

TESTIMONY OF ROBERT T. GRIFFIN  
INDEPENDENCE COUNTY JUDGE  
BATESVILLE, ARKANSAS  
JULY 17, 2013

Chairman McClintonck, Ranking Member Napolitano, and Honorable Members of the Subcommittee, I am Robert Griffin, County Judge and the Chief Elected Official of Independence County, Arkansas located in Northeastern Arkansas and bisected by the White River of recent "National Blueway" fame through Department of Interior Secretarial Order 3321. As a third generation farmer/ landowner in the White River Watershed, my life has been devoted to agriculture along the many links to the White River in our county. As well, I am very familiar with the conservation programs provided by the USDA through the years. As owner and operator of a United States Federal Warehouse Act grain facility for 30 plus years, I dealt with the regulatory protection administered by the Act and as well, dealt day to day with the farmers within the watershed. As a land owner, I have participated in several voluntary conservation programs of the USDA. I see the eighty years historical evidence throughout our county of the conservation efforts brought forth by the dust bowl years beginning in 1933 beginning with the Soil Erosion Service. Our county is dotted with land terraced for protection of soil erosion in voluntary participation with the partnership of the Federal Government. As County Judge, I must be concerned with issues that impact the residents of Independence County and as well, part of my responsibilities is the maintenance of roads and the drainage from those lifelines of society goes directly into the watershed.

Independence County is the perfect place to examine the potential effects of the Blueway designation due to the fact the White River bisects our county. Independence County is at the "fall line" separating the Ozarks from the Mississippi Alluvial Plain, thereby splitting the fertile river bottom soil and the beginning of the mountains. We split evenly between forest at 49 percent and cropland/pastures at 50 percent with 1 percent surface water. This makes us a kindred spirit with the western states of Washington, Idaho and Oregon that share the same balance of forest and crop/pasture/rangeland uses. In fact, the entire acreage within the White River Watershed is comprised of a similar distribution of forest and cropland/pasture/rangeland as those western states named. We are you.

I am pleased today to be able to communicate to you the sorted problems with top driven initiatives but first I ask you to indulge me to begin with an analogy that I believe puts most of the problems into perspective. In the film Cool Hand Luke, the captain has to explain to Luke the core of his issues. When he states, "What we've got here is failure to communicate", he sums up as well the problems with the National Blueway, NO COMMUNICATION!

The Executive Branch began with declaring the AGO (America's Great Outdoors) initiative. This was intended to reshape the conservation efforts of the nation. The Secretary of Interior followed up this initiative with Secretarial Order 3321, declaring the National Blueways System designation and edict for the stakeholders to join together in a cooperative manner to accomplish stated goals. The first problem is defining stakeholders to be agencies under the Interior Department, Department of Agriculture and Army to name a few. The true stakeholders are the 80% of people in Arkansas that are private property owners graced with a dubious honor with unknown consequences.

I want to point out the wording in the initiative whereby it is "not intended to". My analogy here is that each day in America, millions of people leave home for some destination by automobile not intending to

have a wreck. Yet, the result, each day, is multiple millions of dollars of property damage, injuries and death. All of this was unintended when they began the journey. Somehow the wording of unintended does not give comfort when the executive branch is expecting results and some of the goals seem to target our way of life. Agriculture is identified as the single largest contributor to issues within the watershed, both good and BAD. Mr. Chairman and members of the Committee, each of your states are identified as being heavily dependent upon agriculture and/or forestry, just as my beloved Arkansas and Independence County are as well. When the top income generator of your economy is targeted as the biggest contributor of bad issues within the watershed, the words not intended are somewhat disconcerting when the goals such as are stated belie the issue.

Let me quote from the delusory nomination document:

(page 10) "Water quality suffers from sediment, nutrient and biocide runoff from UNSUSTAINABLE AGRICULTURE PRACTICES. Surface and groundwater extraction for irrigation negatively affects aquifers and stream flow. The results of these changes are dramatic and will prove catastrophic to delta communities and the Big Woods ecosystem alike without concentrated attention to the GOALS AND OBJECTIVES that form the CORE PRINCIPLES OF THE NATIONAL BLUEWAYS INITIATIVE."

(page 15) "Many of the near and mid-term goals proposed in this nomination will be achieved through the work associated with the achievement of the AGO goals."

(page 16) "Agricultural practices, good or bad, have the biggest impact on the Watershed's environment."

(page 18) "The Coalition's central commitment and goal is to develop a conservation framework for the Watershed that implements a multi-level strategy for achieving this vision."

Goals are outlined:

(page 19) "Habitat short-term (1-3 years, 4 a.) Establish minimum 180' wide vegetative buffers along ALL SURFACE WATER." (NRCS)

(page 20) "Agriculture Mid-term (3-7 years, 1) Complete enrollment of 30% of eligible cropland into conservation programs (NRCS)."

(page 21) "Hydrology Short-term (1-3 years, 3b.) Control encroachment of HUMAN ACTIVITIES into the existing floodplain." (USACE)

(page 21) "Hydrology Mid-term (3-7 years, 1) Complete reduction of on-farm, consumptive water use by 15% using irrigation efficiency practices (NRCS)  
"(3,a.) Setback levees to RESTORE HISTORIC FLOODPLAIN HABITAT."

(page 24) "DESIRED OUTCOMES- The success proposition for the White River Watershed National Blueway relies on the ability of the Coalition to DELIVER OUTCOMES that 1) achieve the objectives of the AGO pilot project as detailed in this section, and 2) translate the qualities of the partnership to the ENTIRE WATERSHED through strategic recruitment and management of additional Coalition members."

