

National Blueways Briefing
Senate Energy & Natural Resources Minority Staff
Follow-Up Questions

1. Please outline the legal impact of a National Blueway Designation on private property?

National Blueway designation has no legal impact on private property. The National Blueways System (NBS) was established by Secretary's Order No. 3321 to recognize river systems conserved through diverse stakeholder partnerships and to promote cooperation in support of these river systems. The Order expressly states that designation does not authorize or affect the use of private property; nor does it affect or interfere with any Federal, state, local and tribal government jurisdiction or applicable law. National Blueway designation is intended to recognize and support local and regional conservation, outdoor recreation, education and sustainable economic development activities.

2. Please define "sustainable economic development" that will be promoted by the National Blueway designation?

The generally accepted definition of sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. For a particular National Blueway, any economic development activities would be identified and led by local stakeholders. In general, we would expect to see economic development that promotes local business ventures that are connected with the river system, such as economic opportunities related to outdoor recreation, education and conservation, including tourism-related ventures, such as restaurants, lodging, camp grounds, guide services, and outdoor recreational equipment supplies and rentals.

3. Can private landowners opt out of a National Blueway designation on private property?

The National Blueway program is entirely voluntary and private landowners are free to choose to not participate in any assistance programs or initiatives undertaken by the stakeholder partnership. A National Blueway is a designation that encompasses a river and its watershed, but is not specific to any parcel of land. The NBS recognizes and supports diverse watershed-based stakeholder partnerships that are working together to conserve their river system.

4. Will the Blueways Committee provide notice, no later than the pre-proposal stage of a nomination, to the Washington, D.C. offices of all congressional delegations that would be impacted by a proposed Blueways designation?

The NBS Committee will provide notice to delegations of states included in a National Blueway nomination when a qualified pre-proposal is received. In addition, the NBS Committee will strongly encourage the stakeholder partnership that is submitting the nomination to be in contact with their local Congressional offices, indicating their interest and intention of pursuing the designation and/or seeking their support.

5. Will the Secretary commit that the stakeholder nomination process must include a state sponsoring agency from each state that would be impacted by a Blueways designation, as opposed to allowing either a Federal or state agency to sponsor a nomination?

The Department commits that the stakeholder nomination process will require the recruitment of a state sponsoring agency. In addition, if the nominated river and its watershed include land in more than one state, the nomination process will also require a letter of support from states with a significant portion of the watershed within their borders be submitted with the full nomination.

6. What role will a Blueways designation play in water-rights applications (e.g., severance and transfer, change of use, change of point of diversion, etc.) filed by entities that have water rights on a designated river?

The Secretary's Order is explicit that the designation has no such role: "nor shall this initiative or any designation pursuant to this Order affect or interfere with any Federal, state, local, and tribal government jurisdiction or applicable law including interstate compacts relating to water or the laws of any state or tribe relating to the control, appropriation, use or distribution of water or water rights."

7. Will the federal government reference or rely on a Blueways designation if it asserts an objection to a water-rights application (e.g., severance and transfer, change of use, change of point of diversion, etc.) along a designated river?

As stated in the previous answer, designation does not affect or interfere with applicable water law.

8. Could a Blueways designation be used to create a water right (e.g., reserved right or instream flow right)?

No.

9. Will the federal government support Blueways stakeholders that file objections to a water-rights application?

Decisions of the federal government to support or object to water-rights applications will not be based on designation of a river system as a National Blueway.

10. Please provide documentation of the Missouri constituencies (especially Missouri Department of Conservation) supporting the designation.

Letters of support for the White River Watershed National Blueway from the Missouri Department of Conservation, the Missouri Cooperative Fish and Wildlife Research Unit, Audubon Missouri and The Nature Conservancy--Missouri are attached.

11. What specific statutory authorization (Code and Section(s)) supports establishing of this program?

The statutory authorities for the NBS are set forth in Section 3 of Secretary's Order No. 3321.

