

HJR

52

SENATE COMMITTEE REPORT

DATE: 3/30/98

FURTHER:

DATE TURNED IN TO OFFICE: 4/7/98

Resources Committee considered

HOUSE JOINT RESOLUTION NO. 52

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

and recommends:

- be replaced with S CS HJR 52 (RES)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill: same title
- new title
- House Bill: same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Adrian Taylor</i>	✓	<i>Henry ...</i>	✓		
<i>Bob ...</i>	✓				
<i>Linda ...</i>	✓				
<i>Mercury</i>	✓				
<i>Brew A. ...</i>	✓				
CHAIR: <i>Rick Halford</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>H. Res</i>	<i>2/26</i>	<i>X</i>	

APPLIES TO CS

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No: 1

Version: HJR 52

(H) Publish Date: 2/27/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

Dept. Affected: _____
BRU: _____
Component: _____
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							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

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
JEANNETTE JAMES

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North Pole, Alaska 99705
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House Of Representatives

House District 34

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.

- John Shuler of Montana killed grizzly bear after it attacked him late one night. Federal officials rendered the "self-defense" 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 another false promise when they adopted Wilderness legislation saying that there was a provision for the 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, according to Kathy Stupak-Thrall of the Upper Peninsula of Michigan.

- Kathy Stupak-Thrall has been compelled to fight government attorneys who say the provisions have no meaning, or they do not 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 any way they wish.

I would say there is good reason for the distress throughout our country regarding the President's American Rivers proposal, particularly with an attitude like that driving government attorneys. The American people are not stupid. They are well aware that a legacy of betrayals and broken promises are attached to these types of well-intentioned, pleasant sounding, feel-good programs.

For this reason, 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 major 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 more time for the public process is another concern. As it is, there has not been sufficient time for reviews and comments by the public on the initiative. Some people believe it is another intrusion of the federal government and a way to get control of all our lands. To protect our sovereignty this initiative must 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

- James R. Roper

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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ALASKA MINERS ASSOCIATION, INC.

501 W Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 275-0347

Honorable Jcannette James
State House of Representatives
Capital 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



Citizens' Advisory Commission on Federal Areas

3700 Airport Way
Fairbanks, Alaska 99709-4699
(907) 451-2775
Fax: 451-2761

August 20, 1997

Kathleen A. McGinty, Chair
Council on Environmental Quality
Old Executive Office Building, Room 360
Washington, D.C. 20501

Dear Ms. McGinty:

The Citizens' Advisory Commission on Federal Areas has reviewed the proposed American Heritage Rivers Initiative (AHRI), as published in the *Federal Register* on May 19, 1997 and re-issued on June 20, 1997 (62 FR 33647). We offer the following comments for your consideration.

Our review of this proposed initiative, along with the failure to define a clear need for such a program, and the spurious claims of its benefits, leads us to conclude that the proposal should be abandoned. If the actual goal of the initiative is merely to "support communities, within existing laws and regulations, by providing them with better access to information, tools and resources," we submit that creation of a new federal program to accomplish that goal is both unnecessary and undesirable.

The major deficiency of this proposal is its failure to explain adequately the need to create a new program in order to improve the manner in which federal agencies are supposed to conduct business. It is obvious that, despite claims to the contrary, this initiative constitutes a new federal program, not just a realignment of existing ones. Complete with an interagency task force of a dozen different federal departments and agencies, assignment of a federal "river navigator," creation of so-called Performance-Based Organizations, and the stated objective to reinvent federal programs, we believe the unstated goals of this proposal will ultimately result in greater federal control over state and private properties and greater regulatory burdens. Additionally, by siphoning off agency personnel and resources to provide special recognition and focused federal support for newly designated heritage rivers, other programs and projects will necessarily suffer. The result will be poorer, not better, delivery of services.

The Government Performance and Results Act (GPRA) of 1993 requires all federal agencies to submit a 5 year strategic plan and an annual performance plan to the Office of Management and Budget and Congress by September 30, 1997. In passing GPRA, Congress intended to improve federal program effectiveness and public accountability

by focusing on end results, service quality and customer satisfaction. Since each of the departments and agencies involved in the interagency task force must comply with GPRA, with the deadline only a few weeks away, have they not already addressed ways to improve their programs and delivery of services? If the real motivation behind the proposed American Heritage Rivers Initiative is simply to improve agency functions and provide better support to state and local governments by utilizing existing programs, would it not be more appropriate to address ways of accomplishing those goals in the GPRA performance and strategic plans, without the creation of this new federal program?

