TROUT UNLIMITED

Speaking for Trout and Salmon

The TU Member's Guide to Environmental Law and Advocacy

JUNE 2000

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Foreword and Dedication

Since joining Trout Unlimited's National staff in 1991, building our organization's influence as an advocate for healthy watersheds and fisheries has been my highest priority. Yet each year, it becomes ever clearer to me that, no matter how much money we raise and no matter how many staff members we deploy across the range of our coldwater fisheries, we cannot fulfill TU's mission without legions of strong and well informed grassroots advocates. With that in mind, I asked several of the staff members who are responsible for key components of our advocacy work to assist me in drafting this manual.

The task of drafting and editing our work proved larger and more time-consuming than any of us imagined when we began. Time and space limitations forced us to focus most of our work on the major federal laws and regulations that govern land, water, and fishery conservation. Although the federal laws have changed little over the past few years, we had to revise some of the original text to cover new court decisions and changes in the way the agencies interpret their legal mandates. Finally, we struggled to the end to make the often-dry details of statutory interpretation and case law useful and, we hope, interesting, to the lay reader.

Although this manual is limited in scope, I believe that it achieves the purpose of creating a framework for advocacy. Laws, regulations, and judicial interpretations will change, but the basic tools that comprise its advocacy framework are likely to endure.

We offer this manual with the recognition that we, as TU's staff, are uniquely privileged to be carrying on a tradition of outstanding natural resources advocacy that began long before TU had a staff of professional advocates. That tradition continues today in scores of campaigns waged by volunteers who share an uncommon devotion to conserving, protecting, and restoring the watersheds and fisheries that comprise our trout and salmon legacy. We dedicate this manual to all TU volunteers- past, present, and future- willing to speak for trout and salmon.

Charles F. Gauvin
President and Chief Executive Officer

PART ONE

Becoming an Effective Advocate

ad•vo•cate n. (AD•vuh•kit) one who defends or supports a person or cause: *an advocate for protection of coldwater resources.*

I. Introduction

A. WHAT IS "ADVOCACY"?

The term "advocacy" has many connotations. For some, it suggests lobbying and the image of highly paid, well-placed individuals working the halls of Congress or a state legislature. Others no doubt think of a courtroom, with lawyers sparring in front of a judge or jury. Perhaps also there is the image of a New England town meeting, where every taxpayer can speak his or her mind in an open forum with few rules other than the dictates of common decency. Advocacy is all those things and much more.

At its core, advocacy is the process of taking a position and persuading others of its merits with the goal of securing consensus or a decision that advances that position. For TU's professional and grassroots advocates, achieving such goals re quires working on numerous fronts. Along with the traditional venues — legislatures, courts, and regulatory agencies and commissions — decision-makers today take account of public opinion expressed in scores of different media, including polls, television and radio talk shows, and the Internet. The wealth of new media for public expression can be a double-edged sword; it can empower a thoughtful advocate, but it can also overpower one who has not taken the time to devise a well-founded position and a strategy for communicating that position.

Trout Unlimited has a long history of advocacy successes, many due to the hard work of people who never would have described themselves as advocates. TU's advocacy campaigns have involved hundreds of well-known and lesser-known fisheries, like the Quashnet (see sidebar) and other rivers and streams, including:

- The Little Tennessee River, where, two decades ago, volunteers successfully fought all the way to the United States Supreme Court to save a legendary tailwater stream, only to be foiled by an eleventh-hour appropriations rider in the U.S. Congress;
- The South Platte River, where TU's Colorado Council marshaled angler support for blocking construction of the Two Forks Dam project;

- ▶ Pennsylvania's Valley Creek and Letort Spring Run, which volunteers in two TU chapters saved from residential and commercial developments;
- ▶ Maine's Kennebec River and Vermont's Clyde River, where TU chapters played decisive roles in landmark decisions to remove hydropower dams to restore fisheries; and
- ▶ Montana's Big Blackfoot River, where a local TU chapter successfully campaigned to stop a gold mine that threatened the river's fishery.

The great thing about TU is that stories like these are hardly unique. There are scores of similar success stories nationwide in which grassroots advocacy was a decisive factor. In fact, TU's effectiveness lies in the willingness of grassroots volunteers — people like you — to conduct "on-the-ground" restoration projects and to serve as advocates for clean water and healthy wild fish populations. TU's grassroots volunteers come from all walks of life; the one thing they have in common is the willingness to stand up and be counted when it comes to protecting and restoring coldwater fisheries.

CRANBERRY BOGS HAD TU MEMBERS SEEING RED

One of TU's best success stories involves the Quashnet River, a little stream on Cape Cod. By the 1980s, the Quashnet, which once supported a healthy population of sea-run brook trout, had suffered decades of abuse and neglect. Cranberry growers had diverted the river's flow and developed its headwater reaches. Their bogs deposited sand and pesticides that smothered brook trout spawning beds. Real estate developments elsewhere in the drainage threatened water quality and would have precluded native fish restoration. But, thanks to the vision and dedication of a local TU member (who in his "day job" is a plumbing contractor), part of the river's drainage is now protected from development as part of a federal estuary reserve, and the remainder is subject to wetlands regulations in local zoning codes. The Quashnet River today hosts a restored and healthy sea-run brook trout population.

B. HOW TO USE THIS MANUAL

This manual provides trout and salmon conservationists with the basic tools necessary to be thoughtful advocates and to avoid some of the pitfalls that can hamper and defeat less than thoughtful efforts to influence the public decision-making process. This manual is not intended to be read cover to cover; rather it is designed to be used as a reference manual.

We have tried to make the document user-friendly. We suggest you start by setting aside a few minutes to become familiar with the manual. Review the table of contents, index and appendices, and scan some of the information boxes throughout the document.

The information presented in Part One is a distillation of observations based on years of TU staff experiences counseling TU's grassroots advocates, and is intended to help you prepare for your advocacy work. The main body of this manual (Part Two) provides an overview of many of the laws that affect coldwater fisheries, most of which offer valuable opportunities for citizen participation. Space constraints make it impossible to address every issue or law, but the information presented here covers the majority of situations one would expect to face in their efforts to protect trout and salmon and the places they live. We did not duplicate work; throughout the manual you will find references to other publications and we urge you to use those that are pertinent to your situation. Keep in mind that TU National staff stands ready to help you in your advocacy work, and is just a phone call or e-mail away.

II. Creating a Framework for Advocacy How to Build a "Record"

The future of the trout and salmon resources that we enjoy today depends on public and private-sector decisions that occur on a very broad scale in countless forums. You can convince your local zoning board to deny a permit for a subdivision that would threaten a trout stream, but whether that decision will withstand a legal challenge may turn on decisions made in the state court system or the state legislature. The case could even end up in the United States Supreme Court, as have several local zoning disputes over the past decade. Whether you believe legal action is likely in the future or not, the key to success in any advocacy situation is to build what lawyers commonly refer to as a "record" to substantiate your position at each and every stage of the decision-making process.

The necessity of building a good record applies to all types of advocacy, including the less formal process of sitting down with a project proponent to see if you can negotiate a mutually satisfactory solution. In that situation, you can bet that the project developer will have access to engineering, scientific, and legal expertise to support his or her position. Your ability to convince the developer of the merits of your position will require factual information — without facts or data, you are just another person with an opinion.

Building a record requires a basic understanding both of some coldwater fishery biology and of the threats to coldwater fisheries. This manual won't tell you much about biology, but it will address some of the most prevalent threats to trout and salmon and their habitats, and help you in dealing with them. To learn more about those subjects and to familiarize yourself with TU's approach to them, be sure to read TU's "North American Salmonid Policy" ("NASP"), which is available from TU's National Office or on the TU Website (www.tu.org).

There are also several basic texts that can supplement the valuable knowledge of stream and stillwater fisheries that you may have acquired as an angler. Among them are Trout Unlimited's *Saving Your Own Stream*, which is available through the National Office, and *Better Trout Habitat*, which is available from the Montana Land Reliance.

III. Identifying Threats and Opportunities

A. THREATS TO TROUT AND SALMON: THE "FOUR H'S"

Generally speaking, threats to coldwater fisheries fall into one or more of the following categories, known within TU as the "Four Hs":

Habitat Degradation — Coldwater fish and their habitat can suffer from polluted run-off from agriculture, stormwater and other land-use practices. Also harmful are alterations of stream structure, such as channelization (mechanical straightening of stream channels), removal of boulders and vegetation that provide cover and shade, and other activities that change the chemical and physical characteristics of coldwater streams. Threats that might fall into this category include logging, mining, and other land use practices in National Forests and other federal lands; dozing in and around streams as a part of flood remediation efforts; and gravel mining in or near a stream. Of course, the

TU ADVOCATES PROVIDE FIRST LINE OF DEFENSE AGAINST AQUACULTURE POLLUTION

Several years ago, TU's leadership in the Southeast brought to the National Office's attention a proposed aquaculture project that would have threatened several wild trout streams with pollution and a flood of hybridized hatchery fish from netpens located in a large surface water impoundment. TU members involved themselves early in the process, in ample time to educate the agencies responsible for approving the project about their concerns. In a collaborative effort with TU's National staff, local TU members were able to build a strong record with federal and state resource agencies that documented the biological risks of the project. Although the outcome was hardly a foregone conclusion, no one was surprised when the environmental impact assessment for the project portrayed its risks as far outweighing its potential benefits.

A number of factors played a decisive role in this favorable result. First, the TU activists involved were intimately familiar with the streams and the fisheries that the netpen project would have affected, and their knowledge helped them realize early in the decision-making process the magnitude of the project's potential impacts. Second, they had — and continue to have — a strong working relationship with the federal and state agencies involved in the decision-making process, having participated previously in cooperative habitat restoration projects and in the planning process for the National Forests in the region. Third, the volunteer leaders in the region enlisted TU National staff to provide legal and technical advice. Finally, after evaluating the information available concerning the project's potential impacts, they developed a clear consensus position — in this case, to oppose the project — at the council and regional levels and communicated that position to all chapters, so that there was no confusion or misunderstanding regarding TU's stance. While all of these factors contributed to the success of the advocacy efforts, probably the most important were early involvement in the decision-making process, and the development and communication of a clear position.

most important aspect of trout habitat is clean, cold water, and changes in state water quality standards under the Clean Water Act could result in degraded habitat, as could roll-backs in environmental laws at the state and federal levels.

Hydropower and Other Instream Flow Diversions — The construction and operation of dams and other water diversion structures can radically alter fish habitat and can block the migratory routes that some species require to complete their life cycles. In some parts of the nation, water laws permit private interests to deplete stream flows and lower lake levels by withdrawing water for other uses, such as agriculture, navigation, and water supply. Federal and state processes regulating hydropower and other dams provide valuable opportunities for citizen involvement.

Hatcheries — Although acknowledged as a legitimate management tool for restoring depleted fish populations and creating recreational and commercial fishing opportunities, hatcheries can threaten wild and native fish populations by introducing disease and undesirable genetic traits, and by fostering competition with and predation upon indigenous fish populations. Hatcheries also can be significant sources of water pollution.

Harvest — The extent to which fishery managers allow recreational, subsistence, and commercial take of fish is an important factor in the biological integrity of coldwater fisheries and

is vitally related to decisions about native fish restoration and hatcheries.

It may seem simplistic, but there are virtually no threats to coldwater fisheries that do not fall into one or more of the above categories. For that reason, the North American Salmonid Policy ("NASP"), which governs all of the organization's fishery resource programs, uses the "Four Hs" framework. The advocacy tools described in this manual will help you to address threats and to implement TU's NASP.

B. OPPORTUNITIES

On the positive side, numerous opportunities exist to improve the quality of previously troubled waters and fisheries. Government funds or expertise may be available to help you improve the habitat and water quality of a mediocre or marginal stream through state watershed improvement projects. Local or regional foundations may be willing to donate money for such projects as well, and landowners on a stream may be willing to cooperate in efforts to alter land-use practices to improve water quality. Although this manual is focused on laws and regulations, most of which are designed to prevent bad activities, you should not forget the critical role TU plays in making positive things happen on the ground.

IV. Getting Started: How to Become a "Watchdog"

Often advocacy efforts are in response to a crisis. Many TU chapters and grassroots activists have risen to the challenge and often have been successful in thwarting crises. The most effective advocates, however, are also "watchdogs." They keep an eye on the decision-making processes and get involved early, before the situation escalates into a crisis.

As an angler and grassroots activist, you are the first (but not the last) line of defense against threats to fisheries in your local watersheds. Nobody knows your local streams better than you do, and nobody is in a better position to spot threats to those streams or recognize opportunities for improving them. In fact, in some cases, you will be the only watchdog for the resources in your area.

The first step in effectively advocating for coldwater resources at the grassroots level is to know what your state, local, and federal governments are doing — and are proposing to do — relative to your streams and fisheries. The second step is to understand the effects of those activities and develop positions regarding them. Let's look at each in turn.

A. LEARN ABOUT THREATS AND OPPORTUNITIES

Sometimes advocates create issues and have the chance to shape and guide the decision-making process, but more often than not a government agency or a private party initiates a proposal that merits the involvement of other interested parties. Examples of such situations include zoning and subdivision proposals for residential, commercial, and industrial facilities; hydroelectric licensing and relicensing cases; water rights cases; water quality or wetlands permits; amendments of National Forest plans; and proposed changes in trout and salmon harvest regulations. In any of those situations, your ability to participate in the decision-making process, to put forward a position and influence the outcome, depends first on your being aware of the proposed action.

There are a number of ways to gain "notice" of a proposed action. Later in the manual, as we describe some of the more specialized decision-making processes, we will focus on the notice procedures that apply to each. For now, however, it is useful to mention some of the more general means of learning about activities and proposals that may interest you and your chapter or council.

Where federal agencies are involved, many important decisions are posted in the Federal Register, a document the U.S. Government Printing Office issues five days a week throughout the year. The Federal Register is available on the Internet (www.access.gpo.gov/su_docs/aces/aces140.html), and most public libraries and many state and federal government offices have copies available for public inspection and copying. Notices of proposed decisions usually contain all the information you will need to participate as well as an address and phone number to help you obtain more information. You needn't read the Federal Register every day, but it is useful to have someone in your chapter or council check it periodically (perhaps once a week).

GAINING NOTICE

To get early notice of projects that could threaten the streams in your area, your chapter and council should get on the mailing lists to receive notices of proposed projects, legislation and changes in regulations from all of the following:

- your state's water quality agency,
- your state's fish and game agency,
- the local district of the U.S. Army Corps of Engineers,
- the EPA region that includes your state,
- your area's National Forest and each district in your Forest,
- the local BLM district office
- the local U.S. Fish and Wildlife Service district office,
- the local National Marine Fisheries Service office, and
- TU's Grassroots Activist Network.

You can also receive notice by mail from some federal and state agencies by informing them in writing of your interest in certain subjects. For example, many district offices of the U.S. Army Corps of Engineers mail out notices of applications for permits for work affecting wetlands and keep mailing lists of people who wish to receive those notices. Many state environmental protection agencies send out bulletins of proposed regulatory actions, and will put anyone on their mailing list who requests it. Getting on the right mailing lists is critical to protecting your local streams.

Most federal, state, and local agencies are legally required to post public notices in a newspaper of general circulation in the areas affected by their actions. Familiarize yourself with the sections of the newspaper in which the notices commonly appear, usually captioned "public notices." In addition, most government agencies post notices of proposed actions on bulletin boards in their offices or at a local post office.

The Internet is an increasingly important source of notice. TU's website (www.tu.org) and the websites of other conservation organizations and many public agencies can provide similar information. Also, many conservation groups run list-serves and send out regular e-mail bulletins about activities that might interest grassroots activists. Appendix A contains a list of conservation related websites that you may wish to explore further. We have also included "link boxes" throughout the manual to inform you of relevant Internet resources.

TU also shares information about important conservation issues through its Grassroots Activist Network. TU members who join the network periodically receive notices from National staff about important issues and guidance on how they can help influence the outcome of decisions. These may be national action alerts, such as a request that members write to their congressional representatives about a particular bill, or may be targeted to members of the network in particular regions or states. You may

join the network through TU's website (www.tu.org, then go to "Activist Network") or by contacting TU's National Office.

Once you have found public notice of an action that may interest you, read it carefully and make note of all the pertinent information, especially deadlines and addresses for filing comments, the location and time of any public hearings or meetings, and the names and phone numbers of responsible officials who may be able to provide additional information or guidance on how you can participate.

Deadlines, in particular, are vital: most agencies are not legally required to take note of or respond to written comments that are filed late, and such comments usually do not become part of the administrative record used in any subsequent judicial review of the agency action. Challenging a decision will be difficult and may be legally precluded if your views are not already part of the record compiled in response to public notice of a proposed action.

B. UNDERSTAND PROPOSED ACTIVITIES AND DEVELOP A POSITION

Once you have notice of a proposed action and have determined the schedule for public participation, you face what may be the biggest chal-

RESTORING THE CLYDE: TU ADVOCATES USE SCIENCE TO FORM A POSITION AND BUILD THEIR CASE

In 1992, the Northeast Kingdom Chapter in Vermont began participating in the relicensing of a hydroelectric project located on one of its home waters, the Clyde River. The chapter's members knew that the local electric utility owned and operated several dams that obstructed fish passage and limited coldwater fish habitat in the Clyde. They also knew that, before construction of the downstream-most dam in the hydroelectric project, the Clyde had been a nationally renowned landlocked salmon fishery, and that, without major changes in the project, fishery restoration would be impossible.

The Northeast Kingdom Chapter's members urged the state and federal agencies involved in the relicensing of the hydroelectric project to demand of the project owner all the technical information necessary to compile a full and complete record for the decision as to whether, and on what conditions, to issue a new license for the project. That meant pressuring the decision-makers to demand a full array of scientific and economic studies and, where the project owner or the agencies were unwilling to develop a full and complete record, acquiring the necessary information and submitting it for the decision-making record. With the assistance of the TU National Office, the chapter filed its comments on the project, including scientific and economic studies that documented the project's impacts and the measures required to restore the Clyde River's salmon fishery.

In some respects, the Northeast Kingdom Chapter's position in the licensing case was similar to that of the federal and state resource agencies. In others, it went beyond what the agencies were willing to demand of the project owner. Where it did so, the chapter called upon the TU National Office for legal and technical assistance and was able to marshal scientific and economic expert testimony to substantiate its requests for license conditions on such matters as dam and powerhouse removal and flow releases from the remaining hydroelectric facilities that would restore the river's landlocked salmon fishery. When the federal agency responsible for issuing the new license acted, it did so with an unusually full and complete evidentiary record, which made it highly unlikely that a court would reverse or modify the licensing decision on appeal.

lenge of all: obtaining information about the proposed action and its potential resource impacts, and developing a scientifically defensible position.

This is where the real work begins, but before you get started, you should recognize three things. First, despite the seeming abundance of expert opinions surrounding any of the issues of concern to coldwater fisheries, science alone cannot resolve — nor should it resolve — those issues. Decision-makers, ultimately, are accountable for making public policy, and good public policy recognizes science as a tool, not as an end in itself.

Second, as a TU grassroots activist, you have greater access to scientific advice than you might think. Our organization's National staff and its contacts in the scientific community are among the most qualified in the nation. The key is to use TU's scientific and human resources wisely. Once you have involved yourself early in the decision-making process, you are in a good position to call upon those resources and to use them for your benefit.

Third, TU's NASP provides solid technical information concerning many of the issues and problems that you are likely to encounter in weighing the potential impacts of a proposed project, policy, law, or regulation on coldwater fisheries. Reading the NASP is a good way to acquaint yourself with the issues that can arise in any advocacy situation. Most importantly, it will give you a clear idea of the position that you will want to lake to advance TU's mission in the relevant decision-making process.

In situations where a state or federal agency is considering a license application or the adoption of a rule or regulation, the agency will create and maintain a public record consisting of relevant studies, comments, and other information it relies on in its decision. That record may not be complete, and an important part of your job as an advocate is to supplement it with information that supports your position.

But in some cases there is no proposed formal action and no record. For example, where you believe an enforcement action or the adoption of a regulation is needed to deal with a threat to a fishery, an agency's failure to act usually does not require a formal record. Because there is no formal public record, however, does not mean that you cannot obtain the agency's files. In some cases, the documents may be available for public inspection at a government office, and you can arrange to obtain them by visiting the office. In other cases, you may be able to get the documents through a written request filed under the Freedom of Information Act ("FOIA"), which applies to federal agencies, or your state's counterpart statute. Many agencies (EPA, for example) have their own FOIA offices and procedures. Appendix B lists a number of federal FOIA contacts.

Activists in Vermont's Northeast Kingdom Chapter (see sidebar on the previous page) are among the many TU members who rose to the challenge of obtaining information and developing a scientifically defensible position. Their efforts ultimately carried the day and successfully advanced TU's conservation mission.

V. Sometimes It's Who You Know: Developing Working Relationships with Decision-Makers

There are numerous opportunities to develop a positive working relationship with federal, state, local and private-sector decision-makers who may one day be in a position to decide for or against you as an advocate. These personal relationships are another important way to stay informed of government actions that affect trout streams, and can lay the best groundwork possible for affecting the outcome when decision time comes.

In later sections of this manual, we identify individuals and agencies that have specific legal responsibilities for matters affecting coldwater fisheries and their habitat. For now, however, let's consider some beginning steps that will help you learn the ropes of decision-making.

A. STATE AND LOCAL REGULATORY AGENCY PERSONNEL

A good place to begin is with your state fish and wildlife agency, the entity that establishes and enforces fishing regulations; has responsibility for such fishery management decisions as stocking and habitat restoration; and is often involved in a broad array of water quality, water allocation, and facility siting questions.

Chances are, the state fish biologist for your area will not have the last word on all the matters of interest to you and your chapter, but he or she is still an excellent source of information and should be sympathetic to your point of view. State fishery biologists also are frequently part of the decision-making process when it comes to pollutant discharge permits, water rights cases, hydropower permits and licenses, wetlands permits, and a host of other decisions affecting coldwater fishery habitat. Many TU chapters invite state fisheries biologists to speak at chapter meetings. They can keep you informed of issues that affect your local fisheries and help you decide how best to get involved. In many cases, as the relationship matures, the fisheries personnel will turn to local TU leaders for advice on coldwater resource issues.

You should not, however, stop with your area's fisheries biologist. Ascending the chain of command at your state fish and wildlife agency allows you to become part of the process that determines fishing regulations, establishes stocking schedules, and determines many other matters of direct interest to you and your chapter. Take time to call on and get to know agency officials, including the head of fisheries and the head of coldwater fisheries. In many states the fish and wildlife agencies have a politically appointed board or executive panel, and you should get to know the members of that body as well. A phone call or brief meeting to introduce yourself may be all that's needed to get the ball rolling. Experience shows that most agency personnel will appreciate your effort.

Typically, state fish and wildlife agencies have first and final decision-making authority over the matters of primary interest to anglers. They decide fishing seasons, harvest limits, and whether to stock a stream or manage it as a wild trout fishery. They also can often have a secondary, but nevertheless important, role in other decisions thus affecting coldwater fishery habitat. Thus, knowing agency officials and how to influence their thinking on matters of interest to you and your chapter is necessary, but it's not always sufficient for success in advocacy. This is particularly true with respect to decisions that involve interagency consultation such as hydropower licenses, the revision of National Forest plans, and wetlands permits, where federal agencies have the final word, but may have to defer to the fishery management and restoration plans and policies of state fish and wildlife agencies.

Try to be as forward-looking as possible in dealing with state fishery managers. Even if you and the other members of your chapter are generally satisfied with the way that your state fish and wildlife agency manages your coldwater fisheries, you should consider what the agency is planning to do to restore or enhance them. For instance, in the Clyde River relicensing case highlighted earlier and in scores of other hydropower licensing cases, a major factor in the ultimate decision on the license has been and will continue to be whether the license applicant's proposed operating regime is consistent with the stated objectives of a formally adopted fishery management plan. In the Clyde River case, the applicant's proposed operating regime precluded attainment of the state management plan's objective of restoring a wild landlocked salmon fishery in the river. In other hydropower licensing cases, however, the absence of such objectives has made it much more difficult to convince decision-making agencies that their actions should restore or enhance coldwater fisheries.

B. ELECTED OFFICIALS

Chances are, sooner or later, your conservation work will involve you in legislative processes, whether local, state, or national. Local legislation, typically the work of a town or city council, is a great place to start. If you have not yet been active in local decision-making, you might be surprised to see how much you and your chapter can accomplish by participating in the development and revision of zoning and subdivision ordinances and by making your views known at hearings of zoning and subdivision boards. Town and city councils also address other matters of potential interest to you, including siting and development of roads, waste treatment and disposal facilities, and other public amenities; residential, commercial, and industrial water use; the development of new water supplies; and whether to repair or remove aging dams. In these forums, TU members and chapters can have direct and immediate impact on decisions.

State legislatures can be a bit more remote, but their proceedings generally are user-friendly and accessible to grassroots advocates. Most state legislatures deal with fish and wildlife and environmental matters through one of several legislative committees, and some have specialized environmental committees. Hearings of those committees can enable you and your chapter to present testimony on a subject of interest to you. Here, it is critical to identify the appropriate legislative committees and familiarize yourself with their members and staff. Often, developing a relationship with a committee member and/or staffer will result in an invitation to appear before the committee to present testimony. Some of TU's more successful chapters and councils invite legislators and staffers to attend and speak at their meetings. This can be a great opportunity to exchange views in a less formal setting and establish a relationship before a controversy arises.

On the national level, your work may give you the chance to become involved with the United States Congress. Congress makes hundreds of decisions annually that have direct and indirect consequences for trout, salmon and their watersheds. Later in this manual, we review some of the more prominent federal laws and programs that are within Congress's purview. For now, however, let's focus on some key considerations relating to the congressional process.

Your primary point of access to Congress is through the representatives of your state and district: two Senators and one member of the House of Representatives (If you don't know who your representatives are, check out TU's Legislative Action Center at www.tu.org/network.html). Each of them maintains an office in Washington and one or more offices in his or her state. Members of Congress rely heavily on their professional staffs to handle and advise them on legislation. Although it's always a good idea to get to know your Senators and

Congressman, keep in mind that you will probably have better access to his or her legislative aides responsible for fish and wildlife and environmental issues, and that those individuals likely will have more detailed knowledge of the issues than their respective bosses.

To help you in reaching your Senators and Representatives, the National Office maintains a government affairs staff and, as the need arises, facilitates constituent contacts with Congress through the Grassroots Activist Network, constituent visits, and Congressional hearings.

A note about lobbying: Whenever you discuss the merits of any proposed legislation with your elected representatives — local, state, or national — you must be careful not to run afoul of the restrictions that federal tax law places on lobbying. Please refer to the legislative process section of this manual (found in Chapter X of Part Two) for a discussion of those restrictions.

VI. Selecting an Advocacy Campaign to Meet Conservation Goals and Strengthen Your Organization

There is no shortage of threats to trout and salmon and the places they live, but there is often a shortage of resources with which to tackle those threats. If your organization tried to "fix" them all at the same time, you would run out of money and people — and probably still not acheive your goals. Successful advocates pick their battles carefully, devise a plan, and use it as a tool to focus their groups' efforts.

A. PICK YOUR BATTLES.

A campaign is an organized activity aimed at a specific goal or goals. How does a chapter or council determine which issues or campaigns to take on, and which ones to say "no" to? Experience shows that, over the long term, the most successful advocates choose issues that will (1) meet conservation goals and (2) strengthen their chapter or council. They then develop those issues into campaigns.

Launching a new and well thought-out advocacy campaign can be one of the most healthy and energizing things a chapter or council can do to bring in new members and encourage new leaders to step forward. And the stronger your organization becomes, the better equipped it will be to handle current and future threats to the resource. Of course each chapter or council will have different needs and goals, but following are some factors that should be taken into consideration when determining where to focus your organization's energy and resources, and when.

- **Mission compatible?** Is the proposed activity consistent with TU's mission "to conserve, protect and restore North America's coldwater fisheries and their watersheds?"
- **Winnable?** Can our group really make a difference (e.g., is it winnable)? If yes, what is the timeframe? Do we need an immediate "win," or can we afford to be in it for the long haul, if necessary?
- **Members?** Will we gain members? Will we lose members? What if you lose members in the short term, but gain more over the long term?
- **Volunteers?** Do we have the human resources to carry out this campaign (how many people for how many hours/months/years)? Do we have the right expertise? If yes, is this the best use of these resources? If no, how readily can we get the resources, if at all?
- **Funding?** Do we have the financial resources to carry out this campaign? If yes, is this the best use of these resources? If no, how readily can we get the resources, if at all?

- **Lead or support?** Will our group lead on this issue, i.e., be the main "voice"? Or will we support other groups? Being the lead organization on an issue increases the visibility of a chapter or council and can really provide an opportunity for your group to shine if you're ready for it. If your chapter's new to advocacy efforts, lending support to other groups on issues that are consistent with TU's mission is a great way to become more active.
- **Opportunity costs?** Because of limited resources, saying "yes" to one effort means saying "no" to others. What opportunities will be lost by focusing your chapter or council resources on this issue versus another?

B. HAVE AN ACTION PLAN.

Things can't go according to plan if you have no plan. A plan imposes direction, structure and focus on your efforts, and every campaign should have one. A plan can be as simple or complex as your group's leaders desire, but should have the following components:

- Campaign mission,
- Campaign goals,
- Campaign objectives, and
- Campaign strategies.

Don't run the risk of doing a lot and achieving little. Encourage chapter and council leaders to take the time to develop a plan that will achieve your conservation goals and strengthen your organization. Write it down (include who's responsible for what and when in the strategies section). A plan is an important decision-making tool; use it regularly to guide your work.

For more information on developing an action plan or planning an advocacy campaign, see *Starting Up, A Handbook for New River and Watershed Organizations*, published by River Network, PO Box 8787, Portland, OR 97207-8787, rivernet@igc.org; and *How to Save A River, A Handbook for Citizen Action*, by David Bolling, also published by River Network.

VII. Communicating Effectively

Whenever your chapter or council takes a position and becomes involved in an advocacy project, it is critical to communicate that position clearly and effectively, both inside and outside of TU.

A. INTERNAL COMMUNICATIONS

Proper communication within the organization is critical. Chapter positions should always be reached by a resolution of the chapter's board and, where possible, by vote of its membership at a meeting. They should receive sufficient coverage in the chapter's newsletter, so that all members are aware of the chapter's position.

Because more than one TU chapter will have an interest in many of the issues that arise in your conservation work, you will want to approach other chapters in your area, either on your own or through the state council. You don't want to set out on a campaign only to learn that a neighboring TU chapter or your TU council is either unaware of your position or has taken an opposing or inconsistent position.

One of the chief functions of TU's councils is to reconcile any differences that arise between or among chapters, and it is critical that chapters have the support of their councils. That support may vary from a simple resolution that prevents other TU chapters and members from taking inconsistent or oppos-

ing positions in the name of Trout Unlimited to taking a far more active role in fostering the results that you and your chapter are seeking. In many states, the council is a highly effective forum for coordinating the activities of chapters and maximizing TU's voice on particular issues.

Whenever the issue you have decided to address involves a regionally or nationally significant resource, you will want to communicate with the TU National Office. Supporting grassroots work is one of the National Office's highest priorities, but staff cannot do so effectively if they are unaware of or not adequately informed about what's going on.

B. EXTERNAL COMMUNICATIONS

Communication with parties outside of TU can make or break an advocacy effort. The better you can communicate, the more support you can mobilize for your cause.

For example, communicating with conservation groups, landowners, and potentially interested parties ahead of time can uncover the possibility of creating a coalition of interested groups and individuals who may be willing to share in the work and financial burden involved. Some of TU's greatest victories have been achieved in conjunction with a broad base of other groups.

Knowing when to reach out and to whom requires careful consideration. On the one hand, if the matter in question concerns fishing regulations or a decision about stocking a lake or stream, your focus might be angling groups, fishing-related businesses, and property owners. On the other, if you are seeking to influence a water quality permit, a National Forest plan, or a hydropower license, you will need to communicate with a much broader array of interests, possibly including every user group of the resource in question.

Education is an important part of most advocacy campaigns. In many situations, education will include outreach to the general public. TU's communications office is prepared to assist you in conducting that type of outreach, through press releases, media contacts and the use of TU's website. Common sense dictates that, in some cases, you will want to have the first crack at influencing public opinion on an issue, whereas, in others, you will want to communicate your position more selectively.

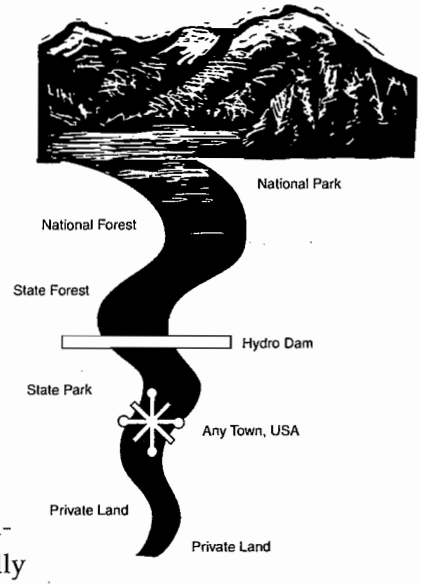
Where litigation is involved, your attorney should be able to advise you on an appropriate communications strategy. Unless your attorney advises you to do otherwise, you should refer to him or her any outside communications concerning pending litigation. The reason for this is simple: successful litigation often requires maintaining a certain degree of confidentiality about strategy and tactics, and your lawyer is in the best position to judge what to disclose to the public. Moreover, certain public disclosures may result in the loss of the attorney-client privilege and other protections intended to protect litigants from having to divulge sensitive information to opposing parties. When in doubt, it is always better to say nothing than to "go public" with information that you may later regret having disclosed. An excellent publication to help with both internal and external communications is *Getting the Word Out in the Fight to Save the Earth*, by Richard Beamish and published by Johns Hopkins Press.

PART TWO: SOURCES OF ENVIRONMENTAL LAW

A Primer for TU Members

This manual's purpose is to give you a working knowledge of the principal environmental laws that affect coldwater fisheries so that you can identify and effectively use the laws that apply to the conservation issues that you encounter as a Trout Unlimited advocate. Because federal laws continue to play the most significant role in the setting of environmental policy, and because discussing the laws of all 50 states would simply be unmanageable, we focus here on federal law. It is important to remember, however, that many federal laws are implemented by state agencies, and that a state may have environmental statutes providing a level of protection above and beyond federal law. Following this overview of the principal federal environmental law is a brief outline of state and local laws that may assist you.

Examining a typical trout stream illustrates the web of laws that may confront a TU chapter. The headwaters of a typical trout stream, for example, might arise deep in the mountains on land that has been set aside as a National Park. Heading downstream, this river might flow through a National Forest or a State Forest. Continuing its journey to the ocean, this river might flow through prairies on federal Bureau of Land Management lands. Winding its way downstream, this same river might encounter a dam built for flood control or hydroelectric power generation. The stream will almost certainly be used by towns and industries to dispose of their waste, and will also flow through a great deal of private property. Different statutes, administered by different state and federal agencies, potentially apply to the different surroundings and activities through which this stream flows.



Even one activity on one type of land can implicate multiple regulatory regimes. Take for example a timber sale in a National Forest that could affect the water quality of a stream. A variety of statutes and regulations may place

ENVIRONMENTAL LAW LINKS

There are several good environmental law sites on the Internet. To get started check out these:

- Environmental Law Information Center at www.envl-info.com.
- National Institute for the Environment at www.cnie.org.
- Pace University Environmental Law Page at willy.law.pace.edu/env/vell6.html.
- WWW Virtual Law Library at www.law.indiana.edu/law/v-lib/lawindex.html.

limits on the sale, or prohibit it altogether. The sale may be inconsistent with that forest's management plan, its effects on the stream may violate state water quality standards promulgated under the Clean Water Act, or it may damage the habitat of an endangered species, to name just three obvious possibilities. In this one example, effective advocacy may require you to deal with four or five different government agencies (U.S. Forest Service, U.S. Fish and Wildlife Service, the state water quality office, the state fish and game agency, and perhaps the Environmental Protection Agency).

The average TU member learns about environmental law through the time-honored practice of "on-the-job-training," often in the middle of a crisis. In the course of these crises, many TU leaders have learned a great deal about particular environmental laws. Although this manual is not intended to give you anything approaching "expertise," it is our hope that it will provide a useful background and help to identify what laws potentially apply in any given situation. If, after reading the summaries, you want to refer to the statutory language itself, you can find a useful compendium in the current edition of *Federal Environmental Laws* (West Publishing Co.), which should be available at your local law library and at larger public libraries.

However, we want to stress that while reading this manual and other legal materials may help you understand your legal options, it is *no substitute for consulting a qualified attorney*. This is especially true if you are in a situation where litigation may be appropriate. You cannot fully understand the choices you face or provide advice to others — much less file a lawsuit — unless you do so with the assistance of an attorney. Following this overview of the principal federal environmental laws is a section on retaining and using legal assistance.

We begin our examination of the sources of environmental law by looking at two federal laws that have broad applications to almost every other piece of federal environmental law: the National Environmental Policy Act and the Freedom of Information Act.

I. The National Environmental Policy Act

The Role of Environmental Impacts in Decision-Making

The National Environmental Policy Act of 1969 ("NEPA") is the "big umbrella" of federal environmental protection law. It applies to actions by every federal agency and was created to ensure that federal agencies give full consideration to the environmental impacts of their actions and decisions. NEPA does not provide substantive rules to determine the outcome of decisions, but requires procedures for assessing environmental impacts of actions and considering alternatives. For example, for certain actions NEPA

requires the well-known "Environmental Impact Statement" ("EIS"). These processes include many opportunities for public review and comment, and although NEPA is a procedural statute, it does provide one of the most significant opportunities for well-organized and prepared citizens to influence the outcome of significant government decisions.

Many of the federal environmental regulatory statutes of the 1970s sought to impose limits on pollution and environmental degradation by *private* entities. In contrast, NEPA was promulgated to redirect the decision-making process of federal agencies and to require consideration of environmental impacts. Section 101 (b) of the Act states "it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy" to avoid environmental degradation, preserve historic, cultural, and natural resources, and "promote the widest range of beneficial uses of the environment without undesirable and unintentional consequences."

Although NEPA does not tell decision-makers how to act, it is a powerful tool for advocates to advance their positions and influence the outcome of an agency decision. In many cases, NEPA offers the best opportunity to become involved early in the decision-making process, to learn more about the environmental and fishery impacts of a proposed action, and to make your views known before an agency or a private party makes an irreversible commitment to a proposed action.

