

**HJR**

**52**

# HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: January 26, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/26/98

The RESOURCES Committee considered:

HJR 52

HOUSE JOINT RESOLUTION NO. 52

OPPOSE AMERICAN HERITAGE RIVERS

Relating to opposition to the designation of any rivers in Alaska as American Heritage Rivers under the American Heritage Rivers initiative.

recommends it be replaced with the following committee substitute \_\_\_\_\_ [ ] the same title  
[ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
[ ] fiscal note(s) \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_

[] zero fiscal note(s) \_\_\_\_\_ [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Fred Ryan</i> Ryan	<input checked="" type="checkbox"/>			
<i>W. K. Williams</i> WILLIAMS	<input checked="" type="checkbox"/>			
<i>Scott Green</i> GREEN	<input checked="" type="checkbox"/>			
<i>Marka Barnes</i> BARNES	<input checked="" type="checkbox"/>			
<i>Kenley Masek</i> Masek	<input checked="" type="checkbox"/>			
<i>Scott Ogan</i> Ogan	<input checked="" type="checkbox"/>			
<i>Bill Hudson</i> HUDSON	<input checked="" type="checkbox"/>			
<i>Reggie Jole</i> JOLE	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *Bill Hudson* *Scott Ogan*

FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO.   HJR 52  

Revision Date: \_\_\_\_\_  
Title:   Oppose American Heritage Rivers    
Sponsor:   Rep. Hudson    
Requester:   House Resources Committee  

Dept. Affected   Legislative Affairs   Agenc  
BRU   All    
Component   All    
Component Serial No. \_\_\_\_\_

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \_\_\_\_\_

POSITIONS						
Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

Prepared by   House Resources Committee    
Division   Co-Chairman Bill Hudson    
Approved by \_\_\_\_\_  
Agency \_\_\_\_\_

Phone   465-6820    
Date   2/26/98    
Date \_\_\_\_\_

# Alaska State Legislature

REPRESENTATIVE  
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## House Of Representatives House District 34

### Memo

**To:** House Resources Committee  
Representative Bill Hudson  
Representative Scott Ogan

**From:** Representative James / Myrna McGhie 

**Date:** February 9, 1998

**Re:** Request for hearing on HJR 52

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Attached is the packet for HJR 52: to oppose the American Heritage Rivers Initiative. Representative James is requesting a hearing on this Resolution at your earliest convenience. Thank you very much.

# Alaska State Legislature

REPRESENTATIVE  
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## House Of Representatives

House District 34

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# American Heritage Rivers Initiative

## Sponsor Statement

Representative Jeannette James

### **HJR 52: Relating to opposition to the designation of any rivers in Alaska as American Heritage Rivers under the American Heritage Rivers initiative.**

Many of you will be wondering, "What is the American Heritage River initiative?" It has not been a widely publicized program. President Clinton first announced it on February 4, 1997 in his State of the Union message. Then in May and September there were announcements in the Federal Register. Since his State of the Union message President Clinton issued Executive Order 13061 directing agencies to establish and implement the initiative.

The program has two objectives: (1) to enhance our citizens' enjoyment of the historic, cultural, recreational, economic and environmental value of our rivers and (2) to protect the health of our communities by delivering federal resources more effectively and efficient. The President's purpose is to support communities within existing laws and regulations by providing them with better information, tools and resources, and encouraging local efforts deserving of special recognition.

We wonder. It all sounds very good, and quite innocent, just like so many federal Acts and Initiatives in the past. They all seem innocent and even beneficial until they begin touching the lives and rights of real people.

For instance, it was a false promise when people were told there is a self-defense provision in the Endangered Species Act.

- Shuler kills grizzly bear after it attacked him late one night. Federal officials rendered the provision a nullity saying that Mr. Shuler was at fault for going into the "zone of imminent danger." That zone happened to be his own back yard.

It was a false promise when they adopted Wilderness legislation saying that there was a provision to protection of "valid existing rights." The promise was that no private land would be taken into wilderness areas without the consent of the owner, that only federal land would become wilderness, and that no buffer zones would be created. Not so!

- Kathy Stupak-Thrall of the Upper Peninsula of Michigan has been compelled to fight government attorneys who say the provisions have no meaning, or don't apply to her private property and her "valid existing rights." These lawyers say that Congress didn't know what the language of the phrase "valid existing rights" meant. Therefore, they can interpret it anyway it wishes.

I would say there is good reason for the distress throughout our country regarding the President's American Rivers proposal. A legacy of lies, betrayals and broken promises are attached to these types of well-intentioned, pleasant sounding, feel-good programs.

Many states are joining with U.S. Representative Helen Chenoweth of Idaho who has introduced legislation asking for the complete withdrawal of the initiative. There are three areas of concern: 1) the lack of congressional approval, 2) the vague language and absence of definitions, and the excess federal control over private property and state water rights. As a sovereign state, it also conflicts with our rights to control and manage our navigable waters.

One important point is that congress should be making rules and regulations Respecting Federal lands and resources, not the president or his appointees. We are again faced with the President stepping beyond the boundaries of his office. As Chenoweth stated in a press release after a House Resources Committee meeting:

"We are doing things exactly backwards here today. Instead of Congress making the proposal and the Administration commenting on it, we are actually in a position today of taking testimony not on the creation of a new program, but on how to stop it."

In addition, there is no justification of the need for such an initiative, and the details of the initiative are insufficient. It does not include any details on how the cleanup will be accomplished, what will actually be done, or who will do the work. Allowing for the public process is another concern. There has not been sufficient time to allow the public to review and comment on the initiative. Some people even think something sneaky is going on. They believe it is just another intrusion of the federal government and a way to get control of all our lands. It is one important reason that this initiative should be stopped. I urge you now to vote yes on this legislation.

**Draft** Testimony of Kathleen Benedetto  
February 1998  
Resolution Opposing Designation of any Rivers in  
Alaska as American Heritage Rivers  
Under the American Heritage Rivers Initiative  
before the  
ALASKA STATE LEGISLATURE

**INTRODUCTION:**

My name is Kathleen Benedetto. I am the Executive Director of *the Minerals Exploration Coalition (MEC)*, a non-profit advocacy group for the multiple use of public lands. Specifically MEC works to maintain access for mineral entry on these lands. Our membership, including 30 corporations, represents a diverse group of professionals and companies engaged in mineral exploration and development.

I have over twenty years experience in the minerals industry as an exploration geologist and activist. In 1993 I co-founded the Women's Mining Coalition to work on responsible mining law reform. I have worked closely with the Western States Coalition, the Alliance for America and other grassroots organizations. The common thread for these groups is a commitment to improving and modernizing national environmental policy by promoting a strong conservation ethic that recognizes our most important resource, people, as part of the environment.

Today I am pleased to testify before your Legislature in support of your resolution *opposing designation of any rivers in Alaska as American Heritage Rivers under the American Heritage Rivers Initiative*, established by President Clinton through Executive Order 13061.

**COMMENTS:**

MEC believes that if a river is designated as an American Heritage River, the designation will be used to restrict mineral access to public lands within the watershed. Each new land use program presented by the Administration

further restricts access to public and private lands for mineral development, grazing, timber harvest and motorized recreation.

These restrictions are put in place under the auspices of saving the environment without regard for the impact that they will have on people. In some cases the restrictions do not provide any environmental benefit and may actually contribute to degradation of the environment and wildlife populations and habitat.

The continued ability to access and harvest the rich mineral resources of this country is critical. Mineral and other natural resources are the source of new money and the raw materials needed in manufacturing. Each American requires over 40,000 pounds of mined materials annually. These mined materials are necessary to provide a clean healthy environment for society.

For example, gold is an important component in all electronic equipment, including telephones, computers and satellite technology. Gold filaments allow us to reach out and touch our family, friends, and neighbors, and even those folks we may not see eye to eye with. It is used to trigger the deployment of air bags and in the protective clothing used by firefighters.

Mineral and other natural resources are plentiful throughout the United States and the rest of the world. Access to and distribution of those resources is where problems arise. On occasion these problems are the result of terrain or lack of infrastructure. However, in most situations these problems are artificial and have been created by political decisions.

The demand for natural resources will not decrease. Unchecked, political decisions restricting access to resources will go beyond negatively impacting rural communities and public land states, to impacting urban areas and the world community as a whole.

#### **THE INITIATIVE:**

I applaud the efforts of the Alaska Legislature and encourage them to pursue passage of **House Joint Resolution NO. 52**, opposing designation of any

Alex Annett with the Heritage Foundation, in 'Good Politics, Bad Policy: Clinton's American Heritage Rivers Initiative,' (see attachment) identified the five most serious problems with the initiative:

1. It violates a number of constitutional and statutory provisions;
2. It is wasteful and inefficient;
3. **IT REDUCES THE ROLE AND AUTHORITY OF STATES;**
4. It threatens property rights; and
5. It "serve[s] political purposes."

It is my observation that when the Clinton administration has been unsuccessful with a legislative initiative they choose to circumvent Congress and the democratic process by issuing an executive order. This has been most apparent in their environmental and land use policies.

During the 104th session of congress a serious effort was made to pass The American Heritage Areas Bill. As a result of the UNESCO designation of *Yellowstone as a World Heritage Site in danger* because of the proximity of the Crown Butte mine project, and the concerns of private property organizations throughout the country, the omnibus American Heritage Areas Bill did not pass. During the 1997 State of the Union Address, President Clinton, announced the American Heritage Rivers Initiative. The Initiative is a watered down version of the American Heritage Areas Bill. To the uninitiated the program appears to be rather benign. And has often been described as a pork barrel project--just an opportunity to bring in some federal dollars. Even if this was the case, the whole concept flies in the face of the efforts to reduce the size of government. It is a giant step backwards. AHRI expands federal bureaucracy, increases centrally planned conservation through punitive regulation. And it does not encourage locally driven incentive based conservation efforts.

Finally, look at the list of Executive Orders and Initiatives issued by the administration that are affecting resource and recreation based communities, rural school districts, and specific industries or companies: No logging in the Tongass National Forest, twenty year moratorium on mineral entry in the New World Mining District and the Sweet Grass Hills, denial of access to coal

reserves in Montana, no oil and gas drilling -- ANWR, severely restricted drilling in the Lewis & Clark and Helena Deerlodge National Forest, the American Heritage Rivers Initiative, signing the Global Warming Protocol, Al Gore's Clean Water Initiative, administrative rewrite of the BLM 3809 regulations governing hard rock mining, and most recently the emergency moratorium of timber harvest within "roadless areas."

I encourage Alaska to sign the resolution opposing the American Heritage Rivers Initiative, **House Joint Resolution NO. 52**. Congress needs support to stop the Administration from usurping their constitutionally delegated responsibilities.

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## Committee on Resources

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### Witness Testimony

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Statement of  
WILLIAM PERRY PENDLEY  
President and Chief Legal Officer  
Mountain States Legal Foundation  
707 Seventeenth Street, Suite 3030  
Denver, Colorado 80202  
303-292-2021; FAX 303-292-1980  
before the  
Resources Committee  
United States House of Representatives  
Washington, D.C.  
September 24, 1997

#### Introduction

As this Committee has discovered, there is great distress throughout the country regarding the proposal of President Clinton to implement his American Heritage Rivers Initiative. There is good reason for such concern. For the legacy of these types of well-intentioned, pleasant-sounding, feel-good programs is of broken promises. The American people are told that such programs are for their benefit, to assist them in fulfilling their environmental and economic objectives while being assured that their rights will be protected and their liberties secure.

We are told, for example, that there is a self-defense provision in the Endangered Species Act, yet in the only instance of a man compelled to make use of that provision--Mountain States Legal Foundation's (MSLF's) client John Shuler of Dupuyer, Montana--the provision has been rendered a nullity by federal officials. Mr. Shuler, who killed a grizzly bear after being attacked late one night, is told that he is at fault for going into the "zone of imminent danger;" that is, his own yard.

We are told, on the adoption of wilderness legislation, that "valid existing rights" will be protected, that no private land will be taken into the wilderness area without the consent of the owner, that only federal land will become wilderness, and that no buffer zones will be created. Yet in the Upper Peninsula of Michigan, MSLF's client Kathy Stupak-Thrall has been compelled to fight, for nearly a decade, government lawyers who assert that those provisions have no meaning, or at least no applicability to her private property and her valid existing rights. (These are the lawyers who have the audacity to assert that when Congress adopted the "valid existin<sup>g</sup> rights" language it had no idea what that phrase meant and therefore the federal government can interpret it in any manner it wishes.)

We are told that the prohibition against motorized vehicles in wilderness areas will be interpreted in a common sense fashion, that it is not a strict liability provision and thus requires what almost every federal law requires, mens rea, or criminal intent. Yet when a man, in the midst of a dangerous, howling blizzard, accidentally, or out of necessity, or out of emergency, finds himself in such a wilderness area on a motorized vehicle, he is told he is guilty regardless of his intent or the need or the emergency. Common sense and more importantly, the law, takes a back seat to a radical agenda.

To whom do such victims turn when the provisions ostensibly adopted for their protection are ignored, or worse yet, violated? Certainly not to Congress, where the essential compromises that permitted federal

legislation to go forward are too quickly forgotten and the victims are told that intervention by Congress should not take place since "the matter is in litigation." No wonder the American people are concerned with President Clinton's rivers initiative.

### **One Reason for Concern: The National Natural Landmarks Program**

One reason for the public's concern is what took place regarding the National Natural Landmarks program, which first came to the public's attention in a seven-part series of articles written by the late Warren Brookes that began on January 17, 1991, and ran through January 29, 1991, in The Washington Times.

Under the National Natural Landmarks program, the National Park Service (NPS) designated property as a National Natural Landmark. Ostensibly this program was established under the authority of the Historic Sites Act of 1935, 16 U.S.C. 461, *et seq.* However, the Historic Sites Act speaks only of a "prehistoric or historic district, site, building, structure, or object . . ." 16 U.S.C. 470w. The word "natural" is nowhere to be found in the Historic Sites Act. Nonetheless, citing the Historic Sites Act, federal regulations defined a National Natural Landmark as any area "within the boundaries of the United States . . . that contains an outstanding representative examples(s) of the nation's natural heritage, including terrestrial communities, aquatic communities, landforms, geological features, habitats of native plant and animal species, or fossil evidence of the development of life on earth." 36 C.F.R. Ch. 1 (July 1, 1992 Edition) 62.2.

While the NPS insists that such a designation carries no special meaning, the National Natural Landmark designation exposes the land to local land-use restrictions, and to local, state, and federal bureaucrats. The NPS, for example, used the designation to target future land acquisitions. More than 587 such landmarks were designated throughout the country. In the process it seems National Park Service employees have violated the law by surveying private property without the permission of the landowner. A 1992 investigation revealed that "land may have been evaluated, nominated, and designated without the landowners' knowledge or consent." According to one NPS document, "The question of secrecy and publicity is a hot topic which will undoubtedly come back to haunt us over the years if this document becomes generally available to the public."

While this particular program has been applied throughout the nation, Western landowners were singled out for abuse, intrusions, and attempts to seize their property. In 1989, a landowner in Idaho discovered that the National Park Service, without his knowledge or permission, had proposed that his property be designated as a National Natural Landmark. As a result of that proposal, to which the landowner objected strenuously, federal officials refused to issue permits or to take actions requested by the landowner. To make matters worse, it appears the proposed designation took place at the request of a private citizen who then used the National Park Service's listing of the property as grounds for attempting to prevent the issuance of various permits and other authorizations to the landowner. No wonder the American people are concerned.

### **The Initiative Violates Federal Law and the Constitution**

#### **A. Only Congress May Make Rules and Regulations Respecting Federal Lands and Resources.**

The U.S. Constitution grants specific powers to each of the three branches of Government. Under the Property Clause, the United States Congress is given exclusive and unlimited power over public lands and resources retained by the United States and not passed to the states or individuals.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;

U.S. Constitution, Article IV, 3, Cl. 2. (Emphasis added). Title to lands under navigable waters were passed to the states, unless there was a federal reservation, Pollard v. Hagan, 44 U.S. 212, 230 (1845). Lands under non-navigable waters were retained by the United States. State of North Dakota v. United States, 972 F.2d 235, 236 (1992).

The Property Clause establishes "full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them." Utah Power & Light Co. v. United States, 243 U.S. 389, 404 (1917). See also McKelvey v. United States, 260 U.S. 353, 359 (1922) (stating that under the Property Clause, Congress "may sanction some uses [of the federal lands] and prohibit others, and may forbid interference with such as are sanctioned."). Congress may also use this power to achieve objectives not within the scope of enumerated federal concerns. In Light v. United States, 220 U.S. 523 (1911), the Court held that the United States possessed plenary power to control the use of public lands and could exercise that power for any "national and public purpose." Id. at 536.

Congress may also legislate against activity taking place off federal property when such legislation is necessary to effectuate the Government's power to regulate the use and occupancy of federal lands and to protect these lands from damage. The authority for such legislation is found in the Necessary and Proper Clause. U.S. Constitution, Art. I, 8. It empowers Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution" the powers enumerated elsewhere in the Constitution. In order to justify federal action under this Clause, the government must show the existence of a means-to-end relationship between the action and the exercise of one of its enumerated powers. McCulloch v. Maryland, 17 U.S. 316, 421 (1819), contains the classic statement of this rule:

Let the end be legitimate, let it be within the scope  
of the Constitution, and all means which are  
appropriate, which are plainly adapted to that end . . .  
are constitutional.

This grant of authority over federal lands does not extend to the Executive branch. The Presidents' legislative authority is limited to "recommending to [Congress] Consideration such Measures as he shall judge necessary and expedient." U.S. Constitution, Article II, 3, Cl. 1. The President is also empowered to "take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States." Id. at Cl. 4. The President may not act as a lawmaker in the absence of a delegation of authority or mandate from Congress. Independent Meat Packers Assn. v. Butz, 526 F.2d 228, 235 (8th Cir. 1975), cert. den., 424 U.S. 966.

