



Legislative BulletinJune 19, 2012

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H.R. 2578 - To amend the Wild and Scenic Rivers Act related to a segment of the Lower Merced River in California, and for other purposes (Denham, R-CA)

Order of Business: The legislation is expected to be considered on Tuesday, June 19, 2012, under a structured rule, H.Res. 688. The rule provides for the consideration of H.R. 2578 in the Committee of the Whole House on the state of the Union. The rule provides for 90 minutes of general debate that is equally divided by the chair and ranking minority member. After debate, the legislation shall be considered for amendment under the five minute rule. The rule makes in order only those amendments that are printed in Rules Committee Report 112-539, which can be [viewed here](#). After amendment debate the Committee shall rise and report the legislation to the House. At that time, Members may demand a separate vote on any amendment that was adopted in the Committee. The rule also provides for one motion to recommit, with or without instructions. The rule can be read [here](#).

Summary: The legislation as amended contains the individual text of the following bills: H.R. 2578, H.R. 460, H.R. 1408, H.R. 3100, H.R. 1545, H.R. 2352, H.R. 3069, H.R. 3685, H.R. 4039, H.R. 4094, H.R. 4234, H.R. 3065, H.R. 258, and H.R. 1505.

Title I – Lower Merced River

This text is similar to H.R. 2578 (Denham, R-CA).

The legislation reduces the boundaries of the Merced Wild and Scenic River. Under the legislation, the upstream boundary is reduced to 0.6 miles downriver of the current boundary. The new boundary will be the boundary set by the Federal Energy Regulatory Commission (FERC) via Project No. 2179 on July 18, 2011.

Title II – Bonneville Unit Clean Hydropower Facilitation Act

This text is similar to H.R. 460 (Chaffetz, R-UT).

Background Information According to the Committee Report: The Diamond Fork system of the Bonneville Unit is a system of dams, pipelines and tunnels that transports water from the eastern mountains in Utah to the Wasatch Front in the north-central part of Utah. Under a 2004 “use of facilities” cost allocation formula, any hydropower developer must agree to pay \$106 million over 50 years as part of installing any hydropower infrastructure at Diamond Fork. This would be in addition to the actual capital cost of the facilities, which would be borne by the developer.

The legislation essentially defers the \$106 million payment by stating that the “reimbursable costs” allocated to power the Diamond Fork System are the final costs.

The legislation states that nothing shall obligate the Western Area Power Administration to purchase any power that’s produced by the Diamond Fork power plant. Additionally, none of the costs associated with development of transmission facilities to transmit this power shall be assigned to power for the purpose of Colorado River Storage Project ratemaking.

The legislation also prohibits the use of tax-exempt financing for the project. Tax exempt financing is found under Chapter 1 of the Internal Revenue Code of 1986, and under subpart I or J of part IV of subchapter A of Chapter 1.

If 24 months after enactment, hydropower production on the Diamond Fork System has not commenced, the Secretary of the Interior shall subject a report to the Congress to state this fact, and the reasons such production has not yet commenced.

Title III – Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act

This text is similar to H.R. 1408 (Young, R-AK)

Title 3 of H.R. 2578 allows Sealaska to select federal lands that are outside of the area that was originally laid out by the Alaska Native Claims Settlement Act (Settlement Act).

As part of the Settlement Act (described below), the regional corporations were allowed to select land from established withdrawal areas. This bill allows Sealaska to select federal lands outside the original withdrawal area. The lands they will be able to select are public lands located in the Tongass National Forest.

The selected lands will be withdrawn from mining and mineral leasing laws. The selected lands include up to 5,000 acres that have been identified as “sites with traditional, recreation, and renewable energy use value.” The legislation gives Sealaska the right to select up to 3,600 acres of “sites with sacred, cultural, traditional, or historic significance.” This acreage is conveyed subject to a covenant that prohibits any commercial timber harvest or mineral development.

The legislation also gives Sealaska nonexclusive easements to allow them to access several forest development roads, construct a new road, and construct a new log transfer facility and log storage area.