A. HOW NEPA WORKS

NEPA applies to a broad range of federal agency actions, including construction projects such as dams, highways, and waste treatment and storage facilities; the promulgation of new or revised regulations; the issuance of federal permits and licenses; and an array of projects that require either federal funding or federal approval. Federal actions can be categorized by the "four P's" — policies, plans, programs, and projects. NEPA regulations allow that a failure to act can sometimes be an "action." NEPA also applies if a state agency uses federal funds to plan or construct a public works project (such as a highway or prison), or if a private entity proposes to develop a project that requires a federal license or permit.

The purpose of NEPA is to avoid or minimize adverse environmental consequences by ensuring that agencies make informed, responsible decisions, with *public input*. If a federal agency proposes to build or finance construction of a dam, for example, it must prepare a document that explains the alternatives available to accomplish the dam's objectives, be they flood control, irrigation, or power generation. The document also must identify the likely effects on the environment of those alternatives. The agency's rationale, conclusions, and final decision must be put into writing. Citizens who disagree with the agency's decision can seek judicial review of that action, and courts have been quite receptive to lawsuits challenging agency actions on NEPA grounds. Because NEPA requires full disclosure of environmental costs and benefits, any agency failure to disclose and discuss the magnitude of such costs and ben-

NEPA HIGHLIGHTS

The National Environmental Policy Act (NEPA) often provides the "best shot" at influencing agency decisions that might affect coldwater fisheries. NEPA requires federal agencies "to use all practicable means" to protect the environment and was created to ensure that federal agencies consider the environmental impacts of their actions and decisions. The Act requires analysis and a detailed statement of the environmental impact of a proposed federal action, and provides for public comment and review as part of the process.

efits may be sufficient to sustain a challenge under NEPA. Moreover, information that becomes part of the NEPA record is often useful in challenging the use of agency "discretion" under laws like the Federal Lands Policy and Management Act, the National Forest Management Act, the Clean Water Act, and the Federal Power Act.

NEPA requires different levels of review and process for different actions. The first step in determining how NEPA will apply in each case is the agency planning process. Some actions must be subjected to the more rigorous and lengthy environmental impact statement process; others may undergo less scrutiny. The planning process determines what level of NEPA process must be used to answer the fundamental question the agency must ask under the statute: will this proposed federal action significantly affect the quality of the environment?

▶LEVEL ONE — CATEGORICAL EXCLUSIONS

Some federal actions are classified as "categorical exclusions" ("CATEX"), and require no scrutiny under NEPA. This exclusion is only available to categories of actions that the agency determines clearly have no significant impacts on the environment. Each agency is authorized to develop its own list of categorical exclusions that are approved by the Council on Environmental Quality (an entity established by NEPA, among other things to coordinate compliance with the statute). If a proposed action falls under the definition of a previously determined categorical exclusion, no further environmental analysis is required. If you have strong objections to a proposed action, you should not give up hope simply because the agency finds that a categorical exclusion applies. Some agencies have been known to abuse this provision of the statute, and you should look closely to confirm that the categorical exclusion applies. If the categorical exclusion does apply, you can also examine whether the agency determination that established the exclusion was valid.

LEVELS OF NEPA REVIEW

- **Categorical Exclusions (CATEX)** - available only to categories of actions that the agency determines, through prior analysis, clearly have no significant impacts on the environment.
- **Environmental Assessment (EA)** - if the proposal does not qualify for categorical exclusion, the agency must perform an environmental assessment.
- **Environmental Impact Statement (EIS)** - if the agency determines that the proposal could have a significant effect on the environment, it must prepare an environmental impact statement that discusses in detail the environmental impacts of the proposal, including alternatives to the proposed action.

▶LEVEL TWO — ENVIRONMENTAL ASSESSMENT

The second level of environmental analysis is the "Environmental Assessment" ("EA") stage. If the proposal does not qualify for categorical exclusion, the agency must perform an EA. An EA is a public document that identifies the need for the proposed action; lists alternatives to the action; discusses the environmental consequences of both the proposed action and alternatives; and identifies the agencies and individuals involved in preparing the EA.

The purpose of the EA is to identify potential environmental impacts and determine if a more rigorous Environmental Impact Statement ("EIS") is necessary. In some cases, however, the agency may bypass the EA entirely if the proposed action will clearly require an EIS. Many agencies provide for public comment during the EA process, and you can take advantage of this process to put TU's views on the project before the agency, including its views on whether a full EIS is needed. The agency may issue a "Finding of No Significant Environmental Impact" ("FONSI"),

which must explain why the proposed action will have no significant environmental impact. In the event of a FONSI, the NEPA process is concluded, assuming there is no court challenge. If the agency finds that the action may have significant environmental impacts, it must so state and begin the EIS process. An EA that results in a FONSI (and therefore completes the NEPA process) will usually analyze various alternative courses of action, identify a "preferred alternative," and explain why the preferred alternative will have no significant impacts.

▶LEVEL THREE — ENVIRONMENTAL IMPACT STATEMENT

The third level of environmental analysis is the EIS process. If the agency determines in the EA stage (or before) that the proposed action could have a significant effect on the environment, an EIS must be prepared. This is the stage in the NEPA process that provides the maximum opportunity for public involvement.

The EIS is a detailed statement that discusses the environmental impacts of federal agency proposals for legislation and other major actions. The EIS process is intended to ensure that important effects of major federal actions significantly affecting the quality of the human environment will not be overlooked or underestimated in the decision-making process.

One agency is designated the lead agency for the preparation of the EIS. Agencies preparing an EIS must publish a Notice of Intent ("NOI") in the Federal Register. Individual agencies use different approaches to announce their intent to begin the EIS process, to publicize their proposed actions, and to solicit public participation. Notices may be published in newspapers (e.g., the legal notices section of the local newspaper for the time and location of public meetings), they may be published in the Federal Register, and they may be mailed directly to interested parties on the appropriate mailing list. Each of the major federal agencies has detailed regulations concerning how it applies NEPA to specific actions. It is often necessary to consult those regulations before beginning to participate in the NEPA process; they will tell you what you can expect and what procedural rights you may have to offer evidence in support of your position. Individuals can also consult *The United States Government Manual*, found in most libraries, for federal agency information.

If you are interested in a proposed project, you should alert the lead NEPA agency (identified in the NOI) by letter of that concern and ask to receive notices of all steps and, if there is a formal proceeding, "intervene" as an interested party. Intervention procedures vary among the agencies and types of proceedings, and you should consult the relevant contact at the agency or the TU National Office to determine exactly how to intervene. You also should contact the state fish and wildlife agency and the U.S. Fish and Wildlife Service to determine their positions and encourage their active participation in the NEPA process.

Once an agency determines that a proposal may significantly affect the environment, the next step is "scoping." Scoping is an early and open procedure in the EIS process to determine exactly what issues will be analyzed in the EIS process and to notify and involve all agencies and individuals interested in the proposal. Agencies are encouraged but not mandated to hold scoping meetings. Scoping enables the public to become involved at the very start of the EIS process. The scoping process is your opportunity to make sure that the EIS addresses impacts of concern to you and considers alternatives that you advocate.

While each agency differs in how it conducts scoping meetings, there generally is an opportunity for members of the public to speak. Oral comments may be as simple as concern about potential effects on one's backyard, or as complex as engineering or biological studies. You should be prepared to offer a written version of your oral comments.

The actual EIS document is prepared after the scoping process. An EIS is generally written in two stages: draft and final. Prepared by the lead NEPA agency, the draft EIS identifies, among other items, all "reasonable alternatives" (NEPA language) and may identify the agency's "preferred alternative." The EIS will include a discussion of the environmental effects of all alternatives. The agency circulates the draft EIS for comment among all other relevant agencies and members of the public who request it, and files it with the Environmental Protection Agency ("EPA") (NEPA requires that EPA review all federal EISs). The lead agency may hold public hearings on the draft EIS. The comment period for a draft EIS is usually not less than 45 days.

NEPA "ACTION" CHECKLIST

1. Get involved early; ask agencies to put you on their mailing lists to be notified about proposed agency actions.
2. Review categorical exclusion decisions, and appeal them if necessary.
3. File comments in the environmental assessment stage. A "Finding of No Significant Impact" can be appealed to the agency, and legally challenged in the courts.
4. File comments in the "scoping" process of the environmental impact statement stage. EIS decisions also can be appealed or challenged in court.
5. Comment on the draft and final EIS.

NEPA LINKS

Details and background information on NEPA are available on the Internet from the National Library for the Environment located at the National Institute for the Environment website at www.cnie.org.

Following the comment period, the lead agency prepares the final EIS. The final EIS must include the agency's responses to the comments received, including comments submitted by members of the public. The final EIS also must discuss any opposing views. The lead agency distributes the final EIS, at which point the public can still comment on it before the agency makes its final decision. The agency cannot make a decision until 30 days after the final EIS is filed with EPA. The final EIS will identify the preferred course of action and its environmental consequences.

B. JUDICIAL REVIEW

There is no regulatory body to oversee implementation of and enforce compliance with NEPA, so judicial enforcement is extremely important. A number of agency decisions in the NEPA process may be challenged in court, including the failure to prepare an EIS, a FONSI decision, and the preparation of an improper or inadequate EA or EIS.

If a federal agency does not comply with NEPA, then it faces the prospect of time-consuming, expensive litigation. Such litigation may significantly affect private activities, either by causing substantial delays or by altering the nature of the underlying regulatory review of the proposed federal action. Although in many cases judicial review under NEPA has been very effective, you should remember that, because NEPA is a procedural statute, the court can only review the decision-making and disclosure process. You will not be able to get the court to second-guess the substance of a decision if NEPA's procedures have been followed. If the court finds that NEPA has not been followed, it will not mandate a particular result, but only send the issue back to the agency to take the steps necessary to comply with NEPA procedures.

Judicial review is probably most important for actions that underwent *no* or minimal NEPA review. Courts have struck down a number of

agency decisions because they underwent no NEPA review, and have ordered the agency to undertake that review. Similarly, numerous actions for which review went only as far as the EA stage have been struck down and sent back for failure to go through the EIS process. These are probably the two most useful opportunities for judicial review for TU chapters and councils. If an agency approves a permit or project without any NEPA review or by stopping at the EA stage, and you believe that the action will have significant environmental impacts, you should explore the possibility of judicial review by consulting with other interested groups, TU National staff and an attorney.

II. The Freedom of Information Act

Like NEPA, the Freedom of Information Act ("FOIA") has broad application to environmental advocacy issues. This law (5 U.S.C. Section 552) establishes the public's right to obtain information from federal government agencies. Under FOIA, "[a]ny person," including U.S. citizens, foreign nationals, organizations, associations, universities — and TU activists — can obtain such information.

FOIA's scope includes executive branch departments, agencies, and offices; federal regulatory agencies; and federal corporations. Congress, the federal courts, and parts of the Executive Office of the President that function solely to advise and assist the President are not subject to FOIA. More importantly to TU members, agencies such as the U.S. Army Corps of Engineers, the National Park Service, the U.S. Forest Service, the Bureau of Land Management, and EPA are fully covered by FOIA.

"Agency records" obtainable under FOIA include a wide range of documents or other materials (including print, photographic, and electronic formats) that were created or obtained by a federal agency and are, at the time the request is filed, in that agency's possession and control. In some cases older material, especially pre-1960s records, may be available at the National Archives in Washington, D.C., and is available without filing a FOIA request. Call the National Archives reference branch (202-523-3220) for more information.

FOIA HIGHLIGHTS

The Freedom of Information Act establishes your right as a public citizen to obtain federal agency documents and information concerning actions and decisions that might affect your trout stream.

A. FILING A FOIA REQUEST

The process of filing a FOIA request has become so commonplace that the acronym is now being used as a verb — as in, "Last week I *FOIA'ed* (pronounced *foy-yad*) the Department of Energy to get

ELECTRONIC FOIA

The Electronic Freedom of Information Act Amendments of 1996 make it clear that computer databases and other electronic records are "agency records" covered by FOIA. The Act now requires agencies to provide information "in any form or format requested," including in electronic form, "if the record is readily reproducible by the agency in that form or format." Many agencies are now routinely posting major agency studies and decisions on their Internet web pages, making these sites a good place for the public to begin gathering information.

a copy of their latest plan." To file a FOIA request simply write a letter to the agency that is likely to have the information you seek and, if possible, address it to the agency component or division that has the relevant records (e.g., to the Cheat Ranger District, Monongahela National Forest, rather than to the U.S. Forest Service headquarters in Washington). For the address, call the agency or ask a reference librarian at a law, research, or public library. In fact, if you have been dealing with a contact person at the agency concerning a particular issue, they will almost always tell you where to send your FOIA request related to that issue. A partial list of FOIA contacts at federal agencies is included as Appendix B.

If possible, write the letter on TU letterhead, or on your personal letterhead as a second choice. The letter should include the following:

- a statement that the letter is a request under the Freedom of Information Act, 5 U.S.C. Section 552;
- a clear and specific description of the information you want. If possible, cite dates, authors, addressees, subjects, or titles of documents you are seeking, and refer to or enclose copies of any published accounts related to the requested material (e.g., newspaper or journal articles or government reports);
- a request for a waiver of fees (see below); and
- a statement that you expect a response from the agency within the 10-day statutory time period; that you want a detailed explanation of the exemptions invoked to withhold any information from release; that if material is withheld, you are entitled under the law to be given any remaining "reasonably segregable portions" of these documents; and that you will file an administrative appeal if the agency's response is not satisfactory.

For your use and reference, a sample FOIA request is included in Appendix C.

FOIA "ACTION" CHECKLIST

1. Always request a waiver of fees.
2. Contact the agency's FOIA office to check on the status of your request and to see if additional information is needed to expedite processing or to clarify what you want.
3. Keep copies of all your correspondence and notes of all phone calls.
4. Always file an appeal letter if the initial response is inadequate.
5. If the agency fails to respond satisfactorily, you may wish to seek the assistance of a member of Congress to contact the agency on your behalf.
6. If all else fails, you have the right to go to court to force the agency to release the documents.

B. WAIVER OF FEES

FOIA provides that all "noncommercial" requesters receive the first two hours of search time and 100 pages of copying free of charge. In addition, all fees, including copying, must be waived by the agency if the material requested "is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester."

As a TU volunteer, your request meets these statutory criteria, and you should make your case for a fee waiver in your request letter as strongly as possible. State in the letter that the materials are not requested for a private, profit-making commercial purpose, and that you are a member of a nonprofit conservation organization (TU) that is concerned about the issue in question. You may also wish to request that if fees are assessable over a certain amount, the agency notify you and give you the choice whether to proceed with the response and pay the fees.

C. AGENCY RESPONSES

Ideally, the agency will promptly release everything you requested with a full waiver of fees. Believe it or not, that actually does happen from time to time. However, frequently the agency responds without producing the records. Some of the most frequent responses (and suggested actions you can take) include the following:

1) You receive an acknowledgment of your request and a statement that your request will be processed in the order in which it was received. Agencies are allowed to process requests on a first-come, first-served basis. If the agency has a backlog of requests (and most do), you may have to wait some time before you receive the materials you seek. Call or write the FOIA office to follow up on requests that have been pending for an unreasonable period of time. Get the names of specific FOIA personnel you can contact about your request. Excessive processing delays may require an administrative appeal letter (see below). Many times the person processing your request will be willing to talk to you about ways to expedite it.

2) Your request for a fee waiver is acknowledged but more information is sought before the agency will begin processing the request. Sometimes the agency asks a short series of questions, and sometimes a lengthy multi-page questionnaire may be enclosed for you to fill out and return. The best way to avoid this response is to provide as much information as possible in your initial letter to support your request for a fee waiver. If the agency continues to resist granting you a fee waiver, it may be necessary to write a strong letter reminding the agency of Congress's intent that fee waivers be granted to all requesters who meet the statutory conditions.

3) The agency says that no records were found in response to your request or claims that your request is too broad. Call or write the office processing your request and ask if additional information is needed from you to make your request more specific. Explain why you believe the agency has material responsive to your request and inquire about other places in the agency's files where relevant records might be found. Often the FOIA contact person will be willing to discuss what records are available and how to facilitate a response to your request.

4) Information relevant to your request is found, but the agency withholds all or part of it. FOIA allows an agency only nine exemptions from its obligation to provide information in response to a request. These exemptions, found at 5 U.S.C. Section 552(b), include material related to national security, internal agency rules, proprietary business information, inter- and intra-agency pre-decisional memoranda, personal privacy, and records related to law enforcement. Improper agency use of these exemptions to withhold information can be appealed.

FOIA LINKS

A currrent list of federal agency FOIA offices' mailing addresses can be found on the internet at www.usdoj.gov/oip/foia_updates/Vol_XIX_2/xix2page3.html.

HOW TO FILE A FOIA REQUEST

Details on how to file a FOIA request and administrative appeal can be found in "Using the Freedom of Information Act: A Step by Step Guide," which can be obtained for $3 from the American Civil Liberties Union, 122 Maryland Ave. NE, Washington, D.C. 20002. A more technical text, "Litigation Under the Federal Freedom of Information Act," is also available from the ACLU at the same address.

D. FILING AN APPEAL

It is often worthwhile to file an administrative appeal if the agency's response is unsatisfactory. Appeals can be especially effective in challenging excessive processing delays, fee waiver denials, and improper withholding of responsive documents. Regulations governing appeals vary from agency to agency; take careful note of the instructions for filing an appeal in the agency's response to ensure that your appeal is timely.

An appeal letter should state the grounds for appeal and reasons why the agency's response to the request was improper, request a more precise explanation of the agency's decision (if the reasons for the initial determination were unclear), and say that you expect a final ruling on the appeal within the 20-day statutory time limit. A sample appeal letter is included in Appendix C.

III. The Clean Water Act

High quality water is essential to good trout habitat. But in the 1960s, after decades of abuse and neglect, you did not need sophisticated scientific tests to know that the water quality in many of this country's rivers and streams was in trouble. You could see it with the naked eye.

The news media routinely showed scenes of terribly polluted rivers, lakes, and estuaries, their waters fouled with industrial and municipal waste. Images of a sewage or industrial pipe flushing toxic waste into a river became commonplace.

Historic Boston Harbor was a cesspool. Lake Erie was declared dead. The Potomac River was clogged with blue-green algae blooms that were a nuisance and a threat to public health. Many of the nation's rivers were little more than open sewers and fish kills were a common sight, and in 1969 the Cuyahoga River in Ohio was so polluted that it actually caught fire and burned.

These images contributed to a growing public outrage about the condition of our nation's surface waters, and in 1972 Congress responded with the passage of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"). The Clean Water Act's primary mission was to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." To meet this objective the CWA contained two fundamental national goals: to eliminate the discharge of all pollutants into the nation's waters by 1985, and to achieve water quality levels that are "fishable" and "swimmable" by mid-1983.

While those dates have long since passed and the goals remain unmet in many of our waters, efforts to attain the goals continue. Our society has made great strides in restoring water quality, and many of our coldwater fisheries have benefited from a quarter-century of water quality improvement, largely because of the Clean Water Act. Most of the successes of the CWA have been in reducing "point source"

CLEAN WATER ACT HIGHLIGHTS

The Clean Water Act is the primary law that protects our nation's waters. It provides a framework to address the many causes of pollution and poor water quality, including both "point source" and "nonpoint source," and gives citizens the right to sue to ensure that the Act is enforced. The CWA is administered primarily by state water quality agencies, with oversight by the U.S. EPA. The future health of our coldwater fisheries relies heavily on protections provided by the CWA.

or "end-of-pipe" pollution. For most watersheds today polluted run-off from a variety of sources, such as agriculture and overdevelopment, cause most water quality problems. These sources are much more difficult to control than the end of a sewage pipe and, in fact, the CWA does not regulate them directly. The CWA, however, can be a valuable tool for addressing threats to the water quality of our coldwater fisheries.

A. CLEAN WATER ACT OVERVIEW

The CWA provides a comprehensive framework of standards, technical tools and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted run-off from urban and rural areas, and habitat destruction.

The CWA designates two distinct types of water pollution: "point source" and "nonpoint source." The CWA defines "point source" pollution as pollution discharged from "discernible, defined, and discrete conveyances," such as pipes or containers. "Nonpoint source" pollution essentially means any water pollution that does not specifically meet the definition of point source, and can include run-off from a variety of causes, including crop production, livestock grazing, timber harvest, roads, mining operations, and urban areas (in this manual, we use the terms "nonpoint source" and "polluted run-off" interchangeably). As will be discussed fully below, some sources of pollution that we think of as run-off may, in some instances, be regulated as point sources. Examples of this include large construction sites, very large animal feed lots (known as "concentrated animal feeding operations" or "CAFOs"), and some municipal storm-water discharges.

The CWA primarily regulates the discharge of pollutants, which it defines as "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. Section 1363(12).

The CWA does not actually prohibit outright the discharge of many individual pollutants; rather, it establishes water quality goals and pollutant discharge limitations intended to achieve those goals. It also establishes, in the case of point source discharges, a permitting system that allows the discharge of pollutants within limits determined by biological analysis (water-quality based limits) or technological pollutant removal capability (technology-based limits).

While the CWA gives the government and the public a direct, enforceable role in regulating point sources, as explained below, its approach to polluted run-off currently involves no binding mandates on nonpoint source polluters.

Most of the responsibility for administering the CWA rests with the United States Environmental Protection Agency ("EPA") but the CWA delegates most day-to-day decisions to state water pollution control agencies. State agencies make most of the decisions that you will encounter under the CWA, with EPA having the right to review and, in some instances, override state agency action. Being an effective advocate on CWA matters thus involves knowing who in your state water pollution control agency handles water quality permitting and who in the EPA regional office reviews those decisions. (As explained below, decisions involving wetlands permits usually go directly to the district office of the U.S. Army Corps of Engineers, although state water pollution control agencies can also have a role). For your reference, a list of contact information for EPA's regional offices is included as Appendix D, and a list of websites for each state's water quality agency is included as Appendix E.

Most TU advocacy efforts will center on one of the following seven aspects of the CWA:

- water quality standards,
- regulation of "point source discharges,"
- the "TMDL" program for restoring impaired waters,

- ► state water quality standard certifications for federal actions,
- ► wetlands protections,
- ► control of "nonpoint source" discharges, and
- ► citizens' suits.

Each of these topics is discussed below.

B. WATER QUALITY STANDARDS

Section 303 of the CWA requires that every state adopt water quality standards. These standards become the goals that all other CWA programs are intended to achieve, and will govern many of the decisions a state must make under the CWA.

Each state's standards must, at a minimum, establish the designated uses of the state's various waters and the maximum permissible concentrations of various pollutants necessary to achieve those designated uses. The standards must incorporate the maximum concentrations of pollutants established by EPA, but may be stricter than EPA's standards. Each state must revise its water quality standards every three years. The standards (and each set of revisions) must be submitted to EPA for approval. If the state standards are inadequate, EPA must promulgate standards for the state (as of December 1998, the EPA had approved the state water quality programs in 43 states).

Each state's water quality standards must have at least five components:

1) Use designations covering each body of water;
2) A description of the methods used to arrive at the standards;
3) Water quality criteria sufficient to support the designated uses;
4) An antidegradation policy; and
5) A certification that the standards were adopted properly pursuant to state law.

THE FEDERAL CLEAN WATER ACT REQUIRES THAT STATE WATER QUALITY STANDARDS CONTAIN:

- ► A "designated use" for each body of water,
- ► Water quality criteria sufficient to support the designated use, and
- ► An "antidegradation" policy.

The first line of defense to protect your state's waters is the state proceedings by which water quality standards are set. Typically, the standards are set by the state's primary environmental regulatory agency through so-called "notice and comment" rulemaking, which involves the opportunity for written public comment and, sometimes, public hearings. How these standards are worded will have far reaching implications for what activities will and will not be permitted in particular watersheds.

In order to influence these proceedings, you must be informed as to what changes are being proposed and what the deadlines are for public comment. Every state publishes its public notices differently, but the best way to see that you get the relevant notices is to contact the agency in charge of water quality in your state and let them know you want to receive all notices related to water quality regulations. The agency will let you know how to keep informed and probably put you on their mailing list.

The heart of the standards are the "designated uses" set out for each body of water. Typically, every river or watershed has a number of designated uses such as municipal water supply, warm or coldwater fishery, boating, or other recreation. The standards then set concentrations of pollutants that cannot be exceeded to maintain the designated uses, and may also include more qualitative, or "narrative," standards that must also be met. Many states include trout habitat as a designated use for relevant watersheds.

The "use" designations are important for two reasons. First, they dictate the level of water quality that is required to be maintained for a

particular water body. For example, streams designated as wild trout habitat will require lower levels of pollutants, lower temperatures, and higher levels of dissolved oxygen. Second, the "use" designations themselves are enforceable. The Supreme Court has held that a Washington state water quality standard that designated a particular stream as habitat for fish migration, rearing, and spawning, could be enforced to require certain minimum flows below a hydropower dam, even though the standards did not include explicit minimum flow provisions. This case established the legal precedent that "use" designations themselves are enforceable, and can be used to impose water use and quality limitations that might not be explicit in the purely objective, quantitative portions of the water quality standards. In other words, if a stream is designated as wild trout water, anything that impairs that function, even if it is not listed under the objective water quality standards, can potentially be addressed through that use designation (assuming the activity is regulated by the CWA).

When your state revises its water quality standards, you should examine the use designations for specific bodies of water to double-check whether any wild trout fisheries have not been designated as such. You should also confirm that the numeric standards for important use designations are sufficient to make sure those uses are supported. This second effort may require the help of a biologist.

The second area of traditional concern to TU members has been each state's "antidegradation policy." EPA regulations require that states include provisions for the designation of "high quality" and "outstanding national resource" waters (the precise terms used for these designations varies from state to state). High quality waters are those waters that exceed minimum water quality standards necessary "to support propagation of fish, shellfish, and wildlife, and recreation." They are sometimes referred to as "tier two" waters ("tier one" waters are those that simply meet water quality standards). Outstanding national resource ("ONR") waters are those that constitute "an outstanding National resource, such as waters of State and National parks and wildlife refuges and water of exceptional ecological and recreational significance." These are sometimes referred to as "tier three" waters. EPA regulations

WATER QUALITY CRITERIA

Water quality criteria are descriptions of the chemical, physical and biological conditions necessary to achieve and protect the designated use of a water body.

Numeric criteria are measurable water quality benchmarks, and are normally expressed as maximum acceptable concentrations of a specific pollutant. Example: "dissolved oxygen greater than 5.0mg/L" (which in plain English means that the level of dissolved oxygen in the water body must always be at least five milligrams per liter).

Narrative criteria are statements that establish water quality goals. For example, some states' narrative standards say that certain waters should be "usable as migratory and spawning habitat for salmonids."

ANTIDEGRADATION LEVELS OF STREAM CLASSIFICATION AND PROTECTION

- **Tier I Streams** — those that simply meet water quality standards for existing use; the "bottom line" for water quality protection.
- **Tier II Streams** — "high quality" waters that meet or exceed current water quality standards necessary "to support propagation of fish, shellfish, and wildlife, and recreation."
- **Tier III Streams** — waters that constitute "an outstanding National resource, such as waters of State and National parks and wildlife refuges and waters of exceptional ecological and recreational significance."

further mandate that every state have an antidegradation policy that limits the extent to which the quality of these "tier two" and "tier three" waters may be compromised.

One of the most important things you can do to protect a particular body of water is to have it designated as "tier three." This designation severely limits, and may even prohibit, the approval of any additional point source discharges into the water. The designation also obligates the state to maintain the quality of the water if it is threatened by sources other than point source discharges. For example, when a limestone mine recently threatened a tributary of Penns Creek, PA, TU activists succeeded in convincing the state to designate the stream as an exceptional value water. That designation became a critical tool in administrative proceedings that resulted in important limitations on the scope of the mine and protected the fishery in Penns Creek, PA,.

The procedures for "tier three" designation vary from state to state, but typically a member of the public can petition the agency responsible for implementing the CWA. The state fish and game department may also be able to petition for designation, and working with that agency may improve your chances of obtaining the designation.

If your state takes action on a water quality standard with which you disagree, the fight does not end with the state agency. EPA must review all state water quality standards, and, after the state acts, you may push EPA to reject the standard you find objectionable. If EPA approves the standard, you then may have remedies in court under Section 505 of the CWA, as discussed more fully below.

Water quality standards illustrate an important point that applies to advocacy with state and federal agencies generally. If you hope to prevent a particular regulation from taking effect, it will accomplish little to submit a single written comment to the state agency. Your letter will end up buried in the file, ignored by the most important decision-makers. A flood of letters, on the other hand, always causes a public agency to take notice, and publicity can stop it in its tracks. You need to get as many chapter or council members as possible to submit comments. You should also coordinate with other conservation or public health groups and with the local media to maximize the public pressure on the agency to convince it to reach the right conclusion.

WATER QUALITY STANDARDS "ACTION" CHECKLIST

1. Review your state's "high quality" and "outstanding waters" stream lists.
2. Review your state's antidegradation policy and implementation plan.
3. Identify the critical water quality issues for your stream or watershed, as well as any critical statewide issues.
4. File timely comments and attend public hearings during the state's "Triennial Review" of water quality standards. Work with other conservation and environmental organizations — lots of comments in support of your position will have a greater impact than your single comment standing alone.
5. File a petition to have your home stream listed as an "outstanding resource water" or upgraded to "high quality" status.
6. Watch for notices of proposed rulemaking changes in your state legislature that may attempt to change stream classifications or water quality standards.
7. Urge EPA to review and reject state water quality standards or classifications that are inadequate to protect your stream.
8. If all else fails, seek judicial review as provided in the Clean Water Act.

C. POINT SOURCE DISCHARGE PERMITTING

The primary means of meeting water quality standards under the CWA is by controlling the direct discharge of pollutants from point

sources. Under the CWA a party discharging a pollutant must obtain a permit under the National Pollutant Discharge Elimination System ("NPDES") from either the state authority or from EPA (in states where EPA has not approved the state regulatory program). If water quality standards are not being met, the most direct means of improving water quality under the CWA is to restrict the level of pollutant discharges allowed by the NPDES permits for that body of water.

NPDES permits usually contain two basic types of requirements: discharge limits and monitoring obligations. Discharge limits regulate the concentration or amount of pollutants entering the receiving water, and are set by one of two methods. The first is to base the discharge limits on the water quality standards. To calculate a discharge limit, the permitting agency considers water quality standards, which, as discussed above, combine designated uses (i.e., industrial waste water disposal, coldwater/warmwater fish habitat, public drinking water source,) with pollutant concentrations (e.g., no less than seven parts per million dissolved oxygen, no visible sheen from oil and grease) that the agency believes are necessary to maintain the designated use. This process is known as "water quality-based" permitting. Most of the discharge limits of interest to you and your chapter will be water quality-based.

The second method the agency can use to set discharge limits is known as "technology-based" permitting. For certain pollutants from certain facilities, EPA has set minimum standards that every facility must meet, regardless of the implications for water quality standards. If EPA has not set a limit for a particular pollutant from a particular type of source, the state may do so.

The NPDES permit process provides two opportunities to address these discharge limits. The first occurs when a new point source, such as a factory or a mine, applies for an NPDES permit.

WHAT ARE NPDES PERMITS?

Under the "National Pollutant Discharge Elimination System," the state agencies or EPA issue permits for discharging pollutants into a water body. These permits include, among others, wastewater discharges from cities and industry, mining operations, animal feedlots, and run-off from stormwater pollution and construction sites. The public has a right to comment on NPDES permits when they are issued and renewed.

The second, and more frequent, of your opportunities to address discharge limits occurs when previously permitted point sources apply for renewed permits (reissuance), which happens every five years. You should not underestimate the importance of public participation in permit reissuance. The intent of NPDES is to incorporate up-to-date requirements in each permit reissuance, but how those requirements appear in the language of each permit can vary widely, and the variations can result in critical "real-world" water quality impacts.

For instance, the most recent EPA regulations might state a specific limitation for a pollutant, but how the permit specifies compliance with that limitation may vary widely and may determine whether the limitation itself is sufficient to protect water quality and aquatic life. Experience has shown that, as a statistical matter, compliance may decrease with the frequency of monitoring, so that you may want to press for more monitoring than proposed in the initial draft permit. Some states allow "mixing zones," which assume that pollutants will dilute in the receiving water and actually allow a polluter to exceed allowable limits at the point of discharge. Whether the use of "mixing zones" is appropriate is yet another issue that you may want to consider in reviewing a draft NPDES permit.

You should not assume that NPDES permitting is limited to end-of-the-pipe discharges from industrial facilities. Recent changes in the CWA and

NPDES PERMITTING "ACTION" CHECKLIST

1. Get on the mailing list to receive notices from your state water quality agency when applications for new permits or permit renewals are being considered in your area.
2. Make your concerns known to state agency officials while the permits are being drafted.
3. File timely comments or request a public hearing if the draft permit is inadequate. Organize — don't forget there is strength in numbers.
4. File an administrative appeal if the final permit is still inadequate.
5. Monitor your stream during the life of the permit and report problems or violations to the state agency.
6. Get ready to go at it again when the permit is up for renewal, usually every five years.

in EPA regulations are bringing several important activities under the auspices of the NPDES program. The most important examples of activities that either now need, or will soon need, NPDES permits include stormwater run-off from larger communities (previously defined as greater than 100,000 people, now defined as greater than 10,000), large construction sites (currently five acres, but with a reduction to as low as one acre expected from EPA), and large animal feeding operations. As these regulations are in flux, and will be applied differently from state to state, you should check with your state's water quality agency for the specifics of these requirements.

WATER QUALITY CLASSIFICATION LISTS

- State 305(b) reports list current water quality classifications for each water body in the state.
- State 303(d) reports list water bodies that are "impaired" (i.e., will not meet their use designations).

Both reports are available from your state water quality agency.

You will probably need expert assistance for any serious review of an NPDES permit, although you can begin your review by questioning state or federal fish and wildlife agency biologists concerning their views of the draft permit's limitations, terms, and conditions. To help you understand how regulators develop permit limitations and how you can begin evaluating their effectiveness, it is useful to consider water quality standards and criteria, which are the CWA's building blocks.

D. IMPAIRED WATERS AND TOTAL MAXIMUM DAILY LOADS

Where each state's antidegradation policy is intended to protect waters that meet or exceed water quality standards, the "TMDL" program is intended to restore waters that do not meet those standards. Section 303(d) of the CWA (33 U.S.C. Sections 1313(d)) plays the critical role of tying NPDES permitting and other CWA programs back to water quality standards. This provision has been largely ignored throughout most of the history of the CWA, but recent litigation in numerous states has revived it. Many believe that this provision is one of the most promising tools to force stream clean-up in the coming years. Every TU chapter and council should at least check the status of this process in its state to determine if it offers opportunities to clean up impaired trout waters.

Section 303(d)(l)(A) requires every state to compile a list of "impaired" waters that do not meet one or more of the state's applicable water quality standards. Section 303(d)(1)(B) in turn requires the state to establish a "total maximum daily load" ("TMDL") for the relevant pollutants that will allow these waters to "recover" and once again meet the water quality standards for their designated uses. At a minimum, the TMDL document should establish an allocation of maximum effluent levels among all the sources contributing the relevant pollutant to the water to cause a sufficient reduction to bring the water

back in to compliance with the water quality standard. The state's list of impaired waters must be submitted for approval to EPA, as must each individual TMDL. If the state's list or any of its TMDLs are inadequate, EPA must impose an adequate list or TMDL on the state.

Historically, the states generally ignored their obligations under Section 303(d) and did not even prepare the required list of impaired waters. Beginning in 1986, public interest groups started filing lawsuits to force states to comply with their obligations under this provision, and in the 10 years following more than 20 suits were filed. This litigation has been uniformly successful, and many states are now under court orders requiring them to develop TMDLs for impaired waters. Most of the other states are complying to avoid litigation. As of summer 1998, all but one state (Iowa) had submitted a 303(d)(1)(A) list to EPA, and EPA had approved 27 of those lists. EPA partially approved and partially disapproved two other lists, and is in the process of reviewing lists from the remaining states. Each state's list must prioritize waters for development of TMDLs.

As a result of this activity, over the next several years states will be in the process of preparing TMDLs for thousands of streams. This is a significant opportunity for additional reductions in pollution, and may be the primary means of attacking the problem of nonpoint source pollution. Under its interpretation of Section 303(d)(1) EPA requires states to include more than a mere list of pollution sources and effluent levels. The TMDL document must include the overall target for the pollutant in question necessary to meet water quality standards, the current level of the pollutant, the identity of sources of the pollutant, the level of effluent for each source, and a plan for reducing effluent levels to meet the target.

For a stream impaired primarily due to point source pollution, the TMDL document will allocate tighter effluent levels among pollution sources, and then the state will write those stricter pollution limits into each polluter's NPDES permit. For streams impaired by nonpoint sources, the TMDL can take a variety of forms. A typical situation involves a river that violates nitrate or phosphate standards because of effluent from sewage treatment plants and agricultural run-off. A TMDL for such a stream might simply ratchet down on the treatment plants to meet the target without any reduction in run-off. It might focus money for voluntary watershed programs (such as Section 319 of the CWA, which is discussed further below, or Farm Bill conservation programs), and attribute some reduction in run-off to those efforts. Some states are exploring the possibility of softening the level of required reductions for waste treatment plants in exchange for payments from those plants to fund programs to reduce polluted run-off.

A host of issues can affect whether the TMDL actually succeeds in achieving water quality standards in a stream. These include the methods for assessing the current and future state of the stream; how reductions in nonpoint source pollution are measured; the time frame for implementing reductions necessary to comply with the TMDL; and the benchmarks for whether the TMDL has been successfully implemented. The language of the statute, standing alone, makes it the state's responsibility to draft TMDLs, with a requirement for

WHAT ARE TMDLS?

When the state water quality agency determines under the 303(d) process that a stream is impaired by specific pollutants, it must establish a "total maximum daily load" for those specific pollutants that will allow the stream to "recover" and once again meet the water quality standards for its designated uses. The established TMDLs are then used to determine the limits set on discharge permits and to decide if new permits for discharges will be granted.

public notice and comment and ultimate approval by EPA. Many states, however, are providing far greater opportunities for public input into the drafting process. In some states, representatives of EPA and interested stakeholders (including environmental groups) are participating in a collaborative process to draft the TMDLs in advance of public notice and submittal to EPA. In these states, there is an opportunity for TU members to gain a seat at the table and influence the requirements of the TMDL and how it will be implemented.

