

March 12, 2014

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Dear Representative:

We, the undersigned organizations, are writing on behalf of our millions of members nationwide to express our opposition to H.R. 3189, the so-called “Water Rights Protection Act.” While H.R. 3189’s stated intent is to help resolve a narrow conflict over water rights between the U.S. Forest Service and Colorado’s ski industry, it is written far too broadly with serious implications for water management across the country. It would undermine nearly all efforts to improve the health of the nation’s rivers and public lands, including National Parks, National Forests, and National Wildlife Refuges.

This bill should not be fast-tracked; a much closer look is needed to better understand how it will impact the nation’s water resources. Unfortunately, the House Natural Resources Committee chose to hold its hearing during the government shutdown. As a result, the Committee marked up the bill without the benefit of expert testimony from the impacted agencies, and the Members of the Committee were denied the opportunity to question witnesses from the Departments of the Interior and Agriculture about the effects of this bill on their districts.

H.R. 3189 would prohibit agencies from requiring conditions that "impair" any water rights, ostensibly to address a narrow conflict between Colorado's ski industry and the U.S. Forest Service. However, the legislative language of H.R. 3189 presents a much more expansive bill that would unnecessarily constrain the Departments of Agriculture and the Interior's flexible approach to water management and prevent them from protecting rivers and public lands. The bill would prevent the Federal Government from conditioning any license, permit, or other approval of water use in such a manner as to impair any privately held water right. This overreaching bill has broad implications for water management that extend far beyond Colorado's ski industry, and would force federal agencies to put private uses of river water ahead of other beneficial public uses like fish, wildlife, and recreation.

H.R. 3189 would prohibit agencies from protecting rivers and public lands. This bill would in effect amend any federal law, such as the Endangered Species Act, that permits agencies to place conditions on permits or licenses that would keep water in rivers to support fish, wildlife, or instream recreation. It would also preempt state laws that allow Federal agencies to impose similar conditions. For instance, H.R. 3189 could prohibit the Forest Service from requiring water diverters to leave some water in a stream on Forest Service land, or stop the Fish and Wildlife Service from requiring flows that attract fish to fish ladders so that they can safely pass over dams.

If H.R. 3189 were to become law, private users of water could dry up rivers on public lands with impunity. While water rights work differently in different states, this bill would affect both western and eastern states. In the west, since any Interior or Forest-Service flow-related condition to protect riparian resources would result in the holder of the right using less of its water for the purpose of its right (e.g. irrigation or hydropower), it could be deemed to constitute a prohibited "impairment" of the state-issued water right under this bill. Enactment of H.R. 3189 could overturn portions of multi-party agreements that have been negotiated to solve some of the West's most challenging water rights conflicts. H.R. 3189 is yet another attempt to overturn the San Joaquin River Settlement, and would also have potentially damaging implications for settlement agreements reached in the Klamath and Yakima River Basins. H.R. 3189 also calls into question the Fish and Wildlife Service's authority to protect endangered species in the Rio Grande River, potentially reigniting controversy and litigation over the fate of the silvery minnow.

In the east, permittees could argue that flows required by a federal agency constitute a limitation on their use of water separate from whatever limitation might be required under applicable state law, and could thus constitute an impairment of their water right. H.R. 3189 could worsen the situation in Florida's Apalachicola Bay by limiting the ability of the Fish and Wildlife Service to place conditions on Army Corps of Engineers' activities in the Apalachicola/Chattahoochee/Flint River Basin. It could also have negative implications for the recovery of the Everglades. What is certain is that H.R. 3189 is an assault on efforts to recover the Chesapeake Bay, due to its impact on Federal Energy Regulatory Commission relicensing proceedings for the Conowingo Dam on the Susquehanna River.

H.R. 3189 would prevent federal agencies across the country from requiring protections for fish and other instream resources like recreational flows in any regulatory action, including mandatory conditions placed on hydropower licenses. Federal agencies would be unable to implement reasonable requirements intended to keep water in rivers for aquatic species and recreation, protect water quality, or ensure safe and effective fish passage.

There are many questions about how H.R. 3189 would affect Bureau of Reclamation water contracts. Without the benefit of expert testimony from the Bureau of Reclamation, it is not clear what impacts this legislation would have on farmers who rely upon leases and permits from Reclamation. Unfortunately, the Natural Resources Committee chose not to hold a hearing in which the Bureau could participate. Likewise, it is not clear what impact this legislation could have on flows through National Wildlife Refuges. Again, the Committee chose to hold a hearing without the expert testimony of the Fish and Wildlife Service.

In addition, H.R. 3189 could seriously compromise the Department of the Interior's critical need to manage the oversubscribed Colorado River. Nine national parks that are literally defined by the Colorado River and that provide millions of dollars to the regional economy would be at risk if this legislation were enacted. Expert testimony from the National Park Service is needed to fully assess the implications of this bill.

There are questions about how this legislation's broad construction could impact federal agencies' efforts to mitigate the impacts of trans-basin diversions. Likewise, questions have been raised about whether or not this bill could be a boon for oil and gas companies who are increasingly in search of new sources of water to fuel rapidly expanding hydrofracking operations. Again, without the benefit of a full and fair hearing, these questions remain unanswered.

What is clear is that as currently written, H.R. 3189 represents an unduly broad and unnecessary attempt to tie the hands of Federal agencies to provide flexible water management options on our public lands and implement reasonable safeguards to protect fish, wildlife, and recreational benefits in the nation's rivers. If enacted, the bill could do irreparable harm to some of our nation's most iconic watersheds, like the Colorado River and the Chesapeake Bay.

Therefore we urge Members to VOTE NO on H.R. 3189.

Respectfully,

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