Within 18 months after enactment, Sealaska shall submit to the Secretary the final, irrevocable priorities for selection. Within two years after the date of selection by Sealaska, the Secretary shall complete the conveyance of the land to Sealaska. After the land is transferred, Sealaska's right to receive any land under the Alaska Native Claims Act shall terminate.

The legislation also transfers reservations for easements to Sealaska to access the lands transferred under the legislation.

All land transferred to Sealaska shall be qualified to receive or participate in:

- “Any federally authorized carbon sequestration program, ecological services program, or environmental mitigation credit; and
- “Any other federally authorized environmental incentive credit or program.”

Similar legislation (S.881) was introduced during April of 2009, during the 111th Congress.

Additional Information According to House Report 112-280: Congress passed the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) in 1971 to settle land claims of Alaska Natives. This legislation created Sealaska as one of 12 regional corporations to oversee the distribution of land.

At the time of enactment of the Alaska Native Claims Settlement Act some public lands in southeast Alaska not located in the Tongass National Forest were not suitable for selection by and conveyance to Sealaska because such lands were located in Glacier Bay National Monument, were included in a withdrawal effected pursuant to section 17(d)(2) of that Act (43 U.S.C. 1616(d)(2)) and slated to become part of the Wrangell-St. Elias National Park, or essentially consisted of mountain tops. In 1975, Sealaska requested that Congress amend the Alaska Native Claims Settlement Act to permit the Regional Corporation to select lands inside of the withdrawal areas established for southeast Alaska Native villages under section 16 of that Act (43 U.S.C. 1615). In 1976, Congress amended section 16 of the Alaska Native Claims Settlement Act to allow Sealaska to select lands under section 14(h)(8) of that Act from land located **inside**, rather than **outside**, the withdrawal areas established for southeast Alaska Native villages.

Outside Groups/Towns Opposed to S. 730 (which is title III of H.R. 2578):

- City of Thorne Bay, AK
 - Opposition letter [linked here](#).
- Testimony of Myla Poelstra is [linked here](#). She was representing the towns of:
 - Thorne Bay, Alaska
 - Cape Pole, Alaska

- Hollis, Alaska
- Naukati, Alaska
- Whale Pass, Alaska
- Kupreanof, Alaska
- Port Protection, Alaska
- Edna Bay, Alaska
- Point Baker, Alaska
- Alaska Outdoor Council (State Association of the National Rifle Association)
 - Opposition letter [linked here](#)
- New Mexico Shooting Sports Association (State Association of the NRA)
 - Opposition letter [linked here](#).
- Oregon State Shooting Association (State Association of the NRA)
 - Opposition letter [linked here](#).
- Territorial Sportsmen Inc.
 - Testimony from President Wayne Regelin [linked here](#).
- Former Directors of the Alaska Division of Wildlife Conservation
 - Signed letter [linked here](#). Note: This letter references S. 881, which is a similar bill from the 111th Congress.

Concerns Expressed by the USDA: Under Secretary for Natural Resources and Environment, USDA, Harris Sherman, testified before the Subcommittee on May 26, 2011, and expressed the below concerns with the legislation. His testimony is [linked here](#).

- Page 4, paragraph 1: “The Forest Service believes this [transfer of older second growth stands to Sealaska] will increase the potential for litigation around timber sales and thereby create significant uncertainty for the forest industry.”
- Page 4, paragraph 5: “the Forest Service is concerned that HR. 1408 could increase the chances for litigation, which would increase uncertainty for all parties, including Sealaska and local mills.”
- Page 6, Conclusion: “we remain concerned about the consequences of the legislation, including its ability to actually finalize the entitlement and current outstanding split estate issues and the potential for the legislation to bring to closure the question of Sealaska’s entitlement under ANCSA.”

Title IV – San Antonio Missions National Historical Park Boundary Expansion Act

This text is similar to H.R. 3100 (Canseco, R-TX)

The legislation modifies the boundary of the San Antonio Missions National Historical Park to include 151 acres as depicted on the map title “San Antonio Missions National Historical Park Proposed Boundary Addition 2009.” The Secretary is prohibited from acquiring any land or interest in land within the boundaries of the park by condemnation. The Secretary is authorized to acquire this land by donation only. No private property or non-federal public property shall be included within the park without the written consent of the property owner.

