

2(a)(ii)-Designated National Wild and Scenic Rivers: The Confluence of Local Management and Federal Protection

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THIS PAPER EXAMINES A SPECIAL CLASS OF WILD AND SCENIC RIVERS: those designated under section 2(a)(ii) of the Wild and Scenic Rivers Act. Using a case study, it highlights the benefits of this type of designation and also the challenges that such rivers face.

Unlike other national conservation programs, such as the national wilderness system or national trails system, rivers designated under the Wild and Scenic Rivers Act (Act)—through provisions in section 2(a)(ii)—allows the states to obtain many of the benefits of the act, including protection from the harmful effects of federal water resource projects. This section was the result of a considerable evolution in thinking by Congress: it allows the governor of a state both to apply to the secretary of the interior for national designation and to serve as the principal manager of the river. With this provision, Congress expressed a clear intent to encourage the states to share in the responsibility of preserving selected rivers of the nation. In fact, the House report expressed the hope that “all the states will become active partners in the development of the national Scenic Rivers System” (Haas 2007).

Qualifying 2(a)(ii) rivers are included in the national system following an eligibility study that comes at the request of a state governor. They are managed by the state without cost to the federal government, although technical assistance is permissible and encouraged. The 2(a)(ii) rivers must be managed to protect and enhance their free-flowing condition, water quality, and outstandingly remarkable values. The state or local administering agency is responsible for establishing boundaries, classifying the river, and protecting water quality and river values. Section 2(a)(ii) is ideally suited to rivers where there is a strong tradition of state or local management and protection.

To date, 19 river segments, representing over 1,800 miles of protected river (NPS 2007), have been designated through section 2(a)(ii) of the Wild and Scenic Rivers Act. Those rivers offer a set of advantages and challenges that distinguish them from their congressionally designated cousins. Benefits include the possibility of a much shortened designation time-frame and greater ease of designation where there are concerns about federal management; contributions to community pride, involvement, and economies; and increased river protection owing to multiple levels of involvement. Challenges include those faced by other rivers, such as development

impacts, as well as shifting state priorities and funding shortfalls. The case study below will look at these in detail.

Why 2(a)(ii)? A case study of Ohio's Little Miami River

If rivers designated under section 2(a)(ii) receive the same protection as congressionally designated rivers but require funding from state and local agencies, what makes the 2(a)(ii) designation more suitable or appealing for a particular river than congressional designation and its accompanying federal funding? While not representative of all 2(a)(ii) rivers in the national wild and scenic rivers system, the generally successful outcomes of Ohio's wild and scenic rivers program reveal the advantages of designation through section 2(a)(ii).

The mainstem of southern Ohio's Little Miami River, the first in the state to become a national wild and scenic river, runs 105 miles through a 1.1-million-acre watershed before joining the Ohio River (Figures 1 and 2). Though the watershed is primarily made up of agricultural land, it also includes developing regions east of the Cincinnati–Dayton metropolitan area. Three million people live within thirty minutes of the river, and the Little Miami aquifer is tapped by twelve communities along its mainstem.

Benefits to the states and local communities. Importantly, 2(a)(ii) rivers offer unique benefits to the state(s) and communities through which they run. First, there are benefits related to the designation process itself. One of these benefits is its brevity: designa-

tion by the secretary of the interior may take less time than congressional action (Haas 2007). Thus, if a state desires to include a river in the national system within a particular period, the 2(a)(ii) designation process may appeal most. If there is a threat, such as a dam or otherwise, a state can act quickly to ensure protection. Moreover, once a river enters the national system under section 2(a)(ii), the local and state agencies shouldering the management responsibilities often have access to federal technical assistance for their river protection programs. For example, on the Little Miami, federal resource agencies such as the U.S. Fish and Wildlife Service or National Park Service have provided important technical assistance in streambank stabilization techniques and the development of a comprehensive river management plan.

While there has been little use of eminent domain for congressionally authorized wild and scenic rivers, in some cases there are nonetheless fears of federal acquisition. Since the federal government is specifically prohibited from expending funds on section 2(a)(ii) rivers, using this type of designation can be easier where such fears exist.

