water rights and ensuring economic growth. Church asserted that federally funded hydroelectric projects would save taxpayer dollars (Ewert 2001). Others supported privately owned and operated dams. However, by this time, preservation of salmon and steelhead runs for their economic and cultural importance was gaining support, as was protecting the canyon's scenic values and associated public recreational opportunities. The debate over how to best develop hydropower for economic growth, irrigation, and other needs soon intensified as the environmental movement grew. Church struggled with balancing his own beliefs, which favored development as an economic

Location of Hells Canyon, Oxbow, and Brownlee dams. Source: Federal Energy Regulatory Commission.



growth stimulus, with those of a growing environmental movement within his own state and across the nation.

### **The Oxbow incident**

Following a bitter battle between federal and private interests, Idaho Power prevailed, and construction for the Hells Canyon projects began in 1955. The Brownlee Dam was completed in 1958, the Oxbow Dam in 1961, and the Hells Canyon Dam in 1967. However, construction was not completed without incident. As part of the permit condition for licensing, Idaho Power was required to ensure protection of the anadromous fishery. Idaho Power's plan was to transport salmon around the 205-foot-high Oxbow Dam and release them into the river as a means to maintain viable runs during construction. Unfortunately, in 1958, the attempt failed and decimated the entire fall Chinook salmon and steelhead run. This debacle, which included trap failures, isolation of fish in an unaerated pool downstream of the dam, and poorly organized logistics, led to, according to one historian, "one of the greatest anadromous fish disasters in history" (Ewert 2001). The U.S. Fish and Wildlife Service was called in to survey the damage, and according one report "approximately 4,000 adult Chinook salmon and steelhead died on site" and "50 percent of the 14,000 salmon which were collected and transported around the project did not survive to spawn. The success of the 3,700 steelhead trout which were passed remains to be determined. In addition to the environmental catastrophe, the monetary loss from their failure to spawn was literally incalculable" (Ewert 2001).

The Oxbow tragedy focused national attention on the limitations of dam technol-

ogy. The controversy surrounding the Brownlee, Oxbow, and Hells Canyon dams had a significant impact on other dam construction. Elsewhere across the country the public was witnessing the unforeseen effects of hydropower dams in other cherished locales—including the loss of recreational whitewater, important floodplain habitat, and important Native American sites. As the issue made its way through the courts, public sentiment in support of the environment strengthened. Environmental quality was rapidly becoming an integral part of America's perception of "the good life" and commensurate to a high standard of living (Ewert 2001). By the 1960s, the debate between the environmental costs and economic benefits of hydropower was raging. Litigation continued to follow on the heels of licensing actions. In 1964, the proposed High Mountain Sheep Dam on the Snake River (with both a private and publicly funded option) was litigated. In a highly unusual move, the Department of the Interior sued the Federal Power Commission in an effort to protect salmon and steelhead from the negative impacts associated with impounding the Snake. The case made it to the Supreme Court, where Justice William O. Douglas, writing for the majority, interpreted the Federal Power Act to require the consideration of alternatives to federal development, including no development. Douglas wrote: "The test is whether the project will be in the public interest. And that determination can be made only after an exploration of all issues . . . including future power demand and supply, alternative sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife."



Aniakchak Wild and Scenic River, Alaska. Photo courtesy of Troy Hamon/NPS.

(Ashworth 1977). The Supreme Court required the Federal Power Commission to reconsider the application.

By the mid-1960s, there was sufficient public concern over the inexorable loss of free-flowing rivers to force change. Church, who witnessed the environmental losses associated with dams, began to share this concern. He wisely recognized that the mounting public sentiment was creating “a groundswell of public concern for the fate of these majestic streams, many of them threatened by dams which would forever destroy their beauty and ecology.” Church warned that “if we fail to give these rivers, which are assets of unique and incomparable value, statutory protection now, while there is still time, we shall have only ourselves to blame later, when time has run out.” The 20-year debate over the development or preservation of the 110-mile free-flowing stretch of the Snake in Hells Canyon changed Frank Church (Ewert 2001). Clearly, his awareness and appreciation of the role of dams in the larger environmental picture deepened, as did his commitment to

balancing development and preservation and his skills in seeking reasonable solutions through consensus.