According to CBO, fourteen acres of the property owned by the city of San Antonio currently have environmental contamination. CBO states the National Park Service would be responsible for the cleanup of this contamination, at a cost of \$9 million. According to the sponsor's office, the manager's amendment will reduce this acreage amount from 151 acres to 137 acres. The amendment will remove the 14 acres that have environmental contamination.

Similar legislation was offered last Congress as H.R. 4438. This legislation passed the House by a [roll call vote of 264-114](#), and the RSC Legislative Bulletin can be [viewed here](#). A notable difference between H.R. 4438 and the legislation being considered today is that Title IV of this legislation only allows private property to be included within the park with the written consent of the property owner. H.R. 4438 also contained 151 acres, whereas the amended version of Title IV will only contain 137 acres.

Title V – Waco Mammoth National Monument Establishment Act of 2012

This text is similar to H.R. 1545 (Flores, R-TX)

The legislation establishes the Waco Mammoth National Monument as a unit of the National Park System. The Secretary of the Interior is authorized to enter into cooperative management agreements with Baylor University and the city of Waco, TX. The legislation states that the Secretary may acquire monument land only by donation from the city.

Within three years after the date of enactment, the Secretary shall complete a general management plan for the monument. The legislation prohibits the use of federal funds for the following:

- Carrying out the cooperative agreements between with city or the university;
- Acquiring land for the monument;
- Developing a visitor center for the monument;
- Operating or maintaining the monument;
- Constructing exhibits for the monument; or
- Developing the general management plan.

According to CBO, the bill's prohibition on the use of federal funds for operations would require that those costs be financed through nonfederal sources. If nonfederal funds do not become available to implement the legislation, ownership of the site would revert back to the city of Waco, and the site would terminate as a unit of the National Park System. In any event, CBO estimates that the legislation would have an insignificant impact on the federal budget.

Title VI – North Cascades National Park Access

The text is similar to H.R. 2352 (Hastings, R-WA)

The legislation allows the Secretary of the Interior to adjust the boundaries of the North Cascades National Park in order to include a 100-foot-wide corridor along Stehekin Valley Road, so that it may be rebuilt. This 100-foot-wide corridor shall be outside the floodplain between milepost 12.9 and milepost 22.8, it shall be within the boundaries of the North Cascades National Park, and it shall be outside of the boundaries of the Stephen Mather Wilderness.

The boundary adjustments shall be equal acreage amounts that are exchanged between the Stephen Mather Wilderness and the North Cascades National Park, and shall result in no net loss of acreage other either party.

Background According to Committee Report 112-532:

The Stephen Mather Wilderness was designated in 1988 as part of the Washington Park Wilderness Act (Public Law 100-668). Excluded from the wilderness area was a 100-foot corridor for a pre-existing dirt road that followed the Stehekin River for 23 miles from Lake Chelan into the wilderness, providing limited vehicle access to trails and campgrounds in that portion of the wilderness.

Until 2003, the park provided shuttle service along the road for hikers and campers, who could only reach the road by passenger ferry or floatplane. Local residents, who retained property and small businesses inside the park and the adjoining Lake Chelan National Recreation Area, also used the road for recreation.

Damage to the road from a 1995 flood was repaired, except for a 2.5 mile section at the very end of the road, but in 2003 and again in 2006 major flooding along the river washed out significant portions of the road in the upper valley. Since these floods, the road has been impassible for vehicles above what used to be the halfway point. The public access specifically provided for and protected by the 1988 law has been voided by the destruction of the road.

Due to the wilderness designation, the Secretary of the Interior says that the U.S. Park Service is unable to rebuild the road. H.R. 2352 is necessary to simply allow the Secretary of the Interior the ability to rebuild an adequate road that can be successfully maintained, thereby upholding the promise made in 1988.

Title VII – Endangered Salmon and Fisheries Predation Prevention Act

This text is similar to H.R. 3069 (Hastings, R-WA)

The legislation amends the Marine Mammal Protection Act to authorize the Secretary of the Interior to issue permits for the lethal taking of sea lions on the waters of the Columbia River and its tributaries.