Specifically, the President cannot develop and enact the American Heritage Rivers initiative without Congressional authority or mandate. The American Heritage River initiative will impact federal lands under non-navigable rivers, federal lands under navigable rivers that were reserved to the United States, and all federal lands adjacent to all selected rivers. Since the Property Clause grants Congress exclusive control over federal lands, the American Heritage River initiative exceeds the President's Constitutional powers and deprives Congress of its Constitutional responsibility of open debate and vote on issues and legislation involving federal public lands. The President cannot act on this program until he receives such authority or such a mandate.

B. Only Congress May Regulate Interstate Commerce.

The power of the United States over waters that can be used as interstate highways arises from the Commerce Clause of the Constitution.

The Congress shall have power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

U.S. Constitution, Article 1, 8, Cl. 3. This power includes the power to regulate navigation so that waterways can be utilized for the interests of the commerce of the whole country. United States v. Appalachian Electric Power Co., 311 U.S. 377, (1940). See also Gilman v. City of Philadelphia, 70 U.S. 713, 724-725 (1866). Congress' power over interstate navigation not only includes keeping the waterways clear of obstructions, but also includes the power to improve and enlarge their navigability. United States v. Chandler-Dunbar Co., 229 U.S. 53, 59 (1913).

This grant of authority over United States waters does not extend to the Executive branch. The Presidents' legislative authority is limited to "recommending to [Congress'] Consideration such Measures as he shall judge necessary and expedient." U.S. Constitution, Article II, 3, Cl. 1. The President is also empowered to "take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States." Id. at Cl. 4. The President may not act as a lawmaker in the absence of a delegation of authority or mandate from Congress. Independent Meat Packers Asso. v. Butz, 526 F.2d 228, 235 (8th Cir. 1975), cert. den. 424 U.S. 966.

Specifically, the President cannot develop and enact the American Heritage Rivers initiative without Congressional authority or mandate. The American Heritage River initiative will impact navigable and non-navigable rivers, thus impacting interstate commerce. Since the Commerce Clause grants Congress exclusive control over interstate commerce and United States waters, the American Heritage River initiative exceeds the President's Constitutional powers and deprives Congress of its Constitutional responsibility of open debate and vote on issues and legislation involving interstate commerce and United States waters. The President cannot act on this program until he receives such authority or such a mandate.

#### C. President Clinton's Initiative Usurps Inherent State Powers Reserved Under the Tenth Amendment.

The Constitution of the United States created a federal Government of enumerated powers. James Madison wrote:

[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

U.S. v. Lonez, 115 S.Ct. 1624, 1626 (1995) (citing The Federalist, No. 45, pp. 292-293).

Under the federal system, federal and state governments coexist. The federal government is one of limited, enumerated powers, while state governments have inherent undefined powers. The Tenth Amendment states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Constitution, Amendment 10. Enumerated federal powers were included to protect the fundamental liberties of the people, and the adoption of the Bill of Rights strengthened the protection of fundamental rights by placing restrictions upon federal governmental actions. The Supremacy Clause modifies this

coexistence by nullifying state laws that conflict with the Constitution, treaties, or other laws of the United States. This Clause states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article 6, 2.

When Congress exercises one of its enumerated powers and intends to occupy an entire field of law, such as commerce, or the President exercises one of his enumerated powers, the federal government has plenary power and the states have residual power in that specific field. The control and regulation of fields of law such as land-use and zoning, property, and water have traditionally been left within the province of the individual states, in that they are not part of the enumerated powers designated in the Constitution.

President Clinton cannot develop and enact the American Heritage Rivers initiative without Congressional authority or mandate. The American Heritage River initiative infringes upon powers reserved to the states. Thus, the American Heritage River initiative exceeds the President's enumerated powers and violates the Tenth Amendment.

D. The President's Initiative Violates NEPA and FLPMA.

1. National Environmental Policy Act.

In creating the National Environmental Policy Act of 1969 (NEPA), Congress declared:

[I]t is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

42 U.S.C. 4331(a). This national environmental policy also sets forth the proposition that the federal government would:

(3) attain the widest range of beneficial uses of the environment . . . (4) preserve . . . wherever possible, an environment which supports diversity and variety of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living . . .

42 U.S.C. 4331(b). In an effort to implement NEPA, Congress created the threshold requirement imposing a duty on federal agencies to prepare an environmental impact statement (EIS) for major federal actions.

**[A]ll agencies of the Federal Government shall---**

**(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on---**

**(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the**

relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented . . . . Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the . . . . public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes.

42 U.S.C. 4332(C) (emphasis added).

In order to comply with NEPA, the federal government has published 40 C.F.R. 1500, *et seq.*, to ensure that all agencies act according to the letter and spirit of the law. The regulations specifically state, "All agencies of the Federal Government shall comply with these regulations." 40 C.F.R.

1507.1. In an effort to simplify an agency action dealing with "major" or "significantly", the Council on Environmental Quality (CEQ) adopted 40 C.F.R. 1508.18, creating a "unitary standard." Under the standard, if a court determines an action is "significant," it should also find that the action is "major." National Ass'n for advancement of Colored People v. Wilmington Medical Center, Inc., 584 F.2d 619 (3d Cir. 1978). A finding that a federal action is "major" and "significantly" impacts the environment requires the preparation of an EIS.

a. Major Federal Actions

"Major" federal actions are described as:

[A]ctions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (40 C.F.R. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities . . . new or revised agency rules, regulations, plans, policies, or procedures . . . .

40 C.F.R. 1508.18.

Despite these guidelines, most courts have approached the "major" determination on a case-by-case basis. Since generalization is quite difficult when dealing with NEPA cases, cases appear to turn on the magnitude and size of the action to determine if the action has a potential impact on the human environment. Large projects with the potential of substantial impacts will be "major" actions. The following are examples of cases that have identified "major" actions:

Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693 (2d Cir. 1972) - a \$14 million bridge with 60 percent federal funding;

Jones v. United States Dep't of Housing and Urban Development, 390 F.Supp. 579 (E.D.La. 1974) - the conversion of a large federally subsidized housing project with a major change in use;

NRDC, Inc. v. Grant, 341 F.Supp. 356 (E.D.N.C. 1972) - a 66-mile water channel project costing \$1.5 million with \$706,000 of federal funding;

Douglas County v. Lujan, 810 F.Supp. 1470 (D.Or. 1992) - the designation of critical habitat for endangered species affecting approximately 6.9 million acres.

Catron County v. U.S. Fish and Wildlife Service, No. 94-2280, 1996 U.S. App. Lexis 1479 (10th Cir. Feb.2, 1996) - NEPA and ESA are not mutually exclusive and the FWS must follow regulations in designating critical habitat.

It is readily apparent that the American Heritage Rivers initiative is a major federal action. It has the potential of effecting all fifty states, depending upon the individual rivers selected for designation. Once selected and designated, management activities and projects on the river can impact federal, state, and local government lands and private lands. Thus, an EIS should have been prepared for this initiative.

b. Significant Actions

"Significantly" is described as:

Significantly as used in NEPA requires considerations of both context and intensity:

(a) *Context*. This means that the significance must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action . . . .

(b) *Intensity*. This refers to the severity of impact . . . . The following should be considered in evaluating intensity . . . .

(1) Impacts that may be both beneficial or adverse. . .

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial . . . .

(5) The degree to which the possible effects on the human environment are highly uncertain . . . .

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about future consideration . . . .

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts . . . . Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts . . . .

40 C.F.R. 1508.27.

When deciding on the need to prepare an EIS, an agency must evaluate whether the nature of the action is such that significant environmental impacts could occur, not whether the agency has adequately considered the significance of the federal action. Daniel R. Mandelker, NEPA Law and Litigation, 8.06[4][a] (2d Ed. 1995). The Court of Appeals for the Tenth Circuit has held that when reviewing administrative decisions not to issue an EIS, the court must, first, utilize the "hard look" doctrine, and, second, if a "hard look" was

utilized, determine whether the agency's decision was arbitrary and capricious. Park County Resource Council, Inc. v. USDA, 817 F.2d 609 (10th Cir. 1987) and Committee to Preserve Boomer Lake Park v. Department of Transportation, 4 F.3d 1543 (10th Cir. 1993). A "hard look" will include an evaluation of the possible effects of the proposed action, which effects have been broadly defined by NEPA.

*Effects include:*

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable . . . Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

40 C.F.R. 1508.8.

The American Heritage Rivers initiative will significantly affect the environment of each watershed or community containing a designated heritage river. The federal government will be providing funds and expertise to assist in implementing measurable results, such as water resource protection, river restoration, protection of historic and cultural resources, revitalization of local and regional economies, and implementing sustainable development. The Executive branch failed to evaluate any potential effects associated with this initiative, thus violating NEPA. An EIS must be prepared.

## 2. Federal Land Policy and Management Act.

The Property Clause establishes "full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them." Utah Power & Light Co. v. United States, 243 U.S. 389, 404 (1917). See also McKelvey v. United States, 260 U.S. 353, 359 (1922) (stating that under the Property Clause, Congress "may sanction some uses [of the Federal lands] and prohibit others, and may forbid interference with such as are sanctioned."). Congress may also use this power to achieve objectives not within the scope of enumerated federal concerns. In Light v. United States, 220 U.S. 523 (1911), the Court held that the United States possessed plenary power to control the use of federal lands and could exercise that power for any "national and public purpose." Id. at 536.

Utilizing its enumerated power found in the Property Clause, Congress declared that it is the policy of the United States that the present and future use of federal lands be projected through a land-use planning process coordinated with other federal and State planning efforts, that Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes, and that Congress also delineate the extent to which the Executive may withdraw lands without legislative action. 43 U.S.C. 1701(a).

In enacting FLPMA, Congress retained its authority over federal lands by limiting the role of the President and the Executive branch to specific federal land withdrawal limits and to resource inventorying and management activities. Congress did not delegate federal land dedication and designation powers to the President or the Executive branch. Without congressional authority, the development and implementation of the American Heritage Rivers initiative violates FLPMA.

## Conclusion

Finally, I would draw the attention of Congress to the decision of the United States Supreme Court in Printz v. United States, its last decision before adjourning in June. It was in Printz that the Court held the Brady Act, and its requirement that state officers enforce a federal program, unconstitutional.

The opinion makes fascinating and educational reading as Justice Scalia gives a history lesson on the origins of our federal system, the views of its creators, and the manner in which it has been interpreted for 200 years. Although Justice Scalia based his holding on the Tenth Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."), he noted that "numerous constitutional provisions" ensure "dual sovereignty."

To those who assert that those provisions are "formalistic" impediments to the "era's perceived necessity," Scalia responded, "[T]he Constitution protects us from our own best intentions . . . the temptation to concentrate power in one location as an expedient solution to the crisis of the day." Justice Scalia's statement has particular meaning to those of us who have heard, much, much too often, that there is an environmental crisis, so we must give up our right to own and use private property as well as other constitutional guarantees.

We are the inheritors of the greatest political system ever devised by humankind, which recognizes, uniquely, that "all men are created equal, [and] are endowed by their Creator with certain unalienable rights, [including] life, liberty, and the pursuit of happiness." However, with that freedom comes an obligation, as the Constitution commands, to "secure the blessings of liberty to ourselves and our posterity.

..."

We hear a lot today about the legacy that we pass on to our children and grandchildren--our posterity--the national debt, the environment, our diverse society. However, the most important legacy we can leave, that we are duty bound to leave, is the Constitutional system entrusted to us by our Founding Fathers. It would be the greatest tragedy if out of apathy, or expediency, or short-term self interest, we allowed the destruction of the only thing that ensures that we remain a free people.

As Justice Oliver Wendell Holmes once wrote, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way. . . ."

###

Larry E. Craig  
United States Senator  
313 Hart Senate Office Building  
Washington, D.C. 20510

Dirk Kempthorne  
United States Senator  
304 Russell Senate Office Building  
Washington, D.C. 20510

Congress of the United States



Mike Crapo  
Member of Congress  
437 Cannon House Office Building  
Washington, D.C. 20515

Helen Chenoweth  
Member of Congress  
1727 Longworth House Office Building  
Washington, D.C. 20515

September 23, 1997

The Honorable Kathleen A. McGinty  
Chair, Council on Environmental Quality  
Old Executive Office Building, Room 360  
Washington, D.C. 20502

Dear Chairman McGinty:

We are writing you once again regarding the American Heritage Rivers initiative. As you know, on August 14, 1997 we sent you a letter outlining our objections to the initiative. Since you have decided to continue with this initiative, we are requesting that no rivers in Idaho be designated as American Heritage Rivers.

We have enclosed a copy of our original letter to you, but we would like to reiterate the underlying principles for why we object to this initiative — the increase in federal bureaucracy and the continued shift of control over water from the states to the federal government. The initiative creates another layer of federal bureaucrats for local citizens to trudge through as they try to manage their rivers. Furthermore it establishes the federal government as the ultimate authority in river protection. Yet, who knows better than the local citizens what is best for them?

The citizens of Idaho have continually demonstrated they can work together to strike a balance between protecting their rivers and using them as valuable economic resources. Over the years, Idaho has worked to protect the Payette River, designate the Salmon River, and others, as Wild and Scenic Rivers and worked to ensure Southern Idaho farmers have one of the most expansive irrigation systems in the world while ensuring high water quality in the Snake River. Furthermore, Idaho has struck a balance between using dams to provide the lowest cost and cleanest electricity in the nation, an irrigation system which sustains Idaho agriculture and vital flood control while maintaining the beauty of Idaho's rivers.

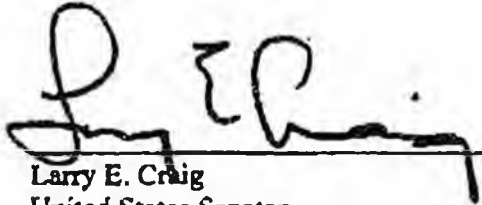
More recently, Idaho residents have come together in support of river cleanup. As you know, the Coeur d'Alene River Basin is contaminated from more than a century of mining activities. Many of these activities were sanctioned by the federal government. Yet now, the federal government

is spearheading a multi-billion dollar lawsuit against the mining companies and citizens of North Idaho, while no cleanup is occurring in the Basin outside of the Superfund area. The local residents are concerned, as they should be, that cleanup activities have been delayed because the process is locked up in litigation. However, local residents have united to support legislation which would settle the lawsuit and implement cleanup activities. Local communities, without the federal government, are working to clean up the Coeur d'Alene Basin.

In addition, since the May 19, 1997, announcement for the initiative in the *Federal Register* we have received an overwhelming number of comments from the people of Idaho, opposing the American Heritage Rivers initiative.

Idaho's rivers are some of the most majestic and beautiful rivers in the country. Idahoans have worked together to protect their rivers without additional federal control or expense. Because of this and the opposition we have heard from the people of Idaho, we, the elected federal representatives for Idaho, request, as you offered, that no rivers within the borders of the great state of Idaho be designated as American Heritage Rivers.

Sincerely,



---

Larry E. Craig  
United States Senator



---

Dirk Kempthorne  
United States Senator



---

Mike Crapo  
Member of Congress



---

Helen Chenoweth  
Member of Congress



BC-ID--Heritage Rivers, Bjt,440  
Idaho delegation gets administration commitment  
maxx9

LEWISTON, Idaho (AP) In response to a request from the state's Republican congressional delegation, the Clinton administration will not designate any Idaho waterways as American Heritage Rivers.

U.S. Sens. Larry Craig and Dirk Kempthorne and U.S. Reps. Helen Chenoweth and Michael Crapo asked Kathleen McGinty, chairman of the White House Council on Environmental Quality, to make sure none of the state's rivers get the distinction.

They contend Idaho residents have worked together to protect their rivers without additional federal control or expense, and they oppose what they consider the administration's effort to shift more control over water to the federal government.

"Who knows better than the local citizens what is best for them?" the delegation asked in a letter to McGinty. "The citizens of Idaho have continually demonstrated they can work together to strike a balance between protecting their rivers and using them."

Elliot Diring, a spokesman for the White House Council on Environmental Quality, said the administration will honor the Idaho delegation's request.

Members of Congress have the prerogative of vetoing a designation within their congressional districts. But Diring said McGinty hopes the Idaho request is the product of broad consultation with communities throughout the state.

"It is not entirely clear to me why there seems to be such suspicion because, as Ms. McGinty emphasized over and over again, there are no new regulations in this initiative," Diring said. "It is a way to help communities re-establish themselves with their rivers and avail themselves of federal resources that have been authorized by Congress."

Liz Paul, associate director of Idaho Rivers United, said Friday that the White House has plenty of other good candidates for the American Heritage Rivers designation.

"But we are disappointed about the way this is turning out," she said. "I think our congressional delegation is out of line in making this type of request. I think if any of those local citizens are interested in pursuing this program, our congressional delegation has put the brakes on it prematurely. They are dictating to the people of Idaho that you shall not participate."

Chenoweth spokesman Chad Hyslop said the congressional delegations in Colorado and Texas also are expected to ask the administration not to designate any waterways in their states.

He said Chenoweth still plans to try to push her bill to eliminate all funding for the American Heritage Rivers initiative.  
(LAST UPDATED BY AT 2:45 PM ; SEP 27, 1997)

PLEASE ENTER A REQUEST.

