

Committee on Resources

Witness Testimony

THE PROPERTY RIGHTS FOUNDATION OF AMERICA, INC.
P.O. Box 75, Stony Creek, New York 12878 - 518/696-5748
American Heritage Rivers Program
Testimony of
Carol W. LaGrasse, President
Property Rights Foundation of America, Inc.
Submitted to
The Committee on Resources
United States House of Representatives
September 24, 1997

Mr. Chairman, thank you for the honor of testifying today. My name is Carol W. LaGrasse, the president of the Property Rights Foundation of America, Inc., in Stony Creek, N.Y., a grassroots nation-wide organization dedicated to preserving in all its fullness the fundamental human right to own private property as guaranteed in the U.S. Constitution. I am a retired Stony Creek Town Councilman and a retired civil and environmental engineer. For the past four years I have been studying the National, or American, Heritage Areas (or "Corridors") program, and exposing its grandiose scope and implications for private property rights and local representative government.

Around the countryside where I live in upstate New York, or down in New York City and Long Island where I often visit old friends and relatives, no one has told me they would like to see an American Heritage Rivers program, or any program that contains any element of the features described in the unveiling by the President's Council on Environmental Quality in the Federal Register in May or as further revealed in the President's Executive Order approximately two weeks ago. Furthermore, no one who has contacted me from the private property rights movement has told me that he or she sought any of the elements described for the program, no matter how I try to extend some of the nebulously outlined features. Many people have called and written, from out in the states of Washington and California, to midwestern states of Indiana and Minnesota, to eastern states of Maine and Virginia, and many more, for help to block the program.

The American Heritage Rivers program is of great national concern. Because of this wide-spread fear, I have been invited to speak numerous times about the American Heritage Rivers plan on radio and TV talk shows, and have, in fact, received more requests to speak about it than for all other topics this year.

After three years of successful grassroots private property rights opposition to the National, or American, Heritage Areas program in Congress, the Clinton Administration has announced a similar, but more ambitious, program unilaterally through the rule-making process. On June 10, when I asked Ms. Katie McGinty, the director of the Council, why the Administration thought it could unilaterally do this program when for three years its sympathizers fought in Congress to get Congress to pass the similar program, she replied that she had never heard of the National, or American, Heritage Areas program. She directed the question to Mr. Ray Clark of her office, who offered in explanation the statement that the reason was that the Administration wanted the Rivers program, whereas the National Heritage Areas program was sought by

Congress. Of course, everybody knows that no matter how much the wording is watered down, the National/American Heritage Areas program is designed to bring the National Park Service into local zoning, and to transfer land ownership to government. This is the mentality and future people are afraid of.

Broad programs like this with vaguely defined powers and goals have been found to sneak up on private property owners during a period of five to twenty-five years from their enactment (in this case, promulgation). Regulation becomes ever more stringent.

Two existing federal waterway protection programs passed during the 1970's have of late had profound effects locally as the rules are passed down from the federal to the state or local basis of direct regulation. One is the Federal Flood Insurance program which often unnecessarily restricts activity in areas designated as flood prone. The other is the Federal Coastal Zone Management Act of 1972, which has caused no end of tinkering with local zoning to make it greener and more onerous. The American Heritage Rivers program has the verbiage to create the same kinds of problems as these programs, and more.

Congress has also brought us rules that are directly enforced on a federal basis. A prime example is the final legal evolution of Endangered Species Act, onerously imposed by U.S. Fish and Wildlife Service. This act was not originally imagined to carry the power over property owners which it now has. A federal land-use control agency which has turned out exactly as feared by its most vociferous opponents is the Columbia River Gorge Commission. People are zoned off much of their land. No one would have predicted that prohibitions against dredging and filling the navigable waters of the U.S. under Sect. 404 of the Clean Water Act would have ultimately given the U.S. EPA and Army Corps of Engineers carte blanche to usurp private property ownership in wetlands of every conceivable definition.

Alternately, the Council on Environmental Quality has represented the American Heritage Rivers program as an honor and an ombudsman. The "honor" claim has no basis in any of the Council's May 19 proposed rules or in the President's September 11 executive order. At most, the "honor" is a very minor feature of the program. Neither is the ombudsman an adequate explanation. This is not merely, as Ms. McGinty said on June 10, a plan to make it easier to reach federal agencies and to get them off your back or to help you. There are no proposed rules applying to any of the agencies describing how they will expedite processes or relax enforcement.

