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Five

July 13, 1976

The Honorable Charles Leppert, Jr.  
Deputy Assistant to the President  
The White House  
Washington, D. C.

JUL 14 1976

Dear Charlie:

I enjoyed seeing you Friday morning. We visited with Jack Marsh after our visit with Jim Cannon. It was a real pleasure to be so graciously remembered by friends when you have a client in toe. The only one I missed seeing was the President. We did see them bringing the President a gift from Saudi Arabia and if I had been a little more quick on my feet we could have seen the tea set before it was taken into the President's office.

Following up on our conversation regarding the President's position on the New River legislation, I am enclosing a booklet -- BLUE RIDGE -- THE PEOPLE's PROJECT. This should give you all the "facts".

I do hope that The White House will continue to not take a position on the New River legislation, even though as I understand it Nat Reed, Assistant Secretary of Interior for Fish, Wildlife and Parks, has been pushing for White House intervention. My understanding is that the House Rules Committee will likely schedule the bill, H.R. 13372, for a hearing July 27, or 28. The Senate has scheduled floor action on their bill, S. 158, for the week of August 23.

As you know, there is an impressive array of groups opposed to the legislation -- labor unions, including the AFL-CIO, and the Building Trades Department of the AFL-CIO; the U.S. Chamber of Commerce, National Association of Electrical Companies, the Associated General Contractors of America, the Water Resources Congress, and the National Constructors Association, to say nothing of the many individual companies and groups not associated with the above organizations.

As I told Max Friedersdorf during several conversations on this subject, it is contradictory for the President to get involved with promoting the development of power to meet our increased demands on the one hand, and then be a party to efforts to stop the construction of the badly needed powerplant on the other. Especially is



it difficult to explain how the President can oppose a unanimous decision of the independent regulatory agency (FPC) and the unanimous decision of the specially appointed three-judge Federal Court of Appeals. You may recall that the court of appeals also upheld the license of the Appalachian Power Company to build the much needed hydro-electric pumped storage powerplant.

Fourteen years is a long time, Charlie. You know all the background on this issue. I can only stress that it would be very bad judgement for the President to get involved in this one beyond his limited statement during the North Carolina primary. As I explained to you, Rep. Roy Taylor told members of the House Interior Committee when the bill was before his committee that the President favored the bill. I have no doubt that he will repeat this same statement when he appears before the Rules Committee either the 26th or 27th of July.

You know of the Republican opposition to the bill in the House, and I can tell you that all five Republican members of the Senate Interior Committee voted against reporting S. 158 (Senator Helms' New River Bill) last month when it was reported out of that committee. A copy of the Senate Report with the Minority views signed by all five Republican members of the Senate Interior Committee is enclosed for your information.

There was less opposition in the House Interior Committee but I think with only 15 of the 43 members voting to report the bill out there is surely enough indicated opposition to tell you that its outcome is certainly in doubt.

Please give me a call after you have received this.

Kindest personal regards.

Sincerely yours,

Donald Baldwin

DB/tcs  
Enclosures





FACT SHEET ON NEW RIVER LEGISLATION  
(House Bill H.R. 13372; Senate Bill S.158)

WHAT IS THE NEW RIVER LEGISLATION? -- The New River bills (H.R. 13372, and S.158) are designed to prevent the construction of a badly needed hydroelectric pumped storage powerplant -- the Blue Ridge Project -- in Grayson County, Virginia. This would be accomplished by putting a 26.5 mile segment of the New River in North Carolina in the National Wild and Scenic Rivers System.

WHAT IS THE BLUE RIDGE PROJECT? -- The Blue Ridge Project is a 1.8 million kilowatt pumped storage hydroelectric powerplant licensed by the FPC to be constructed on the New River in Grayson County, Virginia. It would involve two dams and reservoirs providing recreation lakes and flood control, two thirds in Virginia and one third in North Carolina's Ashe and Alleghany counties.