Larry E. Craig  
United States Senator  
313 Hart Senate Office Building  
Washington, D.C. 20510

Dirk Kempthorne  
United States Senator  
304 Russell Senate Office Building  
Washington, D.C. 20510



Mike Crapo  
Member of Congress  
437 Cannon House Office Building  
Washington, D.C. 20515

Helen Chenoweth  
Member of Congress  
1727 Longworth House Office Building  
Washington, D.C. 20515

August 14 1997

The Honorable Kathleen A. McGinty,  
Chair, Council on Environmental Quality  
Old Executive Office Building, Room 360  
Washington, D.C. 20502

Dear Chairman McGinty:

look  
up

The following are comments from Idaho's united Congressional delegation on the American Heritage Rivers Initiative as described in the Federal Register, Volume 62, No. 96, Monday, May 19, 1997

Let us be clear - we have serious concerns with the initiative. We are not only concerned about the initiative itself, but the manner in which it was advanced. It is a clear effort on the part of the Administration to bypass the Constitutionally directed lawmaking power of Congress and our system of checks and balances. Congress has not authorized this initiative and has not appropriated money for this program. Additionally, the Council on Environmental Quality (CEQ) is not granted the power to govern or regulate rivers or watersheds within sovereign states. As such, this initiative represents a challenge of Congress's power and the rights of states, in line with the protections guaranteed in the Fourteenth Amendment.

We have other objections beyond this fundamental concern. For example, this initiative actually works against its stated goals: to streamline the federal process dealing with river protection.

- ✓ There are existing federal and state authorities that are charged with the mission of regulating water resource planning and allocation. In addition, there are nearly a hundred grass roots watershed councils across the nation that are accomplishing the same objectives as the initiative, but they have local input as opposed to federal control. The initiative creates an unnecessary, additional layer of bureaucracy that will make it more difficult for private individuals to continue
- ✓ to develop and use water resources that have in the past been controlled by state and local government entities.

page two  
Idaho Delegation Comments

Another concern relates to the effort to obtain local input regarding the designation of rivers as an American Heritage River. While we support obtaining local input, we question whether the initiative is designed to achieve a truly representative sample. This is because the local input is based upon what is referred to as "river communities." Any small group, environmental organization or local civic club could be defined as a "community." The initiative redefines communities, watersheds, and jurisdictional boundaries to create this governing entity, which will then have the power to decide the "length of the area" to be designated "whether it be an entire watershed, the length of an entire river, or a short stretch of a river, and may cross jurisdictional boundaries."

Because these communities have no set definition and because of the diverse, and often conflicting set of opinions, this may cause real communities to become fragmented. Worse, there is no guarantee that private property owners will be included in any decisions made by this river community. In fact, a river could be designated over the specific protests of local private property owners whose land would most be affected.

This potential threat to property rights is a serious one. There are no safeguards written into the initiative to protect the rights of property owners. On the contrary, it appears the initiative could result in rezoning properties, thereby disallowing legitimate uses or development. It's also feared that property values will decline because of the designation.

Another major concern with this initiative is that the designation of a river is essentially permanent. While CEQ may claim that a river can be undesignated at any time, according to the wishes of the local community, there is no defined process for undesignation. As you are aware, the needs and wishes of communities change and a community may decide it no longer wants to have that section of river designated.

The process by which this initiative was proposed is flawed, as well. It is in violation of the National Environmental Policy Act (NEPA), which requires an Environmental Impact Statement (EIS) to be filed for any federal action which would significantly impact our environment. No EIS was filed. Furthermore, NEPA requires a ninety-day public comment period for any EIS. A mere three weeks was originally provided for public comment. While we appreciate the extension of the comment period to sixty days, it was only after extensive public outcry.

Despite all of these significant problems with the initiative, there is still one more that cannot be ignored. If this initiative were to be enacted, it would conflict with the Idaho Constitution. Article XV, Section 1 of the Constitution of the State of Idaho, as approved by the U.S. Congress, states: "The use of all waters ... [is] subject to the regulations and control of the state...." Additionally, Idaho Code 42-101 states: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose." Idaho clearly has jurisdiction, control, and sovereignty over water within her own borders and any federal attempt to usurp or interfere with that authority will be aggressively resisted.

page three  
Idaho Delegation Comments

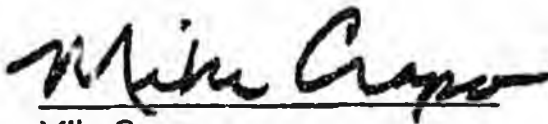
As you can see, we have some serious reservations about your American Heritage Rivers initiative. Our concerns can be summed up into three basic areas: the lack of Congressional approval, the vague language and absence of definitions and the excess federal control over private property and state water rights.

We thank you for extending the comment period to sixty days, but we request you withdraw this initiative and allow the local stakeholders and the state to use their current laws to govern their water.

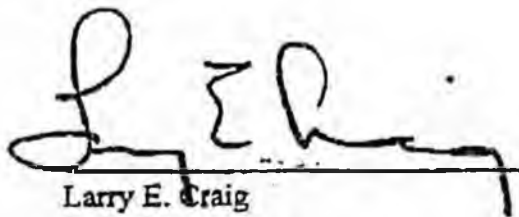
Sincerely,



Helen Chenoweth  
Member of Congress



Mike Crapo  
Member of Congress



Larry E. Craig  
United States Senator



Dirk Kempthorne  
United States Senator



**U.S. REPRESENTATIVE  
HELEN CHENOWETH**  
*First District - Idaho*

**NEWS RELEASE**

FOR IMMEDIATE RELEASE  
August 15, 1997

CONTACT: Chad Hyslop  
(208) 338-5181

**Chenoweth takes stance for states' rights, legislative process**  
*to hold oversight hearing on Rivers Initiative*

COEUR D'ALENE, IDAHO--Idaho's entire Congressional delegation joined U.S. Rep. Helen Chenoweth (R-Idaho) this week in a joint letter to Kathleen McGinty, chairman of the President's Council on Environmental Quality emphasizing the delegation's "serious concerns" with the American Heritage Rivers Initiative and asking for its complete withdrawal.

In addition, Chenoweth will chair a special House Resources Committee oversight hearing on H.R. 1842, legislation she drafted and introduced which will eliminate funding for the initiative. The September 24 hearing, before the full Resources Committee, will focus on the local impacts of the initiative, threats to private property, state water sovereignty, the cost of the program, and usurpation of Congressional authority.

✓ "My concerns with the Rivers Initiative can be summed up into three basic areas," Chenoweth said. "The lack of Congressional approval, the vague language and absence of definitions, and the excess federal control over private property and state water rights."

In the joint letter, the delegation stated "this initiative is a clear effort on the part of the Administration to bypass the Constitutionally directed lawmaking power of Congress and our system of checks and balances."

In addition, the initiative would conflict with Article XV, Section 1 of the Constitution of the State of Idaho, as approved by the U.S. Congress, which states: "The use of all waters...[is] subject to the regulations and control of the state..."

✓ Additionally, Idaho Code 42-101 states: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose." According to the Idaho Constitution and Idaho Code, the delegation emphasized "Idaho clearly has jurisdiction, control, and sovereignty over water within her own borders and any federal attempt to usurp or interfere with that authority will be aggressively resisted."

(more)

fund →

**Chenoweth, Page Two**

✓ The delegation challenged whether another layer of federal bureaucracy would benefit river management, noting "There are existing federal and state authorities that are charged with the mission of regulating water resource planning and allocation. In addition, there are nearly a hundred grass roots watershed councils across the nation that are accomplishing the same objective as the initiative, but they have local input as opposed to federal control. The initiative creates an unnecessary, additional layer of bureaucracy..."

✓ The delegation also noted potential threats to private property rights, and the fact that "there are no safeguards written into the initiative to protect the rights of property owners."

Finally, "The process by which this initiative was proposed is flawed as well," the delegation wrote. "It is in violation of the National Environmental Policy Act (NEPA), which requires an Environmental Impact Statement (EIS) to be filed for any federal action which would significantly impact our environment. No EIS was filed."

"We request you withdraw this initiative and allow the local stakeholders and the state to use their current laws to govern their water," the delegation wrote.

###



**U.S. REPRESENTATIVE  
HELEN CHENOWETH**  
*First District - Idaho*

**NEWS RELEASE**

**FOR IMMEDIATE RELEASE**

September 24, 1997

**CONTACT: Chad Hyslop**

**(208) 338-5181**

## **'Arrogance of power' the issue at Chenoweth hearing on President's Initiative**

WASHINGTON, D.C.--U.S. Rep. Helen Chenoweth (R-Idaho), acting as chairman of a full House Resources Committee hearing today, told Congressmen and panelists gathered to testify on the American Heritage Rivers Initiative "We are doing things exactly backwards here today. Instead of Congress making the proposal and the Administration commenting on it, we are actually in a position today of taking testimony not on the creation of a new program, but on how to stop it."

Chenoweth said the reversed roles of the executive and legislative branch on the issue of the American Heritage Rivers Initiative defies the Constitutional separation of powers, and demonstrates the "arrogance of power" attained by President Bill Clinton.

"This program is illegal, has not met public comment requirements, misappropriates funds Congress mandated for other purposes, usurps individual water rights, private property rights, the sovereignty of all fifty states, and defies the Constitutional separation of powers," Chenoweth said.

Chenoweth has introduced legislation, H.R. 1842, to eliminate all funding for the Initiative. The legislation has 38 current cosponsors.

In related action, Chenoweth and the three other members of Idaho's Congressional delegation today asked that "no rivers in Idaho be designated as American Heritage Rivers" in a letter to Kathleen McGinty, the chairman of the President's Council on Environmental Quality. "Idaho's rivers are some of the most majestic and beautiful rivers in the country," wrote the delegation. "Idahoans have worked together to protect their rives without additional federal control or expense."

(Note to Editors: the entire texts of Rep. Chenoweth's statement and the delegation's letter follow).

###

VOICE ACTUALITY AVAILABLE AT 1-202-225-2355



**U.S. REPRESENTATIVE**  
**HELEN CHENOWETH**  
*First District - Idaho*

**NEWS RELEASE**

FOR IMMEDIATE RELEASE  
October 22, 1997

CONTACT: Chad Hyslop  
(208) 338-5181

## **Chenoweth leads victory for state sovereignty, property and water rights**

WASHINGTON, D.C. -- A growing federal bureaucracy suffered a blow today when the House Resources Committee passed U.S. Rep. Helen Chenoweth's (R-Idaho) bill to stop the Clinton Administration's American Heritage Rivers Initiative (AHRI).

The Chenoweth bill (HR1842) was passed by a 15-8 vote. The measure would eliminate funding for the AHRI. Supporters of Chenoweth's bill believe the AHRI is unnecessary, wasteful and will allow the federal government to interfere in the management of state- and privately owned lands.

"Offering handfulls of federal dollars, President Clinton's Initiative is an attempt to lead the American people down a primrose path," Chenoweth said. "This Initiative is a publicity ploy, when in reality, funds for improving water quality and restoring riverfront communities are already available through programs created by Congress."

"This Initiative is unceded, misappropriates funds Congress mandated for valid projects, has not met public comment requirements, usurps individual water rights, private property rights, the sovereignty of all fifty states, consolidates power in the administration, and defies the Constitutional separation of powers," Chenoweth said.

(Note: For technical reasons, the committee will vote again on the bill next week, before sending it to the House floor. But given the large majority of today's vote, there is no reason to expect a different outcome.)

###

VOICE ACTUALITY AVAILABLE AT 202-225-2355

**46 current cosponsors**

**West**—California (10), Texas (8), Oregon, Colorado, Nevada, Washington (4), Wyoming, Arizona (3), Idaho, Utah, Alaska, Montana

**East**—Tennessee, Arkansas (2), Minnesota, Florida, Indiana (2), North Carolina, Maryland, Missouri, Virginia, Kentucky

Pombo (R-CA)	Young (R-AK)
Doolittle (R-CA)	Cunningham (R-CA)
Smith (R-OR)	Sessions (R-TX)
Radanovich (R-CA)	Lewis (R-KY)
Bob Schaffer (R-CO)	Hill (R-MT)
Gibbons (R-NV)	Bliley (R-VA)
Herger (R-CA)	Brady (R-TX)
Hilleary (R-TN)	
Hastings (R-WA)	
Smith (R-TX)	
Metcalf (R-WA)	
Dickey (R-AR)	
Paul (R-TX)	
Gutknecht (R-MN)	
Cubin (R-WY)	
Stump (R-AZ)	
Hayworth (R-AZ)	
Crapo (R-ID)	
Stearns (R-FL)	
Bonilla (R-TX)	
Hostettler (R-IN)	
Barton (R-TX)	
Myrick (R-NC)	
Hutchinson (R-AR)	
Bartlett (R-MD)	
Royce (R-CA)	
Nethercutt (R-WA)	
Cannon (R-UT)	
Linda Smith (R-WA)	
Riggs (R-CA)	
DeLay (R-TX)	
McIntosh (R-IN)	
Emerson (R-MO)	
Bono (R-CA)	
Thornberry (R-TX)	
Calvert (R-CA)	
Kim (R-CA)	
Shadegg (R-AZ)	

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<http://www.heritage.org>



# F.Y.I.

No. 171  
February 2, 1998

## GOOD POLITICS, BAD POLICY: CLINTON'S AMERICAN HERITAGE RIVERS INITIATIVE

Alex Annett  
Research Assistant

"The AHRI creates, by executive fiat, the most all encompassing regulatory regime ever to be imposed on private landowners. Most other land use programs have been designed to protect Federal Land. And in the case of the Clean Water Act and the Endangered Species Act, Congress passed these regulations. Never has an executive dared to assert so much control over private property through his own declaration."

— Nancie Marzulla, *president and chief counsel,*  
*Defenders of Property Rights*

**D**uring the 1997 State of the Union address, President Bill Clinton announced a new federal program entitled the American Heritage Rivers Initiative (AHRI), which he intended to support communities in their efforts to restore and protect rivers across the United States. To many, this lofty goal sounds good. But, on closer inspection, the pristine image it paints becomes murky, revealing a program that violates many constitutional and statutory provisions, involves the federal government further in local and state environmental issues, is inefficient and wastes tax dollars, and threatens personal property rights.

Nevertheless, President Clinton appears ready to begin implementing his initiative, although he has neither the constitutional authority to do so nor the intention of asking Congress for such authority. He also appears unconcerned that promoting this initiative could suggest to many that, for his Administration, the "era of big government" is not over. Congress should consider taking immediate action to block Clinton's river initiative before it floods America's communities with layers of federal bureaucracy and further muddies the balance of power in Washington, D.C.

## IMPLEMENTING A NEW FEDERAL PROGRAM BY DECREE

President Clinton unveiled new details about how he plans to implement his new American Heritage Rivers Initiative when he issued Executive Order 13061 on September 11, 1997.<sup>1</sup> Through executive order, Clinton has established an American Heritage Rivers Interagency Committee to oversee implementation of the initiative. Members of the committee will include the secretaries of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, and Transportation; the attorney general; the administrator of the Environmental Protection Agency; the chairpersons of the Advisory Council on Historic Preservation, the National Endowment for the Arts, and the National Endowment for the Humanities; or designees at the assistant secretary level or their equivalent.

To nominate a river for designation as an American Heritage River, a local community must submit a river nomination packet to the President's Council on Environmental Quality. The packet must include: a description of the river or river area<sup>2</sup> to be considered, its notable resource qualities,<sup>3</sup> a clearly defined vision for protecting the area and a specific plan of action to achieve it, evidence that a range of citizens and organizations in the community support the nomination and plan of action, and evidence that individuals in the community have had an opportunity to discuss and comment on the nomination and plan of action.

The Council on Environmental Quality will select a panel of experts to review the nominations and make recommendations to the President. From these recommendations, the President would select ten rivers or river areas to designate as American Heritage Rivers. These American Heritage Rivers would receive preferential treatment for federal dollars and the support of other federal programs.

On the surface, President Clinton's program looks appealing. Rivers have played a vital role in the country's history, culture, recreation, health, environment, and economy. Finding ways to encourage states and local communities across the country to become involved in improving the water quality of their rivers and revitalizing their waterfronts is commendable. The AHRI, however, will amount to little more than a surface ripple in accomplishing these goals.

Impediments to achieving the AHRI's lofty goals have more to do with the design of the program than with the intentions of communities. The notable problems with President Clinton's initiative are that:

1. It violates a number of constitutional and statutory provisions;
2. It is wasteful and inefficient;
3. It reduces the role and authority of the states;
4. It threatens property rights; and
5. It "serve[s] political purposes."

Upon close examination, it becomes clear that the AHRI is bad policy and unconstitutional and, like many of President Clinton's other initiatives, will become another political pork-barrel program designed to send federal dollars to politically important jurisdictions across the United States.

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1. *Federal Register*, Vol. 62, September 15, 1997, p. 48445.  
2. The nominated "river" may vary from a short stretch of a river to its entire length. The designated area can include land immediately adjacent to the river, such as the waterfront and streamside areas, or span the entire watershed. It may also cross jurisdictional boundaries.  
3. "Resource quality" refers to how the natural, economic, agricultural, scenic, historic, cultural, or recreational resources connected with the river are distinctive or unique.

## HOW THE AMERICAN HERITAGE RIVERS INITIATIVE VIOLATES THE U.S. CONSTITUTION

Above almost all else, Americans love the beauty and resources of their country. They clearly understand that the U.S. Constitution establishes a system of government to protect their individual rights, and that the federal government should be expressly limited in its ability to usurp those rights. They may disagree, at times, about how much power is given each branch of the federal government to settle disputes and to limit personal freedoms, but there is no dispute that the Founding Fathers intentionally and explicitly designed a balance of power to prevent legislative, judicial, or executive arrogance and abuse of power. Americans expect their elected leaders to abide by the separation of powers delineated in the Constitution, and they want the federal judiciary on guard to make sure they do.

