



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

FILED IN THE OFFICE OF  
 A. JAMES MANCHIN  
 SECRETARY OF STATE  
 THIS DATE 4/29/82

STATE REGISTER FILING

I, David C. Callaghan, Director,  
 Title or Position

Natural Resources, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ( minutes of public hearing ) .

This filing pertains to

Chapter 20  
 Article 2  
 Series XI  
 Section 6  
 Page No. 12

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

April 29, 1982  
 Date Submitted

*David C. Callaghan*  
 Signature of Person Authorizing  
 this Filing



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

JOHN D. ROCKEFELLER IV  
Governor

April 29, 1982

DAVID C. CALLAGHAN  
Director  
WILLIS H. HERTIG, JR.  
Deputy Director

The Honorable A. James Manchin  
Secretary of State of West Virginia  
State Capitol Building  
Charleston, West Virginia 25305

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE

4/29/82

Dear Mr. Secretary:

In accordance with the provisions of Chapter 20 of the Code of West Virginia, a public hearing was held on April 14, 1982, to receive comments and recommendations concerning the proposed interim regulation on commercial whitewater use.

After consideration of the recommendations received, the regulation was revised by adding a new paragraph 6.03. We are, therefore, this date submitting 17 copies of the regulation, as revised, to the Legislative Rule Making Review Committee, with the request that it be made effective at the earliest possible date.

Also, I am enclosing three copies of the revised regulation and a copy of the minutes of the public hearing, along with other comments, to be filed in the State Register.

Sincerely,

  
David C. Callaghan  
Director

DCC/cl

Enclosures

cc: Legislative Rule Making Review Committee (Transmitting 17 copies of the interim regulation on commercial whitewater use)

Section 6. Interim Regulations - Whitewater Recreation Zones.

6.01. A commercial whitewater outfitter shall not exceed 1981 peak weekend or holiday use of any designated whitewater study zone prior to the promulgation of rules and regulations for each study zone by the Commercial Whitewater Advisory Board. Peak use in 1981 is defined as the highest number of commercial watercraft per day in use on each study zone by the outfitter for commercial whitewatering on any Saturday, Sunday or holiday between January 1, 1981, and December 31, 1981.

6.02. A commercial whitewater outfitter may be subject to exemption to the foregoing regulation if the director finds that a substantial financial commitment has been made and a financial hardship will result from operating at the 1981 level. If the director grants an exemption, he will set a peak use figure to apply on each whitewater zone until rules and regulations are promulgated by the Whitewater Advisory Board.

6.03. The New River from its confluence with the Greenbrier River downstream to the Highway-RR Bridge at Thurmond may be exempt from the provisions of 6.01 if the director finds such use will not interfere with the conduct of any whitewater studies or investigations.

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A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 4/29/82

PUBLIC HEARING

April 14, 1982

A public hearing was held in Room 673, 1800 Washington Street, East, Charleston, West Virginia, on April 14, 1982, beginning at 3:00 p.m., for the gathering\_of public\_comment on Department of Natural Resources Administrative Regulation\_20-2, Series XI. The regulation freezes the maximum commercial whitewater use to the 1981 peak number. The hearing was conducted by Dr. Willis H. Hertig, Deputy Director.

Written comments received are attached hereto. Verbal response was in the form of questions about the duration of the regulation, if the number of users may at a later date be increased, and who will conduct the river management study on the New River. These questions were responded to by Deputy Director Hertig and Mr. Jim Carrico, Superintendent, New River Gorge National River.

The hearing was concluded at 8:10 p.m. A list of attendance is attached to this report.

PUBLIC HEARING  
Regarding  
PROPOSED INTERIM REGULATIONS RELATING TO COMMERCIAL WHITEWATER RECREATION

DNR Conference Room  
1800 E. Washington Street  
Charleston, West Virginia

April 14, 1981

ATTENDANCE

George D. Burgess  
Howard O. Campbell  
Richard Lee Cantrell  
Lou Bedford  
Joyce Davis-Adams  
Frank M. Lukacs, Jr. - North American River Runners, Inc.  
Glenn D. Kovac - Diversified River Services, Inc.  
James C. Blankenship - New River Dorries  
Jim Carrico - New River Gorge National River, National Park Service  
Imre Szilagyi - Appalachian Wildwaters, Inc.; American Whitewater Tours  
Paul W. Breuer - Mountain River Tours, Inc.  
David Arnold - Class VI River Runners, Inc.  
Bill R. Simms - White Water Information  
Keith A. Spangler - Gauley Expeditions, Inc.  
John A. Robinson - BWWT, Inc.  
Richard W. Smith - New River Scenic Whitewater Tours, Inc.  
Ralph Wm. McCarty - Mt. Streams & Trails Outfitters  
Jon A. Dragan - Wildwater Expeditions Unlimited, Inc.  
Glenn G. Lukacs - Rivers, Inc.  
Winston E. Poston - Whole Earth Rafting, Inc.  
Michael A. Gray - Rivers, Inc.  
Donald Beals  
Barry Barnett