### **Passage of the Wild and Scenic Rivers Act**

In March 1965, Church introduced the National Wild Rivers Bill, which prohibited dams on certain select rivers. Fully supported by the Johnson administration, this landmark legislation, designed to preserve forever in a free-flowing condition some of the nation’s most precious rivers, was signed into law on October 2, 1968, as the National Wild and Scenic Rivers Act. Officially known as Public Law 90-542, Section 1(b) of the act expresses congressional policy for the rivers of the United States:

The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-

flowing condition to protect the water quality of such rivers and to fulfill other vital conservation purposes.

Today, the act serves as the nation's primary river conservation authority. By establishing a national wild and scenic rivers system, the act established a policy that balances the federal government's role in damming and channelizing rivers for power, flood control, and agricultural purposes with protection of the free-flowing character and associated values of selected rivers for present and future generations.

### **Establishing a system of protected rivers: How the act protects rivers**

The legislation outlines how rivers become part of the national system, how they are managed, what kinds of developments can occur within a river's corridor, and how the federal government and its partners can cooperatively share stewardship responsibilities (National Park Service 2007). The Bureau of Land Management (BLM), National Park Service (NPS), U.S. Fish and Wildlife Service (USFWS) and the U.S. Forest Service (USFS) are the four federal agencies responsible for administering, regulating, and managing designated rivers in the national system. In order to qualify for federal designation, a river or river segment must be in a free-flowing condition, have good water quality, and be deemed to have one or more "outstandingly remarkable" scenic, recreational, geologic, hydrologic, fish, wildlife, ecological, historic/cultural, or other similar values. The act requires the establishment of a boundary, classification of river segments, and the development of comprehensive river management plan.

Segments may be added by Congress,

or a state may apply—through its governor—to the secretary of the interior for designation under section 2(a)(ii) of the Act. For state-administered rivers in the system, the state bears the primary responsibility for management through state and local statutes and regulations. Where no federal lands adjoin state-administered segments, the NPS has oversight responsibilities, and, on behalf of the secretary of the interior, is responsible for evaluating impacts of certain projects under section 7 of the act.

Once included, every river in the national system is to be administered in a manner that will not only protect, but *enhance* the values that made it eligible for inclusion; namely, the river's free-flowing condition, its remarkable values, and water quality. This is often referred to as the "anti-degradation, affirmative protection" clause. The act is nearly unique in requiring the improvement of a protected natural resource's integrity, function, or condition. Importantly, the act establishes federal water rights. The act does not specify the quantity of the right; the amount of the federal right varies from river to river depending on the river's flows, its unappropriated flows at the time of designation, and the values for which it is being protected (Baldwin 2001).

Recognizing the importance of a watershed approach, Congress envisioned river protection to be accomplished by mutual cooperation on the part of federal, state, local, and private partners. As such, federal agencies may assist, advise, and cooperate with states in the designation and management of rivers, and may seek opportunities for sharing management responsibilities with states, political subdivisions, landowners, private organizations, or other partners.



Niobrara National Scenic River, Nebraska. Photo courtesy of NPS.

Congress also recognized that river protection does not always require public purchase and ownership of land. In some instances, river values can be protected by methods other than land acquisition (local zoning, restrictions on development on floodplains or other sites where development is incompatible, or donations of development rights to land trusts). Most wild and scenic rivers are managed to accommodate and reflect local community and landowner interests.

Importantly, section 7 of the act provides the four administering agencies with a powerful regulatory tool. Often called the heart of river protection, section 7 serves as a prohibition or limitation on certain federally assisted water resources projects. The intent is to preserve designated rivers, as

well as congressionally authorized study rivers, in their free-flowing condition and to protect them from the harmful effects of dams and other types of water resources projects that involve construction within the river's bed and banks. Additionally, section 7 prohibits federal agencies from approving water resources projects that are proposed for locations above, below, or on a tributary of a designated (or study) river (National Park Service 2007). As such, river-administering federal agencies serve in a regulatory capacity during the permit review process by scientifically evaluating proposed federally assisted water resources projects that might affect designated or study rivers or their tributaries. Harmful projects can be denied. Because of its inherent veto authority, section 7 is an effective



action-forcing tool—early coordination with state, local, and private entities within the watershed is thus essential for project implementation to occur. Properly planned, most project proposals can be designed in a manner that avoids or minimizes impacts, yet is compatible with the goals of the act.