These sea lions will be considered part of a health population of sea lions that are not listed as an endangered species or threatened species under the Endangered Species Act of 1973. The purpose of issuing these permits is to protect the endangered and threatened species of salmon and other nonlisted fish species.

The Secretary shall approve or deny an application for a permit within 30 days of receiving the application. The permit shall be effective for no more than one year after the date it is issued but it may be renewed by the Secretary. Permits shall not authorize the lethal taking of more than 10 sea lions during the duration of the permit. The total number of sea lions lethally taken each year shall not exceed 1% of the annual potential biological removal level.

The National Environmental Policy Act of 1969 (NEPA) shall not apply to these permits. The Secretary shall suspend issuing permits after 5 years if the Secretary determines that the lethal removal is no longer necessary to protect salmonid and other fish species from sea lion predation.

It is the sense of Congress that:

- “Preventing predation by sea lions, recovery of listed salmonid stocks, and preventing future listings of fish stocks in the Columbia River is a vital priority;
- “Permit holders exercising lethal removal authority pursuant to the amendment made by this title should be trained in wildlife management; and
- “The Federal Government should continue to fund lethal and nonlethal removal measures for preventing such predation.”

Title VIII – Reauthorization of Herger-Feinstein Quincy Library Group Forest Recovery Act.

This text is similar to H.R. 3685 (Herger, R-CA)

The legislation extends the authorization of the Herger-Feinstein Quincy Library Group Recovery Act until September 30, 2022, or until the Secretary completes or revises the land and resource management plan for the National Forest System lands included in the pilot project area. The authorization for a pilot program within the Act would otherwise expire on September 30, 2012.

The legislation also allows the Secretary to expand the pilot project area to include all National Forest System lands within California or Nevada that lie within the Sierra Nevada and Cascade Province, Lake Tahoe Basin Management, Humboldt-Toiyabe National Forest, and Inyo National Forest.

Potential Conservative Concern: CBO estimates that implementing the legislation would authorize spending subject to appropriation of \$60 million over five years. Some conservatives may be concerned that this legislation expands an existing program, that is currently set to expire, at a cost to taxpayers of \$60 million that is not offset.

Title IX – Yerington Land Conveyance and Sustainable Development Act

This text is similar to H.R. 4039 (Amodei, R-NV)

The legislation directs the Secretary of the Interior to convey to the city of Yerington, Nevada, the federal land located in Lyon County and Mineral County, Nevada, that is identified on the map as “City of Yerington Sustainable Development Conveyance Lands.” The city shall pay the Secretary the fair market value of the land they are receiving.

The Secretary shall determine the fair market value of the federal land to be conveyed by using an appraisal of the land.

Upon conveyance of the land, the U.S. is released from any and all liabilities or claims of any kind or nature arising from the presence, release, or threat of release of any hazardous substance, pollutant, contamination, etc.

Title X – Preserving Access to Cape Hatteras National Seashore Recreational Area Act

This text is similar to H.R. 4094 (Jones, R-NC).

The legislation directs the Cape Hatteras National Seashore Recreational Area to be managed in accordance with the Interim Protected Species Management Strategy/Environmental Assessment issued by the National Park Service on June 13, 2007, unless the Secretary of the Interior issues a new final rule regarding access to the Cape Hatteras National Seashore Recreation Area (Cape) to protect endangered species.

If the Secretary determines that additional restrictions on access to a portion of Cape are necessary to protect endangered species, then the Secretary may restrict access of the Cape.

Title XI – Grazing Improvement Act of 2012

This text is similar to H.R. 4234 (Labrador, R-ID).

The legislation extends the Bureau of Land Management (“BLM”) and Forest Service livestock grazing permits from 10 to 20 years. The legislation also allows for crossing permits, or the transfer of grazing preferences, to be categorically excluded from the National Environmental Policy Act (NEPA).