WHO WOULD BENEFIT? -- The 1.8 million kw peaking power would be made available to the entire eastern central United States, including North Carolina, through the 97 interconnectors of the American Electric Power Company's system.

WHAT IS THE STATUS OF THE PROJECT? -- Some 14 years ago the application for the license to build the powerplant was initiated by the Appalachian Power Company, headquartered in Roanoke, Virginia, a subsidiary of the New York based American Electric Power Company. After over 7,000 pages of testimony, 400 exhibits, and \$17 million in expenditures, the Federal Power Commission, on June 14, 1974, issued a license to Appalachian to build the project by a unanimous vote of the five member independent Federal agency. North Carolina sought reversal in the U.S. Court of Appeals but was turned down in March of this year when a specially appointed three judge court unanimously upheld the license. North Carolina has now appealed to the Supreme Court.

WHAT WOULD BE THE EFFECT OF PASSING THE NEW RIVER BILLS? -- Passing legislation to take away a power company's license to construct a badly needed plant for generating electric power would set a precedent. Congress has never overturned an action of an independent regulatory agency. Such agencies were set up by the Congress to act on the merits of an application, devoid of influence or politics which might otherwise be inflicted on the Congress and its individual members. Passing such legislation would also mean that the power company would have to be paid under the due process clause of the Fifth Amendment of the Constitution which protects the rights of the people from having their property taken without just compensation. This might well cost the taxpayers in excess of a half-billion dollars -- the cost difference between building the licensed Blue Ridge Project as opposed to constructing a coal-fired generating plant. (\$845 million to \$1.4 billion)

WHO WOULD PAY FOR THE CONGRESS' PASSING THE NEW RIVER BILLS? -- The taxpayers would pay from the general receipts of the U.S. Treasury after a power company suit before the U.S. Court of Claims. Or, the additional cost of the construction of the more expensive alternate powerplant would be borne by the users of the power.

WOULD THE CONSTRUCTION OF THE POWERPLANT HELP THE ECONOMY? -- Approximately 2,000 jobs (\$225 million plus payroll) would be available during construction of the project. The tax base available to the local governments would go up substantially. Receipts from recreation business would jump from the present estimate of less than \$100,000 to from \$6-8 million annually.

(Over)



WHO SUPPORTS THE PROJECT? - A large percentage of the people in the affected area, the Governors of Virginia and West Virginia, both Virginia Senators, and a majority of the Virginia members of the House of Representatives. Various trade unions, including the Laborers International, the Building and Construction Trades Department, AFL-CIO, United Brotherhood of Carpenters and Joiners of America, International Brotherhood of Electrical Workers, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, AFL-CIO, Operating Engineers, and the AFL-CIO support the project and oppose the legislation. The U.S. Chamber of Commerce, the National Association of Electric Companies, the Associated General Contractors of America, the Water Resources Congress, and the National Constructors Association are also supporting the project.

WHO OPPOSES? -- Some private land owners in North Carolina's Ashe and Alleghany counties, the congressmen from North Carolina, and environmental groups.

DESIGNATING A SEGMENT OF THE NEW RIVER, NORTH  
CAROLINA, AS A COMPONENT OF THE NATIONAL WILD  
AND SCENIC RIVERS SYSTEM

JUNE 16, 1976.—Ordered to be printed

Mr. HASKELL, from the Committee on Interior and Insular Affairs,  
submitted the following

## REPORT

together with

MINORITY VIEWS (*See page 17*)

[To accompany S. 158]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 158) to amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a potential component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with amendments to the text and to the title and recommends that the bill, as amended, do pass.

The amendments are set forth in full as follows:

1. Strike all after the enacting clause and insert in lieu thereof the following language:

That the Wild and Scenic Rivers Act (82 Stat. 906), as amended (16 U.S.C. 1271 et seq.), is amended as follows:

(1) In section 2 delete "Maine, and that segment of the Wolf River, Wisconsin, which flows through Langlade County," and insert in lieu