### **Celebrating decades of river protection**

Since its passage in 1968, the act has served as a visionary template for a nationwide system of federal, state, and locally protected rivers providing a wide range of benefits to the American public. In its entirety, the act is considered one of the most important pieces of conservation law we have. In contemplating this legislation to protect our nation's rivers, Representative William Anderson of Tennessee rightly

observed, “And I count myself more fortunate with each passing season to have recourse to these quiet, tree-strewn, untrimmed acres by the water. I would think it a sad commentary on the quality of American life if . . . we could not secure for our generation and those to come the existence of . . . a substantial remnant of a once great endowment of wild and scenic rivers.” Indeed, we have much to celebrate.

Over the last 40 years, a great deal has transpired. In 1968, there were eight inaugural components in the national wild and scenic rivers system. The “original eight” comprised the Middle Fork of the Clearwater and the Middle Fork of the Salmon in Idaho, the Eleven Point in Missouri, the Middle Fork of the Feather in California, the Rio Grande in New Mexico, the Rogue in

Missouri National Recreational River, Nebraska/South Dakota. Photo courtesy of NPS.



Oregon, the St. Croix in Minnesota and Wisconsin, and the Wolf in Wisconsin. Since then, an astounding 11,290 miles within 165 rivers have been included in the national system. Significant fisheries, riparian corridors, and recreational opportunities are among the outstanding values protected on rivers such as the Skagit, Trinity, and Noatak. The natural beauty of New England is reflected in the Allagash, Farmington, and Westfield rivers. The clean, pristine waters of the Big Darby, Namekagon, and St. Croix serve as important refugia for federally listed species. History abounds where traces of prehistoric communities are protected along the John Day, Snake, and Rio Grande. Appalachia's rich cultural history comes alive along the Bluestone and Gully. As a result of this legislation, rivers that have played a fundamental role in shaping our nation's history, such as the Missouri and Merced, are preserved forever.

Importantly, the formation of the Interagency Wild and Scenic Rivers Coordinating Council in 1995 has greatly improved interagency coordination among the four federal agencies charged with administering the act. A model for interagency cooperation, the work of the council has resulted in the production of technical papers, guidance documents, and training curricula that assist agency staff to fulfill the requirements of the act. Today, the council continues to address a broad range of emerging issues, provides technical expertise to river managers, and serves as a vital resource to local governments and non-profit organizations on the intricacies of the act.

### **Charting a new course**

Yet, with the passage of time, it has become clear that our management ap-

proach needs to be refurbished in order to make it relevant and sustainable. Certainly, taking full advantage of all the act's provisions has proven to be difficult. The act has complex requirements influencing the management of resources and resource attributes as varied as water quantity and quality, minerals, agriculture, fisheries, archeological resources, and varied forms of recreation. The range of involved jurisdictions and ownership further compounds the complexities of the act. Consequently, effective implementation of the act has been a challenge to agency personnel with shrinking budgets and staff, and can be confusing to the public. Key issues demand attention relating to regulatory responsibilities, resource stewardship, and river policy.

In the face of global climate change, droughts and flooding, accelerated wetland losses, and water quality and quantity issues are becoming grave. Already, water wars, once heard of only in the western states, have come to the heartland along the Niobrara and Missouri rivers, and are brewing in the East. As demand increases for water for agricultural, hydropower, and energy development, the pressures on our nation's river resources continue to intensify. The rapid proliferation of energy corridors, wind turbines, cell towers, and other developments within river watersheds have left agencies and partners unable to respond. Our nation's wild and scenic rivers may very well become important repositories or refugia for fish and other aquatic resources, and riparian habitats along rivers could provide important corridors for movement of species. Already, the largest group of endangered species in the United States—mussels, fish, and crayfish—depends on a habitat of clean, abundant water. These species' continued decline could well be a harbinger

of intensifying conflicts associated with water management if we fail to respond.