NEW RIVER DORIES, INC.  
P. O. Box 243  
Glen Jean, West Virginia 25846

April 14, 1982

Whitewater Advisory Board  
Department of Natural Resources  
State Capitol Complex  
Charleston, West Virginia 25305

RE: Proposed Rule and Regulation  
Chapter 20, Article 2, Section 6  
Series XI, Page 12  
New River Dories, Inc.

Member of the Advisory Board:

This letter is directed the members of the Whitewater Advisory Board with respect to the proposed rule and regulation mentioned above. New River Dories, Inc. has been issued a guide license from the Department of Natural Resources and is a permit holder #38-82. This permit was issued on March 31, 1981, but New River Dories, Inc. has been a licensee for the last three years. New River Dories, Inc. opposes the adoption of the proposed regulation, Section 6.01 and 6.02 entitled Interim Regulation - Whitewater Regulation Zones.

The enabling statute from which the Director assumes authority to propose said regulation is Chapter 20, Article 2, Section 23A of the West Virginia Code which took effect April 10, 1981. The language relied upon by the Director is as follows:

The Legislature further finds it desirable to require the director of the department of natural resources, pending such study and investigation and the promulgation of necessary rules and regulations applicable to such areas and portions of rivers and waters, to restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in such areas and portions of rivers and waters in this State until the promulgation of such rules and regulations applicable thereto and to provide for the creation of an advisory board to promulgate such rules and regulations.

The imposition of limits of water craft that will be allowed to be used in the study zones is the peak use for each company in 1981. The Director states that the proposed regulation is proper under his authority to "restrict,

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deny or postpone the issuance of licenses to additional commercial whitewater outfitters....". New River Dories, Inc. feels that since it has already been issued a license for 1982, no restrictions may now be applied to its license, even if the Director's interpretation of the enabling statute is correct. However, New River Dories, Inc. is of the opinion that the statute authorizes the restriction of the "issuance of licenses to additional commercial whitewater outfitters" until the Advisory Board promulgates rules and regulations after the study and investigation in the whitewater recreation zones. We feel that the Director has overstepped the bounds set by the Legislature and that the limit on water craft per day, as proposed, was not the Legislative intent of Chapter 20, Article 2, Section 23A.

New River Dories, Inc. has additional reasons for opposing the proposed regulation, but the one stated above is the most important. New River Dories, Inc. feels that the proposed regulation is vague in that it does not define a termination date for the interim regulation. Also, the proposed interim regulation applies to all whitewater recreation zones, many of such zones designated by the Director as "whitewater zones" are not the subject of overcrowding. Furthermore, the interpretation of the regulation as it now reads would not place any limits of water craft that can be run from Monday through Friday, the limits set by the Director would only have to be observed on weekends and holidays. This, our company feels, seems highly illogical if the motivation for the proposed regulation is to eliminate safety and ecological problems in addition to the stated purpose of providing a static number of water craft for the duration of this study period.

Nowhere in Section 23A, Chapter 20, Article 2 or any subsections is any authority given to the Director to propose or promulgate the interim regulation with which we are now faced. Nowhere in the statute is the Director allowed to grant any exemptions to any such regulation. In this regard, we feel that without an objective standard for the granting of exemptions, any action by the Director in the granting or denial of exemptions would be arbitrary, capricious and unenforceable and would not stand the test of constitutionality. The Director has shown no legitimate state purpose for limiting the water craft per day on weekends and holidays. The statute directly authorizes the Director to issue additional licenses or to "restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters". The limitation of additional licenses, we feel, is the only authority the Director possesses to restrict activity within whitewater recreation zones; the Legislature intended nothing more.