Each state's list of impaired waters includes a timetable for developing TMDLs for each water on the list. In most states the list will be divided up into priority groups, with the highest priority streams slated for TMDL development within three years of issuance of the list, and other streams for later years (EPA policy has set 8-13 years as the outside time line for drafting TMDLs for all the waters on a state's list). Your state's list is readily obtainable, often on the Internet, from the state agency responsible for water quality. Every TU chapter and council should obtain the list to see if it includes any trout waters or potential trout waters and, if so, review the schedule for developing TMDLs for those particular waters. Although participating in the drafting of a TMDL can take a great deal of time and require technical assistance, the process may very well offer the best opportunity for cleaning up waters on the list. TU National staff can assist volunteers interested in working or commenting on individual TMDLs. In addition, other conservation groups in your state are probably already involved in the process, and combining forces with them may make the most of your volunteer resources. Finally, some states are using grant money available from EPA under Section 319 of the CWA to fund participation of volunteers in drafting TMDLs.

WHAT IS SECTION 401 CERTIFICATION?

Section 401 of the CWA gives the states oversight authority over any federally permitted activities that may result in discharges of water pollution in their states. State approval of these federal projects is referred to as "certification."

E. STATE WATER QUALITY CERTIFICATION

Section 401 of the CWA gives the states oversight authority over certain federally permitted activities that may result in water pollution in their states. Specifically, Section 401 requires that applicants for federal permits or licenses that may result in a "discharge" to waters of the United States must first obtain certification from the state where the project is located. If the state finds that the discharge will violate state water quality standards, it can reject the permit or license.

A state has four options under the Section 401 certification process: it can certify the project; it can certify the project together with conditions to protect water quality; it can deny certification; or it can "waive" its certification authority. If a state fails to act on an application for certification within one year the certification authority is automatically "waived" and the project can proceed without state water quality certification.

Section 401 certification has been applied to a number of federal permit programs, including federally issued NPDES permits. Perhaps for TU the most significant applications of Section 401 have been to the issuance of FERC hydropower licenses and to permits issued by the Army Corps of Engineers under Section 404 of the CWA (discussed below). For hydropower projects, the Section 401 certifications can be quite broad, and can include requirements for minimum flows and temperature. For example, in a 401 certification that was upheld by the U.S. Supreme Court, the State

of Washington conditioned its certification for a hydropower dam on the Dosewallips River on the maintenance of minimum flows to protect the river's salmon runs.

There have been some efforts to require Section 401 certifications for permits for grazing and other activities on federal land. A recent decision by the U.S. Court of Appeals for the Ninth Circuit has rejected these efforts and held that a federal permit for grazing does not require a certification. This case is currently being appealed to the Supreme Court.

The specific conditions a state attaches to a Section 401 certification can be very important. These conditions automatically become a part of the permit, and can be enforced by the state, the federal government, or through a citizen's suit. Participation in the 401 certification process can thus have a major impact on the scope of activity actually permitted, and you should try to become familiar with the certification process in your state.

The state water quality agency must provide public notice and comment periods for all Section 401 certification applications. These rules vary from state to state, so the place to begin your involvement in the certification process is your state's water quality agency. Ask to be put on your state's mailing list to receive public notices of Section 401 applications (this is also the best way to prevent the state from allowing the automatic "waiver" provisions to take effect). Do some research to find out what kinds of practices your state is requiring and approving. Submit comments on draft 401 certifications that don't adequately address coldwater fisheries issues. Laying the groundwork by becoming familiar with the Section 401 procedures in your state and establishing contacts with the officials that administer them is critical to using this provision of the CWA to protect your streams.

SECTION 401 CERTIFICATION "ACTION" CHECKLIST

1. Contact your state water quality agency to get on the mailing list to be notified of proposed Section 401 certifications in your area.
2. Submit timely comments on any federal permits submitted for certification.
3. Contact the federal agencies that grant permits and licenses for current or proposed activities in your area. Make sure the agency requires a Section 401 certificate when each permit is up for renewal. If no application is made, you can consider suing the federal permitting agency under the provisions of the CWA.
4. If the state agency issues a Section 401 certification to which you object, you may be able to appeal it within the state administrative and judicial processes.

F. CONSERVING COLDWATER FISHERY HABITAT UNDER SECTION 404 OF THE CWA

Section 404 of the CWA (33 U.S.C. § 1344) is best known as the provision governing the filling of wetlands. Many of us think of wetlands as swamps and bogs that are home to waterfowl and plant species, not as the cold, rushing streams that hold trout and salmon. In reality, however, wetlands are often critical hydrological components of healthy coldwater watersheds, and the riparian zones of many coldwater streams may include extensive areas that fall within the CWA's definition of a wetland. In addition, many types of work in the stream channel itself may be governed by Section 404. Unlike other provisions of the CWA administered by EPA, the permitting program under Section 404 is run by the U.S. Army Corps of Engineers.

WETLANDS, STREAM DREDGING AND THE CWA

Section 404 of the CWA regulates the filling of wetlands and stream channels. Some, but not all, work in the stream channel will require a permit under Section 404. The permitting program under Section 404 is administered by the U.S. Army Corps of Engineers.

Section 404 provides a higher level of protection for "special aquatic sites" - areas with special ecological significance for productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These include:

- Wildlife sanctuaries and refuges,
- Wetlands,
- Mud flats,
- Vegetated shallows,
- Coral reefs, and
- Riffle and pool complexes (i.e. trout streams).

► 1. IDENTIFYING WETLANDS

Section 404 requires a permit for the deposit of "dredged or fill" material in a water of the United States. In the case of a stream channel, the question of what is a "water of the United States" is straightforward: if the water is flowing, it probably qualifies. However, in the case of wetlands it is more controversial, and the identification of wetlands is the first step to protecting them. Identifying wetlands along the stream corridor and using Section 404 to protect them is critical to protecting fish habitat because, in most cases, this will be the only aspect of the CWA that applies to these activities.

Upon learning of potential development near streams in your area, one of the first things you ought to do is verify the location of any wetlands that might be affected. Several different maps and "inventories" are available that can assist you in doing this. The US Geological Survey ("USGS") produces 7.5 minute topographic maps, which feature elevation contours, major roads, rails, and bodies of water. These maps may be available at local bookstores or outdoor equipment stores. They are also available directly from the USGS, 507 National Center, Reston, VA 22092 (703-860-6045). The U.S. Fish and Wildlife Service ("FWS") also has National Wetland Inventory ("NWI") maps. These maps are generated with aerial photography and show wetland delineation, vegetation types, and water data. Internet users can find digital maps of the nation's wetlands through the USFWS home page (www.nwi.fws.gov).

It is important to understand, however, that for both the NWI and USGS maps, in most cases the location of a wetland has not been verified with field investigations. There are some inherent limitations in identifying wetlands with aerial photography, and just because a wetland is not shown on one of these maps does not mean that one does not exist. The ultimate test of whether a wetland exists is whether the area is inundated or saturated with water for a sufficient portion of the year to create the types of vegetation typical of wetlands. Additional data sets that will help verify a wetland are soil surveys and hydric soil lists. These may be obtained by contacting the specific county conservation district offices in the region. This additional data can provide site-specific soil conditions needed to verify wetland locations.

If you suspect an area that has been targeted for development is a wetland, you can use this information to verify the location of the wetland. If you believe a site is a wetland and is not identified on the NWI maps, contact the USFWS and encourage them to conduct a field investigation. If you can establish that the activity in question is occurring in or will affect a wetland, you can take advantage of the CWA's Section 404 program.

► 2. THE SECTION 404 PERMITTING PROCESS

Section 404 of the CWA regulates the discharge of dredged and fill material in waters of the United States and is the primary means of pre-

venting the physical disruption of streams and wetlands. This section makes it illegal to physically place soil, sand, gravel, concrete, structures, or dredged material in waters without first receiving a Section 404 permit from the U.S. Army Corps of Engineers ("the Corps"). Fills used to create development sites, dams, levees, bridges, road crossings, pipelines, and bank protection are regulated under Section 404. In addition, any alterations to the stream channel (including the bank below the ordinary high water mark) resulting from the intentional deposition of material, including material dredged from the channel itself, require a permit under Section 404. Thus, you can expect Section 404 to be a potential tool whenever you encounter road and building construction; development of water supply and flood control projects; and stream channel alterations following natural catastrophes such as floods and landslides.

There are two general types of Section 404 permits:

1) An individual permit under Section 404(a), which is issued to a single entity for a specific project, and includes review of the application, public notice and public participation; and
2) A Section 404(e) general permit, which is issued to the public at large on a nationwide, regional, or state basis for particular categories of activities that are supposed to have only minimal individual and cumulative adverse environmental effects.

In evaluating an individual permit for a project, the Corps' role is to evaluate the project's environmental impacts and determine if the project is consistent with the public interest and guidelines promulgated by EPA under Section 404(b)(1) of the CWA. A basic requirement of these guidelines is that no discharge of dredged or fill material can be permitted if there is a viable alternative that is less damaging to the aquatic environment or if the discharge would result in significant degradation of the nation's waters. The Corps is required to receive public comment on all individual permit applications, solicit comments from other federal agencies, and forward the permit application to the state for a Section 401 certification.

THE TWO TYPES OF SECTION 404 PERMITS

1. A Section 404(a) individual permit, issued for a single, specific project.
2. A Section 404(e) general permit, issued to the public at large on a nationwide, regional, or state basis for particular categories of activities that are supposed to have only minimal individual and cumulative adverse environmental effects.

To participate effectively in this process, you need plenty of advance notice of permit applications. You also need to put yourself in a position to respond well before you get your first public notice. Send a request for inclusion on the mailing list to the Army Corps district office and to the local, state, and other federal agencies (e.g., Fish and Wildlife Service and National Marine Fisheries Service) to receive notification of permit applications. Be aware, however, that you will receive notification of a large number of applications, most of which will be irrelevant to you. If you are not yet on the mailing lists, you can check with the district office to find out if a permit application has been filed for any particular project. Additionally, you can check with the state or local regulatory authorities to find out if applications have been filed. EPA also has a hotline that can provide information about permit applications, wetlands functions, value and protection. The hotline number is 1-800-832-7828 and operates Monday-Friday, 9:00 a.m. to 5:30 p.m. EST.

In dealing with the Corps you need to be aware that the districts are organized by watershed, not by state. The Corps district office with jurisdiction over your area might be in

another state. You can call the closest Corps office to see which district you are in, or check the Corps' website (www.usace.army.mil). In addition, the addresses of the various Corps district offices are included as Appendix G.

You should also gather as much information about your local wetlands as possible. Harmful projects are more likely to be permitted if no one has specific information on the value of the affected wetlands. Learn who owns the wetlands in your area and let them know the valuable roles their land performs. Landowners may be willing to respond to the community's concerns by protecting valuable wetlands. They may even be able to take advantage of lower insurance rates and tax breaks by protecting their wetlands. There are also government funds available to them to improve land-use practices, such as the U.S. Fish and Wildlife Service's "Partnerships for Wildlife" program.

It is also important to develop relationships with employees at regulatory agencies, elected representatives and other citizen groups. Regulatory agency staff can help you obtain information, answer questions and even support your position on a specific project. Politicians pay the most attention to people who contact them. If they know ahead of time who you are and what issues you care about, you are likely to get more help. The protection of wetlands on private lands has become an extremely charged political issue, and landowners upset about restrictions on their ability to develop their property are sure to go to their Congressman to put pressure on the Corps and EPA. You should be prepared to do the same. Other citizen groups can add weight to your position and increase your bargaining power with decision-makers.

Whether the development simply involves filling a wetland as a means of surface and stormwater management or filling a wetland to provide access to a site or allow construction, a dredge and fill permit is required. The first task in the process is to determine the jurisdictional area. Working with a biologist or ecologist hired by the developer, the agencies with regulatory authority over the wetlands will determine the boundaries.

Once the developer submits a completed permit application to the Corps' district office, the Corps will determine if the project is covered by Section 404. If an individual permit is required, a public notice will be issued within 15 days of receiving the permit application. The public notice will describe the scope of comments sought by the Corps and requests for a public hearing. Any citizen may request a public hearing, although the Corps will not necessarily grant that request. The notice generally provides 15-30 days to comment on the application. If you are concerned about the site in question, it is important to respond to the public notice. No public comment is generally interpreted to mean that there is no opposition to the wetland filling, and may preclude any judicial review of the 404 permit. As a practical matter, in the absence of negative comments from the public or other agencies many Corps districts only conduct a superficial review.

Comments must be delivered in writing no later than the expiration date. If you feel more time is needed to review the proposal and provide comments, you may ask for an extension.

You should obtain a copy of the application immediately and request to be included on the mailing list for the specific project. Gather as much information as you can by contacting the regulatory authorities, other local conservation organizations, state environmental resource personnel and federal biologists to find out their opinion on the proposed development. A complete description of the project will not always be provided in the notice. You should conduct your own research by recording the site's land use history and its physical characteristics. A picture is worth a thousand words — using photography or video is very useful. If you plan to visit the site, be certain to get the applicant's permission first.

In your letter, there are some general areas of focus you can comment on, but you ought to include as much specific information about the site as possible. First, discuss "alternative analysis." Section 404(b)(1) guidelines require the applicant to establish that no practicable alternative to destroying wetlands exists. In situations when wetland destruction is unavoidable, applicants are expected to provide mitigation, i.e., replace the lost wetlands value. In a 1989 Memorandum of Agreement between the Corps and EPA, agencies are directed not to consider potential mitigation measures when determining the practicable alternative guidelines. Provide practicable alternative sites for development and explain why those sites would be better. It is important to make sure that viable options become part of the administrative record so that alternatives can be used as the basis for an appeal if the permit is issued.

Second, any Section 404 permit is potentially covered by NEPA, and a significant permit should require a full Environmental Impact Statement (see the NEPA section for more information on what is required of the agency preparing an "EIS"). Request that a full EIS under NEPA be prepared and explain the significance of the proposed action to the environment. If other laws apply (e.g., there are issues involving endangered or threatened species, toxic effluent standards, protection of existing water quality) be sure to address those areas and include as much information as you can. Finally, request that the Corps send you a copy of the draft environmental assessment ("EA") and findings of fact when they become available, and inform you of the final decision. Send a copy of your comments to the agency secretary and other people with whom you are collaborating.

Following the comment period, the Corps reviews the permit application and public comments, and conducts environmental review. The Corps will determine whether or not an EIS is necessary. The applicant may have the opportunity to respond to the comments and a public hearing may be held. The local district Army Corps engineer will evaluate the permit. For each permit, the Corps will prepare and make available to the public a statement of finding that explains how the final decision was made. Finally, the permit is either issued or denied.

You should be aware that a wide variety of activities are covered by "nationwide permits," which are general permits that cover a particular class of activities throughout the country. If you spend much time working with Section 404, you will inevitably run into a project that is authorized by a nationwide permit. For example, bank stabilization projects of less than 500 linear feet of stream, construction of single family homes (other than as part of a development), and repairs to pre-existing road crossings are all activities covered by nationwide permits. For most such activities, the applicant has to notify the Corps of the activity. Without public notice or other review, the Corps then notifies the party that the activity is covered by a nationwide per-

SECTION 404 DREDGE AND FILL PERMITS "ACTION" CHECKLIST

1. Get on the mailing lists of the Army Corps district office for your area, and with local, state, and other federal agencies (e.g., FWS and NMFS) to receive notification of permit applications.
2. Work with federal and state agency staff so they are familiar with your overall concerns about wetlands and stream protection.
3. File timely comments on applications for both individual and general permits.
4. Work with landowners and agencies to identify alternatives to proposed harmful activities and to identify funding sources for stream and wetlands protection and restoration efforts.

mit, and the work may proceed. If this happens with any project that you are concerned about, closely scrutinize the nationwide permit involved to confirm that the project is covered. Even if you conclude that the project may go forward under the permit, you should contact TU's National Office to let the relevant staff person know about it. TU is periodically involved in efforts to challenge nationwide permits, and even if your project goes forward, your information may be useful in eventually getting rid of that particular nationwide permit.

G. POLLUTED RUN-OFF

Most of the improvements in water quality attributable to the CWA have resulted from control of point source discharges of pollution. The statute has been far less effective at controlling the considerable pollution that does not come out of a pipe, so-called polluted run-off or nonpoint source pollution.

Polluted run-off is the waste from various day-to-day activities, such as fluids leaking out of cars, pesticides spread on fields, or sediment from a logging site, that ultimately and inevitably finds its way into rivers and streams. This type of pollution is more difficult (practically and politically) to prevent, and controlling it effectively must involve a variety of efforts, including restricting streamside development, changing agricultural practices, and improving riparian vegetation (without even mentioning regulating all of the myriad activities that actually generate polluted run-off). The CWA does not include any direct enforcement provisions to address polluted run-off, but rather provides for programs designed to promote (without penalties and enforcement) practices that would reduce polluted run-off.

The central provision addressing polluted run-off is Section 319 of the CWA. Section 319 requires each state to identify waters that cannot be expected to meet water quality standards without control of nonpoint sources of pollution. Each state must also identify the nonpoint sources that are preventing the attainment of water quality standards and submit a program for controlling those sources. Each program must identify the "best management practices" that will be employed to reduce polluted run-off, describe the means for implementing those practices, and set out a timetable for implementation. Section 319 provides grant money for the implementation of state programs approved by EPA.

Section 319 does not require that the state impose mandatory and enforceable rules to reduce polluted run-off, although it would be perfectly permissible for a state to do so. Most states have attempted to set up voluntary programs designed to use funds available under Section 319 to promote practices tending to reduce polluted run-off.

Even in the absence of enforceable mechanisms for controlling nonpoint source pollution, there are opportunities for TU chapters and councils to help reduce polluted run-off. These opportunities, however, require a bit of creativity and a lot of hard work.

As discussed above, the TMDL process for streams impaired by run-off is one opportunity for focusing efforts to reduce run-off. In the absence of a TMDL, the primary option will be to convince landowners to participate in voluntary programs offered by EPA, the U.S. De-

SECTION 319 - FUNDING TO REDUCE POLLUTED RUN-OFF

Although the CWA does not include any direct enforcement provisions to address polluted run-off, it does provide for programs designed to promote (without penalties and enforcement) practices that would reduce polluted run-off. Funding for such programs is provided under Section 319 of the Act. Certain activities to protect trout streams may be eligible for this funding (check with your state and federal resource agencies to find out).

partment of Agriculture, and other agencies, that pay landowners to implement practices to reduce polluted run-off.

Some of the best funded of such programs are not under the CWA, but rather are funded by the Farm Bill and implemented by the Natural Resources Conservation Service ("NRCS," formerly the Soil Conservation Service) of the Department of Agriculture. The most important of these programs for TU include CRP (Conservation Reserve Program), CREP (Conservation Reserve Enhancement Program), WHIP (Wildlife Habitat Incentives Program), EQUIP (Environmental Quality Incentives Program), and WRP (Wetlands Reserve Program). On any given project, one or more of these programs could be used to pay for the planting of riparian buffers, for the building of fencing to keep livestock out of streams, and for techniques to improve storage and use of fertilizer. Some TU chapters have had success finding landowners willing to implement conservation practices and helping them obtain funds under the relevant programs. If focused effectively on a small watershed, such efforts can produce noticeable improvements in water quality and stream habitat. NRCS has a state conservationist in each state in charge of programs for each state, and district conservationists scattered across the state. A list of the current state conservationists is included as Appendix F.

POLLUTED RUN-OFF "ACTION" CHECKLIST

1. Monitor the streams in your area for impacts from polluted run-off.
2. Review your state's water quality standards. Many states are beginning to establish criteria and specific standards, both numeric and narrative, for different sources of polluted run-off.
3. Work with your state water quality agency to address polluted run-off in the TMDL and antidegradation processes.
4. Work with landowners and agencies to identify polluted run-off "hotspots" and to develop alternatives to address the problems.
5. Work with landowners and agencies to identify funding sources for programs that could reduce polluted run-off.

H. SECTION 505 — CITIZENS' SUITS

Section 505 of the CWA authorizes any "citizen" (defined as a "person or persons having an interest which is or may be adversely affected"; "person" includes a natural person or an organization) to file suit to enforce the CWA under certain circumstances, including:

- Violations of effluent standards and limitations, and orders from EPA or a state water pollution control agency regarding a standard or limitation; and
- EPA's failure to perform any act or duty under the CWA which is not discretionary.

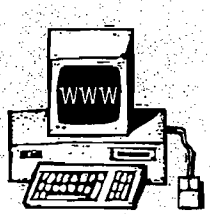
One example of an action or omission that may be challenged by a "citizen" under Section 505 would be the failure of a municipal wastewater treatment plant or manufacturing facility to comply with its NPDES permit limitations, as shown in discharge monitoring reports (DMRs), which are public information and are on file with either the state agency or EPA. Another example would be EPA's failure to issue regulations by a deadline set forth in the CWA. Regulations or permits issued under the CWA may also be challenged under the Administrative Procedure Act, the general statute governing court review of actions by federal agencies.

Although Section 505 is a potent weapon in the hands of private individuals and organizations, you should be aware of the procedural wrinkles the statute presents.

▶1. NOTICE OF INTENT

In cases involving violations by dischargers, written notification ("Notice of Intent" to sue, or "NOI") must be sent to EPA, the state agency, and the alleged violator in the suit at least 60

CLEAN WATER ACT LINKS



The following agency sites on the Internet have extensive materials pertaining to the various provisions of the Clean Water Act:

- The U.S. Environmental Protection Agency at www.epa.gov.
- The U.S. Fish and Wildlife Service at www.fws.gov.
- The Army Corps of Engineers at www.usace.army.mil.
- The Clean Water Network, a national coalition of environmental groups, has a useful site for citizens interested in learning more about the CWA at www.cwn.org.

days prior to filing. If the government has already filed an enforcement action, a separate action may not be filed, but a citizen may intervene, that is, join in the suit as a plaintiff. If EPA is being sued for failure to perform a nondiscretionary act or duty, 60 days written notice must be provided. The EPA regulations specifying the content of the NOI and the manner it is to be served may be found in 40 CFR Section 135.

No notice is required if the violation involves a national performance standard under CWA Section 306 or a toxic effluent standard or prohibition under CWA Section 307(a).

▶2. WHERE TO FILE SUIT

If enforcement of a discharge limitation is being sought, the suit must be filed in the federal district court where the source is located. A suit against the EPA may be filed in any federal district court. In either situation, a copy of the complaint must be served to EPA and the U.S. Department of Justice.

▶ 3. LITIGATION COSTS

Section 505 allows the court to award costs (including court costs and reasonable attorneys' and expert witnesses' fees) to the prevailing or substantially prevailing party wherever it deems such an award appropriate. This means that citizens can recover the expenses of filing a winning suit, but that they can also be held responsible for their costs and the defendant's in a frivolous action.

▶ 4. OTHER LIMITATIONS ON THE RIGHT TO FILE

In 1987, the Supreme Court ruled that CWA citizens' suits must address ongoing violations of effluent discharge requirements. Alleged violations may not be wholly in the past, but must continue beyond the filing of the complaint or, if intermittent, must involve a reasonable likelihood of recurrence. Federal and state agencies retain the right to enforce the CWA against past violations.

▶5. PENALTIES/DAMAGES

Section 505 does not allow citizen plaintiffs to recover damages, but does allow the assessment of penalties for violations of effluent discharge limitations or standards. Civil penalties can be as high as $25,000 per day of violation, and citizens' suits can prompt federal and state agencies to seek criminal penalties. Given that the stakes for violators can be extremely high, citizen plaintiffs often have considerable leverage in settlement negotiations. In lieu of seeking penalties, which go to the federal government, plaintiffs can seek credit or mitigation projects (e.g., habitat restoration). A defendant may be reluctant, however, to agree to such arrangements if there remains the prospect of liability for penalties in a government-filed enforcement action.

▶6. PROCEDURES FOR TU COUNCILS AND CHAPTERS

As with any lawsuit, TU councils and chapters must obtain authorization from TU's National Office before filing a CWA citizen's suit. To do so, you must contact the National Office in advance of filing a complaint. As a practical mat-

ter, in light of the notice requirements under Section 505, requests for authorization from the National Office should come no less than 30 days before the filing of a complaint.

IV. The Endangered Species Act

Since the arrival of European settlers, more than 500 species of North American native plants and animals have become extinct. Although the majority of these extinct species are native plants, most of us are familiar with the more prominent of now extinct animal species, such as the passenger pigeon or the California grizzly bear. However, many are not aware that 17 freshwater fishes are included among the permanently "missing."

The Endangered Species Act ("ESA") is the federal law enacted by Congress in 1973 in an attempt to counteract this alarming rate of species extinction. The ESA provides a means of conserving plant and animal species that are currently in danger of extinction (endangered species) and those that are likely to become endangered within the foreseeable future (threatened species). It also protects the habitat needed for their survival.

The U.S. Fish and Wildlife Service ("FWS") and the National Marine Fisheries Service ("NMFS") are the agencies charged with the responsibility for listing species and overseeing their recovery. While the FWS is responsible for the protection of most threatened and endangered species under the ESA, NMFS has responsibility for marine species, including marine mammals and anadromous fish such as salmon and steelhead.

A. ESA BASICS - HOW THE ACT WORKS

The structure of the ESA can be broken down into two major components: first, the requirements and procedures for listing a species and designating critical habitat and second, the provisions designed to protect species that are listed and to promote their recovery.

ENDANGERED SPECIES ACT HIGHLIGHTS

The Endangered Species Act requires all federal agencies to undertake programs for the conservation of endangered and threatened species, and prohibits them from authorizing, funding, or carrying out actions that would jeopardize a listed species or destroy or modify its "critical habitat." The ESA can be a valuable tool for protecting endangered trout and salmon populations.

▶1. LISTING SPECIES AND DESIGNATING CRITICAL HABITAT

a. Listing Species

NMFS or the FWS must list a species if the best available scientific evidence indicates that the species is endangered or threatened. The service can formally list the species as either endangered or threatened. An "endangered species" is any species of fish, animal, or plant that is in danger of extinction throughout all or a significant portion of its range. Subspecies and distinct population segments of vertebrate species may also be listed. As of March 1998, there were 1,424 species classified as endangered, 902 of which occur in the United States. A "threatened species" is any species of fish, animal, or plant that is likely to become an endangered species within the foreseeable future. As of March

WHAT SPECIES ARE PROTECTED?

The ESA lists species in two categories:

- An "endangered species" is one that is in danger of extinction throughout all or a significant portion of its range.
- A "threatened species" is one that is likely to become endangered within the foreseeable future.

1998, there were 270 threatened species, 232 of which occur in the United States.

The listing procedure is usually triggered when the Service receives a petition for listing. Any "interested person" may file a petition to list a species as threatened or endangered. The Services may also decide to begin the listing process based on information received from a variety of sources, including from federal agency surveys, state agency studies, private company research, conservation organization data, or academic research.

Upon receipt of a listing petition, the Services must take the following actions:

- Within 90 days of receiving a petition, the FWS or NMFS must make a finding on whether or not a listing "may be warranted."
- Within 12 months of receiving a petition that may be warranted, the FWS or NMFS must make a finding on whether the listing is "warranted," "not warranted," or "warranted but precluded," and publish a notice in the Federal Register.
- If listing is warranted, the FWS or NMFS publishes a "proposed rule." No earlier than 90 days, but no later than 12 months after publication of the proposed regulation, the agency must publish the final rule. If any party requests it, the agency must provide a hearing on the rule. A negative determination at any stage (either at the initial 90-day determination or the 12-month determination) is subject to judicial review, as is the final rule implementing a listing.
- If listing is warranted but precluded because the agency lacks the necessary funding and personnel, the species is listed in the "notice of review" as a candidate for listing. A "candidate species" is one whose status warrants listing but whose listing is precluded by lack of administrative resources and/or funding. The Secretary of the Interior is required to publish "notices of review," which list the status of candidate species.

Species can be added to the list for any one of five reasons: current or threatened destruction, modification, or curtailment of habitat or range; overuse for commercial, recreational, scientific, or educational purposes; disease or predation; ineffective regulatory mechanisms; and other natural or man-made factors affecting chances for survival.

b. Designating Critical Habitat

Critical habitat, when identifiable, must be designated along with a species listing. This designation alerts us to the presence of endangered species in a particular area and the special significance of that area to the conservation of the species. Federal agencies may not destroy or adversely modify critical habitat of any listed species. Critical habitat is defined as the geographic area containing physical or biological features essential to the conservation of a listed species or as an area that may require special management considerations or protection.

Unless the FWS or NMFS finds that it is not "prudent" or "determinable," critical habitat must be designated concurrently with a species' listing. If "not determinable," the Secretary has an additional year to determine critical habitat. However, the designation of an area as critical habitat does not, by itself, restrict the rights of a private property owner or prevent any particular type of use or development. The FWS and NMFS are required to "take into consideration the economic impact and any other relevant im-

pact of specifying any area as critical habitat." The agencies may exclude any area from critical habitat designation if "the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless the failure to designate such areas as critical habitat will result in the extinction of the species concerned."

▶2. SPECIES RECOVERY PLANS

The Endangered Species Act requires the Secretaries of Interior and Commerce to develop and implement recovery plans for threatened and endangered species, unless "such a plan will not promote the conservation of the species." The recovery plan essentially sets out the actions the federal government will pursue to bring the species to a point that it may be delisted. Traditionally, the Services have been very slow in developing recovery plans for listed species, and numerous listed species do not have them. "Recovery teams," which include representatives of public and private agencies and institutions, among others, are convened to prepare recovery plans, and each recovery plan must be made available for public comment. A number of TU volunteers and staff have participated in the development of recovery plans to help assure that efforts to bring listed species back will be meaningful.

▶3. PROHIBITIONS

The Act imposes a duty on the federal government to take actions to promote the recovery of listed species. Much better known, however, is its prohibition against the "taking" of any listed species. "Taking" is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" listed species. "Harm," under some circumstances, includes destruction of a listed species' habitat.

The take prohibition operates somewhat differently for federal agencies than for private parties or state governments. For federal agencies, the prohibition is implemented primarily through the "consultation" process under Section 7 of the ESA. Federal agencies are required to consult with the FWS or NMFS to ensure that any action or project authorized, funded, or carried out by that agency is "not likely to jeopardize the continued existence of any threatened or endangered species" or destroy the critical habitat of any such species. Any agency proposing a project must therefore ask FWS or NMFS if there are any threatened or endangered species in the project area. If a listed species is present, the agency proposing the action must prepare a "biological assessment" that identifies listed species in the area and outlines the nature and extent of the action's impact on these species. FWS or NMFS then determines if a "formal consultation" is necessary.

If the biological assessment indicates that the proposed project may impact a listed species, NMFS or FWS is required to prepare a "biological opinion" that determines formally whether the project will cause "jeopardy" to the continued existence of a listed species. If the biological opinion indicates no jeopardy, then the project may proceed. If the opinion indicates that the project, as proposed, will cause jeopardy to the listed species, then FWS and NMFS are required to suggest "reasonable and prudent alternatives" that would not jeopardize the species' existence. If the agency cannot suggest reasonable and prudent alternatives, the proposed project must be denied.

Private parties, including landowners, are also prohibited from taking any member of a listed species. This prohibition has generated the most controversy by virtue of its application to the land use practices of large private landowners, most notably timber and paper companies. Relevant regulations have defined "take" to "include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering," 50 CFR Section 17.3.

ESA "ACTION" CHECKLIST

1. Contact your local U.S. Fish and Wildlife Service or National Marine Fisheries Service field office (or see its website) to find out if there are endangered or threatened species listed in the watershed you are concerned about.
2. Comment on "recovery plans" for species listed in your area.
3. Contact the nearest office of NMFS (for anadromous fish) or the FWS (for inland species) and ask to receive all notices of "habitat conservation plans" (HCPs) in your region.
4. Comment on HCPs for species listed in your area and participate in collaborative processes for drafting HCPs.

Under the interpretation set out in this regulation, the ESA makes it illegal to modify or destroy habitat if that action has a direct negative effect on a listed species using that habitat. A group of logging interests attacked the regulation in court because it restricted private timber holdings used as habitat by the northern spotted owl in the West and the red cockaded woodpecker in the Southeast. The regulation was ultimately upheld by the Supreme Court in a 1995 decision. The Court held that the Interior Department was justified in interpreting the term "harm" to include habitat damage that results in death or injury to listed species.

As a result, private landowners whose activities affect listed species find themselves at risk of violating the take provisions of the Act. The Act deals with this situation by allowing landowners engaged in otherwise lawful activities to get an "incidental take" permit if they also agree to develop and abide by a habitat conservation plan ("HCP"). An HCP is a plan that sets out what the landowner will do on the property, how those actions will affect the species, and what measures will be taken to protect and preserve the species on that property. Typically, the HCP is developed by the landowner in close negotiations with NMFS or the FWS. If the Service concludes that the take allowed under the HCP "will not appreciably reduce the likelihood of the survival and recovery of the species in the wild," and if the HCP meets a number of other criteria, the HCP must be approved and the incidental take permit granted. If the landowner abides by the HCP, including taking affirmative mitigation measures required by the plan, any damage to the species or its habitat is covered by the incidental take permit.

An increasing number of HCPs are currently being developed with large landowners, particularly in the Pacific Northwest for listed salmonids. These HCPs will have a significant effect on the future of these species. In some cases, TU has been asked to participate in the development of the HCP. In all cases, the HCP must be put out for public comment. If you want to receive notice of these HCPs, you should contact the nearest office of NMFS (for anadromous fish) or the FWS (for inland species) and ask to receive all notices of HCPs in your region.

ENDANGERED SPECIES ACT LINKS

A list of ESA Internet links can be found at the University of Michigan's EELink's ESA Page located on the web at www.eelink.net/EndSpp.old.bak/Endangered.html. You may also want to check out the FWS Endangered Species Page at www.fws.gov/r9endspp/endspp.html.

B. THE ENDANGERED SPECIES ACT AND TROUT UNLIMITED

TU will be heavily involved in ESA issues for the foreseeable future. The number of listed species of salmonids is increasing dramatically, par-

ticularly salmon and steelhead runs in the Pacific Northwest. The preservation and recovery of these fish is one of the highest priorities for TU nationally, and if you have a listed fish in your home waters TU National staff will be able and eager to work with you on preserving that species and its habitat.

TU has experienced both great successes and disappointing failures under the ESA. For example, largely through TU efforts at raising restoration funds and prodding government agencies to action, the Greenback cutthroat trout in Colorado and the Apache trout in Arizona have been brought back from the brink of extinction, and now may be on the road to a more stable recovery. Both species were listed as endangered, but have since been downgraded to threatened under the ESA. On the other hand, due to hydropower dams and the destruction of spawning habitat, the ESA has been relatively ineffective at preserving or restoring various runs of Pacific salmon and steelhead in the Northwest.

If you have no listed trout or salmon in your home waters, however, you should not assume that the ESA is irrelevant to you. There are numerous listed aquatic species throughout the country. Actions that would harm these species will, in most cases, also harm the trout that share their waters. A listed species in your home waters can be a powerful tool to prevent actions that will harm water quality or habitat. One of TU's most famous battles under the ESA was over the Tellico dam on the Little Tennessee. The listed fish involved in that fight (and, in the end, eliminated by the dam) was not a trout at all, but the snail darter. In that case, the dam posed the same threat to snail darter habitat as to trout habitat, and the ESA was an effective tool (until suspended by Congress for that case) to protect habitat of trout that did not themselves qualify for listing.

V. The Federal Energy Regulatory Commission

More than 75,000 dams now regulate America's rivers and streams. Many of these dams were built primarily for generating hydroelectric power, and their impacts can be devastating to coldwater fisheries. Any hydropower dam other than those operated by federal entities (such as the Army Corps of Engineers, the Tennessee Valley Authority, and the Bonneville Power Administration, among others) must have a license from the Federal Energy Regulatory Commission ("FERC"). Participating in these licensing procedures can be critical for TU chapters and councils for a number of reasons.

We are in the midst of a period where a large number of dams are having their licenses renewed. Because of changes to the law made in the 1980's, FERC must consider and mitigate the environmental effects of the licenses it grants to a much greater degree than before, and each of these relicensing procedures represents an important opportunity to reduce the environmental effects of each dam. Finally, each new license, when granted, will last for 30-50 years. The terms of that license, whether they be good or bad, will be in place probably for the lifetimes of most current TU members.

TU National simply does not have the resources to participate in all of the important relicensing proceedings nationwide, and chapters and councils must have the tools necessary to participate themselves. Although these pro-

FERC HIGHLIGHTS

FERC is responsible for issuing licenses for nonfederal hydroelectric power projects on navigable waterways and federal lands. The licensing process provides an important opportunity for conservationists to address threats to coldwater fisheries caused by these dams and their operation.

cedures can be quite burdensome, the long term consequences make participating in them well worth the effort.

The process of licensing and relicensing hydroelectric projects begins years before construction of a new project or the expiration of an existing project's current license. Effectively influencing the terms and conditions of a license, however, requires a basic understanding of what the Federal Energy Regulatory Commission is and how it regulates the licensing and relicensing of hydroelectric projects.

A. WHAT IS FERC?

FERC, under the authority of the Federal Power Act, has the exclusive authority to license nonfederal hydroelectric power projects on navigable waterways and federal lands. FERC issues licenses for periods of 30-50 years for constructing, operating, and maintaining such projects. Upon expiration of a license, the federal government can take over the project (with equitable compensation), or issue a new license either to the existing licensee or a new licensee. FERC has only recently begun to use a third option: the authority to refuse a new license and to decommission a previously licensed project.

FERC is a federal commission that is composed of five members appointed by the President with the advice and consent of the U.S. Senate. The Chair, designated by the President, serves as the administrative head. The Commission is supported by an administrative staff, which includes the Office of Hydropower Licensing ("OHL"). OHL staff reviews and processes license applications and makes recommendations to the FERC Commissioners.

When issuing a license, FERC must give consideration to a full range of licensing purposes related to the potential value of a stream or river. FERC is required to balance energy and nonenergy uses of the waterway. Some of the uses to be balanced include: hydropower, energy conservation, fish and wildlife resources and habitat, recreational opportunities, water quality, biodiversity, irrigation, flood control, and water supply.

B. HYDROPOWER'S IMPACTS ON FISHERIES

Hydropower licensing (and relicensing) is a significant part of Trout Unlimited's conservation agenda. Through the efforts of dedicated members, chapters, councils, and National staff, TU has established a solid reputation for integrity and credibility in the hydropower arena. Generally, hydropower projects can affect fisheries in five major areas:

1) **Water Flow** — TU always tries to secure flows that are as much like the natural river regime as possible. During periods when a project is generating power, downstream flows tend to be excessive; when a project is not generating power, flows tend to be insufficient. This unnatural flow regime can place severe stress on fish and other aquatic life. Flows that are too low de-water critical habitat and lead to rising water temperatures during warm weather. Thermal stress can lead to fish kills. High flows can scour streambeds, destroy habitat, and disrupt spawning and feeding cycles. "Peaking" power generation, when water is stored behind the dam (while the riverbed dries up) to meet peak demands for power, is one of the most common threats. Even worse is when water is diverted to a

powerhouse, and then released further downstream, leaving a stretch of the river, known as the "bypass," permanently dry.

