

FACT SHEET for ARKANSAS SCENIC RIVERS PRIVATE PROPERTY OWNERS

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ARKANSAS SCENIC RIVERS LANDOWNER ASSOCIATION
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BACKGROUND

The Arkansas Wild and Scenic Rivers Act was signed into law on April 22, 1992. Congress gave the Forest Service one year after this date to determine final boundaries for each of the river corridors(1). *The Forest Service wants to permanently include within these boundaries all or part of any private lands on the river sections that were designated in the Act by Congress.*

FOREST SERVICE OFFICIAL POSITION

The Forest Service is telling landowners that the designation of the Wild and Scenic River will have no effect on the rights of private property owners. For example, Ozark National Forest Supervisor Lynn Neff said:

"I want to assure all citizens of Arkansas and especially the land inholders adjacent to the congressionally designated Wild and Scenic River segments that there will be no federal effort to condemn or control private land....There have been no condemnations or efforts to control those private lands adjacent to wilderness areas, and there will not be any on Wild and Scenic River segments. I understand the strong desire to maintain the individual rights of the private landholder and intend to honor those rights in every respect..." (August 28, 1992 letter to interested citizens)

THE REST OF THE STORY

Landowners must clearly understand that there is no basis in any law or regulation that justifies the Forest Service official comments that "...*there will be no federal effort to condemn or control private land...*". Forest Service employees making these statements can (and eventually will) be replaced or succeeded by others who are not legally obligated by what their predecessors tell landowners. Administrative policy direction from Washington can (and probably will) change. And, federal law does not give landowners any protection from the harm that may result from misstatements made by Forest Service

employees. It allows the Forest Service to change its policies at any time.

The Arkansas Scenic Rivers Landowner Association has been reviewing the 1968 Wild and Scenic Rivers Act, the Arkansas Wild and Scenic Rivers Act, and associated Forest Service documentation. We have concluded that landowners are not safe from federal regulation or interference with the use and enjoyment of their property if it is included within these boundaries.

The 1968 Wild and Scenic Rivers Act specifically gives the Forest Service the right to condemn (forcibly take for public use) private property along the rivers if they think that owners are using their land in a way "incompatible" with the government's plans for the river. The Forest Service has taken land rights to over 5,000 acres by condemnation from private owners on other National Rivers.

There is a definite political trend in our country toward sacrificing landowner rights whenever a conflict with parks or the environment is claimed. If government takes private property, owners are supposed to be paid. But when money is not available, governments are increasingly imposing burdensome bureaucratic restrictions on the use of land through regulation and other means to avoid having to pay for the land they want to control.

One example is the wetlands regulation nightmare. Thousands of landowners have had to stand by helplessly while their property values have been destroyed or dramatically reduced as the federal government (without compensation) takes their property by classifying it as "wetlands". In the last year, four men have been sent to prison for simply moving dirt on lands claimed by the federal government to be "wetlands". In one case the alleged offender was improving the land for wildlife by building ponds for wild ducks!

Unless national trends change, we feel that ownership rights will eventually be threatened for any private lands that are left inside the river corridor boundaries. The corridors are going to be a continuing and tempting target for those who want to impose future land use controls along the National River System.

The 1968 Wild and Scenic Rivers Act, in fact, covers the regulation or taking of private lands in at least two different sections:

Section 6(b) allows condemnation (of private lands) when necessary to acquire scenic or access easements to the river.

Section 6(c) appears to allow federal condemnation of private lands in areas without local zoning or that have local zoning that is not acceptable to federal authorities.

Attempting to quiet the fears of landowners, the Forest Service frequently claims that owners have more protection from condemnation if they are inside a National River. They quote the part of the 1968 law which prohibits fee(2) condemnation in sections of a river corridor where more than half the land is owned by the federal government (as in all of the Arkansas Rivers).

What the Forest Service conveniently fails to mention is that the landowner is still at risk of losing the majority of his ownership value because they can still go ahead and condemn scenic easements (which are the landowner's development rights to his land).

According to the Forest Service(3), the condemnation of scenic easements is permitted to provide public access to a river or to "protect outstanding remarkable values when they are threatened".

Discussing private land, the Forest Service further states that "all existing uses and development at the time of [National River] designation will be allowed to continue...The Forest Service has established...a guide to determine activities which are compatible...Any new activities within these standards are generally acceptable".

This means that if a landowner develops his property in a way that the Federal Government

considers "unacceptable", than the government can condemn and take the development rights to the owner's property. This then leaves the owner with only title, the obligation to pay taxes, and permission to continue whatever use (if any) he was making of the land in 1992 when the rivers were designated.

Owners of vacant land intending to later build a retirement home or business can legally be prevented from doing so because the government may decide their plans will result in an "unacceptable" change in land use.

We feel that, for most landowners, there is no advantage (and potentially great harm) if their land is included within the river corridor. Congress has not required that the Forest Service include private land within the corridor, only that the Forest Service include no more than an average of 320 acres per mile of river. We think that the Forest Service should exclude private land when requested by owners.

WHAT CAN A LANDOWNER DO ABOUT IT?

Unless you have a lot of money for lawyers, it is virtually impossible for an individual (on their own) to defend their property rights against a powerful government agency who wants to control your land. Furthermore, most people cannot spare the time from their work and families to battle for their rights by themselves.

The Arkansas Scenic Rivers Landowner Association is a group of volunteers that has recently been organized to 1) educate and inform private property owners along the eight Arkansas Wild and Scenic Rivers,(4) 2) provide a means for landowners to work together on common interests, and 3) work toward encouraging environmental protection of the rivers by reasonable and fair means.

There are over 200 landowners along the eight Arkansas National Rivers. We all have a common interest with one another as well as with property owners along National Rivers in other parts of the country. By joining other landowners and sharing the burden of this fight with them we can expect the following benefits:

- 1) We will learn from the experience of landowner groups in other Wild and Scenic River units across the country who have had to deal with the same threats to their property rights.
- 2) We can share, among many, the burden of research (and the cost of legal representation, if necessary).
- 3) We can act much more effectively politically as a group. There is power in numbers.
- 4) We can relieve the helplessness many of us feel individually and become more knowledgeable about the National River System, the Forest Service and our property rights.

TAKE IMMEDIATE ACTION

The Forest Service has stated that the opinions of landowners are important to them and if landowners do not want to be in the corridor, it will effect how the boundaries are drawn. Landowners who do not want their property included in this corridor boundary must act immediately so that their opinions are known by the Forest Service.

It is very important that landowners get to know each other. We must discuss the issues, be heard by the Forest Service, and have a continuing role in the planning process for the Arkansas Wild and Scenic Rivers.

Lack of involvement by landowners will, by default, allow the Forest Service to control and manipulate what should be a free and open dialog with and between interested citizens. If we don't actively participate, the Forest Service will do what it wants and we will forever be suffering the consequences of its decisions.

Please Contact:

ARKANSAS SCENIC RIVERS LANDOWNER ASSOCIATION

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NOTES

1. The corridor is the strip of public and private land along the river (usually ½ mile wide) that will be managed by the Forest Service under authority of the Wild and Scenic Rivers Act of 1968 (and amendments).
2. Fee is the complete title to land as opposed to a partial title or right like a scenic easement or right of way.
3. Wild and Scenic Rivers Study Report in Final EIS on 13 Rivers in the Ozark National Forest, page 5-2 (Dec, 1988).
4. Big Piney Creek, Upper Buffalo River, Cossatot River, Hurricane Creek, Little Missouri River, Mulberry River, North Sylamore Creek, Richland Creek