This legislation is supported by the following national associations:

- Public Lands Council
- American Sheep Industry Association
- Association of National Grasslands
- National Cattlemen’s Beef Association
- U.S. Cattlemen’s Association

This legislation is supported by the following State, and Local Associations:

- Arizona Cattle Growers' Association
- Arizona Wool Producers Association
- California Cattlemen's Association
- California Wool Growers Association
- Colorado Cattlemen's Association
- Colorado Wool Growers Association
- Idaho Cattle Association
- Idaho Wool Growers Association
- Montana Stock Growers Association
- Montana Public Lands Council
- Montana Association of State Grazing Districts
- Montana Wool Growers Association
- New Mexico Stock Growers' Association
- New Mexico Wool Growers, Inc.
- Nevada Cattlemen's Association
- Nevada Wool Growers Association
- North Dakota Stockmen's Association
- Oregon Cattlemen's Association
- Oregon Sheep Growers Association
- South Dakota Cattleman's Association
- South Dakota Public Lands Council
- Utah Cattlemen's Association
- Utah Wool Growers Association
- Washington Cattlemen's Association
- Washington State Sheep Producers
- Wyoming Stock Growers Association
- Wyoming Wool Growers Association

Title XII – Target Practice and Marksmanship Training Support Act

This text is similar to H.R. 3065 (Schuler, D-NC)

The legislation amends U.S. Code to define a “public target range” as a specific location that:

- Is identified by a governmental agency for recreational shooting;
- Is open to the public;
- May be supervised; and
- May accommodate archery or rifle, pistol, or shotgun shooting.

The legislation allows for a state to cover up to 90% of the cost of acquiring land for expanding or constructing a public target range. The legislation also allows for states to allocate up to 10% of funding allocated for Firearm and Bow Hunter Education and Safety Program grants to cover the cost of acquiring land for, or expanding or constructing a public target range.

Title XIII – Chesapeake Bay Accountability and Recovery Act of 2012

This text is similar to H.R. 258 (Wittman, R-VA)

The legislation directs the Director of the Office of Management and Budget, along with the chief executive of each Chesapeake Bay State, and the Chesapeake Bay Commission, to submit to Congress a financial report containing:

- “An interagency crosscut budget that displays--
 - “The proposed funding for any Federal restoration activity to be carried out in the succeeding fiscal year, including any planned interagency or intra-agency transfer, for each of the Federal agencies that carry out restoration activities;
 - “To the extent that information is available, the estimated funding for any State restoration activity to be carried out in the succeeding fiscal year;
 - “All expenditures for Federal restoration activities from the preceding 2 fiscal years, the current fiscal year, and the succeeding fiscal year; and
 - “All expenditures, to the extent that information is available, for State restoration activities during the equivalent time period described in subparagraph (C);
- “A detailed accounting of all funds received and obligated by all Federal agencies for restoration activities during the current and preceding fiscal years, including the identification of funds which were transferred to a Chesapeake Bay State for restoration activities;
- “To the extent that information is available, a detailed accounting from each State of all funds received and obligated from a Federal agency for restoration activities during the current and preceding fiscal years; and
- “A description of each of the proposed Federal and State restoration activities to be carried out in the succeeding fiscal year (corresponding to those activities listed in subparagraphs (A) and (B) of paragraph (1)), including the--
 - “Project description;
 - “Current status of the project;
 - “Federal or State statutory or regulatory authority, programs, or responsible agencies;
 - “Authorization level for appropriations;
 - “Project timeline, including benchmarks;
 - “References to project documents;
 - “Descriptions of risks and uncertainties of project implementation;
 - “Adaptive management actions or framework;
 - “Coordinating entities;
 - “Funding history;
 - “Cost-sharing; and
 - “Alignment with existing Chesapeake Bay Agreement and Chesapeake Executive Council goals and priorities.”

The Director of OMB shall only describe restoration activities that have funding amounts greater than \$100,000 (for federal restoration activities), or have funding amounts greater

than \$50,000 (for state restoration activities). The Director shall submit this report to Congress within 30 days after the submission of the President's annual budget to Congress.

Within one year of enactment, the Administrator shall develop an adaptive management plan for restoration activities that includes:

- "Definition of specific and measurable objectives to improve water quality, habitat, and fisheries;
- "A process for stakeholder participation;
- "Monitoring, modeling, experimentation, and other research and evaluation practices;
- "A process for modification of restoration activities that have not attained or will not attain the specific and measurable objectives set forth under paragraph (1); and
- "A process for prioritizing restoration activities and programs to which adaptive management shall be applied."