Rather than honor these expectations, President Clinton's American Heritage Rivers Initiative violates both the intent and the letter of the U.S. Constitution. It gives the President as well as his executive agencies authorities that clearly and constitutionally belong to the legislative branch of government, and it confiscates the land use and zoning powers of the states.

### Altering the Constitutional Separation of Power

"The Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day."

—*New York vs. United States*, 112 S.Ct. 2408 (1992)

Under the U.S. system of checks and balances, the legislative branch has the power to create laws and appropriate funding, the executive branch is authorized to implement and enforce the laws, and the judiciary is given power to interpret those laws in disputes.<sup>4</sup> To explain to hesitant colonists why this separation of powers was important, James Madison wrote in *Federalist* No. 47 that the "accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny."<sup>5</sup>

The Supreme Court historically has recognized the importance of the separation of powers among the President, Congress, and the judiciary. In the case of *Youngstown Sheet & Tube Co. v. Sawyer*,<sup>6</sup> the Supreme Court was asked to decide whether President Harry S Truman (during the Korean War) was acting within his constitutional power when he issued an executive order directing the Secretary of Commerce to take possession of and operate most of the country's steel mills. The government's position was that the president's action was necessary to avert a national disaster that inevitably would result from the stoppage of steel production, and that in meeting this grave emergency, the President was acting within the aggregate of his constitutional powers. The Supreme Court found in *Youngstown* that, even with the threat of a national catastrophe, the President's order could not be sustained as an exercise of his authority. In this case, the Supreme Court found no statute that expressly authorized the President to take property as President Truman's executive order intended, or any act of Congress from which such authority could be inferred. The Supreme Court concluded that the power to adopt such public policies as those proclaimed by the executive order is beyond question by Congress, and that the Constitution does not subject this law-making power of Congress to the President.<sup>7</sup>

4. U.S. Constitution, Articles I, II, and III.

5. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* No. 47 (Madison).

6. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)

7. *Ibid.*

Supreme Court precedent suggests that President Clinton's Executive Order No. 13061 runs contrary to the separation of power provisions of the Constitution. To implement the AHRI, President Clinton is claiming for himself and future Presidents powers that belong to Congress: specifically, authority over interstate commerce, water rights, property rights, and the appropriation of money. Through executive order, Congress would be relegated to a role of trying to stop presidential programs from being implemented, rather than creating and approving them based on the will of the people and funding them as authorized in the Constitution.

### Walking Around the Property Clause

The Property Clause in Article IV of the Constitution states that "Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States."<sup>8</sup> Executive Order No. 13061, however, gives the executive branch control and authority over the country's rivers and their associated resources located on federal lands, a power specifically assigned to Congress. In order for the executive branch to have authority to govern and control these rivers and associated resources, this power must be delegated to it by an act of Congress. Congress has not given the executive branch such authority.

### Trampling the Tenth Amendment

The Tenth Amendment to the Constitution stipulates that the "powers not delegated to the United States [federal government] by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."<sup>9</sup> Under the Tenth Amendment, then, state and local governments retain the authority to engage in land use planning and local zoning for public health, safety, and welfare. President Clinton's program, however, sets a new precedent by giving federal regulators a greater role in land use planning, local zoning, and other aspects of a river's surroundings, including "characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of a river that render it distinctive or unique."<sup>10</sup> The President has no authority under the Constitution to engage in land use planning and local zoning; thus, Executive Order No. 13061 violates the Tenth Amendment.

## HOW THE AHRI VIOLATES NUMEROUS STATUTES

In addition to altering the constitutional separation of powers, the AHRI implementation process outlined in Executive Order No. 13061 also conflicts directly with two significant environmental laws: the National Environmental Policy Act (NEPA) and the Federal Land Management and Policy Act (FLMPA).

### The National Environmental Policy Act

The Clinton Administration has cited the National Environmental Policy Act of 1969 as the legal basis for establishing the AHRI. The NEPA is primarily a policy statute mandating that federal government agencies consider the environmental effects of major federal actions. The idea behind the NEPA is that, by requiring federal agencies to consider and gather information about the environmental consequences of proposed actions, the agencies will make wiser environmental decisions.<sup>11</sup> President Clinton states that the NEPA provides a grant of authority to establish the AHRI under authority of Section 101(b) of the NEPA. This section only sets out the broad goal to be achieved by the NEPA, however, it provides no authority for action. The only authorities mandated to the executive branch under the NEPA are to prepare reports; interpret and administer federal policies, regulations, and public laws in accordance with the NEPA; provide information, alternatives, and recommendations; and provide international and national coordination efforts.<sup>12</sup> President Clinton apparently has interpreted these duties to mean that the NEPA

8. U.S. Constitution, Article IV, Section 3, Clause 2.

9. U.S. Constitution, Amendment 10.

10. Executive Order 13061, September 11, 1997, Section 2(b)(1).

11. 42 U.S.C. § 4321.

also gives the executive branch broad authority to develop programs. Such authority, however, was given specifically to Congress, not the President, and Congress has not delegated such powers explicitly to the President. Consequently, citing the NEPA as the legal basis for implementation of the AHRI is questionable.

### The Federal Land Management and Policy Act

Even if it can be argued successfully that President Clinton's action is consistent with the purpose of the NEPA, the NEPA, as written, does not trump the requirements of other statutes. And, in the case of the Federal Land Management and Policy Act, the President is expressly restricted in his ability to designate or manage federal lands. Congress enacted the FLMPA in 1976 in order to reestablish its authority over the designation or dedication of federal lands for specified purposes, and to circumscribe the authority of the President and executive branch to manage federal lands.<sup>13</sup>

In the FLMPA, Congress declared that "it is the policy of the United States that Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes" and delineate the extent to which the executive branch may withdraw lands without legislative action.<sup>14</sup> Congress thus asserted its authority to create, modify, and terminate designations for national parks, national forests, wilderness, Indian reservations, certain defense withdrawals, national wild and scenic rivers, national trails, and other national recreational areas and national seashores.<sup>15</sup>

In fact, Congress has not withdrawn, designated, or dedicated any federal lands for President Clinton's American Heritage Rivers Initiative, nor has it authorized the development of the program by the executive branch. The legislative process for obtaining a favored status designation for federal land and resources is clearly established. Consider, for example, the Wild and Scenic Rivers Act adopted by Congress on October 2, 1968.<sup>16</sup> The act provides for the selection, by Congress, of American rivers that, along with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The rivers selected are protected for the benefit and enjoyment of present and future generations.<sup>17</sup> Since 1968, Congress has designated 154 Wild and Scenic Rivers under this act, amounting to 10,814 miles of river.<sup>18</sup> In fact, Congress acted as recently as November 12, 1996, when it designated 11.5 miles of the Lamprey River in New Hampshire and 6.4 miles of the Elkhorn Creek in Oregon,<sup>19</sup> following the designation of 51.4 miles of the Clarion River in Pennsylvania on October 19, 1996, as part of the Wild and Scenic Rivers program.<sup>20</sup> Congress is currently considering legislation to designate three more rivers. Representative Norman Dicks (D-WA) introduced H.R. 1477 to designate 51 miles of the Columbia River in Washington State; Senator Patty Murray (D-WA) introduced a companion bill (S. 200) in the Senate. Representative Martin Meehan (D-MA) introduced H.R. 1110 to designate the Sudbury Assibet and Concord Rivers in Massachusetts for the Wild and Scenic Rivers program, and Senator John Kerry (D-MA) introduced the companion bill (S. 469) in the Senate. Clearly, when Members of Congress believe there is reason to act, they will act.

If President Clinton wants to see his initiative implemented properly, then he first should propose legislation to Congress and allow Congress to approve or reject the initiative based on the merits of the proposal and the will of the people. Because Congress has not designated or dedicated any federal lands for the AHRI, or authorized the development of the AHRI, the actions of the President in creating and implementing the AHRI through Executive Order No. 13061 violate the FLMPA.

12. *Ibid.*

13. 43 U.S.C. § 1701(a).

14. 43 U.S.C. § 1701(a)(4).

15. *Legislative History, The Federal Land Policy and Management Act of 1976* (Public Law 94-579), Vol. 1 at 439 (1978).

16. 16 U.S.C. §§ 1271 *et seq.*

17. *Ibid.*

18. *Wild and Scenic Rivers Reference Guide*, Interagency Wild and Scenic Rivers Coordination Council, 1997.

19. Public Law 104-333.

20. Public Law 104-314.

## HOW THE AHRI THREATENS PROPERTY RIGHTS

The protection of personal property in the Constitution is under increasing assault by all levels of government. The right to own and use property free from unreasonable or arbitrary government interference is fundamental to American freedom and the U.S. Constitution. In fact, the Framers of the Constitution considered the protection of property rights so important that they included it in the Third, Fourth, Fifth, and Sixth Amendments. Today, in an era of almost daily documented cases of unreasonable and arbitrary interference by government agencies, it is not surprising that the Clinton Administration does not seem to recognize or agree with the Founders on the importance of individual property rights.

This lack of appreciation for personal property rights is an undercurrent in President Clinton's AHRI. The right of individuals who own property along designated rivers to use their property free from unreasonable and arbitrary government interference is threatened by the AHRI. The Administration has resisted adding a mandatory opt-in provision to allow the property of landowners along designated American Heritage Rivers to be included in a nomination only in cases in which owners have given their written permission. Such a provision would have shown that President Clinton indeed was concerned about the property rights of those Americans whose land is located along designated rivers. The lack of such a provision means property owners have no guarantee that their property rights are protected.

The regulation of wetlands under the Clean Water Act affects hundreds of thousands of acres of property across the United States. Implementing the AHRI will add hundreds of thousands of acres of dry land to the federal government's control in perpetuity. Rather than increase the access of people to federal resources and protect their rights, the AHRI will increase the access of federal bureaucrats to private property across the United States.

## HOW THE AHRI TREADS ON STATES' RIGHTS

The Founders believed that government closest to the people works best. The Tenth Amendment addresses the empowerment of state and local communities to govern. It recognizes that the federal government—as an entity—should have only limited powers, and that its powers should be specifically enumerated. Water rights and land-use planning are not stipulated powers of the federal government; historically they are subject to regulation and control at the levels of state and local elected government. As Chief Justice William Rehnquist has argued, taking the control of water from the legislatures of the various states and territories at the present time would be nothing less than suicidal. If the appropriation and use were not under the provisions of state law, the utmost confusion would prevail.<sup>21</sup>

President Clinton, through his executive order, is attempting to establish and exert federal control over something that clearly is under state jurisdiction. By allowing the intervention of the federal government through federal bureaucrats, known as "river navigators," who are appointed by the President, Executive Order No. 13061 will interject the federal government heavily into the local decision-making process.

The Clinton Administration claims that river navigators will not interfere in the local planning and zoning process, yet it resists incorporating a provision to prohibit them and all other federal employees involved with the initiative from intervening in local zoning and other decisions affecting private property and water rights. Such a provision would ensure that the states and local communities continue to control areas that are rightfully under their jurisdiction. The AHRI appears to be the program of a President who believes Washington, D.C., knows best and can govern best every aspect of life in every American community.

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21. *California v. U.S.*, 438 U.S. 645 (1978).

## HOW THE AHRI IS WASTEFUL, DUPLICATIVE, AND INEFFICIENT

The Clinton Administration claims that the AHRI will help "reinvent government." But President Clinton's understanding of reinventing government seems to mean creating additional layers of bureaucracy. The American Heritage Rivers Initiative, in fact, is similar to an existing program, the National Rural Development Partnership (NRDP) established by President George Bush in 1991 by executive order. The NRDP is a flawed program: President Bush had no congressional authority over water rights, property rights, or the appropriation of funding when he initiated it; therefore, it also violates a number of constitutional provisions.

Like the AHRI, the NRDP planned to create a collaborative relationship among federal, state, local, and tribal governments, and private, nonprofit, and community-based organizations within each state and some territorial areas, in order to establish a comprehensive and strategic approach to rural development efforts in each state. A comparison of the descriptions of these programs from their respective World Wide Web sites reveals further similarities.

According to the Web site of the National Rural Development Partnership,<sup>22</sup> the NRDP's objectives are to:

- Encourage and support innovative approaches to rural development and more effective resolution of rural development issues;
- Develop innovative approaches;
- Build partnerships among, federal, state, local, and tribal governments and the private sector;
- Encourage local empowerment;
- Involve the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, Justice, and Transportation, the Environmental Protection Agency, and the Army Corps of Engineers; and
- Use existing federal personnel and funds to work with the states to bring public and private resources together for solutions to local problems.

According to the Web site of the American Heritage Rivers Initiative,<sup>23</sup> the AHRI is supposed to:

- Encourage community revitalization by providing federal programs and services more efficiently and effectively;
- Develop strategies that lead to action;
- Build a partnership between federal, state, tribal, and local officials, as well as private for-profit, nonprofit, and community-based organizations;
- Encourage community-led efforts;
- Involve the secretaries of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, and Transportation; the attorney general; the administrator of the Environmental Protection Agency; and the chairs of the National Endowment for the Arts, the National Endowment for the Humanities, and the Advisory Council on Historic Preservation; and
- Use existing federal staff, resources, and programs to assist communities.

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22. "National Mission and Goals Statement," National Rural Development Partnership, at [www.rurdev.usda.gov/nrdp/goals.html](http://www.rurdev.usda.gov/nrdp/goals.html).

23. Council on Environmental Quality, "American Heritage Rivers Initiative," at [www.epa.gov/rivers/fedreg2.html](http://www.epa.gov/rivers/fedreg2.html).

Reinventing government usually does not imply duplicating a federal program already operating in 38 states that has the same objective: promoting community involvement and development. Besides sharing the NRDP's objective, the AHRI will create three new costly layers of bureaucracy. The AHRI:

1. Creates an American Heritage Rivers Interagency Committee that will be responsible for implementing the AHRI;
2. Establishes a panel to review the river nomination packets and recommend rivers to the President for designation. The panel will include representatives from natural, cultural, and historic resources concerns; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management.<sup>24</sup>
3. Gives the Interagency Committee the authority to transfer funds from other legitimate and congressionally authorized federal programs to fund ten new river navigators appointed by the President. The new bureaucrats would be paid approximately \$100,000 each year to assist officials in the ten communities selected by the President to locate existing federal programs and money that would be used to improve their waterfronts and rivers. Funds also would be transferred to compensate engineers, biologists, and foresters who would provide studies and expertise in implementing the initiative. The salaries of the river navigators would cost \$1 million per year (which would be compounded annually because ten new river areas would be designated per year), and the cost of the engineers, biologists, and foresters would be added to the already estimated \$4 million annual cost of the program. It is unclear whether such authority on the part of the Interagency Committee is a violation of the Spending Clause in Article I of the Constitution because the Spending Clause gives Congress—and only Congress—the power and authority to “draw [monies] from the Treasury.”<sup>25</sup>

President Clinton is planning to implement the AHRI at a time when the country is clamoring for Congress to downsize the federal government and give more control back to the states. The true definition of reinventing government is to make government smaller and more efficient. It is difficult to comprehend how creating another federal program—and one that is similar to an existing program—and adding new layers of federal bureaucracy will facilitate an efficient method of cleaning up America's great rivers. Secretary of the Interior Bruce Babbitt, in a recent speech entitled “United by Waters—How and Why the Clean Water Act Became the Urban Renewal Act That Actually Works,” stated:

Finally in 1972 Congress enacted a new law....[t]he Clean Water Act proclaimed a simple if awkwardly stated goal; make the nation's rivers, lakes, and shores “swimmable and fishable.” As American cities used the Act to clean up and restore their waters, those waters, in turn have begun to heal and restore our American cities.

Even as the Clinton Administration touts the effectiveness of the Clean Water Act in restoring and protecting American rivers, it boldly declares that the country also needs the AHRI. If Secretary Babbitt believes the goals of the Clean Water Act already are being achieved, then one must ask: What is the real reason behind the Clinton Administration's new initiative?

## AHRI'S POLITICAL AGENDA FROM A WHITE HOUSE MEMO

One of the best ways to build or strengthen political support in a community is by selecting it to receive a massive infusion of federal funds. Representative Christopher Cannon (R-UT) stated on July 15, 1997, at a House Resources Committee hearing on the AHRI that three to five congressional districts could be covered by each of the ten rivers designated by President Clinton. Using these figures, by the next presi-

24. *Ibid.*

25. U.S. Constitution, Article I, Section 9, Clause 7.

dential election in 2000, the President would have targeted federal funds to go to between 90 and 150 political districts. The American Heritage Rivers Initiative is classic pork-barrel politics.

At the same House Resources Committee hearing, a memo from the Council on Environmental Quality surfaced that read:

Selection committee will recommend more AHR's [American Heritage Rivers] than are actually designated, giving someone else (the President?) a further choice. This could ensure that designated AHR's:

- SERVE POLITICAL PURPOSES
- Are located where agencies can staff them
- Are diverse (river, landscape, community, geography, etc.)<sup>26</sup>

The Administration memo indicates that politics could well play a role in the designation of 10 rivers in early 1998, as well as the designation of an additional 20 rivers before the 2000 presidential election. The AHRI allows the White House to target federal dollars to communities in a way that could be politically advantageous.

## CONCLUSION

At a time when the country wants to downsize government and revitalize the importance of the Tenth Amendment, and Congress is recognizing the necessity of empowering local communities and states even more, the American Heritage Rivers Initiative chooses the wrong approach for preserving some of America's great resources, its many rivers. Although there often has been a lack of political will in Congress to tackle these kinds of issues—even with flagrant violations of law and terrible policy—several Members of Congress recognize the problems with President Clinton's initiative and have begun to focus their attention on it.