2) **Water Quality** — The health of a stream is, in part, determined by the amount of oxygen in the water. Dams typically alter the water's chemistry and can cause unnaturally low levels of dissolved oxygen to the detriment of species, such as trout and salmon, that require high oxygen levels.

3) **Fish Passage** — Over the course of hydropower development in the United States, projects have failed to provide safe and timely passage for trout and salmon. Providing a fish passageway ("fishway") around or through dams can sometimes ensure effective upstream and downstream passage to accommodate all life stages (e.g., feeding, spawning, and seasonal movements). The project owner should also be responsible for monitoring and maintaining fishways to ensure their effectiveness.

4) **Habitat Restoration and Protection** — In just about every case, when there is a dam in the river some mitigation of damage to the river's habitat will be needed. Restoring a healthy ecosystem involves many factors, but in general it is best to seek physical, biological, and geological conditions that are most like the pre-project conditions.

5) **Public Access** — Dams can often block safe public access to the river. Anglers often find themselves in the company of other recreational river users, such as whitewater boaters. These groups can work together to secure public access on affected rivers.

Every hydropower project is unique, and each will require different approaches, both scientifically and politically, to address the fisheries issues involved. It may take considerable scientific groundwork to identify what combination of management practices and mitigation measures will best contribute to a healthy river below the project. Once you have identified your resource goals, you need to know how to use the licensing process to meet those objectives.

HYDROPOWER'S IMPACTS ON FISHERIES

Hydropower projects and other dams can significantly affect coldwater fisheries in five major areas:

- Water flow,
- Water quality,
- Fish passage,
- Habitat restoration and protection, and
- Public access.

C. THE LICENSING AND RELICENSING PROCESSES

Development of any nonfederal hydroelectric projects requires either a hydropower license or an exemption from the license requirement. Permission to construct, operate, and maintain the licensed project is granted to the licensee for the term of the license, subject to the terms and conditions of the license. Over the past few years, FERC has adopted a new and more enlightened perspective on licensing and relicensing issues, and has become more receptive to fisheries concerns.

The traditional licensing/relicensing process has seven major steps, and each of these major steps also contains a number of stages.

STEP 1: DECISION TO FILE AND INITIAL ACTION

An existing licensee is required to notify FERC whether or not it intends to file an application for a license at least five but not more than five and one-half years before the expiration of the current license. After receiving this "notice of intent" ("NOI"), FERC must promptly provide

THE SEVEN STEPS OF FERC FILINGS

1. Decision to File and Initial Action.
2. First-Stage Consultation with Resource Agencies.
3. Study Execution and Draft Application Preparation.
4. Second-Stage Consultation.
5. Application Filed and Acceptance by FERC.
6. Comments on Terms and Conditions, Prescriptions, and NEPA Compliance Activities.
7. FERC Order (Granting or Denying a License).

notice to the public and to specific agencies. A prospective applicant other than the existing licensee is not required to file a notice of intent, unless FERC issues a notice soliciting applications due to a lack of applications. Information about the project is compiled and made available to the public. This material must include information concerning fish and wildlife resources, recreation, and land use.

This step is not required in cases of original licensing. Original licensing follows basically the same steps as relicensing, but begins with first-stage consultation (step 2 below). However, in some cases, a prospective applicant may seek a preliminary permit. A preliminary permit may be issued to a developer interested in a potential site for a hydropower project. Although not required before filing an application for a license, the preliminary permit protects the developer by granting the exclusive right to file a license application for that site for the term of the permit.

Three years is the maximum term of a preliminary permit. Notices of applications and issuance of preliminary permits are intended to provide sufficient advance notice of a potential project to allow for public participation in the process. TU's National Office makes every effort to send copies of such notices to council chairs and chapter presidents in the project area. This is a good time to consider whether the council or chapter has an interest in the project, as the permit merely authorizes the developer to study the site and does not authorize construction.

STEP 2: FIRST-STAGE CONSULTATION

The Federal Power Act, the National Environmental Policy Act ("NEPA"), and the Fish and Wildlife Coordination Act all require consultation with resource agencies and the public before an application may be filed. This consultation may begin at any time, usually between six and four-and-a-half years prior to license expiration. It should be noted that in some cases, pre-filing consultation may begin before the applicant officially files notice of intent to apply for a new license.

A prospective applicant must consult with the appropriate federal, state, and interstate resource agencies, affected Indian tribes, and the public. These parties are collectively referred to as the "stakeholders." During this pre-filing consultation, the following must be accomplished:

1) A review of the proposed project and a decision on what scientific studies are needed concerning the impacts of the project;
2) Completion of the requested studies, a decision on appropriate mitigation measures, and preparation and review of a draft application; and
3) Submission of a final application, incorporating information during this stage.

Consultation is not only a legal obligation; it also helps to reduce the time and cost involved with processing the application. It is initiated through the distribution of a consultation package. The package is intended to solicit comments on resource values and their relative importance in the region. Among those that should be, and in some cases must be, consulted are the following:

- National Marine Fisheries Service,
- U.S. Fish and Wildlife Service,
- National Park Service,

- U.S. Environmental Protection Agency,
- The agency administering any federal lands or facilities used or occupied by the project,
- Relevant state fish and wildlife agencies,
- State water resources management agencies,
- The certifying agency under Section 401 (a)(1) of the Clean Water Act ("CWA"),
- Indian tribes that may be affected by the proposed project,
- Representatives from the local communities,
- Conservation groups (e.g., Trout Unlimited), and
- Water users.

The applicant must schedule a joint meeting with an opportunity for a site visit. The applicant is required to notify FERC of the joint meeting date and to publish the meeting date in a daily or weekly newspaper in each county in which the project is located 14 days before the meeting. From the publication date of the meeting notice until the date of the meeting, the applicant must make the consultation package available for public inspection. Copies will also be made available at the meeting.

This is an ideal time for a TU member who may be familiar with the project's immediate locale to review the consultation package. But it is critical to keep an eye out for the meeting notice in the local papers. Members of the public are encouraged to attend the meeting and participate fully. If you are unable to attend the meeting, yet you are interested in knowing what went on, a record (either audio recordings or written transcripts) is available from FERC.

At the meeting, current and prospective resource needs and management objectives for the project area will be discussed, as well as what further information and studies are needed. Written comments regarding information and study needs and resource issues may then be submitted by the public up to 60 days after the meeting date. This marks the end of first-stage consultation.

STEP 3: STUDY, EXECUTION AND DRAFT APPLICATION PREPARATION

The third step provides less opportunity for public participation. During this stage, the prospective applicant must conduct all reasonable studies and obtain all reasonable information requested by the agencies and tribes, as well as any information FERC staff considers relevant to determine the impact of the project on the environment. The applicant must provide each consulted party with a completed copy of the draft application, results of all the studies and information gathered, and a request for review and comments, which brings us to the second-stage consultation.

STEP 4: COMPLETION OF SECOND-STAGE CONSULTATION

A 90-day comment period is provided beginning on the official date of the draft application. If the written comments express substantive differences with the applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, another joint meeting must be scheduled along with appropriate public notice. The meeting must be held within 60 days of the date of the written comments. This is the next opportunity for the public to participate, whether by written comments or by attending the joint meeting.

Before the application can be filed with FERC, usually about four years prior to license expiration, the applicant is required to submit to the responsible state certifying agency a request for water quality certification under Section 401(a)(1) of the Clean Water Act. FERC cannot issue a license for a hydroelectric project unless either the applicant obtains water quality certification from the state, or the state waives certification. A water quality certificate contains conditions that ensure the project complies with state law requirements, including state water quality standards promulgated under the CWA.

These conditions automatically become part of the federal license.

STEP 5: APPLICATION FILING (THIRD-STAGE CONSULTATION) AND ACCEPTANCE BY FERC

This step begins with the filing of the completed application with FERC — at least two years before the current license expiration date. At the same time, the potential licensee must distribute the final application to the stakeholders. The applicant is responsible for informing the public of the filed application by publishing a notice twice in a daily or weekly newspaper in each county involved in the project within 14 days after the application filing date. FERC will also publish a public notice in the Federal Register.

If you believe that additional scientific study is needed to form an adequate factual base for a thorough analysis of the application's merits, you can request it. The request must be filed within 60 days after the application is filed and a copy of the request must be served to the applicant. At this point, protests or requests for intervention may be filed by the established deadline.

STEP 6: APPLICATION PROCESSING AND NEPA COMPLIANCE ACTIVITIES

FERC must issue a notice declaring the application ready for environmental analysis. As a stakeholder you have 60 days from the date of the notice to file recommendations in your initial set of comments. An extension of the comment period may be requested and granted if good cause is demonstrated. After the first set of comments is filed, there is another 45-day period to file comments in reply to the initial comments.

FERC staff then begins the process of environmental review. First, staff will determine whether the effects of the project merit an environmental impact statement ("EIS"), or a less extensive environmental assessment ("EA"). An EA will conclude either:

1) licensing the project will not have significant adverse impacts;
2) the environmental impacts cannot be avoided or adequately mitigated, resulting in application dismissal; or
3) licensing constitutes a major federal action significantly affecting the quality of the human environment and therefore requires an EIS.

If FERC determines that an EIS is required, FERC will hold one or more "scoping" meetings at the project site and invite interested parties to attend. Scoping meetings are an opportunity for you to identify major environmental issues concerning the project. After completing its analysis, FERC staff then prepares a draft environmental impact statement ("DEIS"). FERC will distribute the DEIS for comment, as well as issue a notice regarding the availability of the DEIS and set a comment period deadline. Interested parties may file a motion to intervene when they comment on any of the NEPA documents. In response to the comments received, FERC will modify its analysis, respond to comments, and issue a final EIS.

FERC must also determine whether the fish and wildlife recommendations from the relevant state agency (commonly referred to as "10j" recommendations, referring to Section 10(j) of the FPA) are consistent with the FPA and other applicable laws. If those recommendations are consistent with the FPA, FERC must integrate them into the license. If a recommendation is found to be inconsistent, FERC will notify the stakeholders of its finding and provide a 45-day comment period to respond to their finding. Often, FERC will decide to have a meeting to address the 10j recommendations.

STEP 7: COMPLETION OF THE SECTION 10J PROCESS AND LICENSE ISSUANCE

Finally FERC must issue a licensing order or dismissal. The license will set the terms and

conditions of the project operations and becomes final after 30 days, unless appeals or requests for rehearing are filed.

D. THE ADVOCATE'S ROLE

Before deciding to participate in a FERC licensing proceeding, you should assess the importance of the project to your coldwater conservation efforts, and you should have an idea of what you are willing and able to commit in terms of time and resources. As you have probably gleaned from the above description, FERC licensing and relicensing is a drawn-out, complex process. To be an effective participant, you must be committed to following the process all the way through, which often takes a minimum of five years. Some of the activities that you will have to commit time to include: attending and speaking at public meetings and hearings; working with the local press; networking with other interested parties; writing comments; and communicating with the National Office.

There are also some out-of-pocket expenses, including travel expenses to attend meetings, postage and copying for filings, and phone calls. There are sources of funding to help defray some of these costs, which you should investigate. For example, a grant program, administered by outdoor equipment retailer REI has funded out-of-pocket expenses for hydropower participation. Grants of up $2,000 have been awarded to TU chapters for their involvement. Another possible source of funding is the licensee. It is often to the benefit of the licensee to have groups like TU involved and some are willing to help pay for their involvement. Don't be afraid to ask.

The next issue to consider is the value of the resource at stake. Does your chapter or council have interest in the resource? What is the extent of that interest? Are there other matters that may be more important to your area? Be careful to prioritize your activities.

Once you have evaluated the resource interest and your own ability to participate, there are a few pieces of information you should collect to facilitate your involvement. First, find out the specific project information, including the four or five-digit FERC number that is assigned to the project. Find out who the licensee is and call the FERC Office of Hydropower Licensing to find out the name of the FERC Project Manager. Next, contact the licensee and FERC to notify them of your interest in the proceeding. Write a letter to both entities requesting that your name be placed on the mailing list to receive copies of correspondence relating to this proceeding. When you intervene in the proceeding your name will be placed on the official service list and you will receive copies of all correspondence from FERC, the project owner, and other parties, relating to the proceeding.

FERC LINKS

You can get direct on-line access to the Federal Register on the Internet at www.access.gpo.gov/nara. You can also get FERC notices and other information at the FERC web page located at www.ferc.fed.us.

E. FILING PROCEDURES

To ensure that your comments become part of the record and are properly considered, all

FERC FILING PROCEDURES

To ensure that your comments become part of the record and are properly considered, all filings must conform to the procedures outlined in the Code of Federal Regulation (CFR). These procedures are listed in Appendix H.

filings must conform to the procedures outlined in the Code of Federal Regulation ("CFR"). See Appendix H for specific information about filing procedures, including addresses, format, and who must receive copies of your filings.

One final note: TU's National Office can provide you with valuable information and advice to assist you in your hydropower advocacy efforts. This help will be most effective for your endeavor if you inform the staff at the earliest stages of your involvement.

VI. The Surface Mining Control and Reclamation Act

It is an unfortunate fact of life that trout and coal frequently share the same mountains. According to recent statistics from the U.S. Bureau of Mines, acid mine drainage ("AMD"), primarily from coal strip mines, adversely affects more than 12,000 miles of rivers and streams and more than 180,000 acres of lakes and reservoirs in the United States. Other studies show that in the Appalachian coal region almost 6,000 miles of streams are dead or severely polluted from AMD. In West Virginia alone, an estimated 832 streams (almost 3,000 miles), or about 10% of the state's waterways, have fallen victim to AMD, while another 73% are subject to chronic acidification. Nationwide, many of these streams were at one time healthy and productive trout fisheries.

The Surface Mining Control and Reclamation Act of 1977 ("SMCRA") is comprehensive federal legislation that covers all surface coal mines (also known as "strip mines") in the United States, as well as the surface effects of underground mines. In addition, it covers all the related surface activities associated with those mines, including coal preparation and processing facilities, coal waste (or "gob") piles, and loading facilities located at or near the mine site.

SMCRA implements three broad policies:

- first, that mine operators bear the full cost of reclamation, as well as mining;
- second, that strip mining be merely a "temporary" use of the land, and that, afterward, the land must be capable of supporting its approved post-mining land use; and
- third, that citizens are allowed to take an active role in ensuring that the law is enforced.

To accomplish the purposes of SMCRA, Congress established the Office of Surface Mining Reclamation and Enforcement ("OSM") under the auspices of the U.S. Department of the Interior. OSM's director is appointed by the President and reports to the Secretary of the Interior.

A. SMCRA PROHIBITS MINING ON CERTAIN LANDS

SMCRA prohibits mining on certain lands: lands where reclamation is not technically or economically possible; certain classes of federal lands, such as National Parks, National Wildlife Refuges, federal wildernesses; or lands included in the Wild and Scenic Rivers system, within 300 feet of occupied homes, churches, public buildings and public parks, and within 100 feet of cemeteries or public roads. SMCRA also prohibits mining in National Forests, unless "there are no significant recreational, timber, economic, or other values which may be incompatible" with the mining activities.

SMCRA also requires that each state program (see below) establish a process for allowing the designation of other lands as "unsuitable for mining." Generally, the criteria for designating "lands unsuitable" status can include lands where strip mining is incompatible with existing state or local land use plans; lands where strip mining could affect fragile or historic sites or natural systems; and lands where strip mining would affect renewable resource lands, such as forests or farmlands.

SMCRA HIGHLIGHTS

The federal Surface Mining Control and Reclamation Act (SMCRA) regulates all surface coal mines in the United States, as well as the surface effects of underground mines. The public participation and citizens' suits provisions of the Act are valuable tools for ensuring that mining operations protect coldwater fisheries and habitat.

B. THE STRIP MINING REGULATORY PROGRAM

SMCRA establishes minimum federal standards for the regulation of strip mining, but gives each state where strip mining occurs the lead role in regulating that mining. Using the federal standards as a benchmark, each state develops its own regulatory program that must meet or exceed the federal standards. Each state program must be approved by the Secretary of the Interior, and SMCRA provides OSM with broad oversight responsibilities for each state program.

Each state regulatory program must contain federally approved provisions in three main areas: permitting and bonding; performance standards; and inspection and enforcement.

1. PERMITTING AND BONDING

SMCRA requires that coal operators obtain a valid permit from the state in order to mine. The permit application must include specific information, including: the operator's legal and financial status; the operator's past history of compliance with the law; detailed characteristics of the affected land and its ecology; and detailed mining and reclamation plans. The operator must show that it can meet all the requirements of SMCRA and can successfully reclaim the land in compliance with SMCRA. The permit application must show that the operator has obtained insurance sufficient to cover the operation, and bonding adequate to ensure that sufficient money will be available to pay for reclamation of the affected land if the operator fails to live up to the terms of the permit.

2. PERFORMANCE STANDARDS

Under SMCRA each state program must contain certain performance standards with which all operators must comply. These standards require, among other things, that the operator restore the land to a condition capable of supporting the uses that land could support before mining, or to "higher or better uses"; that, except in a few cases, the land be restored to its "approximate original contour"; that the operator minimize disturbance to the hydrologic system by avoiding acid mine drainage and preventing siltation and sedimentation to nearby streams; that the land be reclaimed as soon as practical, even contemporaneously where possible; and that the land be permanently re-vegetated. Special performance standards also are established for blasting, wildlife protection, road construction, disposal of excess spoil ma-

SMCRA AND FEDERAL LANDS

SMCRA completely prohibits surface mining on certain classes of federal lands, such as National Parks, National Wildlife Refuges, federal wildernesses, lands included in the Wild and Scenic Rivers system, and most National Forest lands.

GETTING NOTICE

The state regulatory agency must advertise each step in the permitting process in the "official newspaper of record" in the county where the project is located. It is up to you to check the papers for those notices so that you can be involved in the process at the earliest stages. In addition, major OSM rulemaking decisions will be posted in the Federal Register.

terials, steep slope areas, prime farmland, and western alluvial valley floors.

3. INSPECTION AND ENFORCEMENT

SMCRA requires that mine operators comply with all permit conditions and provisions of the state program, and that the states regularly inspect mining operations to enforce compliance. Under SMCRA, mine operations may not be conducted in a manner that would pose an imminent hazard to public health and safety or to the environment. SMCRA requires the state inspectors to take enforcement actions whenever they detect a violation at a mine site. Such enforcement actions are normally written "notices of violation" ("NOVs") and/or "cessation orders" ("COs"). Enforcement actions can be taken against the mine operator, as well as the company's corporate officers or agents, and can include civil fines, criminal prosecution, permit suspension or revocation, or a prohibition on granting further permits to the violator.

4. OSM OVERSIGHT

SMCRA gives the Office of Surface Mining the responsibility of overseeing the state programs. OSM must conduct oversight inspections at mine sites to ensure the state is doing its job. If OSM finds violations and the state fails to act on those violations within 10 days, then OSM can take federal enforcement actions. Finally, if OSM finds a state program in serious deficiency, it can order the state to correct the problems and, if the state fails to act, OSM can take over the regulatory program in that state.

C. CITIZENS' RIGHTS PROVISIONS

SMCRA contains very broad provisions for citizen participation in administrative and judicial proceedings. SMCRA and subsequent court rulings give legal "standing" to participate in SMCRA proceedings to persons who have an interest that might be adversely affected by decisions regarding a proposed strip mine. These "interested" persons include those who might suffer direct effects of a mining operation, as well as those persons who may suffer from effects to their aesthetic or recreational interests. Furthermore, citizen groups (such as Trout Unlimited) may participate in SMCRA proceedings on behalf of their members if any one of their members can participate in their own right.

Opportunities under the act for citizen participation are numerous:

- During the permit process, citizens may comment on the permit application and can request informal conferences with the state authority or formal public administrative hearings.
- Any significant alteration in a permitted mining operation requires the operator to obtain a permit revision, which is subject to the full public review process just as if it were a new permit application.
- Citizens may comment, or object, whenever permits are renewed or transferred, and whenever an operator files a request for a bond release.
- Citizens have the right to call for and participate in inspections of mine property, to use informal or formal agency proceedings to challenge a state agency's failure to take proper enforcement action, and to appeal any adverse decision to the courts.
- Citizens can challenge in court any regulation promulgated under SMCRA, and can

petition to designate an area "unsuitable" for coal mining.

- Citizens may sue in state or federal court if the federal government, state government, or any operator fails to comply with the provisions of the Act, and citizens can be awarded damages as a result of these court actions.
- Citizens can appeal decisions of OSM on the federal level with the Office of Hearings and Appeals at the Department of the Interior, or with the Interior Board of Land Appeals.
- Citizens can request that OSM review a state's enforcement program and can ask for OSM intervention in the state regulatory program.

SMCRA requires that the state regulatory agency advertise each step in the permitting process in the newspaper in the county where the project is located. In addition, major OSM rulemaking decisions will be posted in the Federal Register. Actions of both the state agency and OSM are subject to federal Freedom of Information Act ("FOIA," discussed fully in another chapter of this manual) provisions, if you are having difficulty obtaining information on proposed mining projects.

The SMCRA procedures required for approval of a mining venture are extremely complicated. It will be difficult for you, as an individual or group, to keep up with all the steps in the process once you become involved. It doesn't hurt to have an attorney who can assist you. But, more importantly, don't go it alone if you can help it. Coalitions of concerned neighbors or citizens, as well as other environmental or conservation groups, will be much more capable of successfully challenging a potentially destructive strip mine operation or the failure of the state agency or OSM to enforce the law.

There have been successful coalition efforts, both in Kentucky and West Virginia, to force the respective state regulatory agencies to perform their duties as required by SMCRA. Local TU chapters participated in a West Virginia lawsuit against the state Division of Energy for failure of its strip mine regulatory program. Each of these efforts required hundreds, if not thousands, of hours of work on the part of the coalitions and their *pro bono* attorneys. In both of these cases the coalitions were awarded attorney fees and recovery of their costs and expenses, but such awards are not automatic and may not always be forthcoming.

SMCRA "ACTION" CHECKLIST

1. Check your local newspaper for mining permit applications filed in your area.
2. File timely comments on the permitting, bonding and performance standards provisions of the applications.
3. If necessary, file timely appeals protesting the granting of permits or permit renewals.
4. If mining operations are causing water quality problems in your stream, ask your state agency or OSM for an official on-site inspection.
5. Consider filing "lands unsuitable" petitions for mines proposed in your area.
6. If your state regulatory enforcement program is in total disarray, ask OSM to review the state program, or to intervene until the state program complies with SMCRA provisions.
7. If all else fails, consider filing a citizen's suit under the provisions of the Act.
8. Contact your state agency or OSM about possible restoration efforts in your area.

D. THE ABANDONED MINELANDS RECLAMATION FUND

The Abandoned Minelands Reclamation Fund ("AML Fund") was established by SMCRA to provide money to clean up, restore and reclaim

SMCRA LINKS

The OSM web page — located on the Internet at www.osmre.gov/osm.htm — contains much useful information about OSM's mine lands restoration programs.

the numerous strip mines that operators had abandoned and left unreclaimed prior to the 1977 passage of SMCRA. Money for this fund is raised by imposing "reclamation fees" on operators currently mining for coal: 35 cents per ton for strip mined coal, 15 cents per ton for deep mined coal and 10 cents per ton for lignite. Under SMCRA, only 10% of AML Fund monies may be used to "reclaim" or treat water problems at mine sights. AML funds may be used only for pre-Act reclamation projects. The states are authorized to establish "Special Reclamation Funds" to cover reclamation at abandoned or forfeited strip mines that were permitted after the passage of SMCRA.

In 1994 OSM and EPA organized the Appalachian Clean Streams Initiative, a broad-based, multi-agency program to eliminate acid mine drainage from abandoned coal mines. The mission of the Appalachian Clean Streams Initiative is to facilitate and coordinate citizen groups, university researchers, the coal industry, corporations, the environmental community, and local, state, and federal government agencies that are involved in cleaning up streams polluted by acid drainage. Trout Unlimited is one of the founding "partner organizations" in this Initiative.

The AML Fund currently has more than $1 billion on hand, and spends approximately $200 million a year on mine reclamation, a portion of which goes to cleaning up streams. It is a national priority for TU to increase spending from the reclamation fund and to increase the proportion of the funds spent on stream clean-up. Obviously, the most significant use of these funds from TU's perspective is the clean-up of streams poisoned by acid mine drainage. TU chapters and councils have had some success in efforts to allocate money for liming/neutralization projects. Researchers have also recently completed a TU-funded study on improved methods of cleaning up acid mine drainage. If a stream in your area could benefit from these funds, you should contact the state agency administering the program, as well as local representatives of interested federal agencies, such as the Fish and Wildlife Service or the Forest Service, to organize an effort to design and fund an appropriate reclamation project. You should also consult with TU National staff about the best methods that may be available for your proposed project.

Recommended reading: *The Strip Mining Handbook* by Mark Squillace, 1990, published by the Environmental Policy Institute and Friends of the Earth.

VII. Federal Lands

In the United States some of our best trout and salmon habitat is found on federal lands. The federal government owns approximately 732 million acres of land — almost a third of the total United States land area. Most of these "public" lands are located in the western United States. In the 11 western states from the Rocky Mountains to the Pacific Coast, more than half of the land and a great deal of the coldwater habitat is under federal ownership.

While public lands contain tremendous fisheries, they also contain a vast array of other valuable natural resources such as timber, minerals, oil and gas reserves, and grasslands. Be-

cause activities to extract or use these resources are allowed on most of these lands, serious land management conflicts have arisen — conflicts over managing for commodity extraction versus managing for fish and wildlife resources. Congress has set aside more than 200 million acres of federal lands as National Parks, wildlife refuges, and wilderness areas, with restrictions that prohibit most extractive activities. However, the remaining 500 million acres of federally owned land are "multiple use" lands. On multiple use lands extractive uses such as mining, timbering and livestock grazing are allowed, and federal management actually promotes such uses on these lands in addition to fish and wildlife conservation and recreational uses. The definition of "multiple use" is found in a number of statutes, including the "Multiple Use-Sustainable Yield Act of 1960":

> *'Multiple use' means: the management of all the various renewable surface resources of the National Forest so that they are utilized in the combination that will best meet the needs of the American people, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions, that some land will be used for less than all of the resources, and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return of the greatest unit output.*

As you can see, this definition is not particularly helpful, and it has resulted in a great deal of conflict over activities such as timber harvest and grazing. To make matters worse, these lands are managed by multiple agencies under a complex array of laws. The Bureau of Land Management ("BLM") and the U.S. Forest Service ("USFS"), the two largest federal landowners, each has its own procedures for managing land resources. In addition, there are laws related to certain activities, most notably mining, that apply to both agencies. Finally, general federal environmental statutes, such as the Clean Water Act and NEPA, also apply to federal land managers in many respects.

FEDERAL LAND MANAGEMENT HIGHLIGHTS

The laws and regulations governing the management of federal lands are complex, and sometimes vague and overlapping. The responsibility for managing federal lands frequently involves more than one agency. Under multiple use management, conflict between the competing uses is almost inevitable. Primary responsibility for federal land management rests principally with two agencies: the Forest Service and the BLM.

Because of the conflicts that can inherently arise under multiple use management, as well as the lack of guidance that the doctrine provides in terms of actual management practices, TU has established three principles regarding multiple use management on federal lands ("Conserving Salmonid Biodiversity on Federal Lands: Trout Unlimited's Policy on Mining, Grazing and Timber Harvest," 1994):

- The first priority for multiple use of federal lands is to ensure the health of biological diversity.
- Sustainable use must be the basis of conservation and management of federal lands.
- Planning, management, and evaluation for land and aquatic uses should be on a watershed or ecosystem basis.

By following the guidelines and policies established in TU's "Conserving Salmonid

TU'S THREE PRINCIPLES FOR MULTIPLE USE MANAGEMENT ON FEDERAL LANDS

- The top priority is to ensure the health of biological diversity.
- Sustainable use must be the basis for conservation and management decisions.
- Planning, management, and evaluation for land and aquatic uses should be on a watershed or ecosystem basis.

Biodiversity on Federal Lands" and the "North American Salmonid Policy," TU's grassroots advocates have a sound foundation for effective coldwater fisheries advocacy on federal lands, whether they are managed under the multiple use doctrine or otherwise.

The following discussion is too short to be a comprehensive discussion of federal lands law. In particular, you will need to reference the NEPA and Clean Water Act sections to get a more complete idea of the environmental restrictions that apply to federal land managers. We briefly discuss the following:

- the federal lands subject to the greatest degree of protection;
- the BLM;
- the USFS and its administrative planning and decision-making processes; and
- rules related to mining on federal land.

A. NATIONAL PARKS, WILDLIFE REFUGES AND WILDERNESS AREAS

1. THE NATIONAL PARK SYSTEM.

Begun more than a century ago with the creation of Yellowstone National Park, the National Park System currently includes 37 parks and 257 national monuments, historic sites, recreational areas, seashores and lakeshores, altogether embracing more than 77 million acres of federal land. The National Park Service is a bureau of the Department of the Interior and was created in 1916 to promote and regulate National Park System lands. The fundamental purpose of the National Park System is to conserve natural systems, historical treasures, and fish and wildlife.

The National Park Service also administers protections for rivers designated under the National Wild and Scenic Rivers Act. The Act provides blanket protection against federally licensed dams, diversions, and other on-river development on designated river segments. It also sets aside a quarter-mile-wide riparian corridor in which development, on public lands, is restricted. Private lands in Wild and Scenic corridors are generally open to development. The Act applies both to whole rivers and to river segments, and not just to those that are wild and pristine. Reaches of rivers with road access, private property holdings, and other significant development can qualify as scenic or recreational segments, as long as they are free-flowing.

There are several ways to get a river designated Wild and Scenic. A candidate river can be proposed by a citizen's group (or by local government) for study as a part of the Wild and Scenic System. That requires a friendly U.S. Senator or Congressman to introduce a study bill and an act of Congress to pass it. Study rivers are protected from development for up to six years. Federal agencies may also study rivers for designations and make recommendations to Congress. Finally, states may recommend rivers to the Secretary of the Interior. If the Secretary accepts a state's recommendation, the river becomes part of the system, but must be administered by the state.

The Wild and Scenic Rivers Act has had mixed success. Although it has provided important benefits to a number of rivers, its protections have very little bite, particularly on private land. In addition, the designation of rivers and the development of management plans

for designated rivers have become highly politicized, and have become magnets for the efforts of property rights advocates.

2. THE NATIONAL WILDLIFE REFUGE SYSTEM

The National Wildlife Refuge System was established in 1966 for the conservation of fish and wildlife, including species that are threatened with extinction. The system currently includes almost 89 million acres of federal land in more than 500 wildlife refuges distributed across the 50 states (however, two-thirds of this acreage is located in Alaska). The U.S. Fish and Wildlife Service is the agency responsible for managing these lands, which provide habitat for birds, mammals, fish, and other sensitive species. Extractive activities, such as mining, oil and gas exploration, and grazing, are allowed on these lands only to the extent that they are "compatible" with the primary wildlife conservation goals of the individual refuges. "Incompatible" uses may also be allowed where the uses existed prior to the establishment of the refuges (prior existing mining claims, for example).

3. THE NATIONAL WILDERNESS PRESERVATION SYSTEM

Created by Congress in 1964, the National Wilderness Preservation System currently comprises almost 80 million acres of federal land, including more than 50 million acres of Alaskan wilderness added in 1979. Wilderness designation for a particular piece of federal land must be established by an individual act of Congress. Because lands with wilderness designation are normally only tracts of land within other federal land boundaries (such as National Parks, Forests, wildlife refuges, or BLM lands), there is no single agency that manages wilderness lands. Instead, each federal land agency oversees the wilderness lands included in its jurisdiction, and each agency can "nominate" additional lands to be preserved as wilderness. Lands under wilderness designation are to remain forever as undeveloped areas; however, historical mining and grazing rights can be "grandfathered" into the legislation which designates a new wilderness area.

FEDERAL LAND MANAGEMENT LINKS

TU's "North American Salmonid Policy" and other documents relating to federal land management issues are available on-line at www.tu.org/ library/conservation.html.

B. THE BUREAU OF LAND MANAGEMENT

The Bureau of Land Management ("BLM") manages over 264 million acres of federal land (about one-eighth of the total land mass in the United States) and more than 560 million acres of subsurface mineral resources. These lands are known collectively as National Resource Lands, or "rangelands," and are located principally in the West, including Alaska. Extensive grasslands, forests, high mountains, arctic tundra,

NATIONAL PARKS AND WILDLIFE REFUGES LINKS

For more information on National Parks, wildlife refuges, Wild and Scenic rivers and wilderness areas, check out these Internet sites:

- The National Park Service homepage is located at www.nps.gov.
- The Park Service Wild & Scenic Rivers homepage is located at www.nps.gov/rivers.
- The FWS National Wildlife Refuges homepage is located at refuges.fws.gov.
- The U.S. Department of Interior homepage is located at www.doi.gov/index.html.

BUREAU OF LAND MANAGEMENT HIGHLIGHTS

The BLM manages federal National Resource Lands, or "rangelands," which are located primarily in the West. Activities of major concern include grazing permits, timber permits, road building, and mining. TU members can influence BLM decisions by participating in the NEPA process. There are also opportunities to work with the agency on projects to restore trout and salmon habitat.

and deserts dominate these lands; much of this rangeland is used primarily for grazing. The BLM is responsible for the management and use of a wide variety of other resources on these lands, including energy and minerals, timber, wild horse and burro populations, fish and wildlife habitat, recreation sites, wilderness areas, and archaeological and historical sites.

The BLM had no unified legislative mandate until Congress enacted the Federal Land Policy and Management Act of 1976 ("FLPMA"). With FLPMA, Congress recognized the value of the remaining public lands to the American people and declared that these lands generally would remain in public ownership. Congress also codified the principle of "multiple use" management, defined as "management of the public lands and their various resource values so they are utilized in the combination that will best meet the present and future needs of the American people."

The BLM performs a wide variety of functions. These include: taking inventory of resources; preparing land use plans and assessing environmental impacts; conducting land surveys; issuing use authorizations; enforcing permit conditions; designing and constructing roads and improvements; restoring degraded fish and wildlife habitat; identifying and managing significant natural, cultural, and recreational resources; and monitoring use. In addition, the BLM maintains the original property title and survey records of the United States. The BLM is headquartered in Washington, D.C., with field offices primarily in the western United States.

The National Environmental Policy Act ("NEPA," discussed fully in a separate chapter of this manual) applies to BLM decisions (assuming those activities meet the threshold significance requirements of NEPA), and where NEPA requires it, BLM must make its decisions with public participation and in coordination with other federal agencies; state, tribal, and local governments; and other affected interests. For TU members the NEPA process provides numerous opportunities for involvement in activities proposed on BLM lands. Activities of major concern include grazing permits, timber permits, road building, and mining. If you wish to actively participate in this process, however, you have to keep abreast of what the BLM is doing in your region. You should contact both the state and district BLM offices that cover your

BLM LINKS

The BLM homepage on the Internet is located at www.blm.gov.

BLM "ACTION" CHECKLIST

1. Contact the nearest BLM district office to get on their mailing list to receive notice of projects proposed in your area, including grazing permit renewals.
2. File appropriate comments under the NEPA procedure that deals with the project.
3. Meet with agency officials from your BLM district to discuss partnerships for stream restoration projects on BLM lands in your area.

area and ask to be placed on their mailing lists. They may require you to fill out a form that specifies the types of actions that interest you.

There are also opportunities for TU activists to work with BLM agency officials in projects to restore trout and salmon habitat. One such notable effort is the "Bring Back the Natives" program which is discussed in more detail below.

C. THE U.S. FOREST SERVICE

The U.S. Forest Service (the full name is the U.S. Department of Agriculture Forest Service — referred to here as the "Forest Service" or "USFS") manages over 191 million acres of federal land (almost 9% of the total landmass in the United States). These lands are known collectively as National Forests and Grasslands, or the National Forest System. Currently there are 155 individual National Forests and 20 National Grasslands, located in 44 different states. In 1897 Congress began setting aside large forested tracts of public land to create forest reserves, furnish continuous timber supplies for the nation, and protect mountain watersheds. The Forest Service was created in 1905 to oversee these lands.

Except for those areas set aside as wilderness, National Forests are managed under the "multiple use" doctrine, which calls for a balance of recreation, timber, grazing, and conservation activities. In theory, under multiple use management all resources, including outdoor recreation, range, timber, watershed conservation, wildlife, and fish, are to receive equal status and consideration from federal land managers. However, even a cursory view of the history of the Forest Service would show that this has not been the case. And since many of our better trout and salmon streams begin in or flow through National Forests, USFS management policies through the years have been of particular concern to Trout Unlimited members.

There are four levels of National Forest offices. At the top is the national office located in Washington, D.C., run by the person who oversees the entire Forest Service (the official title is "Chief of the Forest Service"). The Chief's staff provides broad policy and direction for the agency, works with the office of the President to develop a budget to submit to Congress, provides information to Congress, and monitors overall activities of the agency.

The second level is the regional office. There are 9 regions, numbered 1 through 10 (Region 7 was eliminated some years ago) covering broad geographic areas, usually including several states. The person in charge is called the "regional forester." The regional office staff coordinates activities between the individual National Forests in the region, monitors and reviews activities on the National Forests, provides guidance for forest plans, and allocates budgets to the forests.

FOREST SERVICE HIGHLIGHTS

The U.S. Forest Service manages all National Forests and Grasslands. The best opportunity to influence National Forest management directions is during the development of individual National Forest management plans. NEPA provides multiple opportunities for public participation at all levels of USFS decision-making. Because many of our better trout and salmon streams begin in or flow through National Forests, USFS management policies are of particular concern to TU members.

The third level is the individual National Forest office. The person in charge of each National Forest is called the "forest supervisor," and the headquarters is called the supervisor's office. This level coordinates all the activities within each forest, allocates the budget, and provides technical support to forest personnel. Forest supervisors of the National Forests within a region report to the regional forester.

The fourth level is the ranger district. Each in-

dividual forest is composed of several ranger districts. There are more than 600 ranger districts, and each district has a staff of 10 to 100 people. The districts vary in size from 50,000 acres to more than 1 million acres. The person in charge of each district is called the "district ranger" and reports directly to the National Forest supervisor. The district ranger and his or her staff may be your first point of contact with the Forest Service because most of the on-the-ground activities are managed at the district level.

SNAPSHOT OF THE FOREST PLAN PROCESS

1. Identify issues and concerns.
2. Develop planning process criteria.
3. Gather data and conduct studies.
4. Analyze forest resources.
5. Develop a range of alternatives.
6. Compare impacts of each alternative.
7. Prepare a draft EIS.
8. Select and review the "preferred alternative."
9. Review the final plan.
10. Implement the plan and monitor its effectiveness.