“Sec. 3 **Authority.** This Order issued in accordance with authority provided under the Take Pride in America Act, Public Law 101-628; the Outdoor Recreation Act, Public Law 87-714; and the Cooperative Watershed Management Program of the Omnibus Public Land Management Act of 2009, Public Law 111-11. The bureaus within the Department of the Interior (DOI) have a broad panoply of legal authority to carry out their respective missions that support enhancing river recreation, undertaking river restoration, and pursuing river protection initiatives to pass on healthy rivers to future generations. These authorities include the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.; the Fish and Wildlife Act of 1956, 16 U.S.C. 742 et seq.; the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.; the Land and Water Conservation Fund Act of 1965, 16 U.S.C. 4601-4 et seq.; the National Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287; the Federal Land Policy and Management Act, 43 U.S.C 1702 et seq.; the Reclamation Act, Public Law 57-161; the Omnibus Public Land Management Act of 2009, Public Law 111-11; and the National Trails System Act of 1968, 16 U.S.C. 1241 et seq.”

12. What is the cost associated with implementing this initiative, and from which accounts is the department drawing funds to support these efforts? What offices and bureaus of the Interior Department will have staff activities focused on these efforts?

The NBS focus on watershed protection and restoration is fully consistent with DOI core mission objectives – it is not a redirection of existing effort but a complementary approach to ongoing efforts in landscape protection and restoration. Many of DOI's bureaus and offices have responsibilities for river, estuarine and wetland protection and restoration; water sustainability; fisheries management; and river and trail resource protection; and outdoor recreation and education.

Resources supporting the NBS initiative are derived from participating DOI bureau and office appropriated funds. Since NBS works to align existing activities and programs in support of blueways and associated resource benefits, there is not a dedicated stream of funding.

The Deputy Secretary is responsible for ensuring the implementation of the Secretary's Order establishing the NBS. Each DOI bureau and office will appoint members to the

NBS Committee (Committee) as well as the NBS Working Group (Working Group) which performs “staff work” for the Committee.

13. What role will the states and local governments play in the administration and implementation of this program? Will the department designate “Blueways” without broad support from the state and local governments impacted by the designation? What will be the role of local communities and businesses in the designation of “Blueways?”

Participation by public or private stakeholders is entirely voluntary. States, local and tribal governments will determine their level of participation. The Secretary will not designate National Blueways that lack diverse support from government agencies within the watershed. Local communities and businesses will be valued members of successful stakeholder partnerships and will determine their own roles and extent of engagement.

14. Who, within the department’s offices, will be primarily responsible for overseeing and administering this initiative/program? What reporting on the initiative can Congress expect to receive on a regular basis?

The Deputy Secretary is responsible for ensuring the implementation of the Secretary’s Order establishing the NBS. Each DOI bureau and office will appoint members to the NBS Committee (Committee) as well as the NBS Working Group (Working Group) which performs “staff work” for the Committee. Each agency outside DOI that is voluntarily participating is invited to identify an agency representative for the Committee and for the Working Group. Reports can be assembled to meet the needs of the participating agencies, partners, as well as Congress that could include whatever relevant information is desired.

15. Does the Administrative Procedures Act apply to the process of considering a National Blueway designation? If not, what opportunity for public comment exists within the framework of a National Blueway?

Designation as a National Blueway does not involve the grant of a license or similar approval, or the promulgation of regulations, either of which involves actions that are subject to the procedural and other requirements of the Administrative Procedure Act. Watershed partnerships submitting nominations for National Blueway designation are evaluated for the diversity of stakeholders participating in the partnership and for the extent of support they can demonstrate from civic leaders at the local and state levels. Creating opportunities for public engagement would be the mark of a strong nomination.

16. Is there any limit to the size of National Blueway designation?

It is anticipated that National Blueway designation will be for large river systems, with a hydrologic unit code (HUC) of 4-6. To date, National Blueway designations range in size from a few million acres to a system of nearly twenty million acres.

17. In considering a National Blueway at the landscape level, how does the participating agencies and partners evaluate federal land, state land, and private land within a watershed?

The watershed evaluation is based on the presence of a committed, diverse, stakeholder partnership or association that has developed a vision for the river and its watershed and how well that partnership or association has contributed to and promoted conservation, education, recreation, and sustainable economic opportunities. The diversity of the partnership, having a shared vision, goals and objectives, the condition of the river and watershed, and having a strategy to integrate land and water management actions to achieve shared outcomes are the key elements of the evaluation, rather than the mix of public and private land.

