

MISSISQUOI AND TROUT RIVERS WILD AND SCENIC
RIVER STUDY ACT OF 2008

MAY 22, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3667]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3667) to amend the Wild and Scenic Rivers Act to designate a segment of the Missisquoi and Trout Rivers in the State of Vermont for study for potential addition to the National Wild and Scenic Rivers System, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendments is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Missisquoi and Trout Rivers Wild and Scenic River Study Act of 2008”.

SEC. 2. DESIGNATION FOR STUDY.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end the following:

“() MISSISQUOI AND TROUT RIVERS, VERMONT.—The approximately 25-mile segment of the upper Missisquoi from its headwaters in Lowell to the Canadian border in North Troy; the approximately 25-mile segment from the Canadian border in East Richford to Enosburg Falls; and approximately 20 miles of the Trout River from its headwaters to its confluence with the Missisquoi River.”.

SEC. 3. STUDY AND REPORT.

Section 5(b) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(b)) is amended by adding at the end the following:

“(19) MISSISQUOI AND TROUT RIVERS, VERMONT.—Not later than 3 years after funds are made available to carry out this paragraph, the Secretary of the Interior shall—

“(A) complete the study of the Missisquoi and Trout Rivers, Vermont, described in subsection (a)(____); and

“(B) submit a report describing the results of that study to the appropriate committees of Congress.”.

PURPOSE OF THE BILL

The purpose of H.R. 3667 is to amend the Wild and Scenic Rivers Act to designate a segment of the Missisquoi and Trout Rivers in the State of Vermont for study for potential addition to the National Wild and Scenic Rivers System.

BACKGROUND AND NEED FOR LEGISLATION

The Missisquoi River is a tributary of Lake Champlain, located in northern Vermont; the Trout River is a tributary of the Missisquoi. With its headwaters in Lowell, Vermont, the Missisquoi River extends almost 100 miles, flowing north into Quebec then returning to Vermont to flow west through the Missisquoi National Wildlife Refuge before draining into the Missisquoi Bay, an arm of Lake Champlain. While the lower part of the Missisquoi near Lake Champlain contains some hydropower dams, the sections to be considered for inclusion into the National Wild and Scenic River System are comprised of approximately 70 miles of unspoiled river, including the Trout River tributary.

The upper part of the Missisquoi River is a remarkable example of a northeastern river ecosystem as it runs its course through open pastoral fields and native hardwood forests. The river is bordered by the largest and perhaps highest quality silver maple floodplain forest remaining in the state of Vermont. American elm, white ash, white oak, and red maple can also be found on its banks. The river is also home to a diverse range of animal life, including native rainbow and brown trout, rare freshwater mussels, spiny soft-shell turtles and river otter. Meanwhile, bobcat, white-tail deer and moose are among the abundant wildlife that can be found roaming the river's banks. The surrounding marshes also host large flocks of migratory birds such as the great blue heron and black tern, as well as numerous songbirds.

In addition to these natural qualities, there are numerous Abenaki Indian archeological sites along the floodplain. The Missisquoi also possesses outstanding recreational attributes. It is part of the Northern Forest Canoe Trail—a historic, 740-mile water trail through New York, Vermont, Quebec, New Hampshire and Maine—and outfitters in the area consider the northern part of the river, from the headwaters to the Canadian border, to be the pre-eminent flat-water paddling site in Vermont. The river is renowned as well for its scenic gorges and waterfalls, and the Great Falls on the upper Missisquoi is recognized as Vermont's largest undammed waterfall.

The segments that would be studied include: the approximately 25-mile segment of the Upper Missisquoi from its headwaters in Lowell, Vermont to the Canadian border; the approximately 25-mile segment from the Canadian border to Enosburg Falls; and approximately 20 miles of the Trout River from its headwaters to its confluence with the Missisquoi.

COMMITTEE ACTION

H.R. 3667 was introduced on September 25, 2007 by Representative Peter Welch (D-VT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands.

On April 24, 2008, the Subcommittee held a hearing on the bill, during which a representative from the Interior Department testified in support of the bill. However the Department recommended that fewer sections of the river be included in the study than in the bill as introduced, since several hydroelectric dams are located on the lower Missisquoi River (making this section inappropriate for wild and scenic river consideration) and the section of the upper river that bows into Canada must be specifically excluded from the study. The administration also recommended several technical amendments to make the bill consistent with other recently enacted wild and scenic river study bills.

On April 30, 2008, the Natural Resources Committee met to consider the bill. The Subcommittee on National Parks, Forests and Public Lands was discharged from further consideration of H.R. 3667. Subcommittee Chairman Grijalva (D-AZ) offered an amendment in the nature of a substitute to H.R. 3667. The amendment clarified the sections of the river to be included in the study and included technical changes addressing the Interior Department's concerns.