For example, how have the various federal agencies on the interagency task force addressed their responsibilities under the Wild and Scenic Rivers Act in their GPRA plans? That act states:

“The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources.... This authority applies within or outside a federally administered area and applies to rivers that are components of the National Wild and Scenic Rivers System and to other rivers.” 16 USC 1282(b)(1) (emphasis added)

The statutory mandate and authority for federal agencies to provide the same type of assistance and cooperation proposed by the AHRI is already found in the Wild and Scenic Rivers Act. Other statutes such as the Land and Water Conservation Fund Act and the National Historic Preservation Act contain similar provisions. This Commission is unconvinced that the AHRI will result in a miraculous improvement in agency compliance with these mandates and delivery of services. Perhaps more importantly, there is no statutory authority for the creation of this new program, nor for the expenditure of funds for its operation.

The proposed process for nomination of an American Heritage River is also highly suspect. The AHRI uses the term “river community” and states that it is self defined by the members of the community. Based upon this criteria and the discussion in the notice, it would appear that any group of two or more could define itself as a river community and submit a nomination to designate a river under the AHRI. While it is “highly recommended” that nominations for designation of a river be accompanied by letters of support from other members of the community, and a local mechanism that allow members of a community to comment on the nomination must be outlined, it is unclear how much community support is necessary for designation or what level of opposition would prevent designation.

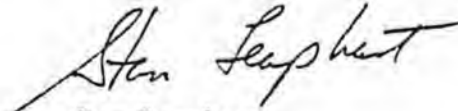
In spite of assurances to the contrary, we foresee the possibility of designation of a river or river area over the objections of the local city, county, borough or state

governments. President Clinton's proclamation creating the Grand Staircase Escalante National Monument over the objections of the state and local governments, as well as local residents and property owners in Utah, gives us no confidence that similar unilateral action could not be taken under the AHRI.

We recommend that, should the decision be made to implement this initiative, changes be made to allow nominations to be made only upon full approval by the legally recognized government(s) responsible for management of the nominated river or river area.

In summary, this Commission believes that the proposed American Heritage Rivers Initiative is an unnecessary duplication of existing programs that is being promulgated without the necessary statutory authority and will do little to enhance the functions of those programs or the delivery of services. It should not be adopted. As we have stated, if the goal is to improve agency efficiency and service to the public, this can best be done through mechanisms such as the GPRA rather than through the creation of a new and unneeded program.

Sincerely,



Stan Leaphart
Executive Director

cc: Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
Representative Helen Chenoweth
Governor Tony Knowles
Senator Mike Miller
Representative Gail Phillips

Monday
September 15, 1997

Executive Order

Part IV

The President

**Executive Order 13061—Federal Support
of Community Efforts Along American
Heritage Rivers**

Presidential Documents

Title 3—

Executive Order 13061 of September 11, 1997

The President

Federal Support of Community Efforts Along American Heritage Rivers

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91-190), and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

Section 1. Policies.

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630, agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as "American Heritage Rivers."

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partnerships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

Sec. 2. Process for Nominating an American Heritage River.

(a) *Nomination.* Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria.* Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process.*

The Chair of the Council on Environmental Quality ("CEQ") shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation.*

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, ten rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) 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.

Sec. 3. Establishment of an Interagency Committee. There is hereby established the American Heritage Rivers Interagency Committee ("Committee"). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- (1) The Secretary of Defense;
- (2) The Attorney General;
- (3) The Secretary of the Interior;
- (4) The Secretary of Agriculture;
- (5) The Secretary of Commerce;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Energy;
- (9) The Administrator of the Environmental Protection Agency;
- (10) The Chair of the Advisory Council on Historic Preservation;
- (11) The Chairperson of the National Endowment for the Arts; and
- (12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

- (1) establish formal guidelines for designation as an American Heritage River;
- (2) periodically review the actions of agencies in support of the American Heritage Rivers;
- (3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and
- (4) perform other duties as directed by the Chair of the CEQ.