1. FOREST SERVICE PLANNING

Forest Service planning occurs on three levels: national, regional, and the individual National Forest. By far the most important level for your chapter or council will be at the individual forest level — each individual National Forest plan dictates what activities can take place and where they can take place in the forest over the duration of the plan. However, it is useful to consider the context in which the individual plans are developed.

National Forest System-wide goals are set on the national level. Under the Forest and Rangeland Renewable Resources Planning Act ("RPA"), the USFS must prepare a so-called "RPA Assessment" every 10 years. The assessment includes an inventory of renewable resources and management goals based on the RPA resource data and economic analysis. These goals are distributed to the nine USFS regions and incorporated in the regional guidelines. Finally, as authorized by the National Forest Management Act ("NFMA"), each individual National Forest incorporates the goals based on its own resource capabilities in a "forest plan," also known as a Land and Resources Management Plan. The NFMA further establishes that each forest plan is due for revision usually every 10 years, but no later than every 15 years.

In 1992, the Forest Service adopted a new guiding management philosophy called "ecosystem management." Ecosystem management principles call for National Forests to provide multiple uses. The goal is to produce a variety of resources and values through the sustained management of healthy ecosystems. One of the inherent challenges of this management policy is balancing economic and non-economic considerations in making resource allocation decisions.

The Secretary of Agriculture is required by the RPA to assess the nation's renewable forest and rangeland resources and evaluate their future use and sustainability for long-term planning purposes. To do this, the Forest Service prepares three RPA documents: the RPA Assessment, the RPA Program, and the Annual Report. In addition to the requirements of NEPA, NFMA regulations recognize the importance of public participation in the land and resource management planning process for the National Forest System. Public participation is intended to expand the information base upon which management planning decisions will be made and educate the Forest Service on the needs, concerns, and values of the public. Additionally, with citizen participation the public will develop an understanding of Forest Service programs and proposed actions. The Forest Service's planning process allows conservationists to voice their concerns. As with the other processes described in this

manual, your involvement will be most effective by participating early and being committed to your involvement.

The public has the same opportunities to participate in the preparation of environmental impact statements for forest planning as required by NEPA. Public comments will be analyzed according to NEPA procedures. Formal participation commences with a notice in the Federal Register and local newspapers. The notice will provide a description of the proposed planning action, the area involved, and issues to be discussed; times, dates, and locations of scheduled meetings; USFS contact; and directions on how to acquire relevant documents.

The process that will have the greatest impact on the streams you fish in National Forests will be the individual forest plan. Every individual action authorized by the forest during the duration of the plan will have to be consistent with the plan. The individual plan process is probably the single best opportunity to ensure that the USFS manages the particular National Forest in a fashion consistent with healthy aquatic ecosystems. The best way to stop a road, a timber sale, or a grazing permit is to show that it would be inconsistent with the forest plan. There are ten steps in developing a forest plan:

(1) The USFS must identify the issues and concerns that are to be addressed in the range of forest plan alternatives. It is very important that issues and concerns identified by the public are included and that the public issues are not simply from the USFS's perspective. Citizens must voice their concerns and state what is important to them.

(2) The USFS must prepare criteria to guide the planning process. It is essential for the public to be involved with the development of the criteria, which will be used to evaluate and eventually select a forest plan alternative. The decision-making process can be only as good as the criteria that are set forth early on, and public involvement will help to maximize public benefits.

FOREST SERVICE "ACTION" CHECKLIST

1. Immerse yourself in the forest plan process. Get involved at the earliest stages of the forest plan discussion. File comments at every opportunity, and pay particular attention to the draft EIS.
2. Monitor the implementation of the forest plan, making sure that individual projects comply with the plan's management guidelines.
3. Get on your forest's "scoping" mailing list so you will receive notice of each individual project when it is proposed.
4. Request site visits with USFS district rangers and staff, both to educate yourself and to let the USFS know of your specific concerns with proposed projects.
5. File timely written comments at every stage, from the scoping phase on.
6. When necessary, file timely appeals to USFS decisions.
7. Try to establish respectful working relationships with USFS staff and personnel, including fisheries biologists.
8. Chapters and councils should set up a system to enable members to report threatening water quality conditions, etc., which members observe while fishing forest streams.
9. Participate with the USFS in the numerous opportunities available for stream restoration and improvement.

(3) Interdisciplinary teams collect data to fully assess the resource value involved. Data and information needs will vary depending on the public issues, management concerns, resource use and development opportunities. Citizen participants can request special studies to make sure decisions are based on the best information available.

(4) The planning teams analyze the management situation. Each team will determine the forest's potential for supplying various resources. This analysis will provide the basis for formulating a range of alternative needs to be evaluated to determine the range of maximum production potential.

(5) Based on the issues identified in step one, a range of alternatives must be developed according to NEPA procedures. The USFS will usually notify interested parties of the alternatives to be considered. This is a critical stage for activists to evaluate the alternatives and to be certain that the alternatives address their concerns. If not, the Forest Service should be contacted and another alternative should be suggested. This does not mean the suggested alternative will be selected, but it will guarantee its consideration. Conservation groups have presented their own overall "alternative plan" when the USFS-proposed alternative strays from protecting valuable natural resources.

(6) The USFS must compare the physical, biological, economic, and social impacts of each alternative. It must also compare the ability of each alternative to meet the objectives of the national level RPA program.

(7) The USFS uses the previously established criteria to evaluate the effects of each alternative. The draft environmental impact statement ("DEIS") prepared at this stage must discuss the physical, biological, economic and social impacts estimated in the previous steps.

(8) Following the alternative analysis, the forest supervisor recommends a "preferred" alternative to the regional forester to be identified in the DEIS. The public has the opportunity to comment on the draft plan, and if, after reviewing the public's input, the regional forester still believes it is the best alternative, the selected alternative becomes the basis for the final plan.

The regional forester must provide the rationale for the selection in the written "record of decision" that accompanies the final plan.

(9) The final plan must then be reviewed and approved or disapproved. In addition to NEPA regulation requirements, the record of decision for approval of the final plan must include a summarized comparison of the selected alternative with the environmentally preferred alternative(s) and alternatives that come closer to maximizing the present net value of the forest's resources.

(10) As the plan is implemented, the Forest Service is required to monitor the plan's effectiveness. The plan will include environmental, economic and social indicators. Monitoring these indicators will tell how well the plan meets its objectives and management standards. Effective advocates should be prepared to carefully monitor Forest Service implementation of the forest plan until it is next up for revision, as you will see below.

A list of National Forests and the dates their plans come up for consideration is included as Appendix I. Check it to see when you will have the opportunity to participate in the drafting of your local forest's plan.

2. INDIVIDUAL PROJECTS

The forest plan process requires intense advocacy involvement, but for a relatively short period of time. However, TU members are likely to find that monitoring the specific project proposals that are broadly authorized by the forest plan, such as individual timber sales, comes close to being a full-time job.

In order to find out exactly what projects are in the pipeline, you must be on your National Forest's "scoping" list. Write to your forest supervisor or district ranger requesting advanced notification of any projects that are proposed for your forest. The addresses and phone numbers of the headquarters office of each National Forest are included as Appendix J. Be sure to keep a copy of this request and all other correspondence with the USFS. In case your initial request is not taken seriously, you may have to

refer to it in follow-up phone calls or in a second, certified letter. Once you are on the scoping list, you will receive letters announcing projects including campground water lines, all-terrain vehicle trails, mining permits, and timber sales.

These scoping notices contain the location of proposed projects as well as some information about implementation plans. Read the scoping notices carefully. They will give you the name, address, and phone number of a USFS contact who can give you more information. Write or call this person as often as necessary to answer any questions you may have. If you are not familiar with the project's location you may want to visit the site, preferably with someone who knows the area well. You may even consider requesting that someone from the USFS visit the site with you to answer your specific questions. Be sure to take detailed notes; then follow up by submitting your questions in written correspondence so that you receive a written response. This "paper trail" may prove invaluable later.

3. PUBLIC COMMENT

One of the purposes of scoping is to identify issues of concern to the public should the project ultimately be approved. This is accomplished through letters sent to the USFS during a "public comment period." The deadline for comments is specified in the scoping notice. This is your opportunity to make your concerns known by phone, fax, letter or personal visit. If you believe the proposed project, or some parts of it, are not in the best interest of an affected stream, you must write a letter explaining why. Rather than simply objecting to the project, you should be as specific as possible in your comments, detailing what is wrong with the proposal and how it will impact the stream.

Public comments submitted to the USFS are public information. You may find it useful to go to the USFS office and count the comments for and against the proposal. These figures may be useful later, especially if it establishes that the only people in favor of a timber sale or mining permit are the ones who stand to gain from it financially. Take a look at who submitted comments. You may find allies you didn't realize you had, or additional beneficial information in comments from scientists, academics, and other forest activists.

Sometime after the public comment period has ended — unless you have successfully convinced the USFS to withdraw the proposal — the forest officer in charge will issue a "Decision Notice" ("DN") and "Finding of No Significant Impact" ("FONSI"), which will be based on a finding for "categorical exclusion" of the project or on the project's EA or EIS. It does sometimes happen that the public outcry against a USFS project is so great, or the scientific and legal cases against it are so overwhelming, that the USFS is forced to withdraw its proposal. However, if the deciding officer (usually the district ranger) decides to proceed with the project without adequately addressing your concerns, all hope is not lost.

4. ADMINISTRATIVE APPEALS

A common assumption is that once the regional forester has made a decision to approve a forest plan (or a district ranger has approved a specific project), no further action can be taken. Any citizen dissatisfied with decisions made in the forest plan or a regional plan can make an administrative appeal to the Chief of the Forest Service. Likewise, decisions made on the forest level may be appealed to the regional forester. This appeal process is intended to be an extension of the public participation process that any concerned citizen can employ without securing legal counsel. Despite the high level of concern for forest planning decisions, the number of administrative appeals is very small and is likely due to a lack of knowledge by the public about this option, rather than disinterest or satisfaction with fi-

nal decisions. Preliminary planning decisions made before a final plan is adopted are not subject to appeal.

The procedures for filing any administrative appeals are essentially the same, no matter the type of decision being appealed:

(a) The appellant (citizen) must file a "notice of appeal" with the forest officer who made the decision within 45 days of the date of the decision. No extensions may be requested. In an appeal of a decision to adopt a forest plan, the "notice of appeal" must be filed with the regional forester.

FOREST SERVICE LINKS

To learn more about Forest Service management programs and policies, visit their web page which is located at www.fs.fed.us. To learn more about the proper procedures for filing USFS comments and appeals, check out the website for Heartwood, an environmental organization that focuses on reforming USFS timber practices, which is located at www.heartwood.org.

(b) Within 30 days of the written decision on the appeal, a "notice of appeal" must be filed with the next higher forest officer. An appeal of a regional forester decision would require a second level appeal with the Chief of the Forest Service. The notice should include a statement of reasons to support the appeal, as well as any requests for oral argument.

(c) A "notice of appeal" should specifically identify the decision being appealed, the date of the decision, and the name and title of the forest officer who made the decision. You should also include your name, address, and telephone number, and an explanation of how you are affected by the decision. Finally, state the relief you are seeking in the appeal.

(d) The deciding officer (the regional forester, in the case of an initial appeal) will provide a "responsive statement" within 30 days of receiving the appeal. Appellants have 20 days from the mailing date of the "responsive statement" to submit a reply. After receiving the reply, or if the 20-day period has expired, the entire written appeal record will be sent to the reviewing officer (e.g., Chief of the Forest Service).

Other individuals or organizations can intervene in support or in opposition of the appeal. This means that even if you have not filed your own appeal, you may intervene in another group's appeal either in support or opposition.

Just because an appeal is filed does not mean that the disputed action is halted until the appeal is resolved. In order to stop such an action pending the appeal, any party filing an appeal or intervening in an appeal may request a stay of the disputed action pending resolution of the appeal. A request to stay the decision may be made any time while an appeal is pending. The stay request must be accompanied by the "notice of appeal" (if the appellant is making the request) or request for intervention (if the intervener is requesting the stay). The stay request should be filed with the reviewing officer, with a copy to the initial decision-maker. The reviewing officer will rule on the stay within 21 days of receiving it.

Since appeals are reviewed and ruled upon by USFS employees who are all essentially colleagues and working for the same boss, it isn't surprising that most appeals are routinely denied. Nonetheless, it is important to make your appeal as strong and comprehensive as possible. Thoroughly researched, well-written appeals will help hold the USFS accountable for the projects they do propose, and may eventually deter forest managers from simply "rubber stamping" the approval of blatantly harmful projects. Perhaps most important of all, keep in mind that only issues raised on appeal can be included in the next (and final) step in the

forest advocacy process, a lawsuit challenging the decision.

If after exhausting the administrative appeal process you are still dissatisfied with the forest plan (or with other regional, forest, or district level decisions), you may want to file a lawsuit. You should not undertake this step lightly. It is always best to think of the lawsuit as a measure of "last resort." Of course, bringing suit against the Forest Service will require professional legal assistance.

D. REGULATION OF MINING ON FEDERAL LAND

Mining on federal land has had devastating effects on the environment generally and water quality in particular, from the perpetual water pollution caused by acid mine drainage, to cyanide spills and heavy metals contamination, to the creation of toxic waste rock. Today, such mining is still largely governed by laws passed more than 100 years ago, the same laws that resulted in the pollution of so many western streams.

There are essentially three laws governing mining on federal lands: one for hard rock mining (gold, silver, and other precious metals), one for fossil fuels (oil, coal, and natural gas), and one for so-called "common" variety minerals, such as gravel, stone, and sand. Although the three laws have somewhat different restrictions on mining, all have the same basic structure: approval of the mining operation is administered by BLM with the input of the agency controlling the land (most frequently either the U.S. Forest Service or the BLM itself).

Hard rock mining is regulated by the infamous General Mining Law of 1872 (30 U.S.C. Sections 22-54), which gives individuals or corporations who find metallic ores on federal lands the right to mine them at minimal cost. The law, as amended modestly over the years, allows parties to stake mining claims on federal land, so long as they spend a nominal amount of money to develop the site ($100 for a 20-acre site). If a company or person can prove that the claim can be economically mined, the claim can be "patented" (or purchased), a process that leads to full ownership of the land and mineral rights. Depending on the type of claim, the fee for patenting is either $2.50 or $5.00 an acre, a real bargain in either case. No royalty is required for the value of ores taken from public lands. This antiquated law contains no environmental standards and no reclamation requirements.

Extraction of fossil fuels is regulated under the Mineral Leasing Act of 1920, as amended. Under the statute as it is now written, the BLM and the Forest Service have the authority to issue mineral leases on federal land. The BLM or the Forest Service may deny a lease because of environmental concerns, or may condition a lease on appropriate environmental protections.

Finally, extraction of sand and gravel is governed by the Materials Disposal Act of 1947, as amended by the Common Varieties Act of 1955.

Although these statutes differ as to the degree of environmental restrictions on mining activity, the principles for contesting a mine or a fossil fuels lease are essentially the same. The primary authority for administering mining on federal lands is the BLM. However, the BLM must consult with and obtain the approval of the

MINING FEDERAL LANDS HIGHLIGHTS

Hardrock mining on federal land is governed by the 1872 General Mining Law, an antiquated statute which basically has no provisions for protecting aquatic resources. The NEPA process does offer citizens the opportunity to comment on proposed mining projects on federal lands; however, the best defense is to rally a high level of public support in opposition to activities or decisions that will harm coldwater resources.

HARDROCK MINING "ACTION" CHECKLIST

1. Get on the appropriate federal agency mailing lists to receive notice of proposed mining operations in your region.
2. File timely comments during the NEPA process for whichever agency is involved.
3. In the case of National Forest lands, get involved in the forest plan process to reduce the chances of mining activity being proposed.
4. Recruit support from other relevant federal agencies, as well as from your state regulatory agencies.
5. Work with other conservation and environmental groups to raise public opposition to the proposed activity.

agency responsible for managing the land whenever the exploration for or extraction of mineral resources will "significantly affect" the other environmental resources of the land in question.

In the case of National Forests, this means that the USFS must also approve the mining related activity. To limit mining in any National Forest, the first step, as outlined fully earlier, is participating in the preparation and approval of the forest plan. The plan could include limits on the amount of mining that can take place and on where and how it can take place. Effective participation in the planning process can reduce the chances of mining activity being proposed and create an excellent first line of defense if a mine is proposed.

Once mining activity requiring federal approval is proposed, the most likely first step is the NEPA process described fully in the separate chapter on NEPA. Any effort to stop a mine should include extensive discussions, in person and in writing, with the relevant agencies, recruiting support for opposition within other agencies (for example, the U.S. Fish and Wildlife Service), and submitting formal written comments. State agencies can also provide potential ammunition, particularly under Section 401 of the Clean Water Act, which can be used by the state to block or restrict a mining operation requiring a federal permit. As always, the key to participating in this process is keeping informed and learning of planned mines early in the process. The formal way to do this is to stay on the mailing lists of the relevant BLM and USFS district offices. Maintaining good working relationships with agency employees, however, can help you get a heads up at an even earlier stage in the process.

Given the lack of strong legal protections for natural resources affected by mining, the most potent tool against mines is usually publicity. As demonstrated by the recent decision to stop the Crown Butte Mine near Yellowstone National Park, negative publicity can galvanize public opinion and influence the actions of the mining company as well as of the government. It is important to raise public awareness of the mine and generate broad-based opposition to it as early as possible. Experience shows that working cooperatively with other local and national conservation and environmental groups is the best way to generate the necessary public opposition.

E. TU/AGENCY PARTNERSHIPS

Finally, for the TU member some of the most powerful tools for influencing Forest Service decisions are the cooperative partnerships that we have established with the agency on many levels. These partnership programs exist at the national level, as well as the council and chapter level. We can not stress enough the importance of TU members establishing good working relationships, both formal and informal, with USFS managers —relationships built on mutual understanding and respect. Such relationships can go a long way toward relieving you of ever having to take the step of last resort — going to court.

Over the last several years TU has had two formalized national partnerships related to federal lands. Since 1988 it has had a TU/Forest Service Partnership Coordinator. The purpose of this national partnership is to promote and coordinate TU grassroots involvement in National Forest planning, stream restoration projects, and coldwater fishery management.

As mentioned above, one of TU's most productive partnerships with federal land managing agencies is the "Bring Back the Natives" program. Since 1994 TU has teamed up with the Forest Service, the BLM, the National Fish and Wildlife Foundation, and the Bureau of Reclamation in this collaborative effort to restore native fish on public lands. Through the "Bring Back the Natives" program TU has delivered thousands of dollars and an untold number of volunteer hours to projects on California's Kern River, Arizona's West Fork of the Black River, Lake Superior, and in the Great Smokey Mountains National Park, to name a few. The program uses a watershed approach to restoring native fish: projects address both the symptoms and causes of stream degradation.

MINING LAW REFORM LINKS

For information about efforts to reform the 1872 Mining Act check out the Mineral Policy Center website located at www.mineralpolicy.org.

If either of these partnerships is relevant to the activities of your chapter, consult your TU directory or contact the National Office for the contact information for these programs. The coordinators of these programs can also be very helpful in answering your general questions about federal land management.

VIII. The Clean Air Act

The Clean Air Act is an exceptionally complicated statute that regulates myriad activities. Virtually all sources of air pollution, from the tailpipe of your car to power plant smokestacks, are regulated in some fashion under the Clean Air Act. The statute has become of increasing concern to TU members because of the problem of acid deposition. Many watersheds that are undisturbed by human activity on the ground suffer the effects of human activity hundreds of miles away due to acid deposition. Acid deposition (or "acid rain," as it is often called) is caused by two pollutants: sulfur dioxide, which results from the burning of coal, and nitrogen oxides, which result from the burning of any fossil fuel. In 1990 Congress amended the Clean Air Act to create a program specifically to deal with the problem of acid deposition. TU is currently striving to strengthen that program so that it protects all sensitive aquatic ecosystems.

The 1990 Amendments of the Clean Air Act remain highly controversial, primarily because they created a "cap-and-trade" system that allows utilities to purchase allowances to emit sulfur dioxide. The Amendments established a national cap on emissions of sulfur dioxide from coal burning power plants to be implemented gradually by the year 2010. The national cap is implemented through a series of individual caps imposed on each coal burning generator. The owner of the generator can comply with the cap in two ways. First, the owner can make modifications to the generator or the way that it is run so that the generator actually emits less sulfur dioxide than required by its cap. If this

happens, the generator is in compliance with the law, and the owner receives "allowances" in the amount of the difference between the cap for the generator and what the generator actually emitted. Second, if the owner decides it is too costly to meet the cap, it can purchase allowances from power companies that have met their caps. A company can also bank allowances earned in a given year and use them in future years if any of its units do not meet their cap.

The Amendments have proven very effective at meeting their goals at a cost to utilities far below what anyone predicted. However, an increasing body of research is showing that the actual cap set for sulfur dioxide is not sufficiently low to protect many aquatic ecosystems in the East, from the southern Appalachians to the Adirondacks. In addition, the Amendments did not set a cap for nitrogen oxides, which also contribute to the acidification of streams and lakes. TU is currently working to explore legislative alternatives that will result in pollution reductions adequate to protect sensitive aquatic ecosystems.

CLEAN AIR ACT LINKS

To learn more about EPA's Acid Rain Program check out their website at www.epa.gov / acidrain/ ardhome.html.

Although amending the statute to improve the acid rain program is the best and most straightforward means of solving the national problem of acid rain, there are some regulatory opportunities for volunteers to minimize their own state's contribution to the problem. The Environmental Protection Agency ("EPA") currently has several regulatory programs that also ultimately control sulfur dioxide and nitrogen oxides. These include new ambient air quality standards for ozone (caused by emissions of nitrogen oxides) and airborne fine particles (the most significant cause of which is sulfur dioxide); a program to deal with the problem of state-to-state ozone transport; and a program to improve visibility in National Parks (visibility impairment is also caused largely by emissions of nitrogen oxides and sulfur dioxide). One of these programs (the ambient air quality standards) has been struck down by a court, and the other two are being challenged politically and legally, so it is far from certain that they will be brought to conclusion. If they progress normally, however, most states in the East and Midwest will be required to prepare state implementation plans ("SIPs") describing how they will comply with EPA's requirements under these various programs. If you are very concerned about air quality, including acid deposition, in your state and in neighboring states, you may wish to explore this process and ultimately comment on your state's SIP. These SIPs, however, typically involve very technical issues, including monitoring of emissions, transport of pollutants in the atmosphere, and complicated chemical reactions that transform pollutants in the atmosphere (for example, the reactions by which nitrogen oxides ultimately produce ozone). It is probably best to seek help in participating in this process, or to do so as part of a larger coalition of groups.

As with the Clean Water Act, sources of air pollution must have a license, and the license in turn must comply with all relevant standards and requirements imposed by the EPA and by the state's SIP. Occasionally TU chapters and councils have participated in the process for licensing new sources of acid causing pollution. The theory they have used is that, given the level of acid deposition in the eastern mountains, any additional sources of the pollution are unjustifiable. Again, these licensing procedures can be very technical, and it helps a great deal to have organized, broad-based opposition. In general, you should carefully scrutinize these new sources before opposing their li-

censes. Most new facilities, in particular new power plants, are far more efficient and cleaner burning than older facilities. Indeed, new power plants are subjected to much stricter pollution standards than older ones. The new facility may in the long run result in reductions in air pollution, particularly if it will replace older, less efficient generating capacity.

IX. State and Local Law

In the last 30 years environmental law has become overwhelmingly federalized. Most state programs, including most notably water quality standards, water pollution permitting, and air pollution permitting, are largely the result of federal mandates. A major exception to this federalization of environmental law is the area of water rights and instream flows-water quantity law. However, some states do provide additional or stricter protection for the environment, and in those cases the state laws may prove more helpful to you than federal law. Of course, the environmental and state water laws of the 50 states vary considerably, and there is no way in this manual to discuss them in any meaningful detail. The following discussion of state laws is intended to alert you to what tools might be available in your state; you will have to do further research or consult with a local attorney to confirm whether your state has that tool and, if so, how it can actually be used.

STATE AND LOCAL LAW HIGHLIGHTS

State and local laws provide a variety of tools which may be useful in your efforts to protect coldwater resources. Some of these may provide environmental protection standards that are similar to or even greater than those provided in federal law. These legal tools include:

- State "environmental policy acts,"
- Zoning and land use laws,
- Common law remedies such as "nuisance" and the "public trust doctrine,"
- State forestry statutes,
- State fish and wildlife laws, and
- State water rights laws.

A. STATE ENVIRONMENTAL REVIEW STATUTES

As discussed above, the federal National Environmental Policy Act ("NEPA") requires review of the environmental impacts of certain federal actions and an exposition, if not consideration, of less damaging alternatives. Many states also provide for environmental review through statutes modeled after NEPA. In these states, certain state actions or expenditures must undergo a review of their environmental consequences and be subjected to public scrutiny and input. If you are faced with a state project receiving little or no federal money, you should check if your state has a "state environmental protection act" (or "SEPA") that requires some level of environmental review.

Although often modelled after NEPA, many of these statutes can vary from NEPA itself and from each other in a variety of important ways, including the type of review, the content of the document prepared, which agency has responsibility for the review, and the procedures followed in conducting the review. The two areas where the differences are most important are in the scope of actions to which the statute applies and in the degree of review the statute requires.

1. SCOPE OF ACTIONS REQUIRING REVIEW

When you are confronted with a new highway, a major development, work in a stream channel, or another significant project that might

STATE AND LOCAL LAW "ACTION" CHECKLIST

1. Read your local newspaper to learn of proposed activities that may affect your stream or watershed.
2. Attend local government meetings and work with local officials to avoid or minimize the impacts of harmful projects.
3. Get on the mailing lists of state fish and wildlife and state forestry agencies to receive notices of proposed projects or proposed changes in state law.
4. Follow the actions of your state legislature closely so you are not caught unaware of detrimental changes in state laws.
5. Find out if your state has a Freedom of Information Act, and learn how to use it.
6. File timely comments whenever there is opportunity to do so.
7. Try to get the mayor to join your chapter of Trout Unlimited!

affect water quality or habitat, the chances are that the state is paying for some portion of it, has permitting authority over it, or is performing the activity itself. If your state has a SEPA, the first issue will be whether the statute mandates environmental review of these projects. NEPA applies to "major federal actions" affecting the environment, including direct actions of federal agencies, projects funded by federal money, and activities requiring a federal permit. Individual SEPAs may have an identical scope, or may apply to only some subgroup of actions. For example, your state's SEPA might or might not apply to state permits; it might or might not apply to actions funded by the state, and if so might be limited to expenditures above a specific amount; and it might be limited just to activities of certain agencies. Some SEPAs apply to actions of state and local governments, while others apply only to state agencies.

You should not assume that a particular action does not require state environmental review simply because NEPA review would not be required for a similar federal action or because the parties proposing the action believe it is not required. Many agencies and other project proponents try to avoid these environmental review procedures because of the risk of added time and uncertainty. Any action affecting one of your local streams potentially could require state environmental review. You should examine your state's environmental review statute and, if necessary, consult with a local attorney in connection with any project you believe needs closer environmental scrutiny. If you have contacts in the state resources agencies, they may also be able to advise you as to the scope of your state's statute.

2. DEGREE OF SEPA REVIEW

NEPA does not provide substantive environmental protection; it merely provides a procedure for consideration and disclosure of a project's environmental effects and alternatives. The SEPAs in a handful of states go a step further and require that environmental effects identified in the SEPA be avoided or minimized. For example the California Environmental Quality Act requires that if the environmental impact report concludes that a project will have significant environmental effects, the project must be altered to "mitigate or avoid the significant effects on the environment," unless such changes would be "infeasible." (California Public Resources Code Section 21081 (a)(1) and (3)) In New York, the State Environmental Quality Review Act requires that "[a]gencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process."

New York Environmental Conservation Law, Article 8, Section 8-0109(1).

In these states the SEPA does not prohibit any particular environmental impacts, but it does require that the impacts be minimized to the extent feasible, given the economics of the project. The result is that the SEPA process opens the substantive impacts of the project to agency and public review, and also opens the final agency decision to substantive review by the courts.

B. COMMON LAW REMEDIES

1. NUISANCE

Before the advent of modern environmental statutes and regulation, there were far fewer tools for stopping activities that polluted water and air. One of the few such means was a common law (law announced by courts and modified over time) cause of action known as "nuisance." Under certain specified circumstances, a landowner or public official could be sued for nuisance if his conduct harmed the general public or interfered with the rights of other landowners to enjoy and use their property.

The legal claim of nuisance has been around for hundreds of years. One of the classic examples is a 16th century lawsuit against town officials for allowing swine to run free in the town and spread their waste in the streets and alleys. In more modern times, nuisance law has been used in efforts to reduce the odor or noise from poultry facilities, portable toilets, cement plants, rock concerts, town dumps, and numerous other activities. Although in some states the distinction has blurred, traditional nuisance law draws a distinction between "public" and "private" nuisances. A public nuisance is "an unreasonable interference with a right common to the general public;" a private nuisance is "a substantial and unreasonable interference with the use and enjoyment of land."

Nuisance law offers a potential tool when no specific statute forbids a polluting practice, or if the relevant agencies refuse to take action. However, there are a number of hurdles that such a claim must clear that may be higher than those in a typical pollution control statute. The injury caused to the public or to another landowner must be substantial. What this means has varied over time, and can vary from state to state. The clearest case of liability is ongoing conduct with a clear threat to public health. The shorter the duration of the conduct and the less direct its effect on the public's health as opposed to merely its good taste, the less useful a nuisance claim will be. In addition, the challenged activity must be "unreasonable." In most states, this means the court must balance the activity's social utility with its negative effects. Again, the case of clear liability is easy to illustrate: a nuisance case will be strong where the challenged activity brings little or no socially redeeming value, causes substantial harm, and is easily avoided. In the case of a typical modern, industrial context, the balancing will depend on the degree of harm, the benefit of the activity, and the cost of technology to reduce or eliminate the harmful effects (be they fumes, water pollution, noise, or some other objectionable product).

Whether an activity is a nuisance also depends on where it takes place. In addition to serving as the primary means of pollution control, for hundreds of years nuisance law was the primary form of zoning. A slaughter house or a factory might be a nuisance if adjacent to a residential area, but might not be if situated in a rural or industrial area with buffering space to dissipate its offensive fumes. Similarly, a landowner who knowingly buys property downwind from the hog farm might be barred from suing over the offensive odor.

Finally, the existence of a statutory mechanism to control the relevant conduct may preclude a nuisance suit. For example, a state's statutes may be written in such a way that if a particular factory complies with all regulations on air pollution, no party may bring a nuisance suit to challenge its emissions. The technical term for this legal rule is "preemption."

A nuisance claim is probably best characterized as a last resort for most issues confronted by TU chapters and councils. It will probably be far less useful than state and federal environmental statutes. Under the right circumstances, however, a nuisance claim might provide the TU activist with a door to the courthouse to challenge activities that affect water quality or stream habitat. If clean water laws and other regulations do not cover the conduct in question, or do not give private citizens a right to go to court, you should not abandon hope without exploring the scope of a cause of action for nuisance in your state.

2. PUBLIC TRUST DOCTRINE

Many states have some form of what is referred to as the "public trust doctrine" that can be an important source of protection for natural resources. The public trust doctrine has a variety of different sources and forms, but at its most general level the term refers to the state's obligation to protect certain resources that either belong to the public or that the public has some right to enjoy. The doctrine as applied to tidal waters and tidal lands originated in English common law. Some states had a version of the doctrine incorporated into the Act of Congress by which they were admitted as a state, others have incorporated it into their constitutions quite recently, and yet others have incorporated the doctrine into modern statutes. Different states' public trust obligations apply to one or all of the following: tidal lands and waters, publicly owned lands, and navigable streams.

The public trust doctrine's applicability to streams is of primary interest to most TU members. In many states, particularly states west of the original thirteen colonies, navigation by rivers was so important that when the states were admitted to the union the beds of all navigable rivers (between the high water marks) were declared a public resource, held by the state in trust for the public. Although the principal purpose of this declaration was to ensure open highways of commerce, in some states it has evolved to impose an obligation on the state to protect natural, aesthetic, and recreational qualities of rivers.

Application of the public trust doctrine varies considerably from state to state. As a general (but not universal) rule, the procedures by which state agencies must fulfill their public trust obligations are not spelled out in detail by any statutes or regulations, but have been enunciated over the years by the courts of each state. At a minimum, the doctrine imposes obligations on the state agencies with control over public trust resources. Generally, those agencies must at least consider the implications of a particular action (like building a dam or diverting water from a river) on the public's ability to use and enjoy the public trust resource. If the agency fails to consider these implications, or if its consideration is inadequate, the agency's decision can sometimes be challenged in court. Public trust resources are also entitled to some minimal level of substantive protection, and the agency usually must ensure that environmental impacts are not unreasonable and are mitigated to the extent feasible. The doctrine usually prohibits the state from divesting itself of its public trust obligations by, for example, unconditionally selling the bed of a navigable stream to a private party.

Some states with modern statutes spelling out their public trust obligations have NEPA-like procedures that must be followed and, in some cases, give citizens a private right of action to step into the shoes of the state and challenge actions by private parties that might impair trust resources. States with some version of such a statute include Michigan, Connecticut, Massachusetts, Indiana, Minnesota, New Jersey, and South Dakota. In traditional public trust states with generally phrased trust obligations (California and Wisconsin are the two most often cited examples of strong public trust states), the doctrine has been used in court

most often by citizens suing the government on the grounds that it is taking or permitting some action without adequately considering the effects on a trust resource.

The first issue you must resolve in your state is whether its version of the public trust doctrine in fact applies to navigable, but non-tidal, streams. If it does, you may be able to use it to challenge actions by the state or actions that require state approval when those actions threaten water quality, free flows, or the natural beauty of any navigable stream. In most situations, the doctrine will probably only require some additional decision-making process to consider environmental effects, but in some cases it may actually limit the substantive outcome of that process. You may not be able to assess your state's version of the public trust doctrine without the help of a lawyer. If you do not have a lawyer in your chapter or council willing to look into the issue, you should try the nearest law library, and begin by asking the librarian to help you find relevant materials.

C. STATE FOREST PRACTICES LAWS

Most states with significant timber resources have forest practices statutes that regulate how timber may be harvested on private land. Although in most states these regulations are not particularly rigorous, they do include provisions intended to reduce erosion and limit turbidity in nearby waters. Many of these statutes include limitations on the size of clear-cuts, requirements that the landowner submit an erosion control plan, and restrictions on logging adjacent to streams.

Typically, if a landowner wants to cut more than some minimal number of acres of timber, the landowner must apply for a permit from the appropriate regulatory agency (which may be a separate department or under the state department of agriculture). There may be a public notice provision for such permits, or for permits over a certain, larger threshold of cut. In some cases the permit will require the timber operator to include an erosion management plan as part of the permit. In other cases the permit may recommend (or actually require) that the timber operator use "best management practices" while conducting the operation.

If timber cutting on private property is degrading water quality, you should check with the relevant state agency to see if the landowner has a permit, or if the landowner is complying with the terms of the permit. You may also wish to monitor the public notices issued by the forestry department and comment on permit applications in watersheds of interest to your chapter.

Although most forestry laws do not require all the protections for water quality that TU would like to see, they may provide a route to limit overly aggressive harvest plans, to get at "bad actors" in the industry, or to address specific timber operations that are particularly harmful to a stream or watershed.

D. ZONING AND LAND USE LAWS

In many ways, local governments exercise more extensive and direct power over the development of land than do federal and state governments. In many states, local governments have some direct control over what may be built, where it may be built, and how. Local lobbying can be extremely effective at influencing land-use policy, and may achieve much more immediate and direct results than lobbying at the state and federal levels. This section provides you with a working knowledge of how local laws can affect coldwater fisheries, so that you can begin identifying specific ordinances, policies, and procedures in your community that may affect conservation issues.

Of the four main threats to fisheries (the "four H's" framework) discussed in the first part of this manual, habitat degradation is the area in which there is the most opportunity to mitigate threats through advocacy at the local level. Advocates can work to avoid or mitigate ad-

verse local impacts to habitat in a number of ways. For starters, local governments themselves engage in many activities that have the potential to harm trout and salmon habitat, such as the regulation of water use by residential, commercial, and industrial development; the siting and construction of roads; the siting of waste treatment and disposal facilities; and the development of new water supplies. Advocates can work with local governments to ensure that these public activities are carried out in a manner that is sensitive to habitat concerns.

Also, through zoning and subdivision regulations, local governments can significantly influence the private development and use of land. For instance, they may regulate particular uses, such as golf courses, that have the potential to harm water quality. Or, they may adopt various development standards to protect environmental resources, including tree and vegetation protection regulations, prohibitions on development on steep slopes, and stormwater management/erosion control standards. Many potentially threatening activities may be limited or prohibited entirely by local government action. Bulldozing of development sites, for instance, may be controlled through local clear-cutting controls; mining, though usually regulated by state statute, may nevertheless sometimes be restricted at the local level by requiring mining operations to set back a certain distance from bodies of water.

Federal laws may have indirect influence at best over local actions, while zoning and subdivision regulations can have very direct influence. To give a very typical example, a local land-use ordinance may determine whether and how a proposed subdivision will be built. Even if that development affects fish habitat and water quality, the Clean Water Act will have, at best, only indirect influence; in most cases, it will have no influence at all.

Keep in mind that many of the same advocacy principles that apply when working with federal and state governments also apply at the local level. For example, it is just as important when working at the local level to build a record to substantiate your position at each stage of the decision-making process. Also, as already emphasized, the most effective advocates often are those "watchdogs" who get involved in the decision-making process early and often, usually long before crises erupt. If you live in a jurisdiction where growth is the primary threat to habitat quality, you may want to get to know and stay in close touch with the elected and appointed officials that administer the zoning and planning ordinances in your community. Note, however, that advocates must work within locally defined procedures for public participation in order to effectively influence the local decision-making process, and such procedures are likely to vary widely among jurisdictions.

This section begins with a discussion of zoning, the principal tool local governments use to influence the development and use of land. Next is a brief overview of how local governments control the subdivision of land, including the design standards that affect how subdivided land is developed. Throughout the section, emphasis is placed on the opportunities for public involvement and the impacts various tools may have on your conservation efforts.

1. ZONING

Zoning generally is defined as the division of an area into zones or districts to facilitate regulation of land use, buildings, and other improvements. Typically, zoning ordinances allow for residential, commercial, industrial, and agricultural zone districts. Zoning is the fundamental planning tool that local governments use to balance the public welfare with landowners' rights to use their land as they see fit. There are a number of features of local zoning with which you should be familiar since zoning can be a powerful tool to provide protection for

coldwater fisheries by controlling incompatible uses and preventing habitat degradation. Although this chapter provides an overview of the general concept, local zoning systems vary widely among different communities.