For example, on June 10, 1997, Representative Helen Chenoweth (R-ID) and 46 cosponsors introduced H.R. 1842 to terminate funding by any federal agency for the AHRI. The bill passed the House Resources Committee by voice vote on November 5, 1997. In addition, on December 10, 1997, Representatives Chenoweth, Richard Pombo (R-CA), and Bob Schaffer (R-CO), and House Resources Committee chairman Don Young (R-AK) filed a lawsuit in U.S. District Court for the District of Columbia to challenge the constitutional authority of the President to implement this initiative.

Because President Clinton plans to designate the first ten rivers in early February, the time has come for every Member of Congress to take a long, hard, and honest look at the AHRI program. It is an indefensible waste of taxpayer dollars. Through its Wild and Scenic Rivers Program and numerous other water quality initiatives, Congress already has devoted considerable resources to cleaning, restoring, and enhancing America's rivers with great success. But even more disturbing than the waste, the AHRI program seriously undermines congressional authority and upsets the delicate balance of power so carefully crafted in the U.S. Constitution.

Congress must exercise its proper statutory and constitutional authority to bring this program to an end before it is launched.

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26. Council on Environmental Quality, Draft Memo, "The American Heritage Rivers Initiative," provided to the House Resources Committee and the basis for questioning at a hearing on the Initiative. See *Oversight Hearing on the Clinton Administration's American Heritage Rivers Initiative*, House Report 105-36, 105th Congress, 1st Session, July 15, 1997, pp.81-82.



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November 17, 1997

Dear Western States Coalition State Committee:

We're enclosing two important documents, first is the highlights of the transcript of Katie McGinty's address at the Western States Coalition Summit VIII July 12, 1997 and her pledge to us and all America on the American Heritage Rivers Initiative; the second is a resolution either by elected officials and/or from property owners. We suggest you take this matter seriously and react in accordance to the promise made by Katie McGinty and keep a copy, registered possibly in your courthouse which you should record. Thanks for all you do, good luck with your endeavors.

Sincerely,

Met Johnson  
Executive Director

Encl.  
MJ/mdp

Resolution by Elected Officials for:

**Exclusion from the American Heritage Rivers Initiative**

On behalf of \_\_\_\_\_ (County, Parish), \_\_\_\_\_ (State), we the undersigned, as duly elected officials and representatives of the community, do hereby request that our community be excluded from any area designated as an American Heritage River. The application for designation as an American Heritage Rivers requires that a "river community" designate itself for the purposes of this Initiative. As such, we the undersigned, affirm our Constitutional role as the local, legal authority(ies) authorized to represent this river community. We, the representatives of the river community, thereby request that all lands that fall within the jurisdiction of one or more of the undersigned not be designated, or be part of a designation, as an American Heritage River.

We oppose the intervention of the federal government, agencies and employees into matters of zoning, planning, and land and water use. These matters are best resolved at the state and local levels.

We will not submit not support any petition for federal designation of a river, watershed or portion of a river within our community, and within the boundaries of our jurisdiction, under the American Heritage Rivers Initiative. Any person or persons submitting a petition to the federal, state or local government to designate a river, a portion of a river, or a watershed as an American Heritage River that falls within the lands under our jurisdiction does so without our approval or consent as the elected representatives of the river community.

Now, therefore, be it resolved on this the \_\_\_\_ day of \_\_\_\_\_, 1997, that this resolution shall be executed, made public and delivered to the White House Council on Environmental Quality in Washington, DC.

Signed:

Resolution by Property Owners for:

**Exclusion from the American Heritage Rivers Initiative**

We the undersigned, as citizens and representatives of \_\_\_\_\_ (County, Parish), \_\_\_\_\_ (State), do hereby request that the property owned either by us or by the members - which includes both property totally in private ownership, rights property, as well as to public lands and resources - of our organization(s) be excluded from any area designated as an American Heritage River.

The application for designation as an American Heritage Rivers requires that a "river community" designate itself for the purposes of this Initiative. As such, we the undersigned are representatives of the river community. We, the citizens of the river community, thereby request that all lands that fall within the jurisdiction of one or more of the undersigned not be designated, or be part of a designation, as an American Heritage River.

We oppose the intervention of the federal government, agencies and employees into matters of zoning, planning, and land and water use. These matters are best resolved at the state and local levels.

We will not submit not support any petition for federal designation of a river, watershed or portion of a river within our community, and within the boundaries of our property, under the American Heritage Rivers Initiative. Any person or persons submitting a petition to the federal, state or local government to designate a river, a portion of a river, or a watershed as an American Heritage River does so without our consent and directly contrary to our desires.

Now, therefore, be it resolved on this the \_\_\_\_ day of \_\_\_\_\_, 1997, that this resolution shall be executed, made public and delivered to the White House Council on Environmental Quality in Washington, DC.

Signed:

\_\_\_\_\_  
(name/organization) (date)

## QUESTION & ANSWER PERIOD

Pat Childers: If I could have these people come up we'll start the questions period: Laura Cleland, Oregon Lands Coalition; Bud Eppers, New Mexico Land Advisory Commissioner; Steve Burrell, Alaska Miners Association; Rob Bishop, former Speaker from the state of Utah. While those folks are coming up, a couple of points I'd like to make with those that don't understand NEPA and a few more things. It is a fact-gathering process involving state and local communities and also some key points in the Act and CEQ regulations, significant impact, the differences between an EA and an EIS is there's the famous . . . , finding no significant impact you don't have to do an EIS and all of that is supported by scientific evidence. With that I think these folks will first ask some of the questions and I have some questions concerning another issue if we could start with . . .

WSC Delegate: Can you hear me OK? Thank you. We very much appreciate you're coming. Thank you very much. In particular, first, on the American Heritage Rivers Initiative, we've heard what you've said but we don't believe in you.

McGinty: I picked that up from some of the reaction. I noticed that.

WSC Delegate: I would not say that crassly or anything like that but so many pieces of this are ill-defined, they appear to be establishing doing things through an Initiative, a non-regulatory issue, yes, but a non-regulatory issue where the general public does not know where it's going. The general public does not have confidence that this government can treat its citizenry fairly. Your response, I don't have a specific question on that but that is a sense that I have received very widely throughout Alaska where I come from but throughout the western United States.

McGinty: Fair enough. It has, I agree, that there has not been enough time, I think, for folks to get their arms around this or to become as informed about it as they would like. We've tried, in the light of some of the comments that maybe some of you personally have written, to be responsive to that issue. Most importantly, as you probably know, on the basis of your letters, we extended the comment period on the program for an additional sixty days which will mean we'll have ninety days overall, further to elicit your views and ideas about this. Now in addition to that we have tried to put the pedal to the metal, if you will, and get out there. Like we are doing here today, and talk to people about the Initiative. I mentioned that I was in St. Paul just two weeks ago. Karen is on her way to Wisconsin to visit with twenty some mayors about this program as well so we're trying our best to get the information out there. Now there are additional ways and, I think, convenient ways for folks to access information too. We have a hotline on this issue, a week after the President announced it we also set up a homepage so that we could provide information and receive commentary that way as well. We will continue to do our best to put information out there but I think at the end of the day too, you will see some changes in the program based on the commentary we did receive. **I mentioned the one piece in particular on private property rights, we will put that in there. Some others had mentioned "Geez we don't see agricultural interests represented strongly enough in this program and we want that to be respected and identified too." We will make sure that happens.** We have not made final decisions about this but I will tell you it's our strong inclination at this point also, that if a member of Congress who oversees the area in question, says he or she opposes the area being part of this program, that's it. The area won't be part of this Initiative. I hear what you're saying and I think your comments have been valuable, we've learned from them.

WSC Delegate: Let me follow up on that then. Why should we not then have a statute passed that this, whereby Congressmen actually say what . . .

McGinty: Well what we're trying to do with this Initiative actually is not to create anything new. The fact is you all are probably too painfully aware that there are plenty of programs out there. This is about trying to coordinate them, trying to make them more accessible to communities that are, for example, trying to put that

new historic area along their waterfront. Well, you know, do they know about the tax benefits, that the Park Service can help walk them through if they design it a certain way? Do they know about what the Small Business Administration can do to provide seed money and grants to launch something like that? Maybe you do, maybe you know about one of those programs but I'll, you know, tell you there are a lot of them out there, they are not as effectively put as the service of citizens and this really, it's got a label on it, the American Heritage Rivers Initiative but really what it's about is simply trying to take the stuff that's out there and make it work better and in fact, some criticism that we've received from a different direction is that "Well, this isn't anything new." Aren't there any new funds here, isn't there a new program? What's new in all of this? And the honest McGinty is, nothing, it's just an ability to bring it together to make it work and make it accessible to local communities.

WSC Delegate: Thank you very much. Different topic, you focused on NEPA also. At the New World Mine north of Yellowstone it appeared to the public that the NEPA process was working after a long and costly process for a company, the administration brought in the World . . . Committee, using the Yellowstone Reservation as a, in some people's view, a ploy to bring the community in, then all of a sudden the project was derailed when NEPA seemed to be working. How is it that the administration felt the need to do that, how is it that . . . ?

McGinty: In terms, I guess as I reflect on some of my comments, as we have tried to handle environmental issues, wherever it has been possible for us not to go to the route of endless court battles, but to work in a collaborative way with industry, we have done that. The Yellowstone issue is an example of that. The sequence of events that led to that agreement started with the company coming and knocking on our door. Now there's quite a story that you will resonate with and say, "Well it's still a problem" and that's the part of the story that said to the company, "Geez, we've got a lot of regulations we need to work through here. We've already sunk millions of dollars in this EIS and where has it gotten us? It's gotten us to a lawsuit that we've lost and now we're on the hope for millions of dollars to clean up historic pollution under the Clean Water Act, we've got wetlands permits we need to get yet and we're getting signals from the Corp of Engineers that are not particularly inclined to give them to," etc. etc. The company as a business decision looked at those odds and said, "I wonder if there isn't a better way for our shareholders to go about handling this issue. We don't like the prospect of years of regulatory and court battles" and it was on that basis that we came to a mutual agreement and I will tell you the EIS work continued throughout the deliberations and only was ceased when the company ceased it, when we reached the overall agreement. You know the alternative was to continue down a road but down a road again that you have right to say Well gee we shouldn't have a road like that but the truth is that it was a road that offered lots of years of further regulatory traps that needed to be gone through and lots of court battles.

WSC Delegate: Thank you. Last question from me would be in regards to, you made a very good statement about one size fits all and about command and control. We believe your message is not getting filtered down to your Secretary of Interior. In particular, in proposing the changes to the . . . Regulations the Secretary has not justified, has not given a reason, if there's a problem, he's not defining the problem that needs to be fixed and two to the mineral industry who typically spends three to five to seven years going through the NEPA process for a single project in a single watershed or a single mineral in a given climate. To think that someone could do an EIS which is the process that's required in two years that covers Alaska, southern Arizona, and Colorado and all the points in between is . . . , I mean it just does not resonate as being at all practical or at all feasible, how would you McGinty that?

McGinty: Let me say to . . . The number that you referred to, this is mining regulations?

WSC Delegate: 3809 regulations are the BLM, Bureau of Land Management regulations that deal not with the land tenure . . . , a federal mining law deals with land . . . ownership, whereas 3809 on BLM land deals with the reclamation standards, those kinds of things which are currently not a one-size fits all but that is the appearance the Secretary wants, a one-size fits all and we can't see it . . .

McGinty: OK. Well, I have to confess to not knowing the details of the regulations. I am aware that the Secretary was working on them and was going to promulgate them. The thing I would mention, two things I would mention on this front. This has been one of these endless battles to the 1872 Mining Law and what to do with it and I just would note for you that in the President's budget, submission to Congress this year, we took the issue on, again, time to just kickin' it off, we took it on again but the proposal that we put forward which called for a 5% net smelter return and which funneled that money into a reclamation fund is a proposal that won the support of the National Mining Congress. And I've received letters of support on that front, we worked with Senator Reed and others to get that done so I can look into the regulations you mentioned, I will do that, I'm not familiar with them, I do know however that what we did propose in the budget this year listened to and incorporated the proposals that had previously been put forward by the mining industry, particularly that net return which was so important to the mining companies as opposed to a gross return.

WSC Delegate: Let me mention that Senator Reed's proposal and also Senator . . . for a net return, it's a different basis of net than a net smelter return and it's a significantly different, we're talking . . . magnitude of difference. Thank you.

McGinty: Thank you.

WSC Delegate: As you're aware, our state constitutions delegate the responsibility of the management of water to the states . . .

Woman in audience : Excuse me, can we have the questions panel identify themselves?

Response (McGinty): That was for you.

WSC Delegate: My name is Bud Eppers. I'm chairman of the Chavez County Public Land Advisory Council and I'm here because Lt. Governor Bradley asked me to come up and present a question.

McGinty: On a Saturday . . .

WSC Delegate: On a Saturday

McGinty: Because he's doing something else.

WSC Delegate: But anyway, how do you intend to handle state constitutions . . . That are apparently going to develop and arise under the American Heritage Rivers Initiative?

McGinty: Well, there's nothing in the Initiative that anyway would effect water rights or the state's prerogative in terms of water rights, and, in fact, again to reiterate since we've been criticized from the other side about it, there isn't any new programatic initiatives that are part of this, so any outstanding rights, obligations, requirements, all of that is not changed by virtue of this program.

WSC Delegate: But under our state constitution, our state engineer is in charge of managing the water and he

hasn't been contacted, included, or participated in any way in this Commission. We feel that it would be important to have that individual and the individuals in other states as well to take part in this concept.

McGinty: I think that's an important point and one of the criteria that has been developed in fact on the basis of the public comment that has come in, is the criteria which would say, there needs to be broad bases of support, and in particular, people who have authorities and responsibilities need to be part of and sign off on the interest of the proposal pursuant to the American Heritage Rivers Initiative. If there is that kind of opposition that is not a proposal that's likely to be part of the program.

WSC Delegate: You spoke earlier about the elimination of hopefully of top-man driven program and I think many of us feel that this is just another top-man driven program because there was very little communication to our knowledge. It was established between the states, county governments or the landowners who might be effected from this program and we were wondering do all, have all fifty states participated in the drafting of this program, have they been involved in it in any way?

McGinty: Not only all fifty states but in terms of the basis of the overall public comment which again was extended because people felt that they didn't have sufficient opportunity, we hope that not just government or even local or state levels of government but individual citizens will voice their comments. And we have received countless comments and countless input into the program now. Underscored once again, however if a community, if the state, if an area of the country does not want to be part of this program that is completely and totally their prerogative. There will be nobody knocking on anyone's door, saying, "Here sign up for this program." It must come from the community, from the state, from the locality to us and again if a place is participating in the program but decides, you know, "This is a raw deal" for one way or another, they don't like it, there's no obligation to remain a part of the program. The point of putting it in is, I think that's a fair question, as I said, we've gotten that kind of critique from the other side, the point in putting it in is simply to make those programs that are already out there . . .

Man in audience: You have no authority under the constitution . . .

McGinty: To do what, sir?

Man in audience: . . . federal government . . .

McGinty: I know, I understand that principle completely and respect it fully

Man in audience: But in 1932 President Roosevelt . . .

Moderator: Sir, sir, I appreciate your concern, if I can't have you carry on a one on one debate here, let her ask the questions and then we'll go on with it. Thank you.

WSC Delegate: Miss McGinty, my name is Laura Cleland. I'm with Oregon Lands Coalition, a grassroots group. First I have a question from the audience for you. If the Heritage River Initiative is 100% voluntary, can I as a landowner along the selected river, avoid influence and any requirements of the Initiative?

McGinty: You can certainly, yes, not be part of it at all, not have your part of either the stretch of river, not be part of it, say this part of it is just not gonna be included in the Initiative, absolutely.

WSC Delegate: What is the mechanism, a simple written letter or what?

McGinty: Well again, the proposals will all come from the local level and after September is when we expect to begin to receive the proposals from the communities at that time so it has to identify what's in and what's out and there'll be no addition on our part to what's in and what's out.

WSC Delegate: Now I have a question. You have said, and I've seen you quoted in the newspaper, that you are bewildered and perplexed with the opposition to this program. I think that there's a real breach of trust between the people out here, the people in this room, in the west, and the folks back in Washington, D.C. and I have some examples. Well, you gave each of these examples as an accomplishment. We view each of these examples as failed public policy. This Initiative is brought to us by the same cast of characters who gave us the President's forest plan. That plan has closed hundreds of mills in the pacific northwest and put tens of thousands of people out of work. That is not success. This plan is being brought to us by the same people who brought us the Interior and Upper Columbia River Basin Management Plan. That project is still in the planning stages and already mills have closed, families have been hurt, and communities have been damaged. It's also brought to us by the same people who secretly planned for and executed the lock-up of 1.7 million acres in southern Utah without, I might add, using the NEPA process. You have garnered no trust. How are you going to overcome that?

McGinty: Well first of all I can see and understand that there is, we're at a very delicate place because there are people in the country who don't, as you're very well reflecting, who don't have the trust in terms of the government's ability genuinely to serve them, and in fact, to the contrary, a feeling that interests are being worked against. The reason I'm here is because I take that damn seriously. I think it's a scary proposition for our country and this country being the best one in the whole world that we might and do have that kind of distrust among citizens and between citizens and government. I don't want to be part of that, I can do whatever I can to help reach the difference because I really and genuinely take it very seriously. I'm not about just pointing fingers, I agree that we have responsibility, I think I very honestly said that we have lost our way on the environment. It's not a good place where we've come to and we've got to get to a different kind of place. Now I could walk through some of these examples that you've cited but I don't want to do that because I don't want to get into a deliberate or debating format on that. A more important thing is that you're opening statement which expresses something, even if I disagree with your examples or the details I don't disagree with the truth that you are . . . And the only thing I can say is that I've made myself personally available to you, to be as responsive as I can when you have a legitimate concern or beef. I will also tell you as honestly as I know how where I just disagree and then you deserve to know the reasons why I disagree. But I will lay that out. Now that's not going to solve the world, I don't presume myself to sit in a place even where I could solve all the problems of the world but I just sort of close the comment by respecting the truth you've pointed to and sharing with you a concern and a determination that we've got to try to fix it.