Sec. 4. Responsibilities of the Federal Agencies. Consistent with Title I of the National Environmental Policy Act of 1969, agencies shall:

- (a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;
- (b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;
- (c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;
- (d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;
- (e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;

(f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;

(g) select from among all the agencies a single individual called the "River Navigator," for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;

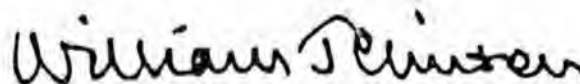
(h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and

(i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

Sec. 5. Responsibilities of the Committee and the Council on Environmental Quality. The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

Sec. 6. Definition. For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

Sec. 7. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
September 11, 1997.

214 Massachusetts Avenue, N.E.
Washington, D.C. 20002-4999
(202) 546-4400
<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

During 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, 1997.¹ 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 area² to be considered, its notable resource qualities,³ 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.

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.⁴ 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."⁵

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*,⁶ 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.⁷

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."⁸ 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."⁹ 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."¹⁰ 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.¹¹ 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.¹² 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.¹³

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.¹⁴ 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.¹⁵

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, 1968.¹⁶ 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.¹⁷ Since 1968, Congress has designated 154 Wild and Scenic Rivers under this act, amounting to 10,814 miles of river.¹⁸ 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,¹⁹ 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.²⁰ 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.²¹

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.

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,²² 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,²³ 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, non-profit, 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.

22. "National Mission and Goals Statement," National Rural Development Partnership, at www.rurdev.usda.gov/nrdp/goals.html.

23. Council on Environmental Quality, "American Heritage Rivers Initiative," at 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.²⁴
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.”²⁵

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.)²⁶

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.

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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~~Paul C. Jones~~
Executive Director

DATE: February 18, 1998

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RE: Draft Copy of remarks on
House Joint Resolution No. 52
Copy of the Heritage Foundation paper
"Good Politics, Bad Policy: Clinton's American
Heritage Initiative," by Alex Annett.

14 pages with cover. If there are problems with this fax please call
Kathy at 406/259-3861.

For Immediate Release
July 17, 1997

Contact Glenna Hodge
(512) 463-0644

The American Heritage Rivers Initiative Makes No Sense
by Rep. Bob Turner

On May 19, 1997, the White House Council on Environmental Quality (CEQ) published a notice in the *Federal Register* announcing the American Heritage Rivers Initiative (AHRI), following up on a promise by the President in his State of the Union address to designate 10 rivers as American Heritage Rivers in 1997. The CEQ had allowed a scant 21 days for public comments, after which the President would issue an executive order making the new federal program official. Since then, citizens and elected officials from the county level to the U.S. Senate have been scrambling to make sense of the initiative, in order to submit meaningful comments by the deadline.

Toward that end, my office called the CEQ on May 22 to learn more. What problem does the AHRI seek to solve? What are its goals and purposes? These questions are relevant to Texas, because Land Commissioner Garry Mauro is working with the White House to have the entire Rio Grande designated as one of the first 10 American Heritage Rivers. So far, neither the phone call to the CEQ, my June 10 letter to Garry Mauro, nor a July 9 briefing by the CEQ's Ray Clark and Assistant Land Commissioner Ty Fain have yielded many, if any, specifics about the initiative. No one can explain what will be possible with a federal designation that is not possible now.

According to the CEQ, the problem is poor performance by federal agencies. The AHRI will reinvent government and thereby improve the delivery of services by 13 federal agencies using existing budgets and no new regulations. Apparently, there is money enough for local projects such as water and wastewater treatment plants and economic development, but federal agencies are doing a poor job of getting the money back to the communities. Somehow, the CEQ reasons, a federal designation will cause the agencies to do better.

Since this is a "bottom-up" initiative, the goals and purposes of the AHRI will be left to the imagination of local communities, within specified parameters. A petition must be based upon some aspect of restoring the river. What does that mean? According to the CEQ, a petition might be based upon restoring stream flow which would be accomplished by removing impediments (dams, levees, impoundments) to natural flow of water. When asked how that might impact drinking water supplies, surface water permits for irrigation, hydroelectric power or flood control, the CEQ employee allowed that restoration of stream flow by actually removing obstructions might be going too far, but could not suggest other ways a river's original stream flow might be restored. From that, I took it that a petition for the purpose of restoring stream flow would not be looked upon favorably by the CEQ.

