

**Alabama Rivers Alliance • American Bird Conservancy • American Rivers • American Whitewater • Appalachian Mountain Club • Atlantic Salmon Federation • California Sportfishing Protection Alliance • CalTrout • Chesapeake Bay Foundation • Clean Water Action • Connecticut River Watershed Council • Deerfield River Watershed Association • Defenders of Wildlife • Earthjustice • Foothill Conservancy • Friends of Butte Creek • Friends of Merrymeeting Bay • Friends of the Rivers of Virginia • Friends of the White Salmon River • Gunpowder Riverkeeper • Hydropower Reform Coalition • Idaho Rivers United • Lower Mississippi River Foundation • Maine Rivers • National Audubon Society • National Parks Conservation Association • Native Fish Society • Natural Resources Defense Council • Northwest Resource Information Center • Rivers Alliance of Connecticut • Shenandoah Riverkeeper • Sierra Club • Stewards of the Lower Susquehanna, Inc. • Tennessee Clean Water Network • Upstate Forever • Utah Rivers Council • WaterWatch of Oregon • Yadkin Riverkeeper Inc.**

November 13, 2013

Dear Representative:

We, the undersigned organizations, on behalf of our millions of members across the nation, are writing to express our opposition to H.R. 3189, the “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 State of Colorado’s Ski Industry; as currently drafted, the bill could have serious implications for water management across the country. This includes potentially undermining efforts to improve the health of the nation’s rivers and public lands, including National Parks, National Forests, and 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 Committee chose to hold a hearing during the government shutdown. As a result, if the Committee marks up the bill this week, it will do so without the benefit of expert testimony from the impacted agencies, and the Members of the Committee will be denied the opportunity to question witness from the Departments of the Interior and Agriculture about the effects of this bill on their districts.

H.R. 3189 could prohibit agencies from requiring conditions that “impair” any water rights. This language could 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 which could have broad implications for water management that extend far beyond Colorado’s Ski Industry.

For example, the bill could unreasonably constrain the Departments of Interior’s and Agriculture’s flexible approach to water management and inhibit their ability to protect rivers, wildlife, and public lands. The bill could also weaken federal law such as the Endangered Species Act that allows agencies to place conditions on permits or licenses that would keep water in rivers to support fish, wildlife, and in-stream recreation. It could also preempt state laws that allow Federal agencies to impose similar conditions. For instance, this could prohibit the Forest Service from requiring water diverters to leave some water in a stream on Forest Service land, or stop the U.S. Fish and Wildlife Service from requiring flows that attract fish to fish ladders so that they can safely pass over dams.

If H.R. 3186 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 could affect both western and eastern states. In the west, since any Interior or Forest-Service flow-related condition to protect riparian resources could 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. 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.

The resulting effect could be to prevent federal agencies from requiring protections for fish and other in-stream resources like recreational flows in any regulatory action, including mandatory conditions placed on hydropower licenses. Federal agencies could 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 could 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 Committee chose not to hold a hearing in which that the Bureau could participate. Likewise, it is not clear what impacts this legislation could have on flows through National Wildlife Refuges. Again, the Committee chose to hold a hearing without the expert testimony from the Fish and Wildlife Service.

In addition, this legislation could seriously compromise the Department of 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 passed. Expert testimony from the National Park Service should be provided to carefully consider the implications of such a broad bill.

As currently constructed, 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.

We respectfully ask the Committee to delay consideration of the bill pending a full hearing where the Departments of Interior and Agriculture are allowed to testify and answer questions about the impacts of the legislation. In the absence of such a hearing, we urge Members to VOTE NO on H.R. 3189.

Respectfully,

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