Within 60 days of enactment, the Administrator shall report to Congress on the implementation of this adaptive management plan.

The legislation also requires an Independent Evaluator for restoration activities in the Chesapeake Bay watershed, who shall report and review on restoration activities. The legislation establishes nomination requirements and requires a report every 2 years on the findings of the evaluator.

Title XIV – National Security and Federal Lands Protection Act

This legislation is similar to H.R. 1505 (Bishop, R-UT)

The legislation prohibits the Secretary of the Interior or the Secretary of Agriculture from impeding, prohibiting, or restricting activities of U.S. Customs and Border Protection on land under the jurisdiction of the Secretaries. The legislation authorizes U.S. Customs and Border Protection to have immediate access to land under the jurisdiction of the Secretaries for the following activities:

- Construction and maintenance of roads;
- Construction and maintenance of fences;
- Use vehicles to patrol;
- Installation, maintenance, and operation of surveillance equipment and sensors;
- Use of aircraft; and
- Deployment of temporary tactical infrastructure, including forward operating bases.

This title shall sunset 5 years after the date of enactment.

Committee Action: H.R. was introduced on July 18, 2011 and was referred to the House Natural Resources Committee, which held a markup and favorably reported the legislation.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: The legislation is a combination of 14 bills separated by title. The following are CBO estimates for each individual title of the legislation.

Title I - H.R. 2578 - CBO estimates that any changes in the agency's costs to manage the affected area would not exceed \$500,000 in any year.

Title II - H.R. 460 - CBO estimates that the federal government would receive payments from the hydropower developer of about \$4 million over the 2013-2022 period.

Title III - H.R. 1408 - CBO estimates that transferring that land to Sealaska would result in a net loss of timber receipts, totaling about \$2 million over the 2012-2021 period and additional amounts after 2021.

Title IV - H.R. 3100 –CBO estimates that remediation work would cost around \$9 million, subject to the availability of appropriated funds. CBO also estimates that implementing H.R. 3100 would have no other significant impacts on the federal budget.

According to the sponsor's office, the manager's amendment that will be offered will reduce this acreage amount from 151 acres to 137 acres. The amendment will remove the 14 acres that have environmental contamination. CBO has estimated that this cleanup would cost \$9 million.

Title V - H.R. 1545 - CBO estimates that implementing H.R. 1545 would cost \$1 million over the next three years and about \$400,000 a year thereafter.

Title VI - H.R. 2352 - CBO estimates that completing the rerouting project would cost about \$3 million over the next five years.

Title VII - H.R. 3069 - CBO estimates that providing NOAA with the authority to issue permits for California sea lions would have a negligible impact on the federal budget.

Title VIII - H.R. 3685 - CBO estimates that implementing the legislation would cost \$60 million over the 2013-2017 period.

Title IX - H.R. 4039 - CBO estimates that enacting the legislation would increase offsetting receipts (a credit against direct spending) by \$2 million in 2013.

Title X - H.R. 4094 - CBO estimates that the legislation would have no significant impact on the federal budget over the 2013-2017 period.

Title XI - H.R. 4294 – CBO estimates that implementing the legislation would have no significant impact on discretionary spending.

Title XII - H.R. 3065 - CBO estimates that enacting H.R. 3065 could affect direct spending, however CBO estimates that any such effects would be minimal over the 2013-2022 period.

Title XIII - H.R. 258 - CBO estimates that implementing this legislation would cost about \$1 million annually over the 2012-2016 period.

Title XIV - H.R. 1505 - CBO estimates that implementing the legislation would not have a significant impact on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: Titles IV, V, and VIII arguably increase the size and scope of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, Title XII of the legislation (H.R. 3065) would impose a private-sector mandate as defined in UMRA by eliminating an individual's existing right to seek compensation from the federal government for damages occurring at a public target range supported by federal funds. The cost of the mandate would be the forgone value of awards and settlements in such claims. CBO estimates that the cost of the mandate would be below the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks.

Constitutional Authority: Rep. Denham states “Congress has the power to enact this legislation pursuant to the following: Article IV, Section 3, Clause 2 (relating to the power of Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States).” The statement can be [viewed here](#).

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