If a petition were based upon a goal of restoring water quality, we asked, how would that be accomplished? For example, we have a Clean Water Act which governs water quality. The U.S. Environmental Protection Agency (EPA) and the Texas Natural Resource Conservation Commission (TNRCC) are charged with carrying out the mandates imposed by that federal act. Does the AHRI suggest these agencies are failing at their jobs as well? Furthermore, if the AHRI involves no new regulations, what more can be done under a federal designation that is not already possible under the Clean Water Act?

In 1994, we rejected an effort to designate five Texas water bodies as Outstanding National Resource Waters. We understood then that the federal designation would severely and unnecessarily restrict land use surrounding the designated water body. The fact that the water bodies contained such high quality water was testament enough that the state already was doing an excellent job managing our natural resources.

Also in 1994, we managed to fend off the federal designation of 33 central-Texas counties as critical habitat for the endangered golden-cheeked warbler. Again, Texans understood that the designation would deny them of the right to own, maintain and transfer their private property without federal involvement. And again, the fact that the creatures were thriving in these counties was testament to the fact that Texans do an excellent job of taking care of their land.

No one yet has explained how the federal designation of the Rio Grande River as an American Heritage River will be different from any other federal designation. Yes, water quality in the Rio Grande needs to be improved, but we need to be honest about the source of the pollution. Texas is doing its share. Mexico still dumps raw sewage into the river. And, yes, we need good clean economic development projects in communities along the Rio Grande. But we don't need a federal designation to make that happen, either.

In my humble view, the American Heritage Rivers Initiative makes no sense. Based upon everything we know about federal designations, I cannot imagine why anyone would offer up the Rio Grande as a federal American Heritage River for any reason, much less as an incentive for federal agencies to shape up.

The new deadline for public comments on the initiative has been extended to August 19. After that time, it is my understanding President Clinton will sign the executive order breathing life into the AHRI. We in Texas may not be able to change that, but we can and should adopt a wait and see approach before requesting the federal designation of any Texas river.

In the meantime, I suggest we invite the heads of those 13 federal agencies to Texas and ask them to outline for us the array of federal programs which offer assistance to local communities. We need to have them tell us how much money is available for infrastructure and other projects and ask them why we can't have it - now.



U.S. REPRESENTATIVE
HELEN CHENOWETH
First District - Idaho

NEWS RELEASE

FOR IMMEDIATE RELEASE
October 22, 1997

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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 unneeded, 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.)

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VOICE ACTUALITY AVAILABLE AT 202-225-2355

AMERICANS AREN'T FOOLS, MR. PRESIDENT

By Glenna Hodge

Reprinted from *Liberty Matters Journal* 7/4/97

On May 19, the White House Council on Environmental Quality (CEQ) published an innocent-looking notice in the *Federal Register*. It was like a birth announcement in a way, heralding the arrival of the President's new baby, the American Heritage Rivers Initiative. The first public glimpse of this, his latest land-grab scheme, came during the State of the Union address when the President unveiled his plan to designate 10 American Heritage Rivers in 1997. The designations, he said, would "help communities alongside them revitalize their waterfronts and clean up pollution, proving once again that we can grow the economy as we protect the environment." Americans weren't fooled. It was *deja vu*.

Last year, with the stroke of his pen, the President had simply taken Utah's Grand Staircase-Escalante as a National Monument. Neither the majority of elected officials nor the people whose assets were instantly frozen had any advance warning of the seizure. Who would have seen it coming? The President of the United States does not just fly in and take people's property. Well, OK, now we know this President does, but then he does a lot of things that would make our forefathers shudder.

Earlier, Congress tried to pass the National Heritage Areas Act, which was abandoned when it became clear that passage would have to be over the furious objection of the American people. There it was, though, in black and white, the *Federal Register* notice. Unfazed by the will of the people, the President was back again. This time, though, he would leave Congress out and bypass the democratic process. Instead, he would use the Grand Staircase-Escalante National Monument method and simply seize vast amounts of American soil and water by presidential proclamation.