(page 28) of six dams in Arkansas, that “have had a profound effect both in their immediate vicinity and throughout the entire Watershed.” “The city of Batesville now owns all three dams and beginning in 2004 they were retrofitted to generate electricity. These dams have no flood control capabilities and hold back a relatively shallow pool of water. THE MAJOR IMPACT OF THESE STRUCTURES IS REDUCED FISH PASSAGE.”

The devil is normally in the details and while the designation has an attractive outer shell, the details are troubling and some of the wording is problematic. Let’s summarize how the nomination is structured and what it intends to accomplish. The Executive Branch issues an initiative, AGO, and thereby his appointee, the Secretary of Interior, also a member of the Executive Branch made a designation of the White River to meet a vision and goals brought forth through the Presidential initiative.

Secretarial Order 3321 establishing the National Blueways System, in section 3 claims authority through various sections of United States Code and Law and says, “The bureaus within Interior have a broad panoply of legal authority to carry out their respective missions that support enhancing river recreation, undertaking river restoration, and pursuing river protection initiatives to pass on healthy rivers to future generations.”

Section 7 of Secretarial Order 3321 says thusly, “Nothing in this Order is intended to authorize or affect the use of private property. Nothing in this Order is intended to be the basis for the exercise of any new regulatory authority, . . .”

The nomination identifies agriculture to be as currently practiced, “unsustainable agriculture practices”. Irrigation is found to negatively impact the watershed. Continuation of current practices is deemed to be catastrophic and the only salvation is found in the goals and objectives that form the core principles of the initiative known as National Blueways. So we have the promise of unintended consequences to fulfill the following goals based upon what was identified (agricultural and irrigation) to be the problem.

Those goals include that a minimum of 180 foot buffer be established along all surface water. This means not just the White River itself but as well all tributaries of rivers, creeks, streams and ponds or lakes. This area includes places cattle and livestock water which would be fenced from their source of water.

Another goal is to complete enrollment of 30 percent of eligible cropland into conservation programs. There is no consideration of the need to produce food for humans and livestock, only a desire to eliminate crop production. Of course, another goal listed is to control encroachment of humans into the existing floodplain. Then again, another goal is to restore historical floodplains further restricting human interference into the floodplains. Did you note I brought forth the fact that Arkansas is 80% owned by private property owners that might object to being told not to go onto their hard earned property?

More goals were to reduce on-farm irrigation use by 15% while a study indicates Arkansas will need to increase its water use by 13% over the next few years. This contradicts what we need to have to sustain life over the term of these goals. In truth, the desired outcomes listed in the nomination indicate how this is determined to be possible. In the mandate to deliver outcomes and objectives of the AGO, there will be strategic recruitment and management of the right type of partners. The key word is “management” as relates to additional partners. Let me illustrate how this is done. There were three elected officials nearby that signed onto the nomination. I called the two mayors and the one county judge to inquire how they even knew this was happening. Each of them had a project or trusted contact

that encourages them to write the letter of support. The enticement was the hope they were given for additional money to work on the slated projects in their area. That is how they would know the designation was in the works while I, with the river running through the middle of my county, would not be aware of the possibility. Those others were "managed" to come along and support the initiative.

As much as any of this, I am concerned about the literal disregard for human needs as relates to the discussion about the three dams in my county. The dams are determined to have no impact other than the fish passage. The nominees apparently forgot that the vast majority of the citizens of Independence County, population 36,647, get their water from the reservoir formed by the dam at Batesville. Also, all of our industries in Batesville receive their water from that source as well. Couple this with wanting to reestablish historical floodplains and no recognition of human needs and you can see why this is not a grassroots generated document. In fact, that one fact is the very reason local input should be paramount before any designation was developed.

As county judge, one of my main responsibilities is the road system of the county. This requires motor graders turning gravel in the roadbed, plowing ditches, putting out prime oil for surfacing with asphalt products. All this is necessary for the public to travel upon these roads. Am I to think that the needs of the public within the watershed would be unraveled by frequency mandates for blading instead of need? The very function of local government could be disrupted for basic services due to more permits required or some review process each time you needed to blade a road.

It is my belief that such edicts as "AGO" and the National Blueways Order circumvent the separation of powers, upon which our government was founded, as to be necessary for it to be a government as seen by Lincoln in his Gettysburg Address, "of the people, by the people and for the people". I fear that the continuation and toleration of executive authority through their appointees, such as this issue, without purview of legislative process and transparency, will lead to continued disembodiment of our people and our government. No process should be allowed to be enacted without local involvement and input and then the legislative action of Quorum Courts, State Legislatures and Congress for these issues that have a local and national impact.

I wish to close with a few local examples just recently brought to my attention. A local grocer has eighty acres in a rural area upon which he placed three adult hogs and a few piglets. There are no county ordinances restricting this activity. He had a visit from a state agency that required a few layers of red tape to finally resolve that he could use his property in that manner. We have had in our area of the state in more than one county, several small gravel pits that are seldom used, closure orders from a state agency due to not having a permit. These are privately owned and used with no impact to their neighbors. Another community cleanup was ongoing by burning a couple of old buildings, build before any chemical treatments were used in processed lumber, attended by local officials and fire departments, and a state agency delivered a complaint upon that group. These were all within the watershed of the White River and can you imagine what unintended consequences could occur with a national recognition?

Private property rights are important to us in Independence County and we support voluntary conservation efforts wholeheartedly. We stand adamantly against the potential of involuntary conversions of private property due to executive edict. We founded a nation to deliver us from a king, how sad we could see this type action result in kingdoms being formed here in our county. There should be community driven conservation efforts and local decision making, not mandates without due process of government.

Mr. Chairman and Distinguished Members of the Committee, I thank you for the chance to be a part of the “due process” of true governance.