WSC Delegate: My name is Rob Bishop. I'm the ex-Speaker in Utah. If I could just go through the process very quickly, I've got three quick questions about the Escalante Monument, then I'd like to ask a couple that we've got from the audience and then we'll see if we can go through the panel again but we're looking at about a ten-minute finish for this. The first one on the Escalante Monument: According to the Antiquities Act that was used, land is set aside for specific scientific or historic purposes. We can understand that in the Garfield County part, can you tell me specifically what was the scientific and historic part of that Monument in the Kane County portion of it?

McGinty: May not be able to do it in that kind of detail but I'll tell you the most salient things that the Department of Interior brought forward in its analysis, were archaeological features, the Anasazi and I forget the other American Indian heritage that is there but archaeological sites that they indicate as the richest deposits of those

sites that we have in the country. There also are unique geological features and ecological features, for example, because of the ruggedness of the terrain there are plateaus as I understand it that have grasses there that have never been grazed and they're the only remnant grasses that we have in the country that have not been grazed and those are some of the things that were articulated.

WSC Delegate: I appreciate that although that's . . .

McGinty: Let me just say one thing, this is not to say that there's anything wrong with grazing, it is to say that that grass doesn't exist anywhere else and you may think that that's completely invaluable but there are many scientists who think that's quite valuable indeed but that's the only point of that particular . . .

WSC Delegate: And I appreciate that, those qualities are truly in the northern part, I was asking about the southern part where they don't exist. The second of three questions: The law says it's supposed to be conducted in the smallest area compatible. If something besides . . . is the smallest area, what was the largest area considered?

McGinty: That was the only area considered. The experts at the Department of the Interior brought it forward and said that in their judgment and estimation this was the smallest area compatible and I don't have the expertise myself to second guess that.

WSC Delegate: The final one is: If you look at the borders of that Monument, it follows geographical or geological borders until it comes to the Arizona state line and then it goes on a flat line. Now the cynics in Utah would say it's because President Clinton thought he could win Arizona and not Utah. I certainly would not be willing to be that cynical. **So the question I have is: Why did God stop creating scientific and historical sites at the Arizona border?**

McGinty: I'll have to go pray on that one. But I'll just make this one comment, again, I'd have to see a map to look at this again but one of the things that's very important about the National Monument, and this has, there's been a lot of misconception about this: **Every inch of the National Monument has always been federal land. There's not an inch of it that is brought in to . . . that's right, it's the land of the people of the country, that's right and so the borders are drawn,** if there was private property, or state property, or anything else that also represents that Arizona border so the boundaries are drawn on the basis of where the federal boundaries have already been set. . .

WSC Delegate: Let me go on with another question from the audience first. How can CEQ and twelve other federal agencies create the American Heritage River program, . . . federal action without having prepared an environment impact statement as required by NEPA?

McGinty: That's a very good question and the answer is because it is not a federal action. The federal programs that are out there, there's not a new one being created here. The action purely and simply on this program is local. If there is not a local initiative to undertake a program through the American Heritage Rivers Initiative, there is no program. It's purely and simply that. Now if part of what the local community wants to undertake involves various federal programs that also include EISs they will be done but the Initiative itself is a locally-driven one, not a federal Initiative. Am I done?

WSC Delegate: Well, the thing you want to ask, the word is done or finished. Let me ask just one last question and I apologize for this one in part because I told you we would hit on the New World Mine in Escalante and the Heritage River. This came from the audience and is slightly different but it deals with a presentation that was

given and it was simply on the global warming issue. Is it true that the satellite temperature data that has been taken and has shown during the past ten years there has been statistically significant cooling instead of warming trend. Does the federal government agree with that data or not?

McGinty: Yes and it's a cooling of the stratosphere as opposed to the issue of climate change isn't the stratosphere, it's the troposphere. It's the air that surrounds the planet that we walk on and live and breath on. And the cooling of the stratosphere, by the way, is the result of ozone, stratospheric ozone depletion, the hole in the ozone. So yes, we agree and it doesn't have anything to do with it. OK, well thank you all very much.

WSC Delegate: We'd like to thank Ms. McGinty and her staff for speaking before us, their arguments . . . But we would hope some future programs would be initiated with this group and some others. Thank you. thanks again.

# WESTERN STATES COALITION SUMMIT VIII

Spokane, Washington on July 10-12, 1997

**HOST: Speaker Clyde Ballard, WSC Executive Board Member**

**Subject: Speech by KATIE MCGINTY, Chairperson**

## **Council on Environmental Quality**

"Well, this is different because of the dedication of being here on a lovely Saturday morning. I hope you all aren't looking out there too much, working very hard to keep yourselves focused here. Well, I guess, it's the traditional thing to say, you know, it's a pleasure to be here. I must share with you that I mean that very sincerely today. Last night we had an interesting flight to come visit with you. At first we were an hour delayed and that's OK, I guess, we expect those things now but then as we tried to take off there was this little problem with the landing gear. Not only was it not working, not working at all, and they told us, of course, don't be worried, this is nothing to worry about, we're going to have a smooth flight. Well we weren't worried about the flight, we were worried about the landing. I guess if that landing gear was up the landing might have been smooth too. Anyway when we finally did arrive, and finally around 11:30, quarter to twelve. I guess, last night, got ourselves crashed into bed, not in there two minutes when (sounds of siren) these huge sirens start going off and the whole hotel is told we need to evacuate. Now you might think it was a big tragedy, actually the person might have thought it was a tragedy because someone's perfectly good popcorn got absolutely burned in the microwave oven. So anyway it is a pleasure to be here. I do want to thank you all too for accommodating my schedule. I have had more than my usual amount of travel this week. I see some folks are here from Alaska. I was in your fair state for a good chunk of the beginning part of the week, up there visiting with Don Young and seeing some of the oil developments, working with Arco who is trying to develop some of the Prudhoe Bay areas and we've been working with them to that end. But it was, as you know, Alaska is a big state with little airplanes, very little airplanes, I've been on plenty of them this week but I appreciate your accommodating that schedule and giving me the opportunity to talk to you today.

Now I want to speak in particular about the environment and further about the American Heritage Rivers Initiative which I know many of you have been focused on and this will be a good opportunity for us to visit about that. But I really wanted to mention a few things first. Why it was really important for me to come, why I welcome the opportunity and the invitation that I received to join you today. First I want to say that I do respect your opinion, I value your many collective years of experience and the very important wisdom that comes from the experiences that each of you has had. Second I really believe that some of the concerns that you have raised, that this group along with others was formed to take on, deserve a considerate, respectful hearing. While I have not always agreed, or at least not fully agreed with some of the solutions that you have proposed, I too have recognized problems and I believe therefore, that there may be an opportunity if we talk with one another; it may be that we can find where there is common ground between us. Third I really do honor the fact that you are engaged citizens in taking your own personal time, especially today in the summer on a Saturday, taking your own personal time to be informed, to organize, and to make a very real difference. This country was built on the basis of an active, informed citizenry, and I believe that the quality of our future depends on our instilling once again this sense of commitment and engagement among our fellow citizens. I really do honor your effort and the personal sacrifice that it represents because I do believe it is a model to all of our citizens as to how they too need to be engaged. Now let me be clear, again there are very real differences between us and I don't intend today to try to gloss over them, in fact, I don't think we can make progress unless we honestly and clearly try to articulate where those differences are. While I wholeheartedly believe, for example, that government can't be the answer to all of our problems and in fact, to go further, I believe that that's a very dangerous idea because it is

the antithesis of what I have just recognized and honored in your work. That kind of approach can lead to the attribute and the building of an apathetic citizenry, as opposed to an active and engaged citizen. However, I'm not prepared, if you will, completely to rely on the kindness of strangers. I think government has an important role to play and that our government is, in fact, an expression of our contract, if you will, with one another. Our commitment, enforceable commitment, to act in a decent and respectful way to one another. But having said all that, again I believe that the differences between us need not always be seen as insurmountable. They may be differences of degree that if we can engage in a respectable dialogue can yield to the discovery of some common ground. Finally, I wanted to come here because I believe we do have an obligation to listen to one another, that we as committed citizens have an obligation to try to work it out and thereby to insure the greater good of the country as a whole. We have enough examples. Bosnia, Northern Ireland, of what happens when people don't work it out. And make no mistake, those kinds of big areas of strife start when the smaller grievances go unaddressed and are allowed to fester and build. I don't want to let that happen here. We can't let it happen to this great land. We can't allow resentments to build that ultimately could tear us apart. So thank you for having me here, for being willing to sit and listen to some of what I have to say. In the questions and answers I look forward to doing the same, I will listen and I'll answer with as much detail and candor as I possibly can.

So let me now then turn specifically to the environment and to the American Heritage Rivers Initiative in particular. I would like to start by painting a bit of a larger picture and placing this Initiative in the context of a different kind of environmental policy we have tried to build over the last four and a half years. Now where do I start? Well it's always a scary thing when you have someone who's an expert in your area of expertise right here sharing the podium with you. But I do start with NEPA, the National Environmental Policy Act that set up my office and that I am now charged to implement. Now you may not know it but under NEPA I have a very enviable job indeed. Well you might think it's a National Environmental Policy, I'm the chair of the council on Environmental Quality. So my job is to protect the environment, well not quite. Twenty-eight years ago when NEPA was written the authors had a much more sophisticated and a kind of poetic way of expressing themselves. They said it's not just my job to protect the environment, no. I am supposed to achieve productive harmony among environmental, economic, and social objectives. Now this is a very enviable job in Washington, D. C. where, of course, everyone loves to work it out. There's lots of harmony, very productive. This vision is challenging but I think it's exactly right. And I will say to you what I say to environmental audiences: I believe that somehow over the years we have lost our way on the environment. Recently I spoke to the Criminal Division of the American Bar Association too, and to them I said I wanted to report a felony, that the environment, I said, had been stolen. Well what did I mean? It seems to me that despite our many differences, different ethnic backgrounds, different life histories, different interests, different states, there really are some things that pull us together as Americans, all 260 some very odd million of us. One of those forces, one of those binding forces, is the environment. America the Beautiful, now wouldn't it be awful on a Saturday morning for me to sing that to you? That song has survived the decades we know, not just because it's nice and lyrical. It survived because it speaks to a truth, to the incredibly rich and deep connection that all of us have to the land, to the great land that is America, to the pride and the blessings we feel in her abundance. But what have we made of this powerful, binding force? Well unfortunately, and all too often it seems to me, we've made it into a source of polarization, litigation, and disputes, far from the talk of country and heritage, and humility, and gratitude for the blessings of our land. Our discourse about the environment has become discord. Endless hassles about the Venutias, the court battles, how many parts per million of this, how many parts per billion of this, and well you have to use this kind of filter, you have to put on that kind of scrubber, and as many of you know well, the dialogue is even worse when it comes to natural resources. We talk of train wrecks and we all know the image of spotted owls vs. loggers. The bitter discord that was allowed to build and the refrain that many, too many have experienced and that is repeated too often. You have to choose between your jobs and the environment. Well I go back to NEPA, this productive harmony. Twenty-eight years ago NEPA said, "No" to that narrow

polarizing thinking that seems to seize us today, that says there's winners and there's losers. I'll see you in court. I'm going to win, you're going to lose. NEPA held the environment job as a binding force, as a lens through which we could bring clarity to our varied environmental, economic, social, cultural, historic values. NEPA says you can't pit the environment against the economy, you have to bring it together in one . . . whole. It says enough of the trench warfare, we can and we must achieve stewardship of the land and economic opportunity, together, both and not either or, that is a losing proposition and NEPA was right about that twenty-eight years ago. Importantly, and if you listen to the poetic productive harmony, NEPA understands that we can't get there, we can't figure out how to reconcile these things if we attempt to have it all come from Washington, D.C. Rather NEPA insists that federal agencies open the doors and that citizens, and state and local governments be given very real and meaningful seats at the decision-making table. Now NEPA has become a pretty rusty issue and Pat can probably tell you that before its directive it has not been fully or faithfully carried out. But with the University of Wyoming and the University of Montana, we're bringing it back to this basic principle: To put the county and the local governments at the decision-making table like we haven't done before. I take this charge very seriously. The last four and a half years we've tried to honor it in the environmental work we've done.

Let me discuss some of the flagship efforts because it is on the foundation of these efforts that the American Heritage Rivers Initiative was built. I'll start with one of your favorites, the endangered species. Now it has often and all too often meant crisis and confrontation but we try to begin to take a different approach. We reached out in partnership with landowners and state and local governments across the country to forge what we call "habitat conservation plans." Through these plans make no mistake we are protecting critical habitats, in fact we have nearly 400 of these plans underway or completed, and when they are completed we'll have 18 million acres that are under sustainable management. But the landowners secure something critically important with these HCPs, habitat conservation plans, too, the landowners secure certainty. We've said to landowners "A deal is a deal." There will be no surprises, no ESA-trained reps right around the corner, instead if they implement their HCP which, by the way, they devise and bring to us, they've got a guarantee that their ESA obligations are met, for 50, 75, 100 years or more. Right here in Washington State I've signed an HCP with a timber company that affords that landowner a century of certainty and we've worked partnerships with the state as well. Washington state for example has a 75-year guarantee from the federal government that their forest lands have met, under their HCP, all the Endangered Species Act requirements. That means fewer court battles, that means more certain timber flows, and all of that means more money for counties and for schools. And all of this again while we protect the environment too. In Oregon we've reached a truly historic partnership, the timber industry is at the heart of it. Industry will take the lead in protecting key watersheds for . . . salmon. On the basis of their leadership and commitment, we said that's good enough for us, we don't need to reinvent the wheel. We've got confidence that the industry's plan can get that job done. We've had similar approaches when it comes to air and water pollution regulations too. We launched something called Project Excel. Excel's based on a simple concept. You know, as I talk to business leaders in every part of the country there's not a single one who says to me, "Well, what I really want is dirty air and dirty water, that's what I want." Nobody says that. But a lot of business leaders say, "I think I know a thing or two about my business that you don't and if you give me a some flexibility I can get there cleaner, cheaper, and faster than you would otherwise tell me to do." Excel takes them up on that. It says if you're willing to get there cleaner and cheaper, we'll throw our rule book aside. We won't micromanage the details, we won't dictate the details. Well, in addition to cleaning up the environment Excel brings a lot of other benefits. There is significant savings if we can allow this flexibility and when you have businesses and local citizens giving them the ability to craft their own solution, an amazing thing happens. when you're in a conference room instead of in a courtroom. Solutions are found and the discussions broaden from the environment to the well-being of the community as a whole. Some communities have decided with the savings from Project Excel, some of them are investing and keeping libraries open longer hours, some are providing health care, some others have invested in job training for local citizens to insure that businesses are hiring locally. So this is about the environment but it's about more too. It's about communities and individuals

taking charge of their own future and using the environment not as a source of confrontation as a tool that it has become but as a catalyst to achieve a greater good. Now it is on this foundation that the American Heritage Rivers Initiative was built. This Initiative is testimony to that connection. The positive energy that can be built around the environment. We know that the rivers connect us physically, one community to another, that a river does run through it. They are a channel of water, the basic stuff of life but they are also a channel of our history, of our poetry, our culture, even the driving engines of our economy. Our spirit as a nation runs through those rivers too. The American Heritage Rivers Initiative is designed to support locally-driven efforts happening all across the country to restore rivers and revitalize the communities that surround them. Now I've seen this first-hand. None of you would guess that I have an accent of any kind but I do, I hail from Philadelphia. Usually it's a media giveaway as soon as a Philadelphian says the word water. Or I say, "Go home." But being from Philadelphia twenty years ago the Delaware Waterfront was no place you wanted to be, even with all of my kid brothers, and my dad's a cop. I did not want to be there. crime, and drugs, and trash, and decay but as our nation's Bicentennial approached, the river, the Delaware, captured our imaginations. The river had a story to tell we realized, history and culture, it was part of what made Philadelphia and our country great, whether it was Landing or George Washington's crossing, so we, the citizens of Philadelphia took that Delaware Riverfront back. we pushed out the pushers, restored the historic buildings along the Waterfront and that was the catalyst that led to the city as a whole coming back too, starting at the Waterfront and when the Waterfront was revitalized people said, "Well, what about First Street, what about all the abandoned buildings on First Street, we can't have that when we have such a nice Waterfront." So First Street was cleaned up and then Second Street and along. It's happening in other places of the country too. I was in St. Paul just a week or two ago and the mayor of St. Paul has changed the name of St. Paul actually to St. Paul on the Mississippi. Testimony to the fact that his greatest selling strength for economic development in St. Paul is to sell the fact that it sits on the Mississippi waterfront. He told me in no uncertain terms that a software company moved into the city of St. Paul and the biggest reason driving that decision was that employees would have a place to walk and to enjoy at lunchtime on that waterfront. He's selling the city on the basis of taking the Mississippi back.