Originally developed in the early 1900s, zoning initially was intended to separate incompatible land uses — to prevent factories from locating next door to residential neighborhoods, for example. Since then, zoning has evolved considerably, and today communities routinely use zoning to accomplish a wide variety of objectives, including to protect property values; to ensure aesthetically pleasing development and maintain community character; and to protect sensitive and unique natural and cultural resources. Zoning now is firmly established as a key land-use tool in most American cities (with a few notable exceptions, such as Houston). Therefore, an understanding of the essential concepts underlying zoning is essential for any conservationist hoping to influence local land-use decisions.

a. General Operation of Zoning Systems

Essentially, zoning involves designating various geographic districts for different types of land uses, and segregating incompatible uses. For example, a typical medium-sized community might have three or four residential zoning districts, several commercial and/or industrial zoning districts, and a handful of miscellaneous special-purpose districts. Zoning ordinances identify acceptable uses for each district, and also set forth regulations controlling the minimum lot size, height, density, bulk, and appearance of new development within each district.

For instance, a community might have one residential district that permits mostly single-family detached residential structures, with controls on the height and setbacks of such structures and overall limits on the density of homes in the district. A second district might permit single-family homes and also multi-family developments such as apartment houses and townhouses, with similar dimensional requirements as the first district, but allowing higher density. This pattern typically continues with the third and fourth residential districts, with each successive district allowing a broader range of uses and permitting slightly higher densities. Similarly, tiered sets of commercial and industrial districts dictate where those types of development may locate. The city identifies the various zoning districts on the official zoning map of the city, which is referenced in the zoning ordinance.

ZONING AND TROUT HABITAT

Zoning is basically the division of a town, city, or county into zones or districts to facilitate regulation of land use and development; it is the fundamental planning mechanism used by local governments to balance protecting the public welfare with providing landowners the basic right to use their land. The zoning process can provide protection for coldwater fisheries by prohibiting land uses that would cause habitat degradation.

In addition to general district regulations, zoning ordinances contain other tools that regulate specific uses or areas. For instance, many modern ordinances contain regulations that impose restrictions on certain types of uses that may be controversial or may have adverse land-use impacts on surrounding properties. Uses frequently subject to specific regulation may include adult businesses, eating and drinking establishments, group living facilities, and junkyards. Use regulations may be employed to restrict the environmental impacts of certain uses, including impacts upon streams and coldwater fisheries. Use regulations may be used to control or prohibit gravel mining operations, for instance, in order to prevent habitat degradation caused by contamination of

streams and rivers. Note, however, that state laws often regulate, and sometimes preempt control of, major uses such as mining that may have state-wide impacts. Local regulations generally must be consistent with federal and state laws, and may not regulate in areas preempted by the state. You should try to familiarize yourself with which activities are subject to local control and which are subject to state control.

Another set of tools often used in zoning ordinances to control land use is the numerous types of development standards that regulate the quality or impact of development. A wide variety of such standards exist, many of which may be in use in your community. Most zoning ordinances include, at a minimum, off-street parking requirements and general landscaping standards. Many modern ordinances also have some type of standards to protect sensitive and unique natural resources, such as rivers, creeks, streams, wetlands, and endangered species habitat; ordinances may restrict, or perhaps prevent altogether, development that impacts such resources. An ordinance may require, for instance, that development be set back a certain distance (e.g., 100 feet) from streams and other water bodies to minimize the chances of polluted run-off, or may require a vegetated buffer between new buildings and water bodies. Or an ordinance may restrict development on steep slopes, to minimize chances of erosion.

b. **Zoning Administration**

As noted, zoning systems vary widely by community. Yet, there are some administrative features common to most zoning systems, including the types of procedures used and the types of agencies and staff involved. You can begin to familiarize yourself with the general system in your community by contacting your zoning or planning office. Also, you may wish to attend a few meetings of your local planning commission or zoning board to become familiar with how it operates.

Zoning ordinances typically distinguish between "permitted" uses (or "uses by right") and "conditional" (or "special") uses. Permitted uses are those that cannot be denied unless they fail to meet applicable development criteria. In contrast, conditional uses are generally compatible with the permitted uses in a particular zone under certain circumstances, but can be denied if the legislative body determines they will not be compatible with their particular surroundings. A conditional or special use often involves potentially deleterious aspects, such as additional traffic, obnoxious smells, increased noise, or the presence of hazardous materials.

The executive branch of a city, town, or county is responsible for the enforcement of that jurisdiction's zoning ordinances. When an administrative official makes a decision that someone disagrees with, the disappointed person generally must appeal the decision to a board of adjustment (sometimes called a "board of zoning appeals"). Only after the board of adjustment has reviewed the case and made a decision can the losing party seek judicial review of the zoning decision. In other words, the disappointed party must generally exhaust their administrative remedies before seeking judicial review of a particular administrative decision. There are, however, some important exceptions to this rule. A property owner may not have an obligation to exhaust administrative remedies when he is challenging the constitutionality of a zoning ordinance on its face, if he can show that the attempt to exhaust such remedies would be futile, or if no administrative remedies were available under the applicable zoning ordinance or state statutes.

You should recognize that the opportunities for public participation in the local decision-making process continue during these appeals. Generally, the same type of public notice and hearing requirements apply during appeals

hearings as during the original review and approval process. Thus, for example, even though you may have been successful in helping to persuade your local government to deny a proposed subdivision that would have had detrimental water quality impacts, you should continue to voice your concerns publicly as the subdivision developer attempts to have the original denial overturned on appeal.

In general, any landowner who fails to comply with local zoning laws by constructing, maintaining, or using a building or land in a manner that violates local law is subject to fines. Imprisonment or injunctive relief also may be authorized in some jurisdictions. In most states, each day that a landowner remains in noncompliance is considered a separate violation for the purposes of calculating fines and penalties.

c. Floodplain Regulations

Most communities today have adopted some sort of special floodplain regulations to restrict floodplain development and also to guard against loss of life, property destruction, and environmental damage associated with flood hazards. Such regulations may be located in a free-standing ordinance, or they may be incorporated into the zoning and subdivision regulations. Very often they will be based in large part on standards adopted by the National Flood Insurance Program. Floodplain development regulations typically seek to restrict new development in flood-prone areas, and instead encourage low-density or recreational development in those areas. Often such regulations will be accompanied by a public and/or private expenditure program designed to acquire especially flood-prone lands and convert them to recreational uses, such as greenways, trails, or parks. Though floodplain regulations are intended primarily to guard against flood-related losses, a major additional benefit is the protection of water quality.

d. Innovative Zoning Tools to Protect Natural Resources

i. Overlay Zone Districts and Sensitive Areas Regulations

While communities traditionally have addressed the basic concerns of land development through zone district and use regulations, there is increasing recognition that the environmental impacts of development require special attention. Communities often seek to protect sensitive resources such as streams, watersheds, floodplains, wetlands, and wildlife habitat in order to preserve their distinctive character and ensure that development is environmentally sustainable.

One of the most common and popular methods for protecting sensitive and unique environmental resources is the use of overlay zone districts or special regulations to protect sensitive lands. Where land areas feature environmental hazards, fragile resources, wildlife habitat, scenic areas, historic buildings, or other special characteristics, zoning overlay districts superimpose additional layers of regulations upon underlying zone districts, such as additional setbacks or restrictions on particular uses.

Many cities and counties have adopted special regulations to protect sensitive environmental areas. For example, Park City, Utah, recently adopted overlay regulations to protect a broad range of environmentally sensitive features including wetlands, stream corridors, steep slopes, ridgelines, and view corridors. Cincinnati, Ohio, has adopted regulations to address development on steep slopes and hillsides to protect against environmental damage and to preserve the distinctive character of that community. Cincinnati also designates environmental quality overlay districts to protect neighborhood business districts, as well as areas of significant public investment. Jurisdictions in Montana and Colorado often require riparian setbacks to protect important trout streams.

In addition, an increasing number of jurisdictions have adopted special stormwater management development regulations designed to prevent major property damage, loss of life, soil erosion, and adverse water quality impacts resulting from stormwater run-off. Communities traditionally have used structural approaches to control run-off, although today the trend is for communities also to encourage the use of non-structural approaches, such as buffer strips and infiltration beds, which can be more friendly to trout streams. Sediment and erosion control standards also are being adopted in many communities in order to protect development sites, adjacent properties, and downstream waterways from excessive erosion and sedimentation resulting from construction activities. Such standards are one of the most effective means for local governments to control nonpoint source water pollution.

Across the United States, there is a growing interest in protecting existing trees and vegetation, particularly in urban areas, for both aesthetic and environmental purposes. Hundreds of communities nationwide have adopted tree conservation overlay regulations that restrict the amount of vegetation that can be removed from a site or require the preservation of larger trees. Indeed, protecting trees, woodlands, and vegetation through municipal ordinances is one of the fastest growing areas of land-use law, and local governments are enacting increasingly strict and sophisticated regulations. No longer satisfied with saving publicly owned street trees or large specimen trees on private property, these new regulatory regimes often require protection of smaller trees or large tracts of woodlands and even require off-site mitigation if trees are destroyed during construction. In practice, they affect the development process every step of the way, from subdivision to site design, through construction, to long-term maintenance.

Overlay districts may be not legally or politically feasible in every jurisdiction, but, if their adoption is possible in your jurisdiction, they could provide tremendous benefits. You may wish to work with your local planning department to consider designating an overlay district, or adopting some other type of special regulations, to protect streams, fisheries, trees, or other natural resources in your community. The districts will enable your community's planners to tailor regulations to specific issues that are relevant to discrete and specifically delineated areas, and will ensure that new development is environmentally friendly and sustainable.

These techniques do, however, have some disadvantages. The implementation and enforcement of overlay districts can create administrative burdens requiring skilled staff. Also, zoning overlay districts add a layer of complexity to development approval processes for developers and landowners, and thus may trigger political opposition. Further, strict sensitive area regulations may raise significant property rights and "takings" issues if they deprive landowners of all reasonable economic use of their property.

ii. Planned Unit Developments

Local zoning regulations generally dictate permissible uses, densities, floor areas, setback requirements, roadways and open space requirements on a district-by-district basis. In practice, however, they sometimes do not allow certain mixtures of residential, commercial, public, and recreational uses. Nor do they generally permit the clustering of residences within broader expanses of shared open space. In recognition of the fact that the rigid separation of uses characteristic of common zoning ordinances sometimes does not allow the flexibility necessary to adjust to changing market demands, many states have passed special legislation authorizing the creation of planned unit developments ("PUDs"). PUDs typically involve multiple, but integrated, land uses within the same development, such as residential, retail, and office space. The PUD process provides an opportunity to integrate design of the buildings and

uses approved for a site (traditionally a zoning item) with the design of the site itself (usually governed by subdivision regulations).

PUD legislation generally grants municipalities and counties wide discretion to negotiate almost every aspect of a proposed development in exchange for PUD approval. In theory, the PUD process protects the public interest by trading off more flexible local government regulations for a higher level of planning and design by the developer. In order to take advantage of the additional flexibility provided by PUD, for example, a landowner or developer often needs to prepare a more detailed application and development guide than is required under standard zoning. Such a development guide sets forth the particular controls, such as uses, density, setbacks, and dedications required for the PUD project, and the means for control and enforcement of these provisions. Since PUDs allow greater flexibility than traditional zoning, more emphasis is placed on site planning for PUDs than in single use districts.

The essence of a PUD is a deal — an exchange of flexibility by the local government for extra quality, amenities, or something else the community would not otherwise get from the developer. Since neither side is forced to accept the deal if it feels it is not fair, there are few limits on what the deal can address. The prime requisite to establish a PUD is that it must be compatible with the existing zones from which it is carved, and must comply with and satisfy all of the standards, procedures, and conditions of the local government's PUD ordinance. You should become familiar with the PUD process in your community since many developers may use the process as a way to develop in and around sensitive environmental areas, such as streams and wildlife habitat, that might be otherwise off-limits to development under traditional zoning. The PUD process usually involves public participation and input at open meetings. If your input is organized and supported by enough people, you can have significant impacts on the environmental protection efforts within the PUD.

iii. Open Space (Cluster) Developments

Your zoning ordinance also may permit open space, or cluster, development, involving on-site density transfers; that is, allowing denser development on part of a parcel than would normally be permitted in exchange for leaving other portions of the parcel as open space. Buildings are located in close proximity to one another while leaving other, more sensitive portions of a site undeveloped. The developer receives the same number of development lots, but large tracts of open space can be preserved. Often, cluster development can be a mechanism for preserving sensitive environmental resources by restricting development to areas on a development site farthest away from such resources. Clustering can involve single-family detached residences, as well as attached dwellings, commercial, and industrial structures. As with PUDs, you should familiarize yourself with the cluster development concept as a potential tool for protecting environmental resources in your community.

iv. Transfer of Development Rights

Transfer of development rights ("TDR") programs allow development densities to be shifted off-site to other parcels. In these programs, a landowner in a "sending area" transfers development rights to another landowner in a "receiving area," who thus augments his development rights in that area in excess of his otherwise permissible limits. TDR programs encourage the maintenance of low-density land uses by establishing an off-site market for the sale of unused development rights. Local governments are able to maintain low-density land uses, such as agriculture, and also protect sensitive areas, such as streams and riparian areas, without depriving property owners of their development rights.

The TDR concept is being applied in an increasing number of jurisdictions. Montgomery

County, Maryland, for instance, has used a TDR program to protect agricultural lands against strong urban growth pressures. The Montgomery program involves three elements: (1) the identification of a "sending area" comprising the county's best agricultural lands; (2) downzoning in the sending area from five-acre minimum lots to 25-acre minimum lots, with landowners retaining transferable development rights equal to their original five-acre lot development rights; and (3) the identification of a "receiving area," where landowners may augment their development rights with additional rights purchased from owners of land in the sending area.

One of the most successful TDR programs for natural area and water quality protection has been employed in the Pinelands National Reserve in New Jersey. To date, over 10,000 acres have been preserved. The TDR program was an important factor in a court's rejection of a takings challenge to the Pinelands' strong system of regulatory controls designed to protect existing agricultural lands and open space. Again, this concept may not be legally or politically feasible in your locality. However, if you live in a community coping with intense development pressures, you may wish to explore adoption of the concept with your local officials.

2. SUBDIVISION REGULATION

Subdivision is the process by which land is divided into parcels appropriate for development. For a variety of reasons, the public has a strong interest in how this is done. For instance, each lot offered for sale must be big enough (or not too big) and adequately shaped for its intended use, and have access to the public road system. Also, the layout of lots offered for sale needs to make adequate provision for required parks, street rights-of-way, storm drainage areas, and infrastructure. In addition, it is important to control the layout of subdivisions to avoid adverse impacts on natural resources. By requiring landowners to prepare an official map of their land identifying the size and location of sites offered for sale and the boundaries of each parcel for the public record, and by requiring that the local government review, approve, and record that map in the public records, all of these interests can be achieved.

A poorly designed subdivision can be an essentially permanent source of water quality impairment. Yet, the process of subdivision approval includes a strong element of public participation. By participating in the process, your chapter can be very effective at stopping bad subdivisions and ensuring that those that are built include effective stream quality protections.

Over the last 20 years, the use of subdivision regulations has become one of the primary tools governing the development of land subsequent to zoning. Subdivision regulation in most states is authorized by detailed enabling legislation, which establishes both a process for local government review of land development, and also the substantive requirements that must be met by an applicant to obtain approval. Counties and municipalities are required by statute in most states to enact and enforce subdivision controls, in the form of a required duty of the planning commission.

a. Subdivision Plats

A subdivision plat is a map showing how a given piece of property is to be divided into lots and blocks, and identifying streets, easements, and other lands intended to be dedicated to public use. The subdivision plat concept was developed to achieve two goals: (1) to avoid the need to repeat the cumbersome "metes and bounds" legal description of a parcel of land each time it is sold; and (2) to ensure that each parcel of land sold for development has sufficient size, shape, utilities, and access to function well. On the face of the plat is a statement of dedication signed and acknowledged by the owner and a statement of acceptance by the local government. This document is recorded and becomes the basis for le-

gal transactions involving the property. Among other things, subdivision regulations establish the minimum standards for such plats.

b. Subdivision Review

Subdivision review generally involves the following elements. First, the landowner submits an application, with supporting data. Normally this application is submitted and reviewed in two or three phases: sketch plat, preliminary plat, and final plat. The subdivision regulations of the individual local government control what the applicant must submit and in what detail. The application is reviewed by the local government, as well as by any other agencies to which the subdivision ordinance requires referral. Denial of the plat or plan generally must be in accordance with the laws adopted by the jurisdiction. Review almost always involves a public hearing or hearings, first before the planning commission and then before the legislative body (i.e., the city council or county commissioners), which takes the final action accepting or rejecting the plat. If the subdivision is not approved, the landowner generally may appeal the decision under state law.

The public hearing process will be your best opportunity to comment on the potential environmental impacts of a proposed subdivision. You should become familiar with your local government's procedures for public notice and scheduling of such hearings, for obtaining written copies of the application in advance, and for submitting written comments to the legislative body. You may be able to register to receive notice of subdivisions that are over a particular size, or are located in a particular area. In some communities, groups and organizations may register to be notified of major subdivision applications.

Once you have learned of a proposed subdivision that you believe will harm water quality, you must first carefully assess the actual effects of the subdivision, if necessary with the help of a capable scientific expert. Once you have assembled your arguments, it will be critical to build the broadest possible base of opposition to the subdivision. Opposition by a significant portion of the community (coupled, of course, with effective factual arguments) will have a much better chance of influencing the planning commission and the local legislative body than opposition by a single group. Strong broad-based opposition will also give you bargaining power to convince the developer to make appropriate changes to the subdivision plan.

Most jurisdictions also have a "minor subdivision" process for lot splits or other low-impact subdivisions that do not require full subdivision review. Minor subdivision processes often allow for review by planning staff, a recommendation or approval by the planning commission, and/or approval by the legislative body without public hearings, provided that all affected property owners receive notice and consent to the changes.

c. Substantive Requirements

The list of matters addressed by subdivision ordinances can be quite detailed and can vary widely by jurisdiction. Indeed, a subdivision application generally can address as many post-zoning land use concerns as the local govern-

SUBDIVISIONS AND TROUT HABITAT

"Subdivision" is the process of dividing large parcels of land into smaller parcels (or lots) for the purpose of development. In the last 20 years, the subdivision of rural lands has had an increasingly negative impact on stream habitat. A poorly designed subdivision can be a permanent source of water quality impairment while a well designed one can help preserve stream health. Although the subdivision process varies from state to state, in almost all jurisdictions there is ample opportunity for public input.

ment wishes to address. This is particularly important since subdivision review is often the last opportunity for the local government to exercise meaningful control over the impacts and design of a development project. Typically, a subdivision application will have to address the following topics:

- Property ownership information;
- Physical characteristics of the site, including geology;
- Designation of lot lines and lot areas;
- Non-residential floor area;
- Off-street parking;
- Total area and total proposed dwelling units;
- Storm drainage facilities and other infrastructure;
- Adequacy of proposed water supply and sewer service;
- Land dedication for schools, parks, streets, and other public areas (or payment of cash in-lieu); and
- Guarantees of necessary public improvements.

Usually, state subdivision enabling legislation is broad enough to allow local governments to add requirements and details specific to local needs. In Colorado, for example, counties may adopt additional requirements in order to: 1) avoid the extension of utilities to remote areas; 2) preserve and create scenic views; 3) promote compatibility with existing neighborhood uses and goals; 4) preserve and protect public lands from impacts of incompatible development; and 5) prevent the layout of lots that may result in destruction of habitat.

d. Exactions

Local governments often pass on the costs of public improvements and community facilities required to serve new development to the development itself through the subdivision approval process. The most common tools used to achieve this goal are land dedication, improvement dedication, fees-in-lieu of dedication, and development impact fees, all of which are collectively referred to here as "exactions." Exactions may also include specific requirements placed upon the developer as a condition of development approval, such as requiring the developer to construct a shopping center as a condition of rezoning approval, or limiting access to sensitive environmental areas as a condition of rezoning.

The rationale behind exactions is that the benefit of public improvements or facilities made necessary by the new development principally flows to the new development, and the developer can pass the cost of the exaction on to the ultimate user of the improvement, the developer's customer- in other words, growth should pay its own way. If the developer feels that the price of paying for public improvements necessary to serve the land is too high, he may decide not to develop until the value of his land rises.

e. The Basic Exaction Tools

Dedications of land to serve the development's future occupants have historically been required by most local governments. Dedication may involve the developer donating land necessary for the establishment of public improvements such as parks, schools, streets, sidewalks, or drainage projects. Additionally, local governments often require the construction of improvements and the dedication of those improvements to the local government, with the government taking the responsibility for future maintenance. Improvement items commonly dedicated include paved streets, sewer and water improvements, and drainage improvements.

As an alternative to compulsory land or improvement dedication, many local governments allow developers to pay a fee-in-lieu of the dedication. The fee-in-lieu is an amount equal to the fair market value of the dedication otherwise required. The payment of a fee-in-lieu of dedication may be more practical than land dedication where the size of the development is small

or the public improvement or facility necessitated by the new development will serve a larger area than just the new development.

Dedications for open space and parks for recreational activities are becoming increasingly common. Such dedications are considered crucial to providing these amenities and avoid the need for the community as a whole to bear these costs of growth. Communities have the opportunity to enhance and expand what they gain through dedications by working with private conservation organizations to acquire land that will be preserved as open space or developed as parks and outdoor recreation facilities.

Local governments also frequently enact impact fee programs that require the developer to pay a fee to the local government to defray the cost of improvements necessitated by the impact of the new development. The fees generate revenue needed in order to build or upgrade municipal facilities and services necessitated by the new development, and usually are levied against the dwellings and buildings in the development on a per unit basis, rather than against the developer himself.

Impact fees (also referred to as "development fees" or "land development charges") are becoming an increasingly common means of financing public improvements and facilities such as off-street parking, storm drainage projects, water systems, and sewer systems. An advantage of impact fees is the ability to exact the fee from all types of development, including low-and high-density residential, industrial, and commercial projects, based upon each development's relative impact on community services and facilities. A disadvantage is that such fees can increase the cost of housing and thus exacerbate a community's housing affordability problem.

3. CONCLUSION

Remember that advocacy at the local level can be extremely effective, and you may see much more immediate and direct results from your efforts than you might at the state and local level. Keep in mind, also, that you are not alone when dealing with your local government. Be sure to communicate with other conservation groups, landowners, and other potentially interested parties-not only to form potential coalitions, but also to ensure you are not duplicating other efforts already underway.

Clearly, there are a number of areas of local land-use regulation to consider when you are contemplating how best to provide protection for coldwater fisheries and prevent habitat degradation. From basic zoning regulations, to development standards, to innovative zoning tools such as overlay districts, to subdivision regulations, to growth management techniques, there are numerous tools you might use to help preserve sensitive environmental areas. Because no single approach will accomplish your overall objectives, you can expect to have to work with a variety of these tools to achieve your goals.

A useful source for background information on open space subdivisions is Rural by Design, by Randall Arendt, American Planning Association, 1994.

E. STATE FISH, GAME AND WILDLIFE LAWS

Most matters involving fishing regulations (such as creel and size limits, stream stockings, hatcheries, and special stream regulations including delayed harvest, catch-and-release, or fly fishing only designation) are governed by the individual fish and game agency in each state. This is also true for most public lands, such as National Forests and BLM lands, where cooperative federal/state agreements give the authority for fish and game regulation to the state agencies. These agencies usually have responsibility for other fishery management decisions, such as habitat restoration, and are frequently involved in a broad array of water quality, water allocation, and facility siting questions.

For all those reasons, we urge TU chapters and councils to be actively involved with the fish and game agency in their states, in a cooperative spirit wherever possible. State laws and regulations may provide a formal process for involvement with the agency, but you will find there are also numerous informal opportunities for involvement and communication, and in the long run this informal relationship may be of greater benefit to your advocacy efforts than a formal role provided by state law.

STATE AGENCY LINKS

Lists of Internet sites for each state's fish and wildlife office are included as Appendix K.

There likely will be times that you find yourself in opposition to a specific state fish and game agency proposal or management plan. This is part of your role as an advocate for coldwater fisheries and watersheds. However, this does not preclude your working cooperatively with the agency on other matters. Remember always to base your position on sound data and science, rather than on personality differences, and to present your arguments in a rational and calm manner. This will go a long way toward building a relationship of respect between TU and agency officials. As a starting point, we have provided a list of Internet sites for state fish and game agencies in Appendix K.

Finally, many states have established "non-game" wildlife programs, usually as a separate division of their state fish and game agencies. These "non-game" programs may provide opportunities for stream and habitat restoration projects, as well as further water quality or habitat protection measures, that will be useful to your advocacy efforts. In addition, a few states have established their own state Endangered Species Acts along the lines of the federal ESA. Such statutes are more than likely overseen by the state wildlife agency, and may contain significant additional protective measures that will also be useful to your advocacy efforts. Be sure to check if your state has either of these programs.

F. WESTERN WATER RIGHTS LAW

Lack of water is a fundamental problem in rivers and streams throughout the arid American West. For more than 100 years, water has been dammed or diverted and used for irrigation, mining, industrial, and municipal uses, with little or no regard for the value of free-flowing rivers and streams and the species that depend on them. The result is that many of the rivers and streams in the West simply do not have enough water at the right times to support healthy fish populations, good water quality, recreation, and other public uses.

Dams and diversions on many western rivers have altered their natural flow patterns, leveling out seasonally high and low flows or creating high or low flows when they wouldn't naturally occur. Low flows create serious problems for fish, including higher water temperatures (in summer), increased icing problems (in winter), lower levels of dissolved oxygen, lower survival rates for incubating eggs, lower production of insects needed by adult trout, and stranded fish. In some rivers, natural periods of low flow in late summer and (especially) in winter can be further aggravated by diversion or storage of water, worsening problems for trout at already stressful times of the year.

Although water quality law is federally based, water quantity law is state-based, with each western state having its own system of issuing and enforcing water rights, and protecting instream flows. The core of the water rights system in most western states is the doctrine of *prior appropriation*. Prior appropriation

is based on the principle of "first in time, first in right." In other words, those with the oldest (or senior) water rights — i.e., those who first put water to use from a given river system — have priority over newer, junior water rights. Water users with senior rights are entitled to take all the water under their rights before junior users — or the rivers themselves — can have any water at all.

In many states, particularly more populous western states like Colorado, this system has allowed farmers, cities, industries, and other water users to take virtually every drop of water from some of the state's rivers and streams. In fact, until recently, water that remained instream was considered wasted, and by law the only recognized beneficial uses of water were out-of-stream uses like mining or irrigation ("beneficial uses" are the only purposes for which one can acquire a water right). This principle is deeply imbedded in the laws of many states. For example, Colorado's constitution declares that "the right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied."

Western water law has been typically extremely unfriendly to citizens seeking to preserve flows in rivers for ecological purposes. Indeed, these difficulties have caused TU to engage in a major effort to reform western water law known as the "Western Water Project." There are, however, some opportunities for keeping water in streams that TU members in western states should not ignore.

A number of states have passed laws allowing for the use of water rights to preserve instream flows. Under the pure prior appropriation doctrine, the holder of a right must actually take the water out of the river in order to perfect that right. The new instream flow programs allow a party (usually the state) to hold a right but leave the water in the stream for ecological purposes. The state can either apply for new (very junior) rights or accept donations of more senior rights. Idaho, Oregon, Washington, Montana, Alaska, California, Colorado, Wyoming, Kansas, Nebraska, and Utah all have some form of instream flow rights legislation, although the statutes vary considerably in their effectiveness.

Unfortunately, instream flow programs have several major limitations. Instream flow rights are usually junior rights (unless senior rights are donated). As a result, they can only help maintain existing conditions and cannot restore flows to depleted reaches. Certain instream flow statutes also limit these rights to the minimum necessary to preserve the natural environment to a reasonable degree. While more flows could be beneficial for fish and other instream values, the rights are limited to the identified minimum. State agencies also lack the manpower to monitor and enforce their rights.

In most states there are procedures available for contesting applications for new water rights. Usually these applications are considered by a board or agency (in Colorado, however, there is a separate water court). Unfortunately, when opposing a new water use or a change in use, claims of environmental impacts are not allowed in many states, even if the new use would completely dewater a stream. Issues typically considered in evaluating a new appropriation are: a) whether senior water users will be injured by the new use; b) whether the project as proposed is speculative; c) whether the proposed project will waste water; d) whether affected parties were given adequate public notice of the project; and e) whether there is water available. Even though state water law typically does not recognize environmental impacts, federal laws such as the Endangered Species Act can force water users to address such impacts. For example, applicants for new water rights may have difficulty obtaining federal permits and other licenses for their development project if a listed species is present, thus bringing into question the project's feasibility. In some states, new

water rights can be denied on grounds of lack of feasibility. Your contacts at state and federal resource agencies may be able to help you learn about procedures in your state. You can also contact one of the offices of TU's Western Water Project. The names of Western Water Project staff and their numbers can be found in your TU directory or on the TU website.

X. The Legislative Process

In the preceding chapters of this manual we have attempted to provide you with the tools necessary to participate in the "regulatory" process. All regulations and procedures ultimately originate in legislatures, however, and many TU chapters and councils eventually find themselves participating in legislative processes as part of their conservation efforts.

Fisheries and natural resource protection, public lands management, clean water and air, and even climate change, are all affected by decisions made in the U.S. Congress. Virtually every year bills are brought before Congress that would roll back the protective or enforcement provisions of many of the laws discussed above. Opportunities also arise every year to improve environmental protection and to fund conservation activities. Similar threats and opportunities arise in state legislatures all over the country.

The details of the legislative process will differ from state to state, but overall the state process is quite similar to the Congressional process, which we concentrate on here.

You may have the impression that only well-heeled lobbyists and sophisticated advocacy groups have any chance of influencing the legislative process. While this has an element of truth to it, many ordinary people have had a dramatic influence on the fate of legislation. It is also definitely the case that numbers matter, and enough people visiting, writing, calling, or sending e-mail to their representatives can sway how they vote on particular legislation. And even though TU National has paid professional staff who monitor federal legislation and "work the Hill" on our behalf, our legislative success depends on the active participation of our grassroots members.

LEGISLATIVE PROCESS HIGHLIGHTS

Fisheries and natural resource protection, public lands management, clean water and air, even climate change, are all affected by decisions made in the U.S. Congress. To be a truly effective advocate for coldwater resources requires some involvement in the legislative process. To do so, you must stay informed on what's happening on Capitol Hill (and in your state captiol). TU's National staff is available and eager to help members, chapters and councils in their efforts to "work the Hill."

A. HOW LAWS ARE MADE

The conventional humor on Capitol Hill goes something like this: the two things you don't want your children to see made are laws or sausage. While not a pretty sight in practice, the legislative process is fairly straightforward in theory.

Anyone may draft a "bill" (proposed legislation is a "bill," and becomes a "law" once it is enacted). However, only members of Congress can introduce legislation, and by doing so become the sponsor. The official legislative process begins when a bill or resolution is introduced and numbered. House bills have num-

bers that begin with the letters "H.R." (e.g., H.R.222), and Senate bills have numbers that begin with the letter "S." (e.g., S.222). The bills are then referred to a committee and printed by the Government Printing Office.

STEP 1. REFERRAL TO COMMITTEE:
With few exceptions, bills are referred to standing committees in the House or Senate according to carefully delineated rules of procedure.

STEP 2. COMMITTEE ACTION:
When a bill reaches a committee, it is placed on the committee's calendar. A bill can be referred to a subcommittee or considered by the committee as a whole. This is the first critical stage in the life of a proposed bill. It is at this point that a bill is examined carefully and its chances for passage are determined. If the committee does not act on a bill, it is the equivalent of "killing" it.

STEP 3. SUBCOMMITTEE REVIEW:
Often, bills are referred to a subcommittee for study and hearings. Hearings provide the opportunity to put on the record the views of the executive branch, experts, other public officials, and supporters and opponents of the legislation. Legislators will invite experts to hearings and conduct studies on the effects of the proposed legislation. At this stage you, as a citizen, may submit written comments to become part of the public record, as well as write to the subcommittee members to express your concerns about the bill. If you are a constituent of one of the subcommittee members, your letter at this stage will carry even more weight. If you are asked to provide testimony, either written or in person, you should be aware that each committee has specific rules and procedures governing how testimony is presented.

STEP 4. MARK UP:
When the hearings are completed, the subcommittee may meet to "mark up" the bill; that is, make changes and amendments prior to recommending the bill to the full committee. If a subcommittee votes not to report the legislation to the full committee, the bill dies.

STEP 5. COMMITTEE ACTION TO REPORT A BILL:
After receiving a subcommittee's report on a bill, the full committee can conduct further study and hearings, or it can vote on the subcommittee's recommendations and any proposed amendments. At this stage citizens may again submit written comments for the public record and may contact committee members to urge them to vote one way or the other on the bill. The full committee then votes on its recommendation to the House or Senate. This procedure is called "ordering a bill reported."

Bills reported from committee have passed a second crucial stage in the lawmaking process. A small number of legislators have the responsibility of deciding whether a piece of proposed legislation will make good public policy long before it ever reaches the House or Senate floors. Since the relative number of people who consider a bill in subcommittee and committee is small, letters written to those legislators at these early stages are particularly important.

Only a very small percentage of the legislation referred to committee gets reported to the House or Senate floor.

STEP 6. PUBLICATION OF A WRITTEN REPORT:
After a committee votes to have a bill reported, the committee chairman instructs staff to prepare a written report on the bill. This report describes the intent and scope of the legislation, impact on existing laws and programs, position of the executive branch, and views of dissenting members of the committee.

STEP 7. SCHEDULING FLOOR ACTION:
After a bill is reported back to the chamber where it originated, it is placed in chronological order on the "calendar." In the House there are sev-

eral different legislative calendars, and the Speaker and majority leader largely determine if, when, and in what order bills come up. In the Senate there is only one legislative calendar.

STEP 8. DEBATE:
When a bill reaches the floor of the House or Senate, there are rules and procedures governing the debate on legislation. These rules determine the conditions and amount of time allocated for general debate. Each bill is debated and further amended on the floor before members vote either to defeat or to pass the bill. This is the next opportunity for activists to influence the outcome of the proposed legislation. Each member of the House or Senate will have the opportunity to vote on the final passage of the bill. This stage is usually targeted by grassroots organizations, such as TU's Grassroots Activists Network, for citizens to urge their representatives and senators to support or oppose the bill. Again, constituents writing and calling will carry more weight with the lawmakers concerned with serving their districts and looking to get re-elected.

STEP 9. VOTING:
After the debate and the approval of any amendments, the bill is passed or defeated by the members voting.

STEP 10. REFERRAL TO OTHER CHAMBER:
When the House or the Senate passes a bill, it is referred to the other chamber, where it usually follows the same route through committee and floor action. This chamber may approve the bill as received, reject it, ignore it, or change it. This provides the activist with yet another opportunity to contact legislators about the proposed legislation.

STEP 11. CONFERENCE COMMITTEE ACTION:
If the other chamber makes only minor changes to a bill, it is common for the legislation to go back to the first chamber for "concurrence." However, when the actions of the other chamber significantly alter the bill, a conference committee is formed to reconcile the differences between the House and Senate versions. If the conferees are unable to reach an agreement, the legislation dies. If an agreement is reached, a conference report is prepared describing the committee members' recommendations for changes. Both the House and the Senate must approve the conference report. This stage is yet another opportunity to contact your legislator about the bill.

STEP 12. FINAL ACTIONS:
After both the House and Senate have approved a bill in identical form, it is sent to the President. If the President approves of the legislation, he signs it and it becomes law. Or, if the President takes no action on the bill for ten days while Congress is in session, the bill automatically becomes law. If the President opposes the bill, he can veto it; or, if he takes no action after the Congress has adjourned its second session, the bill dies. This is called a "pocket veto." There is little opportunity to affect the final version of the bill once it is sent to the President's desk. A letter or phone call or e-mail to the President certainly would not hurt, but you have a better chance of influencing a member of Congress, who represents one Congressional district, rather than the President, who represents the entire nation.

STEP 13. OVERRIDING A VETO:
Congress may attempt to "override" a presidential veto of a bill. This requires a two-thirds roll call vote of the members of both the House and Senate who are present in sufficient numbers for a quorum. The override must be approved in both houses.

B. TYPES OF LEGISLATION

There are basically two types of bills Congress deals with: "authorization" bills and "appropriation" bills. In recent times politicians have

manipulated authorization and appropriation procedures, requiring activists and interest groups to follow both kinds of bills with a keen eye on what they contain. Both kinds of bills must follow the same basic procedures outlined above to become law.

Authorization legislation proposes solutions to public problems by designing federal programs, such as the Clean Water Act, and recommends levels of funding not to exceed specified amounts. In order to give the authorization committees more opportunity to control agency operations, some programs are authorized for only short time periods. The Clean Water Act of 1972, for example, established a federal policy for 20 years, and was therefore due to be "reauthorized" in 1992. Since that time, a number of attempts have been made, and continue to be made, to reauthorize the program — that is, to affirm the continuation of the policy. Reauthorization is necessary to continue the program; but, in the interim, Congress generally automatically reauthorizes the program from year to year.

Appropriation bills, on the other hand, "appropriate" the necessary monies to fund the bills that have been authorized. The House and Senate Appropriation committees have jurisdiction over appropriation legislation. In appropriation bills, a dollar amount, which may not exceed the recommended level in the authorization bill, is specified for a period of time for federal agencies to carry out the program or policy. For example, if an authorizing committee recommends $20 million for a program, the House Appropriations Committee can provide the full $20 million (but no more), propose cuts, or refuse to fund the program. A severe cut in funding, or refusal to appropriate any funding altogether, could have the effect of dismantling a federal program that has been legitimately established by an authorization bill. For this reason, it is important for activists to monitor the progress of not only the authorization legislation, but also the corresponding appropriation bills.

In theory these processes are to be separate and distinct, with authorization occurring first, followed by appropriations. In reality, it is difficult to keep these stages distinct and legislators often attach appropriation measures in authorization bills and policy provisions in appropriation bills. These maneuvers are generally done with measures that would not pass if forced to go through the regular process, and therefore require even greater scrutiny by advocates. For many programs there are rarely new authorizations bills, so the only annual "look" will be through the annual appropriations bill. In addition, in recent years there have been numerous efforts to attach last-minute "riders" to totally unrelated legislation.

C. STAYING INFORMED

The number of bills moving through Congress is overwhelming, and the speed with which Congress sometimes acts (especially at the end of the fiscal year) makes tracking those bills even more difficult. TU has a number of methods of keeping you informed of federal legislation of interest to TU members.

