



Legislative Bulletin.....September 10, 2008

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H.R. 3667—Missisquoi and Trout Rivers Wild and Scenic River Study Act of 2008

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$300,000 over three years.

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 3667—Missisquoi and Trout Rivers Wild and Scenic River Study Act of 2008 (*Welch, D-VT*)

Order of Business: H.R. 3667, the Missisquoi and Trout Rivers Wild and Scenic River Study Act of 2008, is scheduled to be considered on the House floor on Wednesday, September 10, 2008, subject to a structured rule ([H.Res. 1419](#)), making in order three amendments, each debatable for 10 minutes. A summary of each amendment made in order can be found at the bottom of this document.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO

rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Summary: H.R. 3667 would require the Secretary of the Interior to study approximately 70 miles of the Missisquoi and Trout rivers in Vermont to determine whether certain segments of the rivers should be designated as a part of the Wild and Scenic River System.

H.R. 3667 would study three different segments of the two rivers for potential inclusion as a Wild and Scenic River. The bill would study a 25-mile segment of the Upper Missisquoi from its headwaters in Lowell, Vermont to the Canadian border; a 25-mile segment from the Canadian border to Enosburg Falls; and a 20-mile segment of the Trout River from its headwaters to its confluence with the Missisquoi.

H.R. 3667 would require the Secretary of Interior, within three years of receiving funds, to conduct a study that includes an analysis of the potential impact on private lands within the designation, a complete study of the river segments described in the bill, and a report describing the results of the study.

Additional Background: There are currently 166 rivers designated as part of the Wild and Scenic Rivers System, stretching some 11,000 miles through 38 states. Each segment is managed by the Department of Interior (DOI) or the Department of Agriculture (USDA), either through the Bureau of Land Management (BLM), the National Park Service (NPS), the Fish and Wildlife Service (FWS), or the Forest Service (USFS). Rivers designated as segments of the Wild and Scenic Rivers System are arranged according to one of three classifications:

- *Wild Rivers:* Rivers that are free from dams or other impoundments and are usually underdeveloped only accessible via trail.
- *Scenic Rivers:* Rivers that are free from dams or other impoundments, but are accessible via roads and may have some development along their shore.
- *Recreational Rivers:* According to the Wild and Scenic Rivers Act of 1968, recreational rivers are “those rivers or sections of rivers that are readily accessible by road or railroad, that may have *some* development along their shorelines, and that may have undergone *some* impoundment or diversion in the past.” *[Emphasis added].*

Before a river may be designated as a Wild and Scenic River it must undergo a study by the Secretary of Interior, which H.R. 3667 would authorize.

The Wild and Scenic Rivers Act of 1968 (P.L. 90-542) was enacted in order to protect the natural characteristics of the nation’s “outstanding” free flowing rivers and their immediate surrounding environments. Specifically, the legislation was created to prohibit the construction of dams or other facilities that endanger the free flow and/or resource value of the river. According to the Congressional Research Service (CRS), at the time the Act was passed it was a national policy for the federal government to construct dams and flood control treatment facilities along the nation’s rivers. Such “impoundments” often resulted in the permanent alteration of the river’s flow or the geography of the land surrounding the river. The Wild and

Scenic Rivers Act was passed as a means by which to set-aside certain rivers in order to protect their natural free flow from future development.

The original Wild and Scenic Rivers legislation states that rivers which “possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” According to the Wild and Scenic River System’s [Website](#), the designation specifically:

- Prohibits dams or other federally approved projects on the river;
- Protects outstanding natural, cultural, and recreational resources;
- Ensures that selected rivers’ water quality is maintained;
- Requires a comprehensive river management plan to establish resource protection and river management practices.

Though the original purpose of the Wild and Scenic Rivers Act was to prohibit the construction of dams and other facilities that alter the fundamental characteristics of a particularly pristine and secluded river, the definition of a “Wild and Scenic River” has been greatly expanded through legislation. While the development and construction restrictions on Wild and Scenic Rivers have stayed the same, the requirements for designating a Wild and Scenic River have loosened extensively since the Act was originally passed in 1968. Illustrating this point, Rep. Barney Frank, arguing for H.R. 415, which included an industrial section of the Taunton River as a segment of the Wild and Scenic River System, stated on July 16, 2008:

This isn’t a test on what was in the minds of people 40 years ago who passed the bill. We are the Congress. We are now passing the bill. The notion that a law passed in 1968 somehow defies this Congress of the ability to pass a subsequent law incorporating current judgment doesn’t make any sense to me.

As the view that any segment of river can properly be designated as a Wild and Scenic River becomes more pervasive on Capitol Hill, it is likely that more and more rivers, and local residents along those rivers, will be affected by development restrictions.

Some Members of the Committee on Natural Resources have expressed their concerns that these river designations have become little more than thinly veiled attempts by environmentalists to halt all development around a certain river. In their dissenting views that accompany the [House Report 110-668](#), Republicans opposing H.R. 3667 wrote:

While no risk to the river was identified in the subcommittee legislative hearing, the Majority has seen fit to use federal law to impose zoning regulations. These studies, such as the one proposed in H.R. 3667, are marketed as a way to determine whether or not a river has the necessary characteristics to be designated as a Wild and Scenic River. Unfortunately, we have found that the Park Service can interpret any river as having these characteristics merely because the water is ‘free flowing.’ Consequently, what these studies amount to are federally subsidized congregations where environmentalist and zoning officials sit down and plot property restrictions cloaked as ‘riparian setbacks.’

During the committee mark-up of H.R. 3667, Rep. Rob Bishop offered an amendment that would have required the National Park Service (NPS) to obtain written consent from private property

owners along the Missisquoi and Trout rivers to have their land include in the designation. This amendment sought to protect property owners within the purposed designation from potentially unwanted and restrictive zoning regulations under the river management plan, but was defeated on a party line vote.

Possible Conservative Concerns: Some conservatives may be concerned that H.R. 3667 does not specifically require the Secretary of Interior to notify the owners of private property along the river of the new designation or let them decline from participating. Inclusion in the designated area could block future private development rights along the shore of the Missisquoi and Trout rivers without the knowledge of the local residents.

Committee Action: H.R. 3667 was introduced on September 25, 2007, and was referred to the Committee on Natural Resources' Subcommittee on National Parks, Forests, and Public Lands. On April 24, 2008, the subcommittee hearings were held. The bill was discharged from the subcommittee without further action on April 30, 2008. That same day, the full committee held a mark-up and the bill was reported, as amended, by voice vote.

Cost to Taxpayers: According to CBO, implementing H.R. 3667 would cost the National Park Service (NPS) \$300,000 over three years to study the area described in the bill.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the bill creates a new federal Wild and Scenic River study.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to the Committee on Natural Resources, in [House Report 110-668](#), "H.R. 3667 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI."

Constitutional Authority: The Committee on Natural Resources, in [House Report 110-668](#), cites constitutional authority in Article I, Section 3 and Section 8, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." [*Emphasis added*]

AMENDMENTS MADE IN ORDER UNDER THE RULE

1. *Rahall (D-WV).* The amendment requires the Secretary of the Interior, while carrying out the study required by the bill, to analyze the potential impacts of a Wild and Scenic River designation on the possession or use of a weapon, trap, or net, including a concealed weapon in the designated area.

2. Bishop (R-UT). The amendment requires the Secretary of the Interior, while carrying out the study required by the bill, to include an assessment of any effect the Wild and Scenic River designation is likely to have on energy production or conveyance.

3. Flake (R-AZ). The amendment would state that nothing in this Act shall be construed as authorizing appropriations to create a new component of the Wild and Scenic Rivers System.

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