**Let me say with clarity what the American Heritage Rivers Program is and what it is not. It is 100% voluntary. It is 100% locally driven. It is 100% non-regulatory. There are absolutely no new regulatory requirements or restrictions of any kind. It is 100% in the spirit of NEPA, environmental, economic and social concerns integrated in a way that is designed and driven by local communities themselves. It is 100% in the spirit of reinventing government, it's a directive to federal agencies to recognize citizens as customers and serve them much better than they have before, to do more with less, to cut red tape and bureaucracy so that citizens can access resources in an efficient and effective way. It is finally 100% at the option of communities. Communities become part of the American Heritage Rivers program only if they choose and once a part, they can stop their participation at any time they choose as well. What this Initiative is not: It is not a federal land grab or an intrusion on private property rights. In fact in light of the concerns many of you have shared with us and I have visited personally with some of you in my office, in light of what you have said, we have gone back and taken language that President Reagan had penned directing agencies to respect and protect private property, we've taken that and put that into this program. Not every community will elect to be part of this program and that is perfectly well and good but some communities will see it as an opportunity to help them achieve important goals they've identified for themselves, economical revitalization, instilling in children an understanding and appreciation for the history, the development of a particular area, ensuring water quality, underscoring and demonstrating the unique aspects of a particular place, whether it is urban, rural, or suburban. For them this program means that federal agencies will be directed to work at their service, helping them to achieve the goals, that again, they have come together and set for themselves.**

Let me conclude where I started off. I genuinely believe that the time for polarization and confrontation around

the environment has come to an end. It is time for partnership, collaboration and respect to be shown. The time for top down, one-size fits all, command and control solutions have come to an end. We've got to engage citizens in an active and effective way to work toward goals that are part of their own visions for themselves. The environment can and should bring us together. We, as Americans are tied to this land and we are blessed by what the Creator has given us here. We cannot let it, like so many other things, tear us apart. We've got to listen to one another, work with one another and find ways to work it out. I think the environment can help us do that. The American Heritage Rivers Initiative is true to all of these principles. Thank you for your time and your attention in allowing me to lay that out for you today. Thank you very much."

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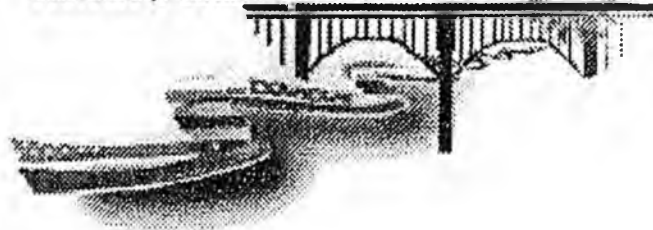
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## AMERICAN HERITAGE RIVERS



Final Federal Register Notice  
September 17, 1997

### **Council On Environmental Quality American Heritage Rivers Initiative**

**DESCRIPTION OF AMERICAN HERITAGE  
RIVERS INITIATIVE AND INFORMATION ON  
HOW COMMUNITIES NOMINATE THEIR  
RIVERS**

#### **CONTENTS:**

The major sections of this document include:

- Summary —
- Deadline
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the Federal Register Notices of May 19  
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- Overall Program Design
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- Improved Services Available to All  
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## SUMMARY

In the State of the Union Address on February 4, 1997, President Clinton announced an initiative supporting community-led efforts relating to rivers that spur economic revitalization, protect natural resources and the environment, and preserve historic and cultural heritage. President Clinton has since issued Executive Order 13061 directing agencies to establish and implement the initiative. This notice summarizes the initiative developed to implement the President's directive.

The federal government plays two critical roles in supporting river-related projects. First, it offers federal agency services to organizations and governments conducting community-based work. Second, it creates a national information and communications network to encourage communities to provide useful information to communities, including sharing success stories.

The American Heritage Rivers initiative is voluntary and locally driven: communities choose to participate and can terminate their participation at any time. In implementing the American Heritage Rivers initiative, federal departments and agencies shall act with due regard for the protections of private property provided by the Fifth Amendment to the United States Constitution.

The American Heritage Rivers initiative will create no new regulatory requirements or rules for property owners or state, tribal, or local governments. The American Heritage Rivers initiative will use existing federal resources more effectively to assist communities.

To enhance federal assistance to community-based projects, the federal government will solicit nominations from communities wishing to designate their rivers as American Heritage Rivers. The nomination process is described in this notice. The President will designate 10 American Heritage Rivers in early 1998. The communities surrounding designated rivers will receive a number of benefits, including special recognition; focused support from existing federal programs; a person (the River Navigator) to serve as a liaison between the community and the federal government; improved delivery of assistance from agencies

throughout the federal government; and a good neighbor policy. The federal government will work to integrate and streamline its approach to providing existing federal services in designated American Heritage River communities in partnership with local leadership. These partnerships will give the federal government an opportunity to study and improve how it provides assistance to communities across the nation.

Additionally, the federal government will provide a new information center on the World Wide Web for community-based projects in economic revitalization, natural resources and the environment, and historic and cultural preservation. These Web pages will include information about services that can assist community projects and provide opportunities for dialogue between communities. The federal government will also provide this information to people without access to the Internet.

The American Heritage Rivers initiative was developed by an interagency task force convened by the White House.

The President's Executive Order creates a new committee, called the American Heritage Rivers Interagency Committee (Committee) that will be responsible for the implementation of the American Heritage Rivers initiative. The Committee will be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- The Secretary of Defense:
- The Attorney General:
- The Secretary of the Interior:
- The Secretary of Agriculture:
- The Secretary of Commerce:
- The Secretary of Housing and Urban Development:
- The Secretary of Transportation:
- The Secretary of Energy:
- The Administrator of the Environmental Protection Agency:
- The Chair of the Advisory Council on Historic Preservation:
- The Chairperson of the National Endowment for the Arts:
- The Chairperson of the National Endowment for the Humanities.

**Address:**

Nomination packets will be accepted in three ways:

1. To mail nomination packets: Executive Office of the President, Old Executive Office Building, Room 360, Washington, D.C. 20502.
2. To fax nomination packets: 202-456-6546.
3. To e-mail nomination packets, see instructions on the American Heritage Rivers home page. <http://www.epa.gov/rivers>.

All applicants will receive a postcard notification that their nomination packet has been received.

**For Further Information:**

You can request additional information about American Heritage Rivers in the following ways:

1. To receive an information packet or ask a specific question: Call 1-888-40RIVER and leave a message with your name, address and daytime telephone number. Please be as specific as possible in your information request.
2. Federal field staff have been identified in each state to answer questions. You can obtain a list of the federal field staff by calling 1-888-40RIVER, or by accessing the American Heritage Rivers home page at: <http://www.epa.gov/rivers>. A list of the agency staff in Washington, D.C. is also available via these two methods.
3. The latest information is available on the American Heritage Rivers home page at <http://www.epa.gov/rivers>.

**Supplementary Information:**

This notice is available on the American Heritage Rivers home page at: <http://www.epa.gov/rivers>.

**BACKGROUND****Why this Initiative?**

Rivers are an integral part of our Nation's history. They often define the distinctive character of communities, providing avenues for trade, opportunities for

commerce, agriculture and forestry, routes for exploration and discovery, inspiration for ideas and culture, means of recreation, and habitat for wildlife.

Communities across America are working to revitalize their waterfronts and to enhance the historic, cultural, recreational, agricultural, economic, public health, and environmental values of their rivers. At the same time, many people have called for better, smarter, and more coordinated ways to work with the federal government. President Clinton instructed the Cabinet to work with communities in the design of this initiative to support community-led efforts that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage.

The American Heritage Rivers initiative is consistent with the existing authorities articulated by Congress in the National Environmental Policy Act (NEPA) of 1969, as well as other authorities granted to agencies (the National Historic Preservation Act, the Housing and Community Development Act, the Clean Water Act and the Intermodal Surface Transportation Efficiency Act, to name a few). NEPA, for example, instructs federal agencies to seek to create and maintain conditions under which man and nature can exist in productive harmony, while preserving important historic, cultural, and natural aspects of our national heritage. The American Heritage Rivers initiative seeks to coordinate these existing authorities in a more efficient and complementary manner.

### **How Was the Initiative Was Developed?**

President Clinton announced the initiative during the State of the Union Address on February 4, 1997. An interagency task force was formed to develop the initiative and was charged to report to the President within 90 days. The task force was chaired by the Council on Environmental Quality, and participating agencies included the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Justice, Interior, Transportation, the Environmental Protection Agency, the Advisory Council on Historic Preservation, the National Endowment for the Arts, the National Endowment for the Humanities, and the Smithsonian Institution.

On February 10, 1997, a home page on the World Wide Web was established to share ongoing information with the public and to encourage their input on all components of the initiative (<http://www.epa.gov/rivers>). The home page is updated on a regular basis. In addition, a hotline was established for citizen comments and questions (1-888-40RIVER).

During April and May, meetings were held across the country to solicit input on the criteria and selection process and to identify the particular federal resources sought most by communities. Staff members from the U.S. Congress authorizing and appropriating committees, along with a varied group of stakeholders, were invited to the two Washington, D.C. meetings. Meetings have also been held in Albuquerque, New Mexico; Boston, Massachusetts; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; San Francisco, California; Los Angeles, California; Seattle, Washington; Asheville, North Carolina; and Denver, Colorado. In addition, members of the interagency task force were invited to meetings in El Paso (organized by Congressman Silvestre Reyes) and Laredo, Texas (convened by Mayor Saul N. Ramirez, Jr. and Webb County Judge Mercurio Martinez, Jr.)

Participants in these meetings offered many excellent suggestions on the overall initiative design and the needs of communities across the country engaged in river revitalization efforts. As a result, a draft notice of the initiative was published in the Federal Register on May 19. The Federal Register notice specifically asked for comments on the proposed overall design of the initiative, the qualifying and selection criteria, and the nomination and selection process. It also solicited advice regarding the specific types of federal assistance communities would find most helpful.

The comment period was originally scheduled to end June 9, 1997, but was extended until August 20, 1997 at the request of individuals and organizations and to encourage additional public comment.

Following the Federal Register notice, members of the interagency task force were invited to attend a number of meetings, including those in Minneapolis, Minnesota (organized by St. Paul Mayor Norm Coleman and attended by some 20 mayors along the Upper

Mississippi River); the Fox River, Wisconsin (at the request of Congressman Jay Johnson); and the cities of Dubuque, Iowa; Jefferson City, Missouri; and Austin, Texas (at the invitation of representatives from the agriculture community); Denver, Colorado (at the invitation of the Upper Arkansas Watershed Council); West Virginia (at the request of the Hardy County Commissioners); and Frederick, Maryland (at the request of the Frederick County Board of Commissioners).

### **SUMMARY OF COMMENTS RECEIVED FROM THE COMMENT PERIOD (May 19 to August 20, 1997)**

The Federal Register notice comment period ran from May 19 to August 20, 1997, for a total of 90 days. The Administration is appreciative to all those who took the time to express their views and ideas on the initiative.

More than 1,700 comments were received. Many respondents wrote in favor of the initiative, citing increased coordination of federal services, the attention to environmental, economic and cultural/historic values in the design of the initiative, the integrated method to river restoration and revitalization, and the community-driven approach. Many appreciated the fact that no new regulations would be imposed as a result of the initiative.

Many of the respondents wrote in opposition to the initiative. Many were opposed to federal involvement of any kind in restoring and revitalizing rivers and often expressed concern about property rights and the role of the United Nations along designated rivers.

Efforts were made to address all comments received. Special effort was made to clarify and refine the following areas:

overall initiative design:

- need for the initiative;
- qualifying and selection criteria;
- role of the federal government;
- Congressional, state, and local roles;
- benefits to non-designated rivers;
- role of the River Navigator;
- private property concerns;

- nomination and selection process
- public involvement in the design of the initiative.

A summary of the comments received, and how each was addressed, appears in Appendix 2 of this Notice.

## **OVERALL PROGRAM DESIGN**

The American Heritage Rivers initiative will be driven by the needs and desires of communities that wish to participate. The federal government will focus the delivery of resources to support community-led efforts that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage. The initiative will also pinpoint and recognize outstanding models of community-based development, conservation, and other efforts, and will, through an information clearinghouse, share the lessons learned in these communities with all who are interested.

### **How do Communities Nominate a River and Who May Apply?**

The nomination process begins in the local community. People representing all the different interests who live and work in the area should come together to develop the nomination. After meeting to share information, identify common goals for their river, and set strategies to achieve those goals, they should ask one of their members to submit a nomination on their behalf.

The nomination package must include a completed American Heritage Rivers Cover Sheet (printed at the end of this notice in appendix 1) and responses to items 1-4, listed below. Responses to items 3 and 4 constitute the primary basis for evaluating nominations. Items 1 and 2 will be used to put responses to items 3 and 4 in context, but will not be used to assess the merits of the nomination. The President will designate rivers that receive the highest evaluation from items 3 and 4 and have substantively answered items 1 and 2. The President will also seek rivers representing the geographical and resource diversity of the nation (for a complete discussion of additional factors used in the selection process, please see "How Will Rivers Be Selected for Designation?", below).

These four items reflect changes made to the initiative as a result of public comment. In the May 19 and June 20 Federal Register notices, five criteria were listed: 1) broad community support; 2) notable resource qualities; 3) local and regional partnership agreements; 4) strategies that lead to action; and 5) measurable results. In this final notice, two criteria from the earlier notices, 1) broad community support and 3) local and regional partnership agreements, have been combined into one item: "illustrate support for the nomination and plan of action." The second criterion from earlier notices, notable resource qualities, is no longer a criterion because it is primarily descriptive and thus, more difficult to objectively judge. However, it remains a key factor in selection. The two criteria from the earlier notices, 4) strategies that lead to action and 5) measurable results, have been combined into one item: "describe the community's plan of action," which includes measures of performance as one of the components of the plan of action.

The four items to be addressed in the nomination packet are:

- 1. Describe the proposed American Heritage River area.**

Define the proposed area and describe its natural qualities and current uses, for example, economic activities, population patterns, and topography. The size may vary from a short stretch to the whole length of the river. It can cover land immediately adjacent to the river, such as the waterfront and stream side areas, or span the entire watershed. It may cross jurisdictional boundaries. The scope of the area, however, should be sufficient to achieve the community's goals.

- 2. Describe the notable resource qualities in the area.**

Explain how the natural, economic, agricultural, scenic, historic, cultural, and/or recreational resources are distinctive or unique.

- 3. Describe the community's plan of action.**

Demonstrate that the community has in hand, or is

developing a clearly defined plan of action to achieve its vision for the river area. Applicants are expected to address all three American Heritage Rivers objectives -- economic revitalization, natural resource and environmental protection, and historic and cultural preservation -- either through planned actions or past accomplishments. Any actions planned on the designated river area should not adversely impact neighboring communities. The community may describe both long-term plans and short-term actions. It should also describe how private property rights will be respected.

At a minimum, the plan of action should address:

- Community vision
- Products and projects, including project maintenance
- Resources, both committed and anticipated, including means of generating additional support from both private and public sources
- Expected federal role
- Schedule or timeline
- Citizen involvement
- Public education
- Logistical support, operating procedures and policies
- Prior accomplishments, if relevant, and relationship to existing plans and projects in the area
- Challenges to community action
- Measures of performance.

**4. Illustrate who supports the nomination and plan of action.**

Demonstrate that a range of citizens and organizations support the nomination and plan of action. Provide evidence that members of the community have had an opportunity to comment on and discuss the nomination and plan of action.

- Supporters should reflect the diversity of the community. As appropriate, they should include farmers, ranchers, landowners, businesses and industries, educational and arts organizations, youth groups, community leaders, developers and community development organizations, historical societies, environmental groups and other

nonprofit organizations, elected officials, and state, tribal, and local governments. Supporters should include minority and low income individuals and groups. Those who rely on the resources but live outside the area should also be included in discussions about the plan of action, but may not submit a nomination.

- Describe the nature and scope of the supporters' roles. Demonstrate that they come from all affected jurisdictions.
- As appropriate, describe how past and continuing partnerships/agreements support the nomination proposal. If relevant, describe partnerships/agreements forged and commitments made specifically to support the American Heritage Rivers nomination proposal.
- Letters of endorsement and support are highly recommended, especially those from elected officials and appropriate state, tribal and local governments. Letters from federal agencies will not be accepted.

Nominations must be limited to 15 pages of 10-point text or larger, using one-inch margins. Letters of endorsement should include names, addresses, and phone numbers of the supporters and will not count toward the 15-page limit. Letters of endorsement should also indicate the level of support to be given to the American Heritage River plan of action by the individual or organization writing the letter. Letters of endorsement must be included in the nomination packet; letters of endorsement sent separately will not be considered. Due to constraints on the review and selection process, additional materials, such as videos, photographs, and plans, will not be accepted; however, photographs may be embedded in the text if the total length does not exceed 15 pages.

As part of a nomination packet, communities must identify projects they wish to undertake. Communities seeking designation do not have to agree on every aspect of the river's use; they must only agree to support the plan of action for the river they identify in their

nomination package. Of course, any projects identified in the nomination packet must still undergo applicable state and local review processes.

The most successful applicants will show evidence of broad community support and a clearly defined plan of action. A single nomination for the same river, river stretch or river confluence will indicate, in part, this broad community support. One nomination per river, river stretch or river confluence is recommended. Multiple nominations will be ranked and scored separately.

The scope of the nomination does not have to include contiguous segments of the river. While it is desirable to apply for designation of contiguous river segments, nominations for two or more noncontiguous segments will be accepted and considered. It is conceivable that two communities will choose to nominate noncontiguous segments of the same river. Although this is acceptable, actions proposed should not adversely affect neighboring communities or have a negative impact on such things as cultural or natural resources, the environment, river access, water quantity or quality, agriculture, navigation, or flood plain management.

After a designation is made, some communities may wish to add stretches of river as part of their designated river. The same process used by the community to seek designation should be used to augment the designated river area. The community should notify the American Heritage Rivers Interagency Committee (hereafter referred to as the Committee) of this augmentation (see "Coordinated Delivery of Federal Services" below). The Committee will then make such recommendations to the President on behalf of the community.

Foreign governments and their international organizations are ineligible to nominate rivers. Foreign governments and their international organizations will have no authority granted to them as a result of an American Heritage Rivers designation.