The growth of state-level river management and protection programs is an important benefit to states with 2(a)(ii) rivers. For

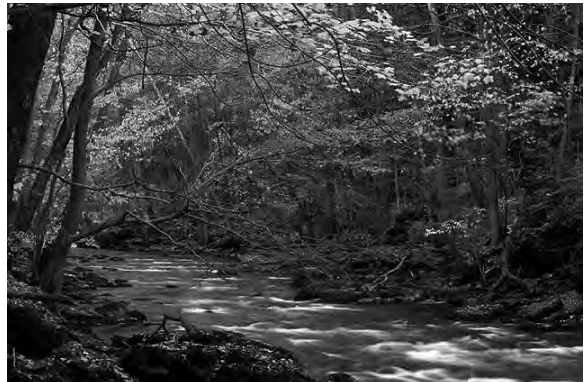


Figure 1. The Little Miami River. Photo courtesy of Ronald Levi.



Figure 2. Railroad bridge over the Little Miami. Photo courtesy of Little Miami, Inc.

example, following the passage of the act in 1968, Ohio modeled its existing state-level scenic rivers program after the national program. Because of that program, Ohio now protects sections of 13 rivers and their tributaries—754 stream miles in total at the state level (Gable 2008). Of those 13 rivers, three have met the criteria for inclusion in the national system pursuant to section 2(a)(ii): the Little Miami River, the Little Beaver Creek complex, and the Big and Little Darby creeks. Though those rivers were first protected by the provisions of Ohio's state-level scenic rivers program, local agencies and groups petitioned the governor to seek secretarial designation.

Ohio rivers designated under section 2(a)(ii) have contributed significantly to local communities' identity, tourism, and economic growth, primarily because of the attention that comes from a national wild and scenic river designation. When a 2(a)(ii) river is designated, one of the immediate benefits is a surge of local pride from the people who worked to protect the river to the level requisite for designation. Even citizens who did not participate actively in efforts toward a river's national designation have a sense of ownership when a local resource is recognized with a national title. That pride often fosters appreciation,

which results in a shift of perspective: people come to see the river as an amenity worth protecting (Gable 2008). When more people are aware of and experience the positive attributes of a river, they become likely to see it as a local amenity. They grow proud of the river, they appreciate it, and they want to protect it.

Likewise, when viewed as a community amenity, tourism and river-based recreation opportunities expand locally. Fishing, canoeing, hiking, and other water-dependent activities offer undeniable benefits to the local economy. A 1999 study of the Little Miami Bike Trail, for example, proved that visitors spent an average of over \$13 per visit to the trail on food, beverages, and auto expenses (OKI 1999:31). Recreation opportunities are beneficial economically, but they also make the river accessible to local school groups, citizens, and out-of-state visitors. Again, Ohio's Little Miami River provides an example: canoeing draws about 100,000 people each year (Partee 2008). That is 100,000 customers for the river's six canoe liveries and 100,000 people who annually benefit from the protection afforded the Little Miami as a result of its 2(a)(ii) wild and scenic river designation. According to Little Miami, Inc. (LMI), a private, non-profit land trust, 500,000 people recreate in some way along the Little Miami every year.

State-level protections usually grow from grassroots, community protection efforts. Consequently, 2(a)(ii) designation often requires attention at two legislative and geographical levels—the local and the state—before it gains protection through the federal act. Such multiple levels offer numerous opportunities for citizens living within the watershed to maximize river protection (Haas 2007) The local river man-

agement model detailed in section 2(a)(ii) fosters participation from the citizens whose work helped establish state protection in the first place. In some cases, those residents organize local non-governmental organizations, citizen groups, and other non-profit organizations that offer supplementary funds and volunteer time in the name of river protection. Though such local organizations have no legal or decision-making authority over the rivers, they may cooperate with state and local management agencies in restoration and fundraising efforts. Perhaps most significantly, they represent a means for local people to participate and work in concert with the efforts of state and local management efforts.

LMI provides an excellent example of such an organization. Founded in 1967, LMI was the key local advocate for the Little Miami's inclusion in the national wild and scenic river system and Ohio's state scenic river program. Over the years, LMI has exerted considerable influence in the watershed of the river. The organization also played a lead role in the passage of the Little Miami Forest Preserve law in Ohio. Funded by the support of over 500 member families and individuals, as well as foundation grants, LMI has co-funded a study of endangered mussels in the Little Miami watershed and created the Little Miami Scenic River and Trail Center in Loveland, Ohio—a site that educated close to 15,000 visitors in 2007, its first full year of operation.

