

Whose heritage?

New federal designation doesn't sit well with everyone

July 12, 2009

Lauren Donovan
Bismarck Tribune

BISMARCK – One day it was five counties bordering the Missouri River in North Dakota. Overnight, the counties became the Northern Plains National Heritage Area, signed into law March 30 by President Barack Obama.

Opponents say they feel they were ambushed, that the new designation sprang on them like a cat on their back. They aren't sure what it means for their property and that uncertainty isn't wearing well.

Tracy Potter of the Northern Plains Heritage Foundation says the designation was explained at city and county meetings up and down the river several years ago. Those cities and counties agreed to a feasibility study that was completed in the interlude and presented to Congress, which gave it the OK for Obama's signature.

Potters says the designation is in no way a land grab, though it's been unflatteringly and unfairly characterized that way.

Rather, he says, it gathers the Native American cultural and agricultural history and scenic nature of the undammed and unflooded portion of the Missouri River and opens it to federal grant matches for tourism and development of cultural resources.

The Heritage Area includes McLean, Mercer, Oliver, Morton and Burleigh counties. The actual boundary will be defined in more laser-beam fashion once a management plan is written, Potter said.

While it's a new idea for North Dakota, the National Heritage Program, affiliated with the National Park Service, has been around since 1984. Eight others in states like Arkansas, Maryland and Alabama were authorized along with North Dakota's in an Omnibus Land Management Bull. There are now 49 of them.

But since the president's pen touched paper, all heck has broken loose.

That's happened partly in a North Dakota neighbor-to-neighbor kind of way up and down the river, spurred on by the Farm Bureau and the privately funded and conservative North Dakota Policy Council.

The Policy Council says Potter was deceitful when he testified to Congress that public hearings were held on the heritage area, when none were. The council's director, Brett Narloch, says Potter broke federal law by using federal grant funds to hire a lobby firm and to personally lobby for the designation.

Potter says "hearings" was a poor word choice. He said when he was questioned about that by the congressional committee, he clarified that the heritage area was explained at regular city and county meetings that were open to the public. He also said he was invited to testify to the congressional committee in 2007, which is not the same as lobbying. He said he was asked to deliver the feasibility study report to the committee and incurred expenses of \$1,400 to "come back and talk about what they'd asked me to investigate."

The Greystone Group, a D.C. lobby firm, worked on Heritage Area issues in 2007 and 2008 and was paid with private money from the Fort Lincoln and Lewis and Clark Fort Mandan foundations, he said.

The National Park Service reviewed the foundation's feasibility study and told the same congressional hearing that the document fell short on public involvement.

Sue Pridemore is the Heritage Area coordinator for the NPS's Midwest office at Omaha, Neb. She said the feasibility study didn't make a case "for the success of this Heritage Area. More dialogue from residents would have made a better case," especially from Native Americans.

She said the only public letters of support were from cities and counties agreeing to a feasibility study. "There was not enough documentation of a commitment to preserving and telling the (Northern Plains Heritage Area) story" that might otherwise come from public workshops, meetings, or dialogues, she said.

Wes Klein, a Farm Bureau director from Mercer County, said the lack of any public hearings or involvement during the feasibility study process left people feeling like, "The bill is here and you can like it, or don't like it. It creates bone-on-bone friction because of what's been done."

It has become clear that since people knew little about it, they didn't know what it would mean to them.

A Farm Bureau flier, inviting people to a public meeting about the heritage area a month after the bill's passage, called it "the largest regulatory taking of private property in the history of North Dakota."

Sen. Byron Dorgan, D-ND, who sponsored the designation, disputes that notion. "This is not designed to affect property rights. No one is going to have their property rights thwarted," Dorgan said. "If they tried to, I would shut down funding."

Potter says some landowners are unduly paranoid. "We can't own land; we can't regulate people's property. The list of things we can't do is longer than the things we can do," he said. "The only thing is a positive action."

Dorgan and Potter say having a Heritage Area means up to \$10 million in federal money over 15 years. The funds can go to preserve and promote places like Knife River Indian Villages National Historic Site at Stanton, or Double Ditch Indian Villages north of Bismarck. It can be used for better signs, better interpretation, better promotion and better preservation of the area's cultural heritage.

Potter said the money can't be used to buy property, nor will the foundation have any regulatory, zoning, or land use authority. "How would private property owners be affected? I can't think of a single way, unless they wanted a grant to develop an opportunity," he said.

The actual bill contains nine provisions that protect private property and it expressly prohibits the purchase of property with federal funds.

Klein pushed for even more protection. He helped persuade Dorgan that landowners should have an opportunity to opt out of the heritage area – language that is sometimes included in Heritage Area authorizations – and remove their property from any inclusion or participation.

Dorgan said Klein and others worried that "if we can't get out, we're in," so he put an opt-out provision in an interim bill to provide that option.

Becky Graner, who lives on the Missouri River near Huff Hills in Morton County, recently notified Potter and the foundation that she is opting out. So did three other property owners.

Graner said she worries that private property owners will be prevented from using their property as they'd like if the Missouri River "viewscape" becomes a protected resource. "These kinds of things happen, even if they say it never will happen," Graner said.

Graner also says that for such a "little group," the foundation has a lot of influence. "They should have had a lot more public input."

Potter said the foundation will accept the opt-out notices, even if they are premature and mean the property owners can't benefit from any future grant money. The management plan, written with public input at meetings starting in September, will much more narrowly refine the heritage area's boundary inside the five counties. The focus will be on the theme of "the birthplace of agriculture in the Northern Plains," he said.

Klein said the opt-out language satisfies one goal for the Farm Bureau. The other is to insist that the foundation follows the National Park Service's process for gathering public input during the three years it now has to write a heritage area management plan. That would help make up for the lack of information and lack of transparency that characterized the feasibility study, he said.

"We want to make sure that every single property owner in the heritage area knows they're in it," Klein said.

Potter says the foundation has invited the Farm Bureau, North Dakota Stockmen's Association and the Farmers Union to take a seat on the foundation board. The board has 12 members and can have up to 21.

Potter says the foundation saw Congress, not the public, as its audience during the feasibility study process. He says he now owes a return visit to the county and city boards to explain what happens next. Potter says those will be scheduled in the fall, or sooner if any city or county board wants that.

Pridemore says there's an upside to the fact that the Farm Bureau and Policy Council have stirred up and engaged people, even if it's in opposition. "This could be a really good dialogue because people are obviously passionately involved, people who have not been pleased with the process to date," she said. She said she's fielded a few phone calls and has been impressed with the callers' need to understand exactly what a National Heritage Area is and is not.

Klein says the heritage area is here to stay and at this juncture, it's important to build bridges and stay tuned in as the management plan takes shape.

Potter says the management plan process "is supposed to be a democracy. What's right (for the Northern Plains Heritage Area) has to come out of a public process."