18. Can a dissenting private landowner, county, or state stakeholder prevent a designation from occurring?

One of the key criteria for being recognized as a National Blueway is that a diverse stakeholder partnership representing interests from across the watershed has come together to seek the recognition. Stakeholder partnerships will be encouraged to seek out and consider the views of a diverse array of individuals and public entities. Successful nominations for recognition as a National Blueways will include statements of diverse support from businesses, organizations, federal and state agencies, and local and tribal governments within the watershed.

19. What agencies make up the committee?

Members of the committee from DOI include representatives of the Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, the U.S. Geological Survey, the Bureau of Indian Affairs, and the Bureau of Reclamation. Other members of the committee include the U.S. Forest Service, the National Resources Conservation Service, and the Army Corps of Engineers. Membership may expand to include representatives of other Federal agencies that can contribute to the goals and objectives of the NBS for the benefit of the American people.

20. What funding is being used to evaluate potential watersheds for consideration?

Bureaus and offices in DOI are using existing base funds to improve the alignment of programs and activities in order to identify opportunities for protection and enhancement of watershed resources, as well as enhancing the abilities of bureaus and offices to effectively implement existing authorities. The NBS provides a forum and a focus for these efforts. DOI bureaus and offices and other Federal agencies and partners participate in review of stakeholder-generated National Blueway nominations, as part of the Administration's AGO initiative. These efforts contribute to meeting overall agency objectives and priorities for employing a partnership approach for landscape level stewardship, and outdoor recreation, education.

21. What are the minimum requirements for consideration?

The minimum requirements for consideration as a National Blueway include the following:

- 1) a large river from headwaters to mouth with watershed at the hydrologic unit code (HUC) 4-6 level;
- 2) natural, cultural, recreational resources of national significance;
- 3) a diverse stakeholder partnership that has developed a shared vision and long-term goals for the river and its watershed; and
- 4) federal and state sponsor(s).

22. What role, if any, do actual elected officials (County Commissioners and Governor) play in determining if a watershed is designated or not?

The support of state, local and tribal governments will be sought by the stakeholder partnership as part of the process of nominating a river and its watershed as a National Blueway. The Secretary will not designate National Blueways that lack diverse support from state, local and tribal governments within the watershed. Furthermore, the Department commits that the stakeholder nomination process will require the recruitment of a state sponsoring agency. In addition, if the nominated river and its watershed include land in more than one state, the nomination process will also require a letter of support from states with a significant portion of the watershed within their borders be submitted with the full nomination.

23. If a watershed is crosses one or more state lines, is a unanimous consent from each state required for designation?

If a nominated river and its watershed includes land in more than one state, the nomination process will request that letters of support from states with a significant portion of the watershed be submitted with the nomination.

24. The Secretarial order and DOI press release make two counterintuitive claims: 1) there are no additional rules or regulations associated with the land or water designated a National Blueway– in short no management changes, and 2) the designation of a Nation Blueway will help achieve the stated purpose of the President’s Initiative to “protect, enhance and restore” America Great Outdoors. ...Provided there is voluntary participation by other public and private entities. The participating agencies, incentives, and other assistance will be available should landowners, communities, and others choose to participate.

- a. **How does a designation that makes no management changes to existing land protect or restore the same land in question?**

To be successful in securing a National Blueway designation, any nationally significant watershed will already have in place mechanisms, programs, and organizations that have a track record of success in the protection and restoration of natural resources. Recognition of a watershed as a National Blueway will highlight these existing conservation efforts and facilitate their increased efficiency and effectiveness. For example, the designation of the Connecticut River National Blueway has stimulated an increase in the number of organizations participating in Connecticut's stakeholder partnership. Consequently, the designation as a National Blueway has enhanced communication, cooperation, collaboration, and leveraging of resources with respect to this Blueway.

b. If land is protected or restricted for current use, is that not a departure in some form from current management?

The aforementioned is an outcome based on voluntary participation. It is not a product of the designation; however, it may make voluntary participation easier due to better access to financial and technical assistance.

c. If there is no actual management change, is not a national blueway label unnecessary and potentially misleading?

There is no change to management that results from designation. Recognition as a National Blueway is based on the presence of nationally significant attributes in the areas of outdoor recreation, conservation, education, and a diverse watershed partnership with a shared vision to sustain these attributes. As the partnership evolves and takes voluntary steps forward to better integrate land and water management, change will occur in a more strategic, sustainable, and consensus-based manner.