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## **Get Involved To Protect Property Rights**

(By Harold Maxwell)

Arizona, February 27, 2008--Recently, there has been extensive discussion in Arizona about the proposed Little Colorado River Valley National Heritage Area. As one of the individuals that worked to resolve some of the issues that arose from the Yuma Crossing National Heritage Area, I have a unique view on the potential pitfalls and benefits of having a National Heritage Area (NHA).

First, let me state that the Yuma Crossing National Heritage Area in its final form has been a benefit to our community. That being said, two main issues exist that must be addressed to ensure that a National Heritage Area truly is a benefit to the local community, rather than a threat.

First let's tackle the issue of individual property rights. Proponents of another proposed NHA, the Little Colorado River Valley National Heritage Area (LCRVNHA), cite two main reasons why the local populous should not be concerned about their property rights. The authors of the proposed Heritage Area bill like to point to specific language in the bill that they included in an attempt to afford property owners some protection.

They also like to cite a 2004 study by the GAO that found no issues affecting property values or use. Let me address both of those issues.

Most legislation that designates a NHA and its subsequent management plan includes language that prohibits the National Park Service and/or the Heritage Board from using eminent domain to acquire property. These management plans also prohibit the use of the Federal funds obtained under the bill from being used to acquire land. Unfortunately, these ``protections" are limited.

The proposed LCRVNHA bill does not prohibit local governments from changing zoning ordinances to conform to the land use plans suggested by the Heritage Area Board. Local governments find themselves in a difficult situation: either adopt the new land use plans and put local property owners at risk, or reject the land use plans and put their federal funding at risk.

This is not just idle conjecture. The Wheeling National Heritage Area, Blackstone River Valley National Heritage Corridor, Essex National Heritage Area, Erie Canalway National Heritage Corridor, and the Journey through Hallowed Ground NHAs are just a few examples of where local zoning was changed to accommodate the management plan and those changes did negatively impact local land owners' property rights.

The other statement, that no federal funds obtained under the bill can be used to acquire land, is also misleading. This statement only applies to funds authorized by Congress for a Heritage Area. Any matching funds that are raised are free to be spent however the Heritage Area Board sees fit.

This is not an insignificant problem. Heritage Areas on average receive \$8 in matching funds for every \$1 that is provided under the Heritage Area Act. Far and away the majority of the funds generated by a Heritage Area are eligible to purchase private property, or issue conservation or historical easements. This is of particular significance in Arizona, as only 13% of our land is privately owned. Any acquisition that removes land from the tax rolls has the potential for a huge negative impact on the amount of property tax collected for our local communities.

Even a more serious issue is the potential of a Heritage Area to acquire land and then donate the land to the National Park Service (NPS). This is what happened with the Shenandoah Valley Battlefield Foundation. The Cedar Creek and Belle Grove National Historical Park as it is now known was created in 2003 by using a combination of donated lands and conservation easements. Though National Heritage Areas do not impose direct restrictions on property this is not the case for the NPS. Federal law grants the National Parks the right to impose specific land use restrictions on properties adjacent to their boundaries.

A March 2004 Governmental Accounting Office (GAO) study on heritage areas is the Holy Grail for the National Heritage Areas' claim that Heritage Areas do not impact property rights. The GAO study claims to have found no issues affecting property values or use. This has always been perplexing to me as I know of three separate incidences involving property rights and the Yuma Crossing National Heritage Area.

Having read the GAO report, I now believe that I can shed some light on the subject. In regard to the Yuma events, the GAO report was published in March 2004. The meeting held in Yuma concerning property rights, with an attendance of more than 600 Yuma County residents, was held the end of February 2004. One of the reasons that the GAO did not find any incidents in Yuma was that the publication had gone to press by the time of the Yuma meeting.

It was also noted in the GAO's report that the survey was limited to "national groups" and apparently did not include a survey of individual property owners in the more than three-dozen NHAs already in existence. It is also evident that the GAO was only concerned about the immediate impact of the bill and not the consequences from the land use planning that was encouraged by the National Heritage Areas. When one reviews the literature looking for cases where NHAs have influenced local zoning ordinances, it becomes apparent even to the casual observer that NHAs can and do have the ability to affect property rights.