The heart of each application for designation is elaborately stated planning for the future for the entire river and land along it. The confusing description of the program seems to denote some kind of a plan to coordinate a number of important, powerful federal agencies under a new national commission established for the purposes of the program at each designated river in order to meet a plan of action to protect the river which each nebulously defined "community" has worked out in conjunction with the federal government. A federally appointed "River Keeper" for each American Heritage River coordinates with the "community" and all the federal agencies. Although economic development is noted, a plan for each river is presumably to be one that will further restrict use of land and water to protect nature and someone's idea of historical importance. This program of more efficient coordination of federal enforcement agencies sounds like a juggernaut, the opposite of an ombudsman.

The American Heritage River Designation may soon involve the Mississippi above St. Louis, the Connecticut, James, Wabash, Columbia, Willamette, tributaries of Puget Sound, Hudson and with it perhaps the Champlain Valley, Rio Grande, French Broad in North Carolina and Tennessee, and perhaps the Penobscot.

But no one in the Administration is willing to spell out what really is expected to happen under the draft rules or the executive order. It is remarkable that the Council issued the draft rules in May before the President's executive order creating the program in September, and that the final rules are to be issued by a new body, the American Heritage Rivers Interagency Committee. This elusive entity is to have co-chairs, the Council chair and a continuing rotation among the heads of twelve agencies from the Defense Department to the National Endowment for the Humanities.

Many speculations fly about how the program is to operate.

Judging by (1) the emphasis on planning, pollution and population in the original agency announcement, and the primary focus on planning in the new executive order,

(2) the involvement of so many agencies, particularly the primary ones - Environmental Protection Agency, US Fish and Wildlife Service, Corps of Engineers - ones historically trampling on private property rights,

(3) the creation of a new federal Interagency Committee and the River Navigator in the executive order, and

(4) by the recent history of use of the seeming "essence" of the name American Heritage Rivers and the participating agencies and organization (to the exclusion of property rights advocates),

I think that the program is meant to pan out something like this:

The Practical Meaning and Future of the American Heritage Rivers Program

(1) A river is the focus of interest of certain agencies and environmental groups. Local politicians and certain interest groups, including certain businesses, are promised financial benefits. Planning (which means more rules) financed with federal and state assistance, is exciting to local officials who gain more power, and to environmental groups.

(2) As in every other federal land-use control program when originally implemented, the citizens, taxpayers, small businesses, farmers and private property owners are shielded from information about the program.

(3) Many of the players are in line when the application is submitted. State moneys have been pledged to demonstrate "capability" to carry out the program. Federal porkbarrel will be arranged to get U.S. Congressmen on board.

(4) When the application is complete, without much opposition, it is to be approved and the program set in motion. The use of "linear" regions for federal land-planning and controls has often successfully eluded opposition in the past because the great distances involved and often interstate, rather than regional, designations, make it costly for grassroots opponents to organize. If there is opposition, it can be ignored unless extremely vociferous.

(5) After the fanfare or lack of it, over a period of years the various committees and advisory groups connected to the River Navigator, state commissions and other agencies will be working on plans. Parallel state and interstate river planning agencies will be established by governors or state legislatures.

(6) The planning process, dominated by professionals, environmentalists, "economic development" types who are experts in the government gravy train, etc., will go the rounds in each River area. It will perhaps be years before quasi-voluntary, "partnership," and mandatory programs of varying nature around the U.S.

bring in more state and local preservation zoning. The variation will be as great or greater than the planning still coming down to local towns and counties as a result of the 1972 Coastal Zone Management Act, which comes through a different agency depending on the state. The gravy train will provide for selected economic development eased by the ombudsman aspect of the River Navigator through a multitude of potential stumbling blocks through federal agencies.

(7) Private property will be greatly restricted, a great deal of financial losses will occur, enforcements and prosecutions will increase and be more effective because of greater interagency coordination. But the specific role of the President's Council on Environmental Quality and the American Heritage Rivers program will be unclear to those bearing the final brunt of the planning goals.

Because of the future harm that the American Heritage Rivers program will likely bring to private property rights, the Congress should assert its constitutional prerogative to prohibit expenditures by federal agencies to implement the program. It is not a new regulation or an executive order to further implement the Nixon-era National Environmental Policy Act as claimed but is outside the law. It is, in fact, a means to institute land-use planning and zoning from a national level, which is unconstitutional on its face. Even if it were constitutional to create such a program on a federal level, the Rivers program is a new project needing Congressional authority which is lacking.

###