Forty years after the passage of the act, the time is once again ripe to bring river stewardship into the forefront of the national consciousness—a time to re-evaluate current management policy and approaches, and to chart a bold new course for the next 40 years. First and foremost, we must encourage efforts that promote our rivers as valuable assets, fundamental to our nation's health, safety, and way of life. This goes beyond balancing today's development trends and resource pressures with preservation goals; our challenge is to integrate river protection and consideration of environmental services into our economic equation.

Second, we need to re-invigorate our constituents so they become tomorrow's river champions. Our efforts need to focus on educating, inspiring, cultivating, and motivating a generation of youngsters (and adults) so that they fully understand the value of rivers. We need to cultivate advocates who view rivers from an ecological perspective, who understand their role in our nation's history, and who value rivers as a source of physical sustenance and spiritual inspiration.

In his introduction to *A Sand County Almanac*, Aldo Leopold wrote that "conservation is getting nowhere because it is incompatible with our Abrahamic concept of land. We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.... That 'land is a community' is the basic concept of ecology, but that 'land is to be loved and respected' is an extension of ethics." We need to revive our land, and water, ethic.

Third, our management approaches should focus on enhancements—how to restore systems and undo the mistakes of the past. Such a focus could take advantage of this generation's incredible energy and enthusiasm for new technologies and innovation and direct it toward developing innovative river and watershed restoration technologies.

Finally, we need to work towards building environmental coalitions with non-traditional partners, including business and industry. There is an incredible opportunity in this arena to develop an economy that values healthy resources while diversifying our portfolio of supporters.

As we celebrate 40 years of the Wild and Scenic Rivers Act, I invite you to answer the call of the river. Jump in and engage in the ongoing conversations with river scientists and historians, resource managers and policy analysts, educators and interpreters. Reach out to non-traditional partners and seek innovative ways to restore our watersheds. Look for opportunities within the local community and beyond to institutionalize environmental standards and ensure these standards and core values are not abdicated. Insist on an educational system that produces environmentally literate students—it is imperative that today's youth are given an opportunity to get out to the river's edge, to learn about streams in their own back yard, and to understand their watershed. Only then will they begin to connect rivers to their own history and their personal lives, to associate rivers as an essential link to their future, and thus restore culture. This is the type of land ethic that leads the way to sustainable co-existence. Like the vocal groups that propelled Frank Church into being an advocate for rivers, and others who were instrumental in

our landmark environmental protection laws, without an educated, inspired, and vocal constituency to advance an idea, we

could very well lose what so many have worked so hard to achieve.

## References

- Ashworth, William. 1977. Hells Canyon: Man, land, and history in the deepest gorge on earth. *American Heritage* (April). Online at [www.americanheritage.com/articles/magazine/ah/1977/3/1977\\_3\\_12\\_print.shtml](http://www.americanheritage.com/articles/magazine/ah/1977/3/1977_3_12_print.shtml).
- Baldwin, Pamela. 2001. *The Wild and Scenic Rivers Act and Federal Water Rights*. Congressional Research Service Report no. RL30809. 18 January. Online at [www.ncseonline.org/NLE/CRSreports/Public/pub-16.cfm](http://www.ncseonline.org/NLE/CRSreports/Public/pub-16.cfm).
- Ewert, Sara E. Dant. 2001. Evolution of an environmentalist: Senator Frank Church and the Hells Canyon controversy. *Montana* 51 (spring), 36–51.
- Lawliss, Lucy, and Tim Davis. 2004. Wilderness state of mind: An interview with Roderick Nash. *Common Ground* 9:3 (fall), 27–35. [Washington, D.C.: National Park Service.]
- Lewis, Meriwether, William Clark, and Members of the Corps of Discovery. 2002. Journal entry of August 14, 1805. In *The Journals of the Lewis and Clark Expedition*. Gary E. Moulton, ed. Lincoln: University of Nebraska Press. Online at <http://lewisandclarkjournals.unl.edu/journals.php?id=1805-08-14>.
- National Park Service. 2007. *Final Report: Wild and Scenic Rivers—Charting the Course. Navigating The Next 40 Years of the Wild and Scenic Rivers Act—Recommendations of the Wild and Scenic Rivers Task Force to the National Leadership Council*. Internal agency report. Washington, D.C.: National Park Service.
- Snyder, Gary. 1995. *A Place in Space: Ethics, Aesthetics, and Watersheds*. Washington, D.C.: Counterpoint.
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