### **Local control**

The second major concern involving National Heritage Areas is local control. No clearer example of the benefit of local control can be found than the Yuma experience. After the Yuma Crossing Heritage Area Bill passed Congress designating 22-square miles of Yuma as a National Heritage Area, the local agencies responsible for zoning started to interpret what it meant to own property in and around the boundaries of the new Heritage Area. It was these decisions made by bureaucrats that caused the local population to become concerned about their property rights. Local pressure was brought to bear on the County Board of Supervisors and the City of Yuma to pass resolutions instructing staff not to use the boundaries of the New Heritage Area in determining zoning issues. This solved the immediate issue, but the community realized that the Yuma Crossing Heritage Act was a federal law that would become more difficult to change as federal monies were invested.

We also understood that the local resolutions could be lifted at some time in the future after the Heritage area was well established. The local community decided, for their own protection, to reduce the scope of the project back to what was originally proposed: 4 square miles or 2,560 acres of downtown Yuma and the Colorado River inside the levee system. Even with strong local support it took Yuma over 3 years to change the original legislation. The Yuma community now believes that this new boundary is focused enough that even if the local ordinances are changed the community will be protected from their impact. One of the benefits of such a focused area is that we have enough money to effect change. If one assumes that their Heritage Area will get all of the potential \$10 million from the federal government, and no project has, then the Yuma Crossing National Heritage Area has the potential of receiving a little more than \$3,900 per acre for our project, as compared to the \$710 per acre it could have received under the original scope.

The proposed Little Colorado River Valley National Heritage Area is too large. At over 23,000 square miles or 14,720,000 acres, it falls into the trap that some of the other Heritage Areas have fallen into: On a per acre basis the Little Colorado River Valley National Heritage Area will at a maximum receive only 68 cents per acre under the bill. When a Heritage area is too large the funds are insufficient to get the project up and running on a self-sustaining basis. One of the goals for all Heritage areas is to be self-sustaining at the sunset of their authorization bill in 15 years.

Yuma learned that local control is critical. When issues arose it was relatively easy to convince our County Board of Supervisors and the Yuma City Council to pass resolutions protecting our citizens. The proposed Little Colorado River Valley National Heritage Area covers parts of four states, seven Native American Nations, and 27 counties. How do you have local control in such a large entity? The only effective control is on a county, sovereign nation, or city basis. When a project covers so many different governing agencies the only way for the project to work is for the local governments to cede local control to the Heritage Area. After having looked at some of the major pitfalls with the Little Colorado River Valley Heritage Area, these are the changes I would recommend in the plan if your community chooses to go forward.

First, maintain local control. One 23,000 square mile heritage area managed out of Tucson with some local people appointed to the board is not local control. The Little Colorado River Valley National Heritage Area includes parts of 4 states, 7 Native American nations, and 27 counties. At the very least there should be 34 separate Heritage Areas divided along county and Native American nation lines. This would give control down to the county or nation level. A side benefit would be that each heritage area would be eligible for \$10 million in government funds on their own. That is a potential of \$340 million dollars in federal funds vs. the current proposal of \$10 million. Learn from the Yuma experience. If Yuma reduced the size of its Heritage Area from 22 square miles to 4 square miles due to concerns over property rights, one can only imagine the potential issues with the 23,000 square mile Heritage Area that is being proposed.

Secondly, be very focused. One of the ways that you can protect yourselves against property rights abuse is to make certain that the areas that are included are well defined and include cultural, historical and environmental areas that can be developed into self-sustaining economic zones. Vast expanses of the current proposal would not fit these criteria. Heritage Areas are intended to be self-sustaining after the first 15 years of existence.

Finally, the legislation authorizing the Heritage Area should prohibit the Heritage Area from using any of the funds raised to buy private property or to purchase any form of easement (conservation, historical etc.). This would ensure that private property stays on the tax rolls and is not retired. It also would ensure that land is not "donated" by the Heritage Area to create a new or expanded National Park.