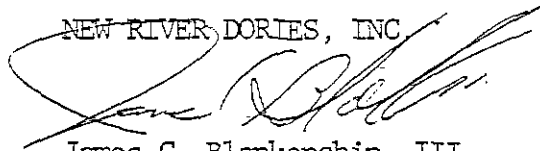
New River Dories, Inc. does not endorse the interim regulation as it is proposed. We do endorse a decision by the Director to restrict the issuance of permits to additional outfitters pending any studies. We stand behind the authority of the Whitewater Advisory Board to impose limitations

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after the study and investigation of the whitewater recreation zones. Until such study or studies are completed, the regulation proposed would be premature, even if the Director had authority to impose limits at 1981 levels since there is no showing of safety or ecological problems until a study is completed. For all of the reasons set forth, we urge each advisory board member to carefully consider all issues related to the proposed regulation, the legal and economic ramifications of its adoption and oppose the regulation as drafted and proposed by the Director.

Respectfully,

NEW RIVER DORIES, INC.



James C. Blankenship, III  
Chairman of the Board

INTERIM REGULATION PETITION - WHITEWATER ZONES

The undersigned supported and continues to support Senate Bill 393. We believe that the study areas proposed for the New, Cheat, Gauley, and Shenandoah are target areas of high whitewater usage.

We also support the concept of the emergency interim regulation proposed by the director and the whitewater commission controlling the number of whitewater craft in the whitewater recreation zone. However, we do not support limits of water craft on the New River from the Greenbrier to Thurmond as this section has minimal usage. To date, it would be unfair to compare this section of whitewater with the section from Thurmond to Fayette Station. We feel that the licensed companies should have the opportunity to continue growing on the Greenbrier River to Thurmond section with their various river trips and their educational kayak and canoe trips. The following companies agree to the above:

David [unclear]  
Paul W. Brewer  
Mr. [unclear]  
Keith A. Spangler  
Bill [unclear]  
Richard [unclear]  
by [unclear] - PRESIDENT  
John A. [unclear] - OWNER  
Gloria E. [unclear]  
Small Boats

CLASS VI RIVER RUNNERS, INC.  
Mountain River Tours Inc.  
Appalachian Wildwaters Inc.  
Gauley Expeditions, Inc.  
White Water Expeditions  
New River [unclear] White Water Tours Inc.  
NORTH AMERICAN RIVER RUNNERS, INC.  
BM WT, INC.  
Rivers, Inc.

# Chamber of Commerce of Summers County

April 12, 1982

Mr David Callahan, Director  
Department of Natural Resources  
Charleston, West Virginia

Dear Mr. Callahan:

The Chamber of Commerce of Summers County is concerned with the recent restrictions placed upon commercial White Water activities on the New River. We understand the necessity for regulating traffic from Thurman to Fayette Station, with the congestion from the already developed White Water commerce in that area, but we think the restrictions on the river from Hinton to Thurman are premature.

Our Chamber would like to see more commerce developed in the Hinton area involving the New River. There is presently very little traffic from Hinton to Thurman, so we feel the river in this area should be left open since no problems exist at this time and if necessity later demands restriction, do so after we have had a chance to develop this much needed commerce.

Sincerely yours,



Edward Hannah  
President

CEH:sh

post box 309 Hinton, W.V. 25951  
phone (304) 466-3836 (temp.)

Rivers Inc.  
Fayette Station Road - South  
Post Office Box 656  
Fayetteville, West Virginia 25840

State of West Virginia  
Department of Natural Resources  
Charleston, West Virginia 25305

Attention: David C. Callaghan - Director

Dear Sir:

Rivers Inc., a duly licensed whitewater outfitter in the State of West Virginia, would like to submit the following statement concerning the proposed interim regulations relating to commercial whitewater recreation, designated as Series XI, Section 6.

The interim regulation as prescribed by the Whitewater Commission is a bold and aggressive movement towards river management. The realm of consequences which this regulation may enhance is far reaching, its effects upon the studies to be made and future regulation is apparent.

It is the opinion of Rivers Inc. that this regulation is in the best interest of the commercial whitewater industry within West Virginia, and we shall support the institution and development of the regulation totally. If Rivers Inc. can be of any assistance either professionally or personally towards the institution or development of this regulation, we shall lend ourselves in whatever capacity the Director or Commission requires or requests.

We look forward to actively participating with the studies that will determine the criteria for future regulation. We are confident the Department of Natural Resources will develop a competent and successful River Management Plan for the State of West Virginia. Our commitment to the Whitewater Industry and its growth is one of concern. We trust the Director, his staff and the Whitewater Commission will work in earnest towards those interests that would best serve the State of West Virginia.

Sincerely,

  
Rivers Inc.

Glenn G. Lukacs - President

c.c./file