Nominations are welcomed from community-led efforts that are well underway, as well as from new efforts that are not yet being implemented.

### **How Will Rivers Be Selected for Designation?**

A panel of experts in river revitalization will review nominations and recommend rivers to the President for designation. The panel will be composed of a number of interests, such as representatives of natural, cultural and historic resources concerns; scenic, environmental and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, forest management and others.

The Chair of the Council on Environmental Quality shall develop procedures for selecting the members of the panel and directing its activities.

In preparation for review by the panel, agency staff will score individual nominations based on community responses to items 1-4 explained in detail above and summarized as follows:

1. Description of the proposed American Heritage River area.
2. Description of the notable resource qualities in the area.
3. Description of the community's plan of action.
4. Illustration of who supports the nomination and plan of action.

Responses to items 3 and 4 constitute the primary basis for evaluating nominations and will be given equal weight in the scoring process. Items 1 and 2 will be used to put responses to items 3 and 4 in context, but will not be used to assess the merits of the nomination.

From among those nominations that are considered to be qualified, the reviewing panel will also seek to recommend rivers for designation that represent a range and variety of kinds of rivers, including those that:

- as a group and individually, represent the natural, historic, cultural, social, economic and agricultural diversity of American rivers.
- showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country. The Committee may recommend both relatively pristine and degraded rivers.
- highlight a variety of innovative programs in such areas as historic preservation, wildlife

management, fisheries restoration, recreation, community revitalization, agricultural practices, public health and drinking water source protection, and flood plain and watershed management.

- includes community partnerships in an early stage of development, as well as those that are more well established.
- stands to benefit from requested federal assistance.

### **Number of Designations**

The President will designate ten rivers in early 1998. Additional designations in subsequent years will be guided by experience gained from the designated rivers and the level of community support for the initiative.

### **Terms of Designation**

American Heritage Rivers designation is intended to enhance the partnership between a community along a designated river and the federal government. Although the term of focused, active assistance will be limited to five years, it may be impossible to achieve measurable results from a community's plan of action in that time. Federal agencies may continue to provide appropriate services as part of their ongoing activities after this time.

The community, with the support of the federal government, will work together to implement the plan of action. Designation will generally be considered indefinite or until and unless termination of designation is sought.

The Committee will develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

The federal government may also find it necessary to terminate designation because a community has failed to pursue its plan of action. The procedures for such an

action will accompany the designation of American Heritage Rivers. Regardless of whether the community or the federal government has requested termination of designation, the other party shall be entitled to know the rationale for the other party's action.

## **BENEFITS OF DESIGNATION**

### **Presidential Recognition**

Designated American Heritage Rivers will be selected by the President of the United States as rivers which deserve special recognition due to their distinctive qualities and community support.

### **Coordinated Delivery of Federal Services**

Programs exist in numerous federal agencies to support river restoration, historic and cultural resource preservation, and community and economic revitalization, especially the agencies that have participated in the development of American Heritage Rivers.

All assistance from the federal government under the auspices of the American Heritage Rivers initiative will come at the request of the community. However, once a river is designated, a preliminary team of federal agency representatives will be available to help the community determine the role for federal assistance. A River Navigator, formerly referred to as a "caseworker" in public meetings and earlier documents (see "River Navigator" below, for a full description of this position) will be made available for each community. The Committee may also assist in overcoming obstacles that arise as the many federal services are provided.

Examples of the federal assistance a community might receive include: information and maps to help communities identify and evaluate historic, environmental and economic resources; capacity building, planning and community outreach assistance to ensure a well-defined action strategy and a broad base of support; training in the use of soil and water quality information as a basis for decision-making and against which to measure progress; training and assistance with environmental monitoring to help communities develop a report card on river conditions and trends; research

assistance to identify events and trends in local history; interpretive assistance to develop a framework for communicating the importance of the community's river heritage; technical and financial assistance to implement restoration and pollution prevention activities; and economic modeling to help communities assess benefits and costs of proposed projects.

Within 90 days of designation, the community and the federal agency team should agree on a framework document to identify their proposed roles. The community and the federal team should agree upon one sponsoring federal agency to lead the coordination of federal resources. Methods for simplifying and expediting individual program services will be investigated, and, recommendations made, as appropriate, for improving the scope and substance of federal tools.

The federal teams will function in partnership with each community, state, local, tribal governments, non-governmental organizations, and others, as appropriate.

The Committee will oversee the federal responsibilities under the initiative. Based on the lessons learned from each designated river, the Committee will look for opportunities to reduce bureaucracy, streamline services, and overcome obstacles.

Finally, federal employees providing assistance to designated American Heritage Rivers will participate in an evaluation of the successes and problems associated with the initiative and make recommendations for improving delivery and accessibility of services and programs.

### **River Navigator**

The community surrounding each designated river will have the opportunity to help select a River Navigator who will assist the community in implementing its plan of action. The River Navigator will serve as a liaison between the community and the appropriate federal programs; assist the community, if requested, in engaging the assistance of state, tribal, and local governments and private sector interests; provide information services; offer technical advice; and

perform other duties as the community may request, consistent with the goals of the American Heritage Rivers initiative.

The community, rather than the River Navigator, will be responsible for implementation of the community's plans. The River Navigator will have no authority to adjudicate and may not engage in the following: lobbying; leadership of the community partnership or any of its endeavors, or sponsoring organizations; or serve as an officer or voting member of the partnership or any sponsoring organization.

In order to ensure clear communication, the federal government will request that the community identify a single person point of contact as its representative to work closely with the River Navigator. Of course, all members of the community may speak with the River Navigator and other appropriate federal officials assisting American Heritage Rivers.

The framework document, drafted by the federal agencies and the community within 90 days of designation, should include a position description for the River Navigator tailored to the unique needs of the community. The federal agencies and the community should develop performance measures for the River Navigator once she or he is identified. These performance measures must reflect the role of the River Navigator as defined in this Federal Register notice.

The River Navigator will be selected by the sponsoring federal agency with input from the community (see "Coordinated Delivery of Federal Services" above), and will be filled for a period no longer than five years beginning no later than 120 days after the date of designation. Because each community will have different needs, the sponsoring federal agency will identify several candidates for the River Navigator position from existing staff and provide an opportunity for the community to interview these candidates and provide input to the selection process. The River Navigator will have maximum latitude to work with the community, while also having direct access to principal staff of the sponsoring agency, including the agency representative on the Council (see "Coordinated Delivery of Federal Services" above) as well as other agencies.

The River Navigator position will be fully federally funded, unless the community volunteers non-federal funds to support the position. There is no requirement that a community accept a federal employee as their River Navigator. If the community chooses not to take advantage of the benefit of having a River Navigator, the federal government will provide a point of contact on the Council to call upon as needed.

### **"Good Neighbor" Policy**

Regarding those sites designated as American Heritage Rivers, the federal government intends to act as a good neighbor in planning and making decisions that affect economic development, natural resources and environmental protection, and historic and cultural preservation. The assistance provided by federal agencies is intended to enhance and complement local community goals. In coordinating with state, tribal and local governments, federal agencies will strive to minimize inconsistency, and to reduce or eliminate conflicting policies and programs operating on and around designated rivers. Through early coordination and public involvement, federal agencies will be in a better position to accommodate the local community plans for designated rivers when planning proposed federal actions. The Good Neighbor policy will add no new layers of review or approval to federal actions -- it will simply facilitate those coordination policies and review processes already in place, and encourage the consolidation and streamlining of existing review processes, where possible.

Federal agencies will be encouraged to work in partnership to assist positively communities. Local federal facilities will be encouraged to provide public access, physical space, technical assistance, and other support for which they have authority and resources.

### **Private Sector Opportunities**

The Administration will look for opportunities to help communities access resources from the private sector to enhance economic opportunities that will revitalize communities, improve living standards, provide incentives, create jobs and similarly achieve environmental goals.

## **BENEFITS TO APPLICANTS WHO SUBMIT COMPLETE NOMINATION PACKAGES**

Communities that invest their time to complete the American Heritage Rivers nomination package have already taken important steps to revitalize their communities and improve their rivers. In recognition of these efforts, those who submit complete nomination packages will receive:

- An invitation to a national or regional symposium on partnering with federal, state, tribal and local governments to share information and learn about the tools and resources available from a variety of sources, including community organizations. These symposia will also provide community members an opportunity to give important feedback to federal program managers.
- Relevant site-specific data and computer software, including environmental information, geological maps, community planning software and economic modeling tools. This information will be tailored to meet the community's needs as identified in their nomination.

## **IMPROVED SERVICES AVAILABLE TO ALL COMMUNITIES**

All communities will benefit from improved federal services. American Heritage Rivers Services consolidates existing information from many organizations in one, easy-to-use World Wide Web site. Those who do not have Internet access can call 1-888-40RIVER to request information.

Services, tools and products related to these three primary objectives of American Heritage Rivers are referenced in the web site. Users may choose from categories such as:

- Information Centers, Publications, Maps and Databases
- Calendars, Discussion Groups, and Contacts
- Hands On Assistance and Talent Banks
- Laws and Regulations

- Financial Assistance
- Community Outreach Tools, Curricula, and Professional Training
- Data Collection and Evaluation Techniques
- Planning and Management Tools
- Research and Development

Each entry describes the services and provides contacts for further information, including Internet links (where possible).

American Heritage Rivers Services also provides information organized geographically. Using familiar prompts, such as a river or city name, users can locate information on flood events, population change, road networks, the condition of the water resources, and the partnerships already at work in their area. They can construct customized maps and download them, use economic and environmental assessment models, find information on relevant educational programs, link their own information, or enter a dialogue with others.

## **CLARIFICATIONS**

### **What is the Role of the Federal Agencies?**

The role of the federal agencies in this initiative is to listen to community concerns and needs; to work with communities engaged in conservation and development activities; to overcome obstacles in the delivery of federal services to identified local priorities; and to play a coordination role in helping communities and government agencies learn from each other and compile the best practices, standards, and models for emulation throughout the country.

The greater coordination of federal agencies involved in the American Heritage Rivers initiative may result in more efficient review of federal actions taken in conjunction with implementation of the community's plan of action.

While federal agencies will not endorse individual nominations for designation as an American Heritage River, they will be able to answer questions about the nomination process and continue to work with local government and nongovernmental organizations, some of which may be pursuing designation.

All activities proposed under the American Heritage Rivers initiative must comply with and be consistent with any applicable federal, state, tribal and local laws, be voluntary, and be helpful to local governments. There is nothing in the American Heritage Rivers initiative that will alter any obligation of the federal government to comply with NEPA or any other statutory or regulatory requirements. Nothing herein shall create or alter any rights, duties, obligations, causes of action or defenses, implied or otherwise, of any person or entity. American Heritage Rivers is a commitment by the federal government to try to provide those programs and resources, identified by the community and paid for by taxpayers, in the most efficient and effective manner possible.

### **Protection for Private Property and Other Rights**

The Administration is committed to ensuring that private property, water, and other rights are fully respected and protected under the American Heritage Rivers initiative.

- The American Heritage Rivers initiative will work in coordination with laws and regulations that seek to reduce pollution, improve water quality, protect drinking water, manage floodplains, promote economic development, facilitate interstate commerce, promote agriculture, protect wetlands and endangered species, preserve important historic and archaeological sites, and address other concerns.
- The American Heritage Rivers initiative will not conflict with matters of state and local government jurisdiction, such as water rights, land use planning and water quality standards, nor will it change interstate water compacts, Indian tribal treaty rights, flood damage reduction, or other existing rights. By achieving greater coordination between programs and local needs, American Heritage Rivers will work to build mutual understanding and better solutions to existing and future problems. It will provide a forum in which federal officials, community organizations, and other stakeholders can examine how the range of regulations are implemented locally.
- Employees of the federal government, including the River Navigator, may not as a result of the

American Heritage Rivers initiative infringe on the existing authority of local governments to plan or control land use, or provide or transfer authority over such land use; nor may the initiative affect any existing limitations on or create any new authorities for the participation of federal employees, including River Navigators, in local zoning or land management decisions involving private property.

- The initiative will not supersede, abrogate, or otherwise impair the authority of each state to allocate quantities of water within its jurisdiction; and any proposal relating to water rights in a community's plan must comport with all applicable laws and interstate compacts. Nothing in this initiative is meant to preclude any holder of a state water right from exercising that right in a manner consistent with state law.
- In implementing the American Heritage Rivers initiative, federal departments and agencies shall act with due regard for the protections of private property provided by the Fifth Amendment to the United States Constitution.

### **What is the Role of State, Tribal, and Local Governments?**

State, tribal, and local governments play critical roles in the American Heritage Rivers initiative. The initiative is designed to complement the work already taking place at the state, tribal and local levels. Local agencies in particular bring a unique and valuable perspective. The American Heritage Rivers initiative can serve as a catalyst to bring these stakeholders together, including neighboring localities and states that share rivers.

Through partnerships, the American Heritage Rivers initiative will bring federal, state, tribal and local resources together to improve the ten designated rivers and provide more efficient services to communities. The greater efficiency achieved through greater coordination of federal services will translate into easier access to federal services by state, tribal, and local governments.

Projects identified through the nomination process for American Heritage Rivers will undergo appropriate state and local review processes. The identification of projects in the nomination process should not

circumvent local, regional, and/or state planning forums, especially those involving public review process. Indeed, as appropriate, such processes should complement public outreach efforts and can serve as public forums on proposed projects to be undertaken as part of designation as an American Heritage River. Designation should not impact existing timetables for projects already identified by the community. In many cases, designation could accelerate completion of common objectives.

Many of the federal agencies already have close working relationships with state, tribal, and local governments. These relationships will continue. The River Navigator may request that state, tribal, and local governments participate in the teams that will be assembled to work with each community to implement its plan of action.

Evidence of state, tribal, and local government support will be a key element in selecting American Heritage Rivers. It is likely that state, tribal, and local governments will submit nominations on behalf of communities who wish to participate.

## **APPENDICES**

- Appendix 1- Nomination Form
- Appendix 2- Summary of Comments Received and How they Were Used

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Email your suggestions

URL: <http://www.epa.gov/rivers/fedreg2.html>  
Revised September 11, 1997



# Resource Development Council for Alaska, Inc.

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February 26, 1998

Representative Jeannette James  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Dear Representative James:

**Re: Support for HJR 52, relating to opposition of American Heritage Rivers in Alaska.**

The Resource Development Council for Alaska, Inc. (RDC) strongly supports HJR 52, opposing the designation of any Alaskan rivers as American Heritage Rivers. The American Heritage Rivers Initiative is a potential threat to private property owners throughout the United States. The supplementary layer of regulations used to manage rivers designated American Heritage Rivers will act as an additional roadblock to development in Alaska.

Several aspects of the Initiative are problematic. First, no clear justification for such a program is provided. Without a clearly defined purpose, this program threatens to add to the already cumbersome complex of federal land management policies. Second, no safeguards exist to protect the rights of private property owners. Finally, as many as thirteen Federal Agencies will be involved in developing an implementation plan for any designated river, resulting in added problems rather than improvements in local land-use planning.

More than half of the lands in Alaska are owned or managed by the federal government. There is no legal authority nor practical need for additional lands to be placed under federal land management. The American Heritage Rivers Initiative is an unnecessary federal program likely to create conflict between state and local communities and the federal government.

HJR 52 is an appropriate step forward in addressing the Initiative and RDC urges its passage. Thank you for the opportunity to comment.

Sincerely,

**THE RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.**

*Ken Freeman*  
Ken Freeman  
Executive Director



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

Honorable Jeannette James  
State House of Representatives  
Capitol Building  
Juneau, AK 99801

February 25, 1998

RE: House Joint Resolution 52, relating to the American Heritage Rivers Initiative

Dear Representative James,

Thank you for the opportunity to comment on House Joint Resolution 52 and thank you for introducing this measure. The Alaska Miners Association supports HJR-52 and we encourage its passage.

The American Heritage Rivers Initiative (AHRI) contains numerous problems. AHRI has not been authorized by the U.S. Congress and as a consequence the relationship between AHRI and existing laws and regulations has not been defined. The relationship between AHRI and the authorities of the land management agencies such as the Bureau of Land Management, Forest Service, U.S. Fish & Wildlife Service, etc. has not been defined. Also, the authorities of AHRI have not been defined as they relate to State and private property.

The system of laws in this country is one where the Congress provides the authority for an action which is then implemented by the Administration. Under this system, statutes and the resulting regulations and rights of the public to appeal or challenge those laws are well defined in law. This is not the case with AHRI and at least one example has already been identified that shows the danger of AHRI.

This example involves the procedure to "opt-out" of the AHRI. Last summer Ms. Katie McGinty, Director of the White House Council on Environmental Quality (CEQ), told the Western States Coalition meeting in Spokane, WA that if an area or community wanted to "opt-out" of AHRI they could do so by writing to her. Then just prior to the close of the nomination period, Ms. McGinty told selected Members of Congress that it was only by a letter from the applicable U.S. Congressman that an area could "opt-out" of the program.

In addition to the legal basis for the program, there are many other problems with AHRI including: 1) No justification has been given for this new program, why it is needed, or why does the current system of federal land management agencies and communities needs to be replaced with this new program. 2) The stated purposes of the program properly fall under local zoning issues and these are the responsibility of local governments, not the federal government. 3) No reference or acknowledgement is given to the fact that the lands under navigable waters are owned by the states and this would include most rivers in the country. 4) Elected representatives of local communities are not involved in the decision to list a river under AHRI.

These are a few of the many problems that have thus far been identified with the American Heritage Rivers Initiative. We urge passage of House Joint Resolution 52 opposing this Initiative for Alaska. If we can be of further assistance in this matter please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director