Eric Partee, LMI's executive director, calls the organization a "land trust plus." It acts as a traditional land trust by securing conservation easements and acquiring lands, but it also pays attention to details of water quality and uses persuasion to

address local issues relating to zoning, taxation, and development. For example, LMI successfully presented a case before the Ohio Supreme Court for the establishment of property tax exemption for conservation lands in Ohio. As the pressures of development threaten riparian zones, maintaining water quality and a viable habitat corridor are principal goals of LMI—especially important because the Little Miami supports habitat for six state and/or federally endangered and threatened aquatic species (Partee 2008).

Though LMI has no legal authority over the river, the organization seeks mutual benefiting opportunities, and operates with what Partee describes as a "cordial, but firm" position in its response to local issues. That means working in a close partnership with local officials and zoning and planning staff to encourage developers to implement sustainable practices that benefit both the river and development goals. Partee observes of LMI's approach, "We've gotten enough inroads with developers and the development community that they have at least some degree of comfort to call us" before they plan projects that may seriously impact the river (Partee 2008).

More than just attracting people for river-based recreation opportunities, state-supported 2(a)(ii) river designations have a positive effect on the community by engaging local municipalities and zoning commissions. In some cases, the Ohio Department of Natural Resources (ODNR) provides matching dollars to park districts or conservation projects that support state-level conservation goals on 2(a)(ii) rivers. In contrast, the federal management and administration of congressionally designated rivers often limits river managers' influ-

ence on local zoning. On 2(a)(ii) rivers in Ohio, these cooperative conservation projects, most often funded by grants received by the state, benefit all parties because they require limited investment from the state and are implemented through a local partner (Gable 2008).

Benefits to the river. The example of the Little Miami embodies one of the most important set of advantages associated with 2(a)(ii) designation: a river gains protection. Because the 2(a)(ii) designation process results in a river having both state and federal legislative protections, there is greater opportunity to focus attention and resources on the river. And, as Eric Partee of LMI believes, “it’s always best to layer the protection. The more layers, the better.” He also points out that the dual requirements of both state- and federal-level protection criteria act as a system of checks and balances for each other, ensuring that designated rivers receive the full attention they deserve from both state and federal agencies (Partee 2008) Similarly, Bob Gable, scenic rivers program manager at ODNR, observes that because of this dynamic, national designation of Ohio’s rivers was a natural outgrowth of local action. Under 2(a)(ii), without the protection of the state first, a river could not be protected as a national wild and scenic river (Gable 2008).

In the case of the Little Miami River, local involvement led to expansion of the portion of the river and its adjacent lands being protected. Though the upper Little Miami was designated in 1973, the lower reaches did not meet eligibility requirements because of water quality issues and the magnitude of visual intrusions along the corridor. This attracted attention and sparked the communities along the river to

organize. Following a tremendous grassroots effort at the local, regional, and state levels, citizens worked to clean up the lower section, remove abandoned buildings, and establish local ordinances to protect the corridor. In 1980, the state re-petitioned the secretary of the interior, and, following further review, the lower Little Miami River was designated. This has been the first and only instance when a segment was first denied inclusion into the system and later deemed eligible.

ODNR cooperates with riverfront property owners to help them with riparian land management issues and forest restoration (Gable 2008). LMI, in turn, has worked to secure riparian protection with acquisitions and conservation easements. Since the upper river’s designation as a national wild and scenic river, LMI has acquired more than fifty nature preserves along the Little Miami, which amount to almost 2,000 acres of riparian forest land. Today, nearly half of forests along the banks of the Little Miami are protected through land ownership or conservation easements held by LMI and other conservation entities; nearly a quarter of the riparian forests remaining are protected by local zoning ordinances.