That was the plan, at least, until May 28. That was the day Liberty Matters faxed an Alert that sparked a firestorm of indignation and created an incredible backlash against the President, his CEQ office and the federal agencies involved in the American Heritage Rivers Initiative. White House telephone operators were swamped with more incoming calls than the system could handle. The grassroots' response generated such a torrent of protest that Katy McGinty, chairman of the CEQ, said in a press release that she was "bewildered and perplexed" by the amount of opposition to their plan.

The callers simply wanted to know what would keep this presidential initiative from having the same chilling effect on commerce, industry and private property rights as the Utah initiative. The CEQ had allowed a scant 21 days for the public to comment on the *Federal Register* notice. Worse still, Memorial Day fell within the already too-short comment period. Congressmen were in their home districts celebrating freedom and honoring Americans who had fought and died defending it for the rest of us. Little did they know that the President had chosen this moment to launch a scheme that, if enacted, would rob Americans of that hard-won liberty by controlling every inch of American soil from the White House.

Because they responded to the Alert by the hundreds of thousands, the American people did their part for liberty. They complained loudly that there was too little information and that the White House had allowed too little time for meaningful comments. The CEQ, even under the crushing weight of public scrutiny, had been willing only to say what the Initiative would not do. It would not involve new federal regulations, they said, and it would not involve the appropriation of new federal dollars. Things just didn't add up. A federal program without regulations that wouldn't cost the taxpayers more money? Do you think we're fools, Mr. President?

The White House said that the American Heritage Rivers Initiative stemmed from Vice-President Al Gore's National Performance Review, the administration's plan to re-invent government. Federal agencies weren't communicating among themselves very well and because of their poor communications, they were not delivering services (federal funds) as fast as the President and Vice President would like. This Initiative would solve the problem, they said. Somehow, a new federal designation would cause the agencies to communicate. Somehow, the presidential designation of a river and its watershed would cause agencies to redirect taxpayer dollars that are languishing in their coffers and to refocus their efforts toward the support of the first 10 river communities because they would now be under federal control.

The administration wanted to create another layer of federal bureaucracy, take control of vast amounts of American soil and

water, and paste a patriotic label across the front of this pork barrel in the hope that federal agencies would improve their performance. No problem. States should be happy to give up their rivers and the people their private property rights in order to inspire federal employees to do their jobs, right? Even if the people didn't buy the line about improving the delivery of services, they certainly couldn't be opposed to saving our rivers.

The President had under-estimated the intelligence of the American people once again. They recognized that this was the same dance, just a different partner. They hadn't bought the National Heritage Areas Act land-use scheme, though, and to the dismay of the White House, the President's new scheme wasn't selling either. Maybe it was the fact that Clinton was bypassing Congress and the democratic process that didn't sit well. Or maybe it was the part about the designations being perpetual. The information was sketchy, but the American people knew something was very wrong.

The growing controversy prompted legislation by Congressman Helen Chenoweth (R-Idaho) who delivered two impassioned speeches from the House floor. She cited the need for Congress to question the purpose of the American Heritage Rivers Initiative. Since the designations would be made by presidential proclamation, Congress would not be given a chance to debate the Initiative unless it took control of the issue. She reminded the members that "this Congress is about less government, self-determination and freedom. It's about states rights, property rights, and the right of the people to be free of federal entanglements." The American Heritage Rivers Initiative, she said, did not fit that bill. Chenoweth, along with eleven other Congressmen, then introduced HR1842 which would prohibit the Clinton Administration from spending federal funds for the American Heritage Rivers Initiative.

Congressman Don Young, (R-Alaska), Chairman of the House Committee on Resources, and four other committee chairmen also took a stand. They delivered a letter to the CEQ pointing out that because the Initiative was a major federal action, it violated the National Environmental Policy Act of 1969. Furthermore, its short comment period violated the Administrative Procedures Act. They requested that the CEQ extend the public comment period and deliver a detailed briefing to that Committee no later than June 27.

Two days later, in a surprising show of bipartisan concern, 30 members of Congress signed a letter to the CEQ requesting an extension of the comment period, citing potentially detrimental implications to property rights in the initiative. They too complained that the initial comment period was too short to allow members to prepare meaningful comments.