In addition to *TROUT* magazine, which occasionally publishes articles on relevant legislation, TU sends out "Lines to Leaders," a monthly publication sent to all TU leaders. "LTL" is available on the TU website if you want to read the most recent issue on-line or if you want to find old issues. TU also maintains a "Grassroots Activist Network." Members of the Network volunteer to write letters to their elected congressional delegation, as well as to state legislators, on legislative and policy issues that affect the quality of our nation's coldwater fisheries. Members of the Network receive "Action Alerts" targeting issues of concern. The "Action Alert" summarizes the issue, provides points to make in your letter, and directions on where to send your letter.

Although the Network is still an important tool for TU, increasingly TU is using its website to keep members informed about federal legislation. The website includes frequent notices about legislation and other matters of national concern, an "Action Alert" section with a feature providing information about how to contact your congressional representatives, and a link that will allow you to send an e-mail to both of your senators and to your congressman.

TU has also initiated an e-mail list-serve for purposes of keeping TU members informed of matters of national concern, including happenings in Congress. To join the list-serve, simply send an e-mail with the word "subscribe" in the topic line to: owner-troutunlimited@lists. tu.org.

If you wish to go beyond the resources provided by TU National and follow legislation on your own, there are endless resources, particularly on the Internet. There are a variety of websites that track bills with environmental implications through Congress, and there are also list-serves you can subscribe to so that you will receive periodic updates about the status of different bills and what you can do to influence Congress's action on those bills. If you know which bill you want to follow, the Library of Congress's website (thomas.loc.gov) can allow you to check on the status of a particular piece of legislation, obtain the text of bills, get addresses for members of Congress, and read testimony given at Congressional hearings. Websites where you can track legislation affecting natural resources are included in Appendix A.

As we discuss below, influencing legislation depends on getting as many people as possible to act by visiting, writing, or calling their representatives in Congress. If, as a TU leader, you consult all of the above resources to keep informed, that is only the beginning. You have to remember that most of the TU members in your state are not checking the website or reading "Lines to Leaders," and that effective concerted action by your chapter or council depends on you spreading all of this information and keeping as many of your state's TU members informed as possible.

There are several ways you can do this. If there is no time pressure on the issue, you should consider publishing TU National Action Alerts or items from "Lines to Leaders" in your chapter or council newsletter. If there is more time pressure, it can be very effective to contact chapter presidents and ask them to discuss the issue at their next chapter meeting, or even just have each of them call a few of the chapter stalwarts and ask them to write in and to let other interested TU members know about the issue. If the issue is important enough, you can do a mass mailing to all TU members in your state. Finally you can use the Internet to make keeping everyone informed easier and faster by creating a statewide TU list-serve, compiling e-mail lists of TU members in the state, or using a council or chapter website. If you need assistance with any of these things, TU National staff may be able to assist you.

D. MAKING YOUR VOICE HEARD

It is a common misperception that ordinary people cannot influence events in Congress. Members of Congress do listen to their constituents, and visiting, writing, or calling can sway your representative's vote on a given issue. This is only the case, however, if interested people act in numbers. Where a few letters might make no difference, very few senators or congressmen can afford to ignore a flood of letters. TU's National staff is always trying to find better ways of keeping the membership informed and enlisting their help in communicating with Congress. One of the most important things you can do as a TU member, however, is to respond to calls to action from TU National. In those situations, every letter and phone call counts, including yours.

If there is a legislative issue you really care about, the best way of getting attention from

one of your representatives is to visit him or her. As a constituent you can usually get a meeting with your congressional representative (although it is a little harder with senators than congressmen), either at one of their offices in your state or by coming to Washington. In fact, TU National has a small amount of money in its budget set aside for purposes of bringing TU volunteers to Washington to meet with their representatives.

If you are responding to a TU National alert or just contacting Congress on your own, keep in mind that the most effective means of communication other than a visit is a personal letter, typed or in your own handwriting, directly from you as a TU leader or individual constituent. Although TU often includes form letters in its Action Alerts, these are best used as a starting point for a more personal letter.

If you do not have time for a personal letter, using the TU-provided form letter is the next best thing. You can either fax or mail your letter, depending on the timing of the legislative action involved. If you do not have time to write, it is important to at least call. Every senator or congressman keeps a tally of constituents who have weighed in on this issue, and your phone call does count. When you call in, tell the receptionist that you want to give your views on a particular piece of legislation. Then concisely state your position and what you want your representative to do. Often, it helps to write out the points you want to make before the call. The receptionist will usually take down your name and address.

Finally, you can also contact your representatives by e-mail. This is often much easier than writing a letter, especially since you can use TU's website to automatically send an e-mail to any senator or congressman. Recent feedback from Congressional staff members has indicated that, unfortunately, many members of Congress view e-mails with the least weight of all the forms of constituent input (visits, letters, and phone calls). Whether this will remain the case is not clear, but in any event, the lesson here is that if you have time to print out a letter rather than just sending an e-mail, by all means do so. You can also follow up on your e-mail with a phone call,

LEGISLATIVE "ACTION" CHECKLIST

1. Get informed and stay informed. Read your newspapers and the magazines and mail you receive from TU and other conservation and environmental organizations (check out their websites on the Internet). Join TU's Grassroots Activist Network and check out our legislative Action Center at www.tu.org/network/index.html.
2. Find out who your congressmen and senators are and how to contact them.
3. Learn how to write a good letter, and be prepared to write lots of them.
4. Write your congressmen and senators.
5. Write the Vice President and President if necessary.
6. Write letters to the editor of your local newspapers. Write "op-ed" columns and submit those to your newspapers and then call the editor to see if they will run them.
7. Organize — there is strength in numbers. If a senator gets 50 individual, hand-written letters from members of your chapter, it will definitely have a greater impact than your letter standing alone.
8. Find out when your Congressional delegation actually plans to "be at home" and arrange for a meeting at their local offices.
9. Attend town meetings that have been scheduled by your Congressional delegation.
10. If you plan a trip to Washington to lobby your delegation, contact TU's National staff and they can provide you with advice and updated information on specific legislation (they also know the best places to eat cheap!).

LEGISLATIVE LINKS

The most comprehensive website for legislative information is the "Thomas" site, run by the Library of Congress at thomas.loc.gov. On the Thomas site, you can track the current status of legislation and retrieve the text of bills from the current or past Congresses.

so long as you mention in the call that you have also sent an e-mail.

You can find contact information, including addresses and telephone numbers, for all members of Congress, along with tips on meeting with your elected representatives and dealing with Congressional staff on the TU Grassroots Activist Network website (www.tu.org/network/index.html).

E. GUIDELINES ON LOBBYING AND 501(C)(3)

As you may know, Congress has imposed limitations on how much tax-exempt organizations may engage in lobbying. These limitations do not impose an absolute ban, and the term "lobbying" is somewhat narrower than you might think. As TU is a "501(c)(3)" tax-exempt organization, however, and the financial consequences of losing that designation would be considerable, it is important to keep these limitations in mind.

Lobbying occurs whenever a TU council or chapter attempts to influence legislation. Legislation can be in the form of a proposed bill or ordinance before any legislative body, including the U.S. Congress, a state legislature, or a town or city council. It also can be in the form of a ballot initiative. It is important to distinguish lobbying from attempting to influence votes on a candidate for elected public office. Whereas IRS rules permit tax-exempt organizations like TU to do a limited amount of lobbying, they absolutely forbid tax-exempt organizations from attempting to influence voter choices on candidates for elected public office. **Any chapter or council that endorses a candidate for elected public office or otherwise attempts to influence voter choices with respect to such a candidate will immediately lose its TU charter and may be subject to liability for unpaid taxes and other penalties.**

With respect to the limitations on lobbying, it is first necessary to understand precisely what constitutes "lobbying." "Direct lobbying" occurs when a TU council or chapter communicates with a member of a legislative body or a staff member of a legislative body or, in the case of a ballot initiative, directly to a member of the voting public in a manner that:

1. refers to specific legislation, and
2. reflects a view on that legislation.

Indirect, or "grassroots lobbying," occurs when a TU chapter or council attempts to influence the general public (e.g., through a newspaper advertisement or any other form of communication not addressed to any specific person) in a manner that:

1. refers to specific legislation,
2. reflects a view on that legislation, and
3. contains a call to action (e.g., urges recipients to contact legislators; states a legislator's address or phone number; provides a petition or tear-off postcard to send to a legislator; or identifies a legislator as being the recipient's legislator, or as being opposed to, undecided about, or a member of a legislative committee that will consider the legislation).

In the case of either direct or grassroots lobbying, IRS rules require that a tax-exempt organization not devote a substantial part of its expenditures to lobbying. The trouble with this "substantial part" rule is that it is inherently vague.

Because the definition of the term "substantial part" is inherently vague and because the costs for running afoul of the IRS's lobbying rules are very high, chapters and councils are encouraged to take advantage of the IRS's "501(h) election." The 501(h) election is a "safe harbor" that provides certainty regarding the IRS's lobbying limits. It allows a chapter or council to devote up to 20 percent of its annual expenditures to lobbying (both direct and grassroots) averaged over a four-year period. By averaging, a chapter or council anticipating the need to do a great deal of lobbying in a given year can do so and still qualify for the election by keeping lobbying costs in subsequent years sufficiently low and stay below the four-year 20 percent average.

As a practical matter, since most chapters do not employ paid lobbyists or have substantial expenditures for lobbying, the 501(h) election will be of greatest interest to those TU councils that are involved in lobbying at the local, county, state, or federal levels. Making the 501(h) election requires filing a special annual report with the IRS and keeping accurate records of lobbying expenditures. The 501(h) election is available regardless of whether the chapter or council making it is required to file a "annual tax return on IRS Form 990. (Note that the requirement to file such a return applies whenever a chapter or council's annual revenues are $25,000 or more.) To obtain assistance in making the 501(h) election, please contact the National Office's controller.

Having delivered the bad news about lobbying, we will now offer suggestions as to how you can avoid having to deal with lobbying restrictions in the first place. A great deal of what could generally be called "legislative affairs" is not in fact lobbying. TU activities that inform legislators of TU's views without referencing specific legislation are not lobbying, and there are no restrictions on those activities.

When a chapter or council representative goes to testify before a legislative committee or a town or city council, be sure to obtain a letter of invitation and be sure that the individual appearing on behalf of the chapter or council expressly states that he/she is there to provide information to the decision-making body concerning the proposal under consideration. In addition, chapters and councils should consider the use of a non-partisan, "white paper" approach to influencing decision-makers. Although more costly to prepare than the traditional broadside, an objective, well documented analysis of an issue by an independent expert is also likely to have considerably more credibility than most documents used in connection with lobbying efforts.

When writing to Congress in response to a TU Action Alert or otherwise, TU members should not indicate that they are writing on behalf of TU, or put their letters on TU stationary. Generally, they should simply write in their individual capacities. Of course, in most cases it is necessary and appropriate to have someone officially write a letter on behalf of the council or chapter.

In connection with communications addressed to the general public that could be viewed as grassroots lobbying, while it is permissible to state a view on proposed legislation or a proposed ballot initiative, such a position should be well supported by facts, and the communication stating the position must refrain from making a "call to action" (see definition above). Recently, for example, the Washington Council issued a public statement concerning a ballot initiative that, while containing a statement of position on the initiative, avoided the grassroots lobbying problem by refraining from making a call to action. Be advised, however, that even a statement of position that refrains from making a call to action can cross the line and become lobbying if it is subsequently used in connection with any of the activities described above under the definition of direct lobbying or grassroots lobbying.

In closing, we urge you to bear in mind that the restrictions on lobbying do not preclude individual TU members, acting on their own behalf, from working for candidates for elected office, writing to legislators (not on TU letterhead and without reference to TU membership or office), or doing anything else to influence legislation on their own part. Lobbying only becomes a concern when it is done by or on behalf of TU. On certain occasions you may be designated to speak on behalf of your council or chapter. Unless a decision to do so has been carefully thought out, when writing to or calling a legislator in connection with action on a specific piece of legislation, you should always make clear that you are doing so on your own behalf.

XI. Seeking the Assistance of National Staff and Outside Experts

This manual identifies numerous occasions where you would be wise to consult with a scientific expert or an attorney. Most TU members have probably never had to hire a scientific expert or lawyer, and would not know how to go about finding the right one. Below are some tips on doing so. The first place to start looking for help in any type of regulatory or legal proceeding is TU's National staff.

A. NATIONAL STAFF

If at any point in your efforts you feel you need professional help, the first place you should go is TU's National staff. TU has a variety of conservation professionals on staff available to answer your questions. Although TU does not have the resources to have its professionals participate actively in most problems confronting a chapter, if your issue is part of a national priority for TU — for example, if your home water has an endangered run of salmon — TU staff may be able to participate actively in your efforts, and you may not need to hire an expert. Under more typical circumstances, TU staff will be able to answer basic questions about the issues you confront and point you in the right general direction.

In contacting TU staff, you can consult your TU directory and call or e-mail the person who seems most appropriate. You can also simply call the general TU number and outline your issue to the receptionist, who will then be able to refer you to the right staffperson.

B. FINDING, HIRING, AND USING SCIENTIFIC EXPERTS

If you get involved in any of the processes described in this manual, you will almost certainly have to at least consult, and maybe even hire, a scientific expert to help you. If that happens, you will confront two threshold questions: what type of expert do you need, and where do you look for such an expert? The first place to go for answers to both is TU's National staff. You may also have scientists active in your council or chapter.

In thinking about what type of expert you need, you should consider a number of other issues. As an initial matter, you should assess precisely what you need from the expert. You may need to have a few, discrete questions answered on a "one-time" basis. You may need for him to review reports prepared by other parties. You may need him to write a report developing TU's positions on an issue. In the ultimate case, you may need an expert to testify in litigation.

You also need to focus on the precise nature of the scientific issue, and explore what field of specialty is most appropriate. For example, both an ecologist and a hydrologist could offer opin-

ions on the effect of filling a wetland on the aquatic health of a stream, but those opinions would have different levels of detail on different aspects of the issue. Which would be more appropriate depends on the precise effects of the development that concern you.

Finally, you should take a look at the intangibles. For example, do you need an expert who is familiar with your watershed's unique characteristics or a consultant with general expertise in watershed issues? Would the mechanics of dealing with the expert be easier if you had someone local? Is your situation one where the expert's reputation or credentials will be important? Do you need someone who is an effective public speaker and who can explain technical matters to lay-people?

SCIENTIFIC AND LEGAL ASSISTANCE HIGHLIGHTS

At some point in your advocacy efforts you may need the assistance of "outside experts" such as scientists or attorneys. Sometimes this help can be obtained for free - on a *pro bono* basis. TU's National staff can provide you with "in house" scientific expertise and preliminary legal advice, as well as refer you to sources of outside assistance.

To find an appropriate expert, you may wish to consider several sources. First, as discussed above, TU National staff can probably point you in the right direction and suggest a number of

OBTAINING OUTSIDE ASSISTANCE "ACTION" CHECKLIST

1. Check first with TU National staff to see what scientific information is already available and to get advice on where to look for outside experts or legal help.
2. Do all you can to obtain such help on a *pro bono* basis.
3. Before you hire an outside expert, research the prospective consultant's work history and take the time to check references.
4. Make sure that you establish a clear understanding of the terms and conditions under which the person will work for you — what the consultant will provide and the fees that will be charged.
5. Have a written and signed contract that includes your understanding regarding compensation, expenses, and a schedule for performing the work involved.
6. If a consultant's work might involve an appearance in court or before an agency, you will want your expert to know that, and you will want your attorney to evaluate the expert's qualifications as a witness ahead of time.
7. Identify one or two members in your chapter or council to serve as primary contacts with your attorney or expert.
8. If litigation is involved, set up a process in your chapter or council for making decisions relating to the litigation as the case progresses.
9. Consider forming coalitions with other local conservation or citizens' groups — aside from the obvious advantages brought by such alliances, this can be a good way to pool financial resources.

names. Second, a local college or university may have a faculty member who is able to help you for free (on what is commonly called a *"pro bono"* basis) or reduced fee basis. The simplest route is to ask around and call a specific professor or, if you do not have a specific name, call the relevant department and ask who does work in the area of interest to you. Although it is very unlikely that the first person you call will be willing to help you, they will almost certainly have ideas about other possibilities.

Third, it's useful to develop a relationship with a retired biologist or other technical expert who perhaps has worked for your state fish and wildlife agency; he or she may be willing to help you and may also be familiar with the resource in question. Fourth, despite the obstacles that can arise, you should not be afraid to approach a private consultant or firm for assistance. People who specialize in fisheries and other natural resource disciplines often are anglers themselves, and their personal interest in your cause can help overcome financial or institutional resistance to taking on public interest work.

Once you do find an acceptable expert who is willing to do the work for what you can afford, be sure to reach a clear, written understanding about what he or she will do and how much they will be paid. However, if you have retained a scientific expert for purposes of litigation, you should limit your written communications with him because all documents, including correspondence from you, reviewed by your expert will be open to discovery by the other side. If you need to give the expert a detailed explanation of the services you need, or a detailed background briefing for purposes of forming an opinion, that should be done verbally to the extent possible. Under no circumstances should you ever send your expert a letter or e-mail discussing litigation strategy.

C. LEGAL ASSISTANCE

In most situations where legal or regulatory interpretation and advocacy is required, finding legal representation is the first order of business. Remember that lawyers generally do not tell you what you should want out of an advocacy effort — you are the client and you will need to do your homework ahead of time. Once you have a good idea of what you want, a lawyer can tell you what outcome you can expect and can help you achieve it.

Grassroots advocates almost always find it difficult to get legal assistance at a price they can afford. Lawyers who will work *pro bono* or on a reduced fee basis are often difficult or impossible to locate. And if you find one, he or she is likely to be in great demand by every conservation group in the local area. For that reason, it is always a good idea to include an attorney as a member of your chapter or council's board of directors. He or she may not be a specialist in environmental matters, but could help you find an attorney who is sufficiently experienced to help you.

Other sources of information about the availability of *pro bono* or reduced fee legal help include your state council, TU's National Office, and the office of your state's bar association. There are also, of course, nonprofit environmental law firms that have represented TU in past litigation, including the Sierra Club Legal Defense Fund (which has changed its name to "Earthjustice Legal Defense Fund"), the Land and Water Fund for the Rockies, the Southern Environmental Law Center, and others. There may be other groups or even private attorneys in your area that offer specialized help on a no-fee or reduced-fee basis.

Remember that these law firms and individual attorneys are usually selective about the cases they take, and, although you can receive legal help free of charge, your chapter probably will be required to foot the bill for most

of the expenses related to the case, such as filing fees, copying records, phone calls, etc. Even if you find an attorney willing to donate his or her time, you will have to come up with money to pay expenses, including (probably) fees for an expert. It is usually a good idea to have the attorney come up with a budget for expenses in advance, and set aside that amount of money to be drawn on as the litigation progresses. If your chapter or council does not have the money on hand, do not simply give up, there are many options for raising it. Other groups within the state may be willing to join the suit and contribute to paying expenses. In addition, some chapters and councils have held special fundraisers to come up with money for litigation.

If you do hire a lawyer, you should also identify one or two individuals in your chapter or council who can serve as "point persons" for your attorney or expert. Those individuals, in turn, should have clear reporting responsibilities to the chapter or council and should strive to keep them informed of developments as they arise. You should set up a process for making decisions relating to the litigation. Lawyers frequently present their clients with a steady stream of decisions that need to be made quickly. Most of these decisions can not wait until your next chapter or council meeting. You will need to establish a policy for who in the chapter or council has the authority to make decisions in the case, so that your internal decision-making process will proceed smoothly and not create subsequent disputes about whether there should have been broader chapter or council involvement before any particular decision.

In a limited number of cases, TU's National Office will provide legal assistance to chapters and councils. Most of the legal assistance that the National Office provides is limited to hydropower licensing cases, but the National Office sometimes joins with chapters and councils in litigating cases of national or regional significance, usually through outside counsel.

D. TU'S LITIGATION GUIDELINES

Before bringing a case in a court of law, TU chapters and councils must notify and consult with the National Office at least 14 days before commencing the case. There are two reasons for this requirement. First, there are some cases that are not consistent with Trout Unlimited's organizational purposes or policies and should not be brought in the organization's name. Second, in some instances, bringing a lawsuit may expose a chapter or council to liability for the defendant's legal fees and court costs, for damages as a result of countersuit, or for penalties or damages as a result of a "SLAPP" suit (Strategic Lawsuits Against Public Participation). TU's liability insurance policy protects the national organization, councils, chapters, and individual members against most such claims, but it requires that the insurance carrier have advance notice of the claim and the opportunity to defend against it.

IMPORTANT TU LITIGATION GUIDELINE

TU chapters and councils are required to notify and consult with the National Office at least 14 days before commencing legal actions in a court of law.

APPENDIX A:
INTERNET LINKS

Conservation and Environmental Organizations:

Trout Unlimited ..... http://www.tu.org
Alliance for the Wild Rockies ..... http://www.wildrockies.org/awr
American Lands ..... http://www.americanlands.org
American Rivers ..... http://www.amrivers.org
ARIN (American Resources Info. Network) .... http://worldweb.net/—arin
Clean Water Network ..... http://www.cwn.org
Defenders of Wildlife ..... http://www.defenders.org
"E" The Environmental Magazine ..... http://www.emagazine.com
Earthjustice Legal Defense Fund ..... http://www.earthjustice.org
EELink (Environmental Education) ..... http://eelink.net
Endangered Species Coalition ..... http://www.stopextinction.org
Envirolink ..... http://www.envirolink.org
Environmental Defense Fund ..... http://www.edf.org
Environmental Law Information Center ..... http://www.envlinfo.com
Environmental News Network ..... http://www.enn.com/index.asp
Environmental Working Group ..... http://www.ewg.org
EPIC (Environmental Protection Info. Center) ... http://www.igc.apc.org/epic
Forest Guardians ..... http://www.fguardians.org/index.htrnl
Greater Yellowstone Coalition ..... http://www.fsr.com/gyc
Headwaters News ..... http://www.headwatersnews.org/index.html
Heartwood ..... http://www.heartwood.org
Mineral Policy Center ..... http://www.mineralpolicy.org
National Institute for the Environment ..... http://www.cnie.org
National Audubon Society ..... http://www.audubon.org
National Wildlife Federation ..... http://www.nwf.org/nwf
Natural Resources Defense Council ..... http://www.nrdc.org
Pace University Environmental Law http://willy.law.pace.edu/env/vell6.html
Pew Center on Global Climate Change ..... http://pewclimate.org/home.html
Public Interest Research Groups ..... http://www.pirg.org/ index.html
River Network ..... http://www.rivernetwork.org
Save Our Wild Salmon ..... http://www.wildsalmon.org
Sierra Club ..... http://www.sierraclub.org
The Salmon Page ..... http://www.riverdale.k1 2.or.us /salmon.htm
University of Oregon Enviro Page ..... http://zebu.uoregon.edu/~ambiente/enviro/online.html
Wilderness Society ..... http://www.wilderness.org/index.html
Wilderness Watch ..... http://www.wildernesswatch.org/clear_stage.html

Information on Government and Politics:

AOL Government Information ..... http://government.aol.com/mygov
C-Span ..... http://www.cspan.org
Congress.Org (Congressional Directory) http://www.legislators.com/congressorg2/main.html
Federal Register ..... http://www.access.gpo.gov/nara
Government Printing Office ..... http://www.access.gpo.gov/index.html
League of Conservation Voters ..... http://www.lcv.org
League of Women Voters ..... http://www.lwv.org
Library of Congress ..... http://lcweb.loc.gov/homepage/lchp.html
National Archives and Records Administration http://www.access.gpo.gov/nara
State and Local Government on the Net ..... http://www.piperinfo.com/state/states.html
Thomas Legislative Information ..... http://thomas.loc.gov

Federal Government Agencies:

Bureau of Land Management ..... http://www.blm.gov
Environmental Protection Agency ..... http://www.epa .gov
Federal Energy Regulatory Commission ..... http://www. ferc.fed.us
National Park Service ..... http://www.nps.gov
Natural Resources Conservation Service ..... http://www.nrcs.usda.gov
Office of Surface Mining and Reclamation ..... http://www.osmre.gov/osm.htm
U.S. Army Corps of Engineers ..... http://www.usace.army.mil
U.S. Department of Agriculture ..... http://www.usda.gov
U.S. Department of Interior ..... http://www.doi.gov/index.html
U.S. Fish & Wildlife Service ..... http://www.fws.gov
U.S. Forest Service ..... http://www.fs.fed.us
U.S. Geological Survey ..... http://www.usgs.gov

APPENDIX B:
FOIA CONTACTS AT FEDERAL AGENCIES

The following list contains some of the principal FOIA contacts at other federal agencies. Note that if you are dealing with a local or regional office of a federal agency, your FOIA request will probably need to be directed to that office, rather than the national contact.

Council on Environmental Quality
Ellen M. Athas
Deputy General Counsel
722 Jackson Pl., N.W.
Washington, D.C. 20503
Phone: (202) 456-6541

FOIA / PA Coordinator
Rm. 536A, Whitten Bldg.
Washington, D.C. 20250-1300
Phone: (202) 720-8164

Department of Commerce
Brenda Dolan
FOIA/PA Officer, Rm. 6020
14th St. & Constitution Ave., N.W.
Washington, D.C. 20230
Phone: (202) 482-4115

Department of Defense
Charlie Y. Talbott
Directorate for Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301
Phone: (703) 697-1160

Department of Energy
Abel Lopez
Acting Director
FOIA/PA Division, HR73
1000 Independence Ave., S.W.
Washington, D.C. 20585
Phone: (202) 586-5955

Department of Housing & Urban Development
William K. Barth
Departmental FOIA Officer, Rm. 10250
451 7th St., S.W.
Washington, D.C. 20410
Phone: (202) 708-3866

Department of the Interior
Alexandra Mallus
Departmental FOIA Officer (MS5312 MIB)
Office of Information Resources Management
1849 C St., N.W.
Washington, D.C. 20240
Phone: (202) 208-5342

Department of Justice
Patricia D. Harris
FOIA/PA Section, Rm. 115 LOC
Justice Management Division
Washington, D.C. 20530-0001
Phone: (301) 436-1018

Richard L. Huff
Daniel J. Metcalfe
CoDirectors, Suite 570 FLAG
Office of Information and Privacy
Washington, D.C. 20530-0001
Phone: (202) 514-FOIA

Department of Justice -Environment & Natural Resources Division
Jessica A. Fehringer
Paralegal Specialist, Rm. 8504 PHB
Washington, D.C. 20530
Phone: (202) 514-4362

Department of Transportation
Ann E. Ross, Acting Chief
FOIA Division (C12/5432)
400 7th St., S.W.
Washington, D.C. 20590
Phone: (202) 366-4542

Environmental Protection Agency
Jeralene B. Green, FOIA Officer
Office of the Executive Secretariat (1105)
401 M St., S.W.
Washington, D.C. 20460
Phone: (202) 260-4048

Federal Emergency Management Agency
Sandra B. Jackson
FOI/PA Specialist, Rm. 840
500 C St., S.W.
Washington, D.C. 20472
Phone: (202) 646-3840

Federal Energy Regulatory Commission
Rebecca F. Schaffer
Office of External Affairs
888 1st St., N.E.
Washington, D.C. 20426
Phone: (202) 208-1088

Federal Maritime Commission
Joseph C. Polking
Secretary of the Commission
800 N. Capitol St., N.W., Rm. 1046
Washington, D.C. 20573
Phone: (202) 523-5725

National Oceanic & Atmospheric Administration
Maria C. Krug, FOIA/PA Officer
Rm. 8626, SSMC4
1305 East West Hwy.
Silver Spring, MD 20910-3281
Phone: (301) 713-2220

National Science Foundation
Leslie Crawford, FOIA Officer
4201 Wilson Blvd., Rm. 1265
Arlington, VA 22230
Phone: (703) 306-1060

Office of Administration
(Executive Office of the President)
Carol Ehrlich, FOIA Officer
Phone: (202) 395-2273
Mark F. Lindsay, General Counsel
Phone: (202) 395-2273
5001 New Executive Office Bldg.
Washington, D.C. 20503

Office of Management & Budget
Darrell A. Johnson, FOIA Officer
6025 New Executive Office Bldg.
Washington, D.C. 20503
Phone: (202) 395-5715

Office of Science & Technology Policy
Barbara A. Ferguson, Assistant Director
431 Old Executive Office Bldg.
Washington, D.C. 20502
Phone: (202) 456-6001

Tennessee Valley Authority
Wilma H. McCauley, FOIA Officer
1101 Market St., WR 4Q
Chattanooga, TN 37402
Phone: (423) 751-2523

APPENDIX C:
FREEDOM OF INFORMATION ACT SAMPLE LETTER

Agency Head [or Freedom of Information Act Officer]
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Request

Dear _____ :

This is a request under the Freedom of Information Act. I am submitting this request on behalf of the _____ Chapter (Council) of Trout Unlimited (TU).

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible]

Responsive documents should be mailed to me at the address given below.

Disclosure of the information requested is in the public interest as it is likely to contribute significantly to the public's understanding of the operations or activities of the government and is not in the commercial interest of TU. TU's mission is to conserve, protect, and restore America's coldwater fisheries and their watersheds. It has over 100,000 members in the United States, and publishes *TROUT* magazine, a quarterly periodical devoted to coldwater conservation issues. (*If appropriate, include information about your chapter/council*). TU also conducts numerous conservation education programs, and is a leading source for information about clean water, water pollution, and the Clean Water Act (*this language is presented as an example only; use a description appropriate to the general subject matter of your request*). TU and its members are particularly concerned about administration of Section 404 of the CWA (*again, this is only an example; use a specific description of the subject matter of your request*) . Therefore, please waive processing and copying fees pursuant to 5 U.S.C. §522(a)(4). In any event, the request for a fee waiver should not be construed as an extension of time in which to reply to this FOIA request.

Thank you for your consideration of my request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone Number [Optional]

FREEDOM OF INFORMATION ACT APPEAL SAMPLE LETTER

Agency Head [or FOIA Appeal Officer]
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Appeal

Dear _____ :

This is an appeal under the Freedom of Information Act.

On [date], I requested documents under the Freedom of Information Act. My request was assigned the following identification number: _____. On [date], I received a response to my request in a letter signed by [name of official]. I appeal the denial of my request.

[Option 1] The documents that were withheld must be disclosed under the FOIA because...

[Option 2] I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. I am a member of the _____ Chapter (or Council) of Trout Unlimited, a non-profit tax-exempt conservation organization, and this request is made for personal use and not for commercial use. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. [Include a specific explanation.]

Thank you for your consideration of this appeal.

Sincerely,

Name
Address
City, State, Zip Code
Telephone Number [Optional]

APPENDIX D:

EPA HEADQUARTERS AND REGIONAL OFFICE LOCATIONS

HEADQUARTERS:

Environmental Protection
Agency Headquarters
401 M Street, SW
Washington, DC 20460-0003
(202) 260-2090

REGIONS:

Region I (CT, MA, ME, NH, RI, VT)
Environmental Protection Agency
1 Congress St. Suite 1100
Boston, MA 02114-2023
http://www.epa.gov/region01
Phone: (617) 918-1111
Fax: (617) 565-3660
Toll free within Region 1: (888) 372-7341

Region 2 (NJ, NY, PR, VI)
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866
http://www.epa.gov/region02
Phone: (212) 637-3000
Fax: (212) 637-3526

Region 3 (DC, DE, MD, PA, VA, WV)
Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
http://www.epa.gov/region03
Phone: (215) 814-5000
Fax: (215) 814-5103
Toll free: (800) 438-2474
Email: r3public@epa.gov

Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)
Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104
http://www.epa.gov/region04
Phone: (404) 562-9900
Fax: (404) 562-8174
Toll free: (800) 241-1754

Region 5 (IL, IN, MI, MN, OH, WI)
Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3507
http://www.epa.gov/regions
Phone: (312) 353-2000
Fax: (312) 353-4135
Toll free within Region 5: (800) 621-8431

Region 6 (AR, LA, NM, OK, TX)
Environmental Protection Agency
Fountain Place 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733
http://www.epa.gov/region06
Phone: (214) 665-2200
Fax: (214) 665-7113
Toll free within Region 6: (800) 887-6063

Region 7 (IA, KS, MO, NE)
Environmental Protection Agency
726 Minnesota Avenue
Kansas City, KS 66101
http://www.epa.gov/region07
Phone: (913) 551-7000
Fax: (913) 551-7467
Toll free: (800) 848-4568

Region 8 (CO, MT, ND, SD, UT, WY)
Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2466
http://www.epa.gov/region08
Phone: (303) 312-6312
Fax: (303) 312-6339
Toll free: (800) 227-8917
Email: r8eisc@epa.gov

Region 9 (AZ, CA, HI, NV)
Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
http://www.epa.gov/region09
Phone: (415) 744-1305
Fax: (415) 744-2499
Email: r9.info@epa.gov

Region 10 (AK, ID, OR, WA)
Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101
http://www.epa.gov/region10
Phone: (206) 553-1200
Fax: (206) 553-0149
Toll free: (800) 424-4372

APPENDIX E:

INTERNET LINKS TO STATE WATER QUALITY AGENCIES

Alabama ..... www.adem.state.al.us
Alaska ..... www.state.ak.us/local/akpages/ENV.CONSERV/dawq//dec_dawq.htm
Arizona ..... www.adeq.state.az.us/water/index.htm
Arkansas ..... www.adeq.state.ar.us/water/main.htm
California ..... www.swrcb.ca.gov
Colorado ..... www.state.co.us/gov_dir/cdphe_dir/wq/wqhom.html
Connecticut ..... dep.state.ct.us
Delaware ..... www.dnrec.state.de.us/water.htm
Florida www2.dep.state.fl.us/water
Georgia ..... www.dnr.state.ga.us/dnr/environ/branches/wpb.html
Hawaii www.hawaii.gov/doh/eh/eiemcw00.htm
Idaho www2.state.id.us/deq/water/water.htm
Illinois ..... www.epa.state.il.us/water/index.html
Indiana ..... www.state.in.us/idem/owm/index.html
Iowa ..... www.state.ia.us/government/dnr/organiza/epd/wtrq//wtrqbur.htm
Kansas ..... www.kdhe.state.ks.us/water.html
Kentucky ..... water.nr.state.ky.us/dow/dwhome.htm
Louisiana ..... www.deq.state.la.us/owr/owr.htm
Maine ..... janus.state.me.us/dep/blwq
Maryland ..... www.mde.state.md.us
Massachusetts ..... www.magnet.state.ma.us/dep/brp/brphome.htm
Michigan ..... www.deq.state.mi.us/swq
Minnesota ..... www.pca.state.mn.us/water/index.html
Mississippi ..... www.deq.state.ms.us /newweb/opchome.nsf/pages/opc
Missouri ..... www.dnr.state.mo.us/deq/wpcp/homewpcp.htm
Montana ..... www.deq.state.mt.us/pcd/wpb/index.htm
Nebraska ..... www.deq.state.ne.us/Programs.nsf/pages/WQD
Nevada www.state.nv.us/ndep/bwpc/bwpc01.htm
New Hampshire ..... www.des.state.nh.us/swq/swqintro.htm
New Jersey ..... www.state.nj.us/dep/dwq
New Mexico ..... www.nmenv.state.nmus/swqb/swqbtop.html
New York ..... www.dec.state.ny.us
North Carolina h2o.enr.state.nc.us/wqhome.html
North Dakota ..... www.swc.state.nd.us
Ohio ..... chagrin.epa.state.oh.us
Oklahoma www.deq.state.ok.us/Water1/home/index.html

Oregon ..... waterquality.deq.state.or.us/wq
Pennsylvania ..... www.dep.state.pa.us/dep/deputate/watermgt/watermgt.htm
Rhode Island ..... www.state.ri.us/dem/org/waterres.htm
South Carolina ..... www.state.sc.us/dhec/eqc/water/html/main.html
South Dakota ..... www.state.sd.us/denr/DES/Surfacewater/surfwprg.html
Tennessee ..... www.state.th.us/environment/wpc/index.html
Texas ..... www.tnrcc.state.tx.us/homepgs/owrm.html#qual
Utah ..... www.eq.state.ut.us/eqwq/dwq_home.ssi
Vermont www.anr.state.vt.us/dec/water1.htm
Virginia ..... www.deq.state.va.us/programs/watqual.html
Washington ..... www.wa.gov/ecology/wq/wqhome.html
West Virginia ..... www.dep.state.wv.us/wr/index.html
Wisconsin ..... www.dnr.state.wi.us/environmentprotect/water.html
Wyoming ..... deq.state.wy.us/wqd.htm

APPENDIX F:

NATURAL RESOURCE CONSERVATION SERVICE STATE OFFICE LOCATIONS

Alabama NRCS
3381 Skyway Drive
P.O. Box 311
Auburn, AL 36830

Alaska NRCS
949 E. 36th Avenue, Suite 400
Anchorage, AK 99508
Phone: (907) 271-2424

Arizona NRCS
3003 N. Central Ave. Suite 800
Phoenix, AZ 85012-2945
Phone: (602) 280-8801

Arkansas NRCS
Room 3416 Federal Building
700 W. Capitol Ave.
Little Rock, AR 72201

California NRCS
430 G Street, #4164
Davis, CA 95616-4164

Colorado NRCS
655 Parfet Street
Suite 201, Room E200C
Lakewood, CO 80215-5517

Connecticut NRCS
16 Professional Park Road
Storrs, CT 06268-1299
Phone: (860) 487-4011

Delaware NRCS
Suite 101
1203 College Park Drive
Dover, DE 19904-8713
Phone: (302) 678-4160

Florida NRCS
P.O. Box 141510
Gainesville, FL 32548

Georgia NRCS
355 East Hancock Avenue
Athens, GA 30601-2769
Phone: (706) 546-2272

Hawaii NRCS
Federal Building
300 Ala Moana Blvd
Room 4118
Honolulu, HI 96850-0001
Phone: (808) 541-2600

Idaho NRCS
9173 West Barnes Drive
Suite C
Boise, ID 83709
Phone: (208) 378-5700

Illinois NRCS
1902 Fox Drive
Champaign, IL 61820

Indiana NRCS
6013 Lakeside Blvd
Indianapolis, IN 46278

Iowa NRCS
210 Walnut St., Suite 693
Des Moines, IA 50309
Phone: (515) 284-4260

Kansas NRCS
760 South Broadway
Salina, KS 67401-4642
Phone: (785) 823-4500

Kentucky NRCS
771 Corporate Drive, Suite 110
Lexington, KY 40503

Louisiana NRCS
3737 Government St.
Alexandria, LA 71 302-3327
Phone: (318) 473-7751