Representative Rob Bishop (R-UT) offered an amendment to the amendment in the nature of a substitute (Bishop #1) that would have required that written consent be obtained before private property could be included in the study. The amendment was not agreed to by a roll call vote of 7 yeas and 15 nays, as follows:

Representative Bill Sali (R-ID) offered an amendment to the amendment in the nature of a substitute (Sali #2) that requires the study to analyze the potential impact of the designation on private lands within the Missisquoi and Trout Rivers, and land adjacent to the area. The amendment was agreed to by voice vote.

The Grijalva amendment in the nature of a substitute, as amended, was then agreed to by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the “Missisquoi and Trout Rivers Wild and Scenic River Study Act of 2008”.

Section 2. Designation for study

Section 2 amends Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) to provide that certain sections of the Missisquoi and Trout Rivers be studied for their potential attributes as a wild and scenic river. Specifically, section 2 details the segments of the river to be included in the study as: “the approximately 25-mile segment of the Upper Missisquoi from its headwaters in Lowell, Vermont to the Canadian border in North Troy; the approximately 25-mile segment from the Canadian border in East Richford to Enosburg Falls; and the approximately 20 miles of the Trout River from its headwaters to its confluence with the Missisquoi”.

Section 3. Study and report

Section 3 amends Section 5(b) of the Wild and Scenic Rivers Act to insert language that directs the Secretary of the Interior, no later than three years after funds are made available to carry out this section, to complete the study of the Missisquoi and Trout Rivers, Vermont; and to submit a report describing the results of that study to the appropriate committees of Congress.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and article IV, section 3, of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has in-

cluded in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill amends the Wild and Scenic Rivers Act to designate a segment of the Missisquoi and Trout Rivers in the State of Vermont for study for potential addition to the National Wild and Scenic Rivers System.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 3667 would require the National Park Service (NPS) to study certain segments of the Missisquoi River and the Trout River in Vermont for potential addition to the Wild and Scenic Rivers System. Based on information provided by the NPS and assuming the availability of appropriated funds, CBO estimates that implementing H.R. 3667 would cost about \$300,000 over the next three years. Enacting H.R. 3667 would not affect revenues or direct spending.

H.R. 3667 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

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.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

* * * * *
SEC. 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

(1) * * *

* * * * *
() *MISSISQUOI AND TROUT RIVERS, VERMONT.—The approximately 25-mile segment of the upper Missisquoi from its headwaters in Lowell to the Canadian border in North Troy; the approximately 25-mile segment from the Canadian border in East Richford to Enosburg Falls; and approximately 20 miles of the Trout River from its headwaters to its confluence with the Missisquoi River.*

(b)(1) * * *

* * * * *
(19) *MISSISQUOI AND TROUT RIVERS, VERMONT.—Not later than 3 years after funds are made available to carry out this paragraph, the Secretary of the Interior shall—*

(A) complete the study of the Missisquoi and Trout Rivers, Vermont, described in subsection (a)(); and

(B) submit a report describing the results of that study to the appropriate committees of Congress.

* * * * *

DISSENTING VIEWS

We oppose H.R. 3667 in its current form and are perplexed as to why regular order in the Natural Resources Committee has become an extinct priority. Despite Chairman Rahall's assurances that the Committee on Natural Resources would return to regular order, the Subcommittee on National Parks, Forests, and Public Lands has again been subverted. The legislative hearing on H.R. 3667 was held just six days before the full committee markup. Needless to say, no time remained for Chairman Grijalva's subcommittee to carefully consider the legislation, have a subcommittee markup, or even review the legislative hearing transcript. If this legislation is "just a study" as the Majority proclaims, then there is no reason for the fervent dismissal of regular order shown by ramming this bill through full committee.

H.R. 3667 puts into motion yet another Wild and Scenic River. This time environmentalists have set their sights on two rivers in Vermont. 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."

The subcommittee witness on this bill identified the desire to continue family farming along the river as a purpose of the eventual designation. Our concern is that these family farmers may not actually know the details of what this federal zoning designation will include and their livelihood will fall victim to impractical restrictions.

An amendment offered by Congressman Bishop of Utah would have required the National Park Service to obtain written consent from property owners to have their land included in the study. This should be a minimal requirement in any study preceding a designation. This presents little if any additional administrative effort by the National Park Service as they are required to study the impacts of the designation of private property. Certainly if the National Park Service actually conducts an on the ground/water study of the river, as opposed to handing off the duty to local environmentalists, they are well positioned to contact each land owner along the river. Consistent with their antipathy for property rights and appetite for a proliferating federal estate, Democrats rejected this commonsense amendment.

Time and time again we have found that these seemingly innocuous designations are damaging to private property and that boundaries always have consequences. It is past time to stop drawing boundaries around Americans and sticking them with the fallout.

ROB BISHOP.
JEFF FLAKE.
CATHY McMORRIS RODGERS.
DON YOUNG.
BILL SALI.