Because liberty still matters to millions of Americans who refused to let the President take it without a fight, politicians who are sworn to uphold and defend our Constitution joined in the chorus of criticism. Finally, the President's staff announced they would grant a 60-day reprieve. They re-issued their proposal in the *Federal Register* on June 20 and the new deadline for public comment is August 20.

In usual form, CEQ assured critics that they had taken care of property rights concerns with their new rules which are "intended to clarify issues raised over the last month." But, on closer inspection, no mention of, nor any specific protections for property rights were included.

More pressure must now be applied to stop this Initiative within the new 60-day window, or an Executive Order will follow. The American Heritage Rivers Initiative will be confirmed and river communities will be asked to submit their petitions for designation by January.

Although this program is not dead, it has been stalled because the American people spoke up. They demanded to know who would stop the President from putting rivers and communities under federal control. They demanded to know what problem the American Heritage Rivers Initiative would solve that could not be solved without a federal designation. They demanded to know what need would be met by the initiative that could not be met now. If federal agencies had money to give away, they wanted to know what was preventing them from doing their job that a federal designation would cure.

Most of all, the American people demanded to know what would make any presidential initiative worth the ensuing loss of freedom. Thank you, America, for asking. Keep asking, for they do not now and never will have a good enough answer.

Glenna Hodge is a freelance writer on property rights issues and is a legislative assistant to State Representative Bob Turner in Texas.



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February 23, 1998

Honorable Craig Thomas
Chairman
Subcommittee on Parks, Historical Preservation and Recreation
354 Senate Office Building
Washington, DC 20510

RE: H.R. 901, the American Land Sovereignty Protection Act

Dear Senator Thomas,

Thank you for the opportunity to comment on House Resolution 901 which would require Congressional approval of all international designations that involve any lands or waters owned by the United States. The Alaska Miners Association supports H.R. 901 and urges its passage at the earliest possible date.

H.R. 901 is possibly the single most important land management issue now before the U.S. Congress. This Act is needed to protect and help insure the sovereignty of our country. This Act is also needed to reduce the opportunity for foreign governments and foreign companies to dictate and adversely impact the policies and economy of the United States. It is crucial that the U.S. Congress and only the U.S. Congress be allowed to offer any area of land or water of the United States or any of its territories as part of an international designation that could, or may, in any way affect the use or management of that area.

World Heritage Sites and Biosphere Reserves have been used in the past and are now being used by environmental groups to harass and stop projects. This occurred at the New World Mine located in Montana just outside Yellowstone National Park. Yellowstone has been designated as both a World Heritage Site and a Biosphere Reserve. The New World Mine was on private property about three miles outside the park and on a watershed that drained away from the park. The Department of Interior invited the United Nations World Heritage Committee to visit the Park with the pre-determined goal of getting the Committee to oppose the mine and thereby add international pressure to block development of the mine. After the visit and without any scientific basis or evaluation of the facts, the Committee predictively came out against the New World Mine.

4/11/98
In the Kamchatka area of the Russian Far East, immediately after designation of the "Volcanoes of Kamchatka World Heritage Site", environmental groups issued a press release attacking OPIC (Overseas Private Investment Corporation) support for a mine project near the newly designated site. This project and the surrounding area had been extensively explored for more than a dozen years and was strongly supported by the local communities. The people of the Russian Far East are desperate for jobs and a means to support their families. But because of the international World Heritage Site designation, outside groups were given a tool to harass the project and add outside international pressure to block development that would be a tremendous benefit to the area.

It has been argued that World Heritage Sites and Biosphere Reserves are only "symbolic" and that such designations do not have any impact on a nation's sovereignty over its lands and waters. We submit that for the New World Mine and the residents of Kamchatka such designations are far more than just "symbolic".

Where World Heritage Sites or Biosphere Reserves are established there exists an undefined "buffer" around the designated area that is also subject to outside influence. In both the New World Mine and the Kamchatka instances, the projects were several miles outside the boundaries of the respective World Heritage Sites. This means that not only is the designated Site subject to outside influence, but that private and government lands and waters around the Sites are also susceptible to harassment.