Maine NRCS
5 Godfrey Drive
Orono, ME 04473-1100

Maryland NRCS
339 Busch's Frontage Road
Suite 301
Annapolis, Maryland 21401-5534
Phone: (410) 757-0861

Massachusetts NRCS
451 West Street
Amherst, MA 01002-2995
Phone: (413) 253-4350

Michigan NRCS
Michigan State University
101 Manly Miles Building
1405 S. Harrison Road
East Lansing, MI 48823-5243
Phone: (517) 337-6701 ext. 1218

Minnesota NRCS
375 Jackson Street
Suite 600
St. Paul, MN 55101

Mississippi NRCS
100 West Capitol Street
Suite 1321
Jackson, MS 39269
Phone: (601) 965-5205

Missouri NRCS
601 Business Loop 70 West
Parkade Center, Suite 250
Columbia, MO 65203
Phone: (573) 876-0900

Montana NRCS
Federal Building, Room 443
10 East Babcock Street
Bozeman, MT 50915
Phone: (406) 587-6868

Nebraska NRCS
100 Centennial Mall North
Federal Building, Room 152
Lincoln, NE 68508-3866
Phone: (402) 437-5300

Nevada NRCS
5301 Longley Lane, Bldg. F
Suite 201
Reno, NV 89511-1805
Phone: (775) 784-5863

New Hampshire NRCS
Federal Building
2 Madbury Road
Durham, NH 03824-2043
Phone: (603) 868-7581

New Jersey NRCS
1370 Hamilton Street
Somerset, NJ 08873
Phone: (732) 246-1171

New Mexico NRCS
Room 305
6200 Jefferson NE
Albuquerque, NM 87109-3734

New York NRCS
The Galleries of Syracuse
441 S. Salina St., Suite 354
Syracuse, NY 13202-2450
Phone: (315) 477-6504

North Carolina NRCS
4405 Bland Rd., Suite 205
Raleigh, NC 27609
Phone: (919) 873-2100

North Dakota NRCS
P.O. Box 1458
3rd & Rosser Avenue
Bismarck, ND 58502-1458

Ohio NRCS
200 North High Street, Room 522
Columbus, OH 43215
Phone: (614) 469-6962

Oklahoma NRCS
100 USDA Suite 203
Stillwater, OK 74074-2655
Phone: (405) 742-1200

Oregon NRCS
101 S.W. Main, Suite 1300
Portland, OR 97204
Phone: (503) 414-3200

Pennsylvania NRCS
One Credit Union Place, Ste 340
Harrisburg, PA 17110-2993
Phone: (717) 237-2200

Rhode Island NRCS
60 Quaker Lane, Suite 46
Warwick, RI 02886-0111
Phone: (401) 828-1300

South Carolina NRCS
Strom Thurmond Federal
Building
1835 Assembly Street
Room 950
Columbia, SC 29201
Phone: (803) 765-5681

South Dakota NRCS
200 4th Street SW
P.O. Box 626
Huron, SD 57350-2475

Tennessee NRCS
675 U.S. Courthouse
801 Broadway
Nashville, TN 37203
Phone: (615) 736-5471

Texas NRCS
WR Poage Federal Building
101 South Main Street
Temple, TX 76501-7682
Phone: (254) 742-9800

Utah NRCS
125 South State Street
Salt Lake City, UT 84138
Phone: (801) 524-5050

Vermont NRCS
69 Union Street
Winooski, VT 05404
Phone: (802) 9516796

Virginia NRCS
1606 Santa Rosa Rd.
Suite 209
Richmond, VA 23229-5014

Washington NRCS
W. 316 Boone Ave., Suite 450
Spokane, WA 99201-2348
Phone: (509) 323-2900

West Virginia NRCS
75 High Street, Room 301
Morgantown, WV 26505
Phone: (304) 291-4152

Wisconsin NRCS
6515 Watts Road, Suite 200
Madison, WI 53719
Phone: (608) 276-USDA

Wyoming NRCS
Federal Building RM 3124
100 East B Street
Casper, WY 82601-1911
Phone: (307) 261-6453

APPENDIX G:

U.S. ARMY CORPS OF ENGINEERS OFFICES

Headquarters
U.S. Army Corps of Engineers
20 Massachusetts Avenue, N.W.
Washington, DC 20314-1000
Phone: (202) 761-0001

Ohio River Regional Office
550 Main Street
Cincinnati, OH 45202-2215
Phone: (513) 684-3002

Great Lakes Regional Office
111 North Canal Street
Suite 1200
Chicago, IL 60606-7205
Phone: (312) 353-6310

U.S. Army Engineer District,
Buffalo, CELRB
1776 Niagara Street
Buffalo, NY 14207-3199
Phone: (716) 879-4200

U.S. Army Engineer District,
Detroit, CELRE
McNamara Federal Building
477 Michigan Avenue
Detroit, MI 48226-2575
Phone: (313) 226-6762

U.S. Army Engineer District,
Huntington, CELRH
502 8th Street
Huntington, WV 25701-2070
Phone: (304) 529-5395

U.S. Army Engineer District,
Louisville, CELRL
Mazzoli Federal Bldg.
600 Dr. Martin Luther King, Jr., Place
Louisville, KY 40202
Phone: (502) 582-5601

U.S. Army Engineer District,
Nashville, CELRN
110 9th Avenue South
Nashville, TN 37203-3863
Phone: (615) 736-5626

U.S. Army Engineer District,
Pittsburgh, CELRP
William S. Moorhead Federal Bldg.
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
Phone: (412) 395-7103

U.S. Army Engineer Division,
Mississippi Valley, CEMVD
1400 Walnut Street
Vicksburg, MS 39181
Phone: (601) 634-5750

U.S. Army Engineer District,
Memphis, CEMVM
167 North Main Street
Room B202
Memphis, TN 38103-1894
Phone: (901) 544-3221

U.S. Army Engineer District,
New Orleans, CEMVN
7400 Leake Avenue
New Orleans, LA 70118
Phone: (504) 862-2204

U.S. Army Engineer District,
Rock Island, CEMVR
Clock Tower Building
P.O. Box 2004
Rock Island, IL 61204-2004
Phone: (309) 794-5224

U.S. Army Engineer District,
St. Louis, CEMVS
1222 Spruce Street
St. Louis, MO 63103-2833
Phone: (314) 331-8010

US Army Engineer District, St. Paul, CEMVP
Army Corps of Engineers Centre
190 5th Street East
St. Paul, MN 55101-1638
Phone: (651) 290-5300

U.S. Army Engineer District,
Vicksburg, CEMVK
4155 Clay Street
Vicksburg, MS 39183-3435
Phone: (601) 631-5010

U.S. Army Engineer Division,
North Atlantic, CENAD
General Lee Avenue
Fort Hamilton Military Community
Brooklyn, NY 11252-6000
Phone: (212) 264-7101

U.S. Army Engineer District,
Baltimore and Supervisor of Baltimore Harbor, CENAB
City Crescent Building
10 South Howard Street
Room 11000
Baltimore, MD 21201
Phone: (410) 962-4545

U.S. Army Engineer District,
New York and Supervisor of New York Harbor, CENAN
Jacob K. Javits Federal Office Building
26 Federal Plaza, Room 2109
New York, NY 10278-0090
Phone: (212) 264-0100

U.S. Army Engineer District,
Norfolk and Supervisor of
Norfolk Harbor, CENAO
Waterfield Building
803 Front Street
Norfolk, VA 23510-1096
Phone: (757) 441-7601

U.S. Army Engineer District,
Philadelphia, CENAP
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
Phone: (215) 656-6501

U.S. Army Engineer District,
New England, CENAE
696 Virginia Road
Concord, MA 01742-2751
Phone: (978) 318-8220

U.S. Army Engineer Division,
Northwestern, CENWD
220 N.W. 8th Avenue
Portland, OR 97209-3589
Phone: (503) 808-3700

Missouri River Regional Office
12565 West Center Road
Omaha, NE 68144-3869
Phone: (402) 697-2400

North Pacific Regional Office
220 N.W. 8th Avenue
Portland, OR 97209-3589
Phone: (503) 808-3700

U.S. Army Engineer District,
Kansas City, CENWK
601 East 12th Street
Kansas City, MO 64106-2896
Phone: (816) 983-3201

U.S. Army Engineer District,
Omaha, CENWO
215 North 17th Street
Omaha, NE 68102-4978
Phone: (402) 221-3900

U.S. Army Engineer District,
Portland, CENWP
333 SW First Avenue, Tenth Floor
Portland, OR 97204-3495
Phone: (503) 808-4500

U.S. Army Engineer District,
Seattle, CENWS
4735 East Marginal Way South
Seattle, WA 98134-2385
Phone: (206) 764-3690

U.S. Army Engineer District,
Walla Walla, CENWW
201 North Third Avenue
Walla Walla, WA 99362-1876
Phone: (509) 527-7700

US Army Engineer District,
Alaska, CEPOA, P.O. Box 898
Anchorage, AK 99506-0898
Phone: (907) 753-2504

US Army Engineer Division,
South Atlantic, CESAD
Room 9M15
60 Forsyth Street, SW
Atlanta, GA 30303-8801
Phone: (404) 562-5003

US Army Engineer District,
Charleston, CESAC
334 Meeting Street
Charleston, SC 29403-6479
Phone: (803) 727-4344

U.S. Army Engineer District,
Jacksonville, CESAJ
400 West Bay Street
Jacksonville, FL 32202-4412
Phone: (904) 232-2241

U.S. Army Engineer District,
Mobile, CESAM
109 Saint Joseph Street
Mobile, AL 36602-3630
Phone: (334) 690-2511

U.S. Army Engineer District,
Savannah, CESAS
100 West Oglethorpe Avenue
Savannah, GA 314013640
Phone: (912) 652-5226

U.S. Army Engineer District,
Wilmington, CESAW
69 Darlington Avenue
Wilmington, NC 28403
Phone: (910) 251-4501

U.S. Army Engineer Division,
South Pacific, CESPD
333 Market Street, Rm 1101
San Francisco, CA 94105-2195
Phone: (415) 977-8001

US Army Engineer District,
Albuquerque, CESPA
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435
Phone: (505) 342-3432

US Army Engineer District,
Los Angeles, CESPL
911 Wilshire Blvd
Los Angeles, CA 90017
Phone: (213) 452-3967

US Army Engineer District,
Sacramento, CESPK
1325 J Street
Sacramento, CA 95814-2922
Phone: (916) 557-7490

U.S. Army Engineer District,
San Francisco, CESPN
333 Market Street, Room 923
San Francisco, CA 94105-2195
Phone: (415) 977-8600

U.S. Army Engineer Division,
South Western, CESWD
1100 Commerce Street
Dallas, TX 75242-0216
Phone: (214) 767-2502

U.S. Army Engineer District,
Fort Worth, CESWF
819 Taylor Street
Ft. Worth, TX 76102-0300
Phone: (817) 978-2300

U.S. Army Engineer District,
Galveston, CESWG
Jadwin Building
2000 Fort Point Road
Galveston, TX 77550
Phone: (409) 766-3001

U.S. Army Engineer District,
Little Rock, CESWL
700 West Capitol, Room 7530
Little Rock, AR 72201
Phone: (501) 324-5531

U.S. Army Engineer District,
Tulsa, CESWT
1645 South 101 East Avenue
Tulsa, OK 74128-4629
Phone: (918) 669-7201

U.S. Army Engineers Waterways Experiment Station,
CEWES
3909 Halls Ferry Road
Vicksburg, MS 39180-6199
Phone: (601) 634-2664

U.S. Army Corps of Engineers
Water Resources Support
Center, CEWRC
7701 Telegraph Road
Casey Building
Alexandria, VA 22315-3868
Phone: (703) 428-8250

U.S. Army Engineering And
Support Center, Huntsville,
CEHNC
4820 University Square
Huntsville, AL 35816-1822
Phone: (205) 895-1300

APPENDIX H:

FERC FILING PROCEDURES

1) The correspondence must be addressed to:
   Secretary
   Federal Energy Regulatory Commission
   888 First Street, NE
   Washington, DC 20426

2) The document should be single-sided, double-spaced, with a left margin of 1 .25 inches;

3) The author must be identified by including their name, title, organization, address, and telephone number;

4) The proceeding you are making a filing in must be identified by including the name of the licensee, the FERC project number and the license expiration date;

5) The purpose of your filing must be identified, (e.g., "Motion to Intervene of...," Request for Additional Information," "Comments Regarding Environmental Analysis");

6) The correspondence must be delivered to FERC by regular or express mail or by hand delivery. If you are responding to a FERC deadline, your response must be received at FERC by the deadline. It is not sufficient to have it merely postmarked by that date;

7) A copy must be sent to each person on the Commission's service list, postmarked on the day of filing. To obtain a copy of the service list, phone FERC Dockets at (202)208-2020 at least four days before your filing.

8) The original and eight copies are filed with the Commission. It is recommended that you send three extra copies, in addition to the original and eight others, and:

   a) request that one be date-stamped and returned to you in a self-addressed stamped envelope;

   b) request that one be date-stamped and mailed to the TU National Office in a self-addressed stamped envelope;

   c) place the third copy in a separate envelope, addressed to "Director of Project Review, Office of Hydropower Licensing."

APPENDIX I:

U.S. FOREST SERVICE FOREST PLAN REVISION SCHEDULES

Northern Region (Region 1)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Beaverhead	4/1986	4/2001	
Bitterroot	9/1987	9/2002	
Clearwater	9/1987	9/2002	Plan revision NOI filed 3/1995
Custer	6/1986	6/2002	Plan revision NOI filed 2/1997 for Custer National Grassland
Deerlodge	9/1987	9/2002	
Flathead	1/1986	1/2001	
Gallatin	9/1987	9/2002	
Helena	5/1986	5/2001	
Idaho Panhandle	9/1987	9/2002	
Kootenai	9/1987	9/2002	Plan revision NOI filed 11/1996
Lewis and Clark	6/1986	6/2001	
Lolo	4/1986	4/2001	
Nez Perce	10/1987	10/2002	

Rocky Mountain Region (Region 2)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Arapaho-Roosevelt	5/1984		Plan was revised 11/1997
Bighorn	10/1985	10/2000	
Black Hills	8/1983		Plan was revised 6/1997
Grand Mesa-Uncompahgre-Gunnison	9/1983	9/1998	
Medicine Bow	11/1985	11/2000	Plan revision NOI filed 2/1997 for Medicine Bow National Grassland
Nebraska	12/1984	12/1999	Plan revision NOI filed 2/1997
Pike-San Isabel	10/1984	10/1999	
Rio Grande	1/1985		Plan was revised 11/1996
Routt	11/1983		Plan was revised 2/1998
San Juan	9/1983	9/1998	
Shoshone	2/1986	2/2001	

Southwestern Region (Region 3)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Apache-Sitgreaves	10/1987	10/2002	
Carson	10/1986	10/2001	
Cibola	7/1985	7/2000	Plan revision NOI filed 1/1997
Coconino	8/1987	8/2002	
Coronado	8/1986	8/2001	
Gila	11/1986	11/2001	
Kaibab	4/1988	4/2003	
Lincoln	10/1986	10/2001	
Prescott	7/1987	7/2002	
Santa Fe	9/1987	9/2002	
Tonto	10/1985	10/2000	

Intermountain Region (Region 4)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Ashley	10/1986	10/2001	
Boise	4/1990	4/2005	Plan revision NOI filed 4/1998
Bridger-Teton	3/1990	3/2005	
Caribou	9/1985	9/2000	
Challis	6/1987	6/2002	
Dixie	9/1986	9/2001	
Fishlake	6/1986	6/2001	
Humboldt	8/1986	8/2001	
Manti-La Sal	11/1986	11/2001	
Payette	5/1988	5/2003	Plan revision NOI filed 4/1998
Salmon	11/1988	11/2003	
Sawtooth	9/1987	9/2002	
Targhee	10/1985		Plan was revised 4/1997
Toiyabe	6/1986	6/2001	
Uinta	10/1984	10/1999	
Wasatch-Cache	9/1985	9/2000	

Pacific Southwest Region (Region 5)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Angeles	11/1987	11/2002	
Cleveland	6/1986	6/2001	
Eldorado	1/1989	1/2004	
Inyo	8/1988	8/2003	
Klamath	7/1995	7/2010	
Lake Tahoe Basin	12/1988	12/2003	
Lassen	1/1993	1/2008	
Los Padres	3/1988	3/2003	
Mendocino	7/1995	7/2010	
Modoc	11/1991	11/2006	
Plumas	8/1988	8/2003	
San Bernardino	1/1989	1/2004	
Sequoia	2/1988	2/2003	
Shasta-Trinity	4/1995	4/2010	
Sierra	9/1992	9/2007	
Six Rivers	6/1995	6/2010	
Stanislaus	10/1991	10/2006	
Tahoe	6/1990	6/2005	

Pacific Northwest Region (Region 6)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Colville	12/1988	12/2003	
Deschutes	8/1990	8/2005	
Fremont	5/1989	5/2004	
Gifford Pinchot	6/1990	6/2005	
Malheur	5/1990	5/2005	
Mt.Baker-Snoqualmie	6/1990	6/2005	
Mt. Hood	10/1990	10/2005	
Ochoco	9/1989	9/2004	
Okanogan	12/1989	12/2004	
Olympic	7/1990	7/2005	
Rogue River	7/1990	7/2005	
Siskiyou	3/1989	3/2004	
Siuslaw	3/1990	3/2005	
Umatilla	6/1990	6/2005	

Umpqua	9/1990	9/2005	
Wallowa-Whitman	4/1990	4/2005	
Wenatchee	3/1990	3/2005	
Willamette	7/1990	7/2005	
Winema	9/1990	9/2005	

Southern Region (Region 8)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Alabama NFs	3/1986	3/2001	Plan revision NOI filed 8/1996
Caribbean	2/1986		Plan was revised 4/1997
Chattahoochee-Oconee	9/1985	9/2000	Plan revision NOI filed 8/1996
Cherokee	4/1986	4/2001	Plan revision NOI filed 8/1996
Croatan	6/1986	6/2001	Plan revision NOI filed 10/1996
Daniel Boone	9/1985	9/2000	Plan revision NOI filed 6/1996
Florida NFs	1/1986	1/2001	
Plans revised	2/1999		
Francis Marion	4/1985		Plan was revised 3/1996
George Washington	9/1986		Plan was revised 1/1993
Jefferson	10/1985	10/2000	Plan revision NOI filed 8/1996
Kisatchie	9/1985	9/2000	Plan revision NOI filed 8/1993; DEIS available 10/1997
Mississippi NFs	9/1985	9/2000	
Nantahala/Pisgah	4/1987	4/2002	
Ouachita	4/1986	4/2001	
Ozark-St. Francis	7/1986	7/2001	
Sumter	8/1985	8/2000	Plan revision NOI filed 8/1996
Texas NFs	5/1987		Plans revised 3/1996
Uwharrie	6/1986	6/2001	

Eastern Region (Region 9)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Allegheny	4/1986	4/2001	
Chequamegon	8/1986	8/2001	Plan revision NOI filed 6/1996
Chippewa	6/1986	6/2001	Plan revision NOI filed 8/1997
Finger Lakes	1/1987	1/2002	
Green Mountain	1/1987	1/2002	

Hiawatha	10/1986	10/2001	
Hoosier	9/1985	9/2000	
Huron-Manistee	7/1986	7/2001	
Mark Twain	6/1986	6/2001	
Midewin National Tallgrass Prairie			NOI for new plan filed 6/1998
Monongahela	7/1986	7/2001	
Nicolet	8/1986	8/2001	Plan revision NOI filed 6/1996
Ottawa	10/1986	10/2001	
Shawnee	11/1986	11/2001	
Superior	6/1986	6/2001	Plan revision NOI filed 8/1997
Wayne	1/1988	1/2003	
White Mountain	4/1986	4/2001	

Alaska Region (Region 10)

National Forest	Initial Plan Date	NFMA 15-yr Revision Due	Status
Chugach	7/1984	7/1999	Plan revision NOI filed 4/1997
Tongass	3/1979		Plan was revised 5/1997

APPENDIX J:

NATIONAL FOREST HEADQUARTERS OFFICE LOCATIONS

REGION 1, NORTHERN REGION

IDAHO

Clearwater National Forest
12730 Highway 12
Orofino, ID 83544
Phone: (208) 476-4541

Idaho Panhandle
National Forest
3815 Schreiber Way
Coeur d'Alene, ID 83815-8363
Phone: (208) 765-7223

Nez Perce National Forest
Rt. 2, Box 475
Grangeville, ID 83530
Phone: (208) 983-1950

MONTANA

Beaverhead /Deerlodge
National Forest
420 Barrett Street
Dillon, MT 59725-3572
Phone: (406) 683-3900

Bitterroot National Forest
1801 N. 1st Street
Hamilton, MT 59840
Phone: (406) 363-7121

Custer National Forest
1310 Main St. P.O. Box 50760
Billings, MT 59105
Phone: (406) 657-6361

Flathead National Forest
1935 3rd Avenue E.
Kalispell, MT 59901
Phone: (406) 758-5200

Gallatin National Forest
Federal Building
10 E. Babcock Avenue
Box 130
Bozeman, MT 59771
Phone: (406) 587-6702

Helena National Forest
2880 Skyway Drive
Helena, Mt 59601
Phone: (406) 449-5201

Kootenai National Forest
506 Highway 2 W.
Libby, MT 59923
Phone: (406) 293-6211

Lewis and Clark
National Forest
P.O. Box 869
1101 15th Street N
Great Falls, MT 59403
Phone: (406) 791-7700

Lolo National Forest
Building 24, Ft. Missoula
Missoula, MT 59801
Phone: (406) 329-3750

REGION 2, ROCKY MOUNTAIN REGION

COLORADO

Arapaho and Roosevelt
National Forests
240 W. Prospect
Fort Collins, CO 80526
Phone: (970) 498-1100

Pawnee National Grassland
Greeley, CO 80631
Phone: (970) 353-5004

Grand Mesa,
Uncompahgre, and
Gunnison National Forests
2250 Highway 50
Delta, CO 81416
Phone: (970) 874-6600

Pike and San Isabel
National Forests
1920 Valley Drive
Pueblo, CO 81008
Phone: (719) 545-8737

Rio Grande National Forest
1803 West Highway 160
Monte Vista, CO 81144
Phone: (719) 852-5941

San Juan National Forest
15 Burnett Court
Durango, CO 81301-3647
Phone: (970) 247-4874

White River National Forest
900 Grand Avenue, PO Box 948
Glenwood Springs, CO
81602-0948
Phone: (970) 945-2521

NEBRASKA

Nebraska National Forest
125 N. Main Street
Chadron, NE 69337
Phone: (308) 432-0300

SOUTH DAKOTA

Black Hills National Forest
HWY 385 North,
RR 2 Box 200
Custer, SD 57730-9501
Phone: (605) 673-2251

WYOMING
Medicine Bow, Routt
National Forests
2468 Jackson Street
Laramie, WY 82070-6535
Phone: (307) 745-2300

Shoshone National Forest
808 Meadow Lane
Cody Wy 82414-4516
Phone: (307) 527-6241

REGION 3, SOUTHWESTERN REGION

ARIZONA
Apache-Sitgreaves National
Forest
Box 640
Springerville, AZ 85938
Phone: (520) 333-4301

Coconino National Forest
2323 E. Greenlaw Lane
Flagstaff, AZ 86004
Phone: (520) 527-3500

Coronado National Forest
300 W. Congress
Tucson, AZ 85701
Phone: (520) 670-4552

Kaibab National Forest
800 South 6th Street
Williams, AZ 86046
Phone: (520) 635-8200

Prescott National Forest
344 South Cortez
Prescott, AZ 86303
Phone: (520) 771-4700

Tonto National Forest
2324 E. McDowell Road
Phoenix, AZ 85006
Phone: (602) 225-5200

NEW MEXICO
Carson National Forest
208 Cruz Alta Road
Taos, NM 87571
Phone: (505) 758-6200

Cibola National Forest
2113 Osuna Road NE, Suite A
Albuquerque, NM 87113-1001
Phone: (505) 346-2650

Gila National Forest
3005 E. Camino Del Bosque
Silver City, NM 88061
Phone: (505) 388-8201

Lincoln National Forest
Federal Building
1101 New York Avenue
Alamogordo, NM 88310-6992
Phone: (505) 434-7200

Santa Fe National Forest
1474 Rodeo Road
Santa Fe, NM 87502-7115
Phone: (505) 438-7840

REGION 4, INTERMOUNTAIN REGION

IDAHO
Boise National Forest
1249 South Vinrell Way
Boise, ID 83709
Phone: (208) 373-4100

Caribou National Forest
250 S. 4th Avenue, Suite 172
Federal Building
Pocatello, ID 83201
Phone: (208) 236-7500

Challis National Forest
RR2, Box 600
Salmon, ID 83467
Phone: (208) 756-5100

Payette National Forest
Box 1026,
800 W. Lakeside Avenue
McCall, ID, 83638
Phone: (208) 634-0700

Salmon National Forest
RR2, Box 600
Salmon, ID 83467
Phone: (208) 756-5100

Sawtooth National Forest
2647 Kimberly Road East
Twin Falls, ID 83301-7976
Phone: (208) 737-3200

Targhee National Forest
420 N. Bridge Street, PO Box 208
St. Anthony, ID 83445
Phone: (208) 624-3151

NEVADA
Humboldt National Forest
2035 Last Chance Road
Elko, NV 89801
Phone: (702) 778-0209

Toiyabe National Forest
1200 Franklin Way
Sparks, NV 89431
Phone: (702) 355-5300

UTAH
Ashley National Forest
355 North Vernal Avenue
Vernal, UT 84078
Phone: (801) 789-1181

Dixie National Forest
82 N. 100 East
Cedar City, UT 84720-2686
Phone: (801) 865-3700

Fishlake National Forest
115 F. 900 N
Richfield, UT 84701
Phone: (801) 896-9233

Manti La Sal National Forests
599 W. Price River Drive
Price, UT 84501
Phone: (801) 636-3500

Uinta National Forest
88 W. 100 N
Provo, UT 84601
Phone: (801) 342-5100

Wasatch-Cache
National Forest
8236 Federal Building
125 S. State Street
Salt Lake City, UT 84138
Phone: (801) 524-5030

WYOMING
Bridger-Teton National Forest
340 N. Cache, Box 1888
Jackson, WY 83001
Phone: (307) 739-5500

REGION 5, PACIFIC SOUTHWEST REGION
CALIFORNIA
Angeles National Forest
701 N. Santa Anita Ave.
Arcadia, CA 91006
Phone: (626) 574-1613

Cleveland National Forest
10845 Rancho Bernardo
Road, Suite 200
San Diego, CA 92127-2107
Phone: (858) 673-6180

Eldorado National Forest
100 Forni Road
Placerville, CA 95667
Phone: (530) 622-5062

Inyo National Forest
873 North Main Street
Bishop, CA 93514
Phone: (760) 873-2400

Klamath National Forest
1312 Fairlane Road
Yreka, CA 96097
Phone: (530) 842-6131

Lake Tahoe Basin
Management Unit
870 Emerald Bay Road, Suite 1
South Lake Tahoe, CA 96150
Phone: (530) 573-2600

Lassen National Forest
55 S. Sacramento Street
Susanville, CA 96130
Phone: (530) 257-2151

Los Padres National Forest
6144 Cable Real
Goleta, CA 93117
Phone: (805) 683-6711

Mendocino National Forest
825 N. Humboldt Ave.
Willows, CA 95988
Phone: (530) 934-3316

Modoc National Forest
800 W. 12th Street
Alturas, CA 96101
Phone: (530) 233-5811

Plumas National Forest
159 Lawrence Street,
PO Box 11500
Quincy, CA 95971-6025
Phone: (530) 283-2050

San Bernardino
National Forest
1824 S. Commercenter Circle
San Bernardino, CA
92408-3430
Phone: (909) 383-5588

Sequoia National Forest
900 West Grand Avenue
Porterville, CA 93257-2035
Phone: (559) 784-1500

ShastaTrinity National Forest
2400 Washington Ave.
Redding, CA 96001
Phone: (530) 242-2200

Sierra National Forest
1600 Tollhouse Road
Clovis, CA 93611-0532
Phone: (559) 297-0706

Six Rivers National Forest
1330 Bayshore Way
Eureka, CA 95501-3834
Phone: (707) 442-1721

Stanislaus National Forest
19777 Greenley Road
Sonora, CA 95370
Phone: (209) 532-3671

Tahoe National Forest
631 Coyote Street
Nevada City, CA 95959-6003
Phone: (530) 265-4531

REGION 6, PACIFIC NORTHWEST REGION
OREGON
Deschutes National Forest
1645 Highway 20 E
Bend, OR 97701
Phone: (541) 388-2715

Fremont National Forest
524 North G Street
Lakeview, OR 97630
Phone: (541) 947-2151

Malheur National Forest
PO Box 909
John Day, OR 97845
Phone: (541) 575-3000

Mt. Hood National Forest
16400 Champion Way
Sandy, OR 97055
Phone: (503) 668-1700

Ochoco National Forest
3160 NE 3rd Street, Box 490
Prineville, OR 97754
Phone: (54l) 416-6500

Rogue River National Forest
Federal Building,
333 W. 8th Street
Box 520
Medford, OR 97501
Phone: (541) 858-2200

Siskiyou National Forest
Box 440
Grants Pass, OR 97526-0242
Phone: (541) 471-6500

Siuslaw National Forest
4077 Research Way
Corvallis, OR 97333
Phone: (541) 750-7000

Umatilla National Forest
2517 SW Hailey Ave.
Pendleton, OR 97801
Phone: (541) 278-3716

Umpqua National Forest
Box 1008
Roseburg, OR 97470
Phone: (541) 672-6601

Wallowa Whitman
National Forest
Box 907
Baker City, OR 97814
Phone: (541) 523-6391

Willamette National Forest
Box 10607
Eugene, OR 97440
Phone: (541) 465-6521

Winema National Forest
2819 Dahlia
Klamath Falls, OR 97601
Phone: (541) 883-6714

WASHINGTON
Colville National Forest
765 S. Main
Colville, WA 99114
Phone: (509) 684-7000

Gifford Pinchot
National Forest
10600 NE 51st Circle
Vancouver, WA 98682
Phone: (360) 891-5000

Mt. Baker-Snoqualmie
National Forest
21905 64th Avenue West
Mountlake Terrace, WA 98043
Phone: (425) 775-9702

Okanogan National Forest
1240 5. Second Ave.
Okanogan, WA 98840
Phone: (509) 826-3275

Olympic National Forest
1835 Black Lake Blvd. SW
Olympia, WA 98512
Phone: (360) 956-2300

Wenatchee National Forest
215 Melody Lane
Wenatchee, WA 98801
Phone: (509) 662-4335

REGION 8, SOUTHERN REGION

ALABAMA
National Forests in Alabama
(including William B.
Bankhead NF,
Conecuh NF, Talladega NF,
and Tuskegee NF)
2946 Chestnut Street
Montgomery, AL 36107-3010
Phone: (334) 832-4470

ARKANSAS
Ouachita National Forest
Box 1270, Federal Building
Hot Springs National Park,
AR 71902
Phone: (50l) 321-5202

Ozark-St. Francis
National Forest
605 W. Main
Russellville, AR 72801-3614
Phone: (501) 968-2354

FLORIDA
National Forests in Florida
(including Apalachicola NF,
Ocala NF, and Osceola NF)
Woodcrest Office Park
325 John Knox Rd., Suite F100
Tallahassee, FL 32303
Phone: (904) 942-9300

GEORGIA
Chattahoochee and Oconee
National Forests
1755 Cleveland Highway
Gainesville, GA 30501
Phone: (770) 536-0541

KENTUCKY
Daniel Boone National Forest
1700 Bypass Road
Winchester, KY 40391
Phone: (606) 745-3100

LOUISIANA
Kisatchie National Forest
2500 Shreveport Hwy.
Pineville, LA 71360-2009
Phone: (318) 473-7160

MISSISSIPPI
National Forests in Mississippi
(including Bienville NF, Delta
NF, DeSoto NF, Holly Springs
NF, Homochitto NF, and
Tombigbee NF)
100 W. Capitol Street, Suite 1141
Jackson, MS 39269
Phone: (601) 965-4391

NORTH CAROLINA
National Forests
in North Carolina
(including Croatan NF,
Nantahala NF,
Pisgah NF, and Uwharrie NF)
160A Zillicoa Street,
PO Box 2750
Asheville, NC 28802
Phone: (704) 257-4200

SOUTH CAROLINA
Francis Marion and Sumter
National Forests
4931 Broad River Rd.
Columbia, SC 29210-4021
Phone: (803) 561-4000

TENNESSEE
Cherokee National Forest
PO Box 2010
Cleveland, TN 37320
Phone: (423) 476-9700

TEXAS
National Forests in Texas
(including Caddo Lyndon B.
Johnson National Grassland,
Angelina NF, Davy Crockett
NF, Sabine NF, and Sam
Houston NF)
Homer Garrison
Federal Building
701 N. First Street
Lufkin, TX 75901
Phone: (409) 639-8501

VIRGINIA
George Washington
and Jefferson
National Forests
5162 Valleypointe Parkway
Roanoke, VA 240 19-3050
Phone: (540) 265-5100

REGION 9,
EASTERN REGION
ILLINOIS
Midewin National
Tallgrass Prairie
30071 South State Route 53
Wilmington, IL 60481
Phone: (815) 423-6370

Shawnee National Forest
50 Highway 145 South
Harrisburg, IL 62946
Phone: (618) 253-1000

INDIANA
Hoosier National Forest
811 Constitution Avenue
Bedford, IN 47421
Phone: (812) 275-5987

MICHIGAN
Hiawatha National Forest
2727 N. Lincoln Rd.
Escanaba, MI 49829
Phone: (906) 786-4062

Huron-Manistee
National Forest
1755 S. Mitchell Street
Cadillac, MI 49601
Phone: (616) 775-2421

Ottawa National Forest
E6248 U.S. Highway 2
Ironwood, MI 49938
Phone: (906) 932-1330

MINNESOTA
Chippewa National Forest
Route 3 Box 244
Cass Lake, MN 56633-8929
Phone: (218) 335-8600

Superior National Forest
8901 Grand Avenue Place
Duluth, MN 55808-1102
Phone: (218) 626-4302

MISSOURI
Mark Twain National Forest
401 Fairgrounds Rd.
Rolla, MO 65401
Phone: (573) 364-4621

NEW HAMPSHIRE
AND MAINE
White Mountain
National Forest
719 Main Street
Laconia, NH 03246-0772
Phone: (603) 528-8721

OHIO
Wayne National Forest
219 Columbus Road
Athens, OH 45701-1399
Phone: (740) 592-6644

PENNSYLVANIA
Allegheny National Forest
222 Liberty Street, PO Box 847
Warren, PA 16365
Phone: (814) 723-5150

VERMONT AND
NEW YORK
Green Mountain
& Finger Lakes
National Forests
231 N. Main Street
Rutland, VT 05701
Phone: (802) 747-6700

WEST VIRGINIA
Monongahela National Forest
200 Sycamore Street
Elkins, WV 26241-3962
Phone: (304) 636-1800

WISCONSIN
Chequamegon-Nicolet
National Forest
1170 4th Avenue South
Park Falls, WI 54552
Phone: (715) 762-2461

REGION 10, ALASKA REGION

Chugach National Forest
3301 "C" Street, Suite 300
Anchorage, AK 99503-3998
Phone: (907) 271-2500

Tongass National Forest
Ketchikan Office
Federal Bldg,
Ketchikan, AK 99901
Phone: (907) 228-6200

Tongass National Forest
Petersburg Office
P.O. Box 309
Petersburg, AK 99833
Phone: (907) 772-3841

Tongass National Forest
Sitka Office
204 Siginaka Way
Sitka, AK 99835
Phone: (907) 747-6671

APPENDIX K:

INTERNET LINKS TO STATE WILDLIFE AGENCIES

Alabama	www.dcnr.state.al.us/agfd
Alaska	www.state.ak.us/local/akpages/FISH.GAME/adfghome.htm
Arizona	www.gf.state.az.us
Arkansas	www.agfc.state.ar.us
California	www.dfg.ca.gov
Colorado	www.dnr.state.co.us/wildlife
Connecticut	dep.state.ct.us/burnatr/index.htm
Delaware	www.dnrec.state.de.us/fandw.htm
Florida	www.dep.state.fl.us/org
Georgia	www.dnr.state.ga.us/dnr/wild/mainpage.html
Hawaii	www.state.hi.us/d/nr/dofaw
Idaho	www.state.id.us/fishgame/fishgame.html
Illinois	dnr.state.il.us
Indiana	www.state.in.us/dnr/fishwild/index.htm
Iowa	www.state.ia.us/government/dnr/fwdiv.htm
Kansas	www.kdwp.state.ks.us
Kentucky	www.state.ky.us/agencies/fw/kdfwr.htm
Louisiana	www.wlf.state.la.us
Maine	janus.state.me.us/ifw/index.htm
Maryland	www.dnr.state.md.us/fisheries
Massachusetts	www.magnet.state.ma.us/dfwele
Michigan	www.dnr.state.mi.us/WWW/fish/index.html
Minnesota	www.dnr.state.mn.us/fish_and_wildlife
Mississippi	www.mdwfp.com
Missouri	www.conservation.state.mo.us
Montana	fwp.state.mt.us
Nebraska	www.ngpc.state.ne.us
Nevada	www.state.nv.us./cnr/nvwildlife
New Hampshire	www.state.nv.us./cnr/nvwildlife
New Jersey	www.state.nj.us/dep/fgw
New Mexico	www.gmfsh.state.nm.us
New York	www.dec.state.ny.us/website/dfwmr/index.html
North Carolina	www.state.nc.us/Wildlife
North Dakota	www.state.nd.us/gnf
Ohio	www.dnr.state.oh.us/odnr/wildlife/ index.html
Oklahoma	www.state.ok.us/~odwc
Oregon	www.dfw.state.or.us
Pennsylvania	www.state.pa.us/Fish/mpag1.htm

Rhode Island ..... www.state.ri.us/dem/org/fish&w.htm
South Carolina ..... www.dnr.state.sc.us/wild/index.html
South Dakota ..... www.state.sd.us/state/executive/gfp/WildlifeHomePage.htm
Tennessee ..... www.state.tn.us/twra
Texas ..... www.tpwd.state.tx.us
Utah www.nr.state.ut.us/dwr/homepg2.htm
Vermont ..... www.anr.state.vt.us/fw/fwhome/index.htm
Virginia ..... www.dgif.state.va.us
Washington ..... www.wa.gov/wdfw
West Virginia ..... www.dnr.state.wv.us
Wisconsin ..... www.dnr.state.wi.us
Wyoming ..... gf.state.wy.us

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