Benefits to the nation. Finally, section 2(a)(ii) provides an additional pathway for eligible rivers that would not otherwise be included in the national system. First, congressional action can be difficult to obtain, which means secretarial designation more quickly. Also, as noted above, the 2(a)(ii) local management model often appeals when there is local concern over federal regulation. By providing an alternative in instances when congressional designation may not be suitable, 2(a)(ii) rivers thereby

boost the number of protected river miles—and all at no or very little expense to the federal government (Haas 2007).

Challenges for 2(a)(ii) rivers

Though 2(a)(ii) river success stories serve as useful models for river management, these rivers nevertheless are facing challenges. As with so many rivers across the country, watershed development around 2(a)(ii) rivers is a principal concern. Developments such as housing projects, road construction, and commercial uses threaten rivers by increasing the number of impermeable surfaces in a watershed, increasing the temperature and volume of runoff, contributing more pollution to the water, and increasing turbidity. While these issues are not unique to 2(a)(ii) rivers, they can overwhelm state programs and staff that are already taking on additional responsibilities.

A second challenge is the public's tendency to misunderstand state and federal authority over private riverfront property rights. Though the act specifically prohibits the federal government from condemning land adjacent to a 2(a)(ii) river, some landowners express concern over potential federal condemnation. In those instances, state management agencies must confront the misconception that a federal designation removes or limits private property rights. While this may make 2(a)(ii) designation somewhat less difficult than other national wild and scenic river designation, it nonetheless poses a challenge. In Ohio, the only regulatory authority held by the state is over publicly funded projects within a 1,000-foot corridor of the 2(a)(ii) river. A state must devote significant time and energy at all levels to make the extent and limits

of its authority clear (Gable 2008).

Additionally, due to their federal protection and local management, 2(a)(ii) rivers may lead to uncertainty about the distribution of funding and management responsibilities. This requires a substantial, long-term commitment on the part of the state to ensure the river is managed to the federal standard. However, as state and local agencies are reorganized and budgets are modified under changing political climates, the commitment becomes blurred with competing state priorities, and confusion may rise about who is responsible for what management actions and what costs (Haas 2007).

LMI'S Eric Partee points out that state budgets cannot always commit the resources needed to protect a river, which is why local non-governmental cooperation is so beneficial on 2(a)(ii) rivers (Partee 2008). In the case of the Little Miami River, LMI's efforts and resources have helped supplement funds allocated from the state.

A related challenge for 2(a)(ii) rivers emerges as a result of changing times. When a river is first designated as part of the national system, the Wild and Scenic Rivers Act requires that a comprehensive river management plan (CRMP) be developed for it. The CRMP, which must be completed within three full fiscal years of designation, should clearly articulate the river's outstandingly remarkable values and identify management goals, requirements, and responsibilities. The CRMP should also provide a management framework for when, where, and what types of development can occur; express guidelines for the intensity of development; and establish zoning recommendations. Moreover, the document should address how conflicts

will be resolved, provide strategies to reach long-term goals, and establish a monitoring program. While CRMPs are critical to river management, the act does not include a provision that they be updated; as a result, management strategies may not receive the review they deserve when changes occur in the federal, state, and local political climates and in the watersheds of the rivers themselves (Jennings 2008).

Strategies for future success

As 2(a)(ii) rivers and their managers face these challenges, what are the best policy strategies to promote protection into the future? What lessons have been learned?

Bob Gable believes that public education is critical. When local landowners understand the value and benefits of protected rivers, they support the establishment of sustainable programs that can benefit all. Through public meetings, hearings, and presentations, agencies can help local landowners understand the facts and goals of protection.

Gable also believes in the necessity of what grows from educational efforts: cooperation and trust between local residents and the agencies involved. Establishing trust takes time, of course, and “where people are skeptical,” Gable observes, “it takes more time.” But that time is worth the trust that emerges when different parties reach an understanding of each other’s individual aims. As Gable has learned, a river benefits most when people understand and trust each other (Gable 2008).

That trust and understanding between parties reflects what Eric Partee of LMI believes is critical to management success: a commitment to protection on a local level (Partee 2008). From his analysis and from Gable’s, then, it is clear that successful 2(a)(ii) river management must reside at the intersection of federal protection and local commitment. The river inhabiting that confluence is armed with the authority of federal protection and the support and energy of local agencies and communities. That river is a 2(a)(ii) river.

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