This "buffer" aspect is of extreme importance in Alaska. Specifically, about 165 million acres of Alaska (an area equal to the combined acreage of New York, New Jersey, Pennsylvania, West Virginia, Ohio, Indiana, and Illinois) is already in federally designated parks, preserves, monuments, refuges, and wild & scenic rivers which are often given the general name of Conservation System Units or CSUs. If any of these CSUs are given international designations, the adjacent State-owned or Native-owned lands would be in jeopardy. How wide is the buffer? Is it three miles as occurred at the New World Mine? Or is it 10 miles or 20 miles? We have calculated that each one-mile width of buffer around the federal CSUs in Alaska would cover another 8 million acres of mainly State or Native owned lands.

The "buffer" affect constitutes a danger to privately owned Native lands in Alaska which total about 45 million acres. Most of these lands were selected because they have the highest mineral potential and therefore the greatest opportunity to create jobs and economic development opportunities for the Native people. The opportunities presented by these lands are essential for the Native people, many of whom live in remote villages that are plagued with chronic unemployment. State and federal programs to create jobs and improve the lives and self-worth of the Native people have utterly failed. It is therefore essential that debate and an act of Congress be required before any international designation is allowed that could in any way be used to harass or block the Native people from normal use and enjoyment and developing their resources.

The impacts of Biosphere Reserves would be even worse than those of World Heritage Sites. The reason is that boundaries of Biosphere Reserves are not defined. They do not have specific clearly established boundaries but rather are made up of a core area where no development can occur and surrounding intermediate "buffer" areas where minimal development can occur. Neither the Congress nor a private citizen can predict what can or cannot be done in the non-core areas or on lands adjacent to a Biosphere Reserve. All of the problems and uncertainties of World Heritage Sites continue and some new dangers are added.

We have focused on World Heritage Sites and Biosphere Reserves. However, are there any other international designations that we do not know about? Are there any other designations that could in any way be construed to result in some measure of compromise of sovereignty? H.R. 901 would require Congressional approval of all international designations.

We believe that international designations could be used to disrupt and hurt U.S. business and industry. If international pressure can be exerted on development in the U.S. through World Heritage Sites or Biosphere Reserves, it is a small step for our international competitors to fund environmental groups to harass and block projects in the U.S.

One example of the danger posed by an international designation involves Native owned private lands in Northwest Alaska. The Red Dog Mine is one of the greatest success stories for the Native people of Alaska. In 1985 the U.S. Congress passed a Act that provided a right of way for the NANA Regional Corporation (a Native corporation) to build a road from its Red Dog Mine across Cape Krusenstern National Monument to the only feasible port site in the area. This mine is now the largest private employer in Northwest Alaska and provides high-quality, skilled, year-around jobs to more than 450 people, 54% of which are Native shareholders. This single mine now produces more than 8% of the world's zinc concentrate.

However, if back in 1985 Cape Krusenstern had been a World Heritage Site, or if the off-shore area had been a Biosphere Reserve, the outcome may have been very different. Environmental groups fought against the road right of way and would have used international pressure to block it if international designations had been in place. Also, it is likely that international competitors would have done everything possible, including funding groups like Greenpeace, in an attempt to block the right of way needed for the mine. World Heritage Sites and Biosphere Reserves expose any area, and especially Alaska, to this type of economic harassment from foreign competitors.


Furthermore, if an international designation is in place, nothing would keep foreign governments from using such designations and the same tactics to advance their political agendas at the expense of the U.S. interests.

Another aspect that must be addressed is the ability of the international community to change the definitions, management regime or use requirements for World Heritage Sites or Biosphere Reserves. If such changes occur, the U.S. could find itself bound to some new requirements and added limitations.

One final point must be raised. All governments have the propensity to grow and continually reach for more power and control. When this occurs in the United States, we the people can elect representatives that will curb this expansion of government without the need for a revolution. There is no such mechanism in place to change the direction of the United Nations. Also, under the U.S. Constitution the Congress has the authority and responsibility for such lands issues and any international designation without Congressional approval is an usurpation of that authority.

For all of the reasons and situations discussed above, it is essential that only the U.S. Congress have the power to allow a World Heritage Site, Biosphere Reserve or any other international designation over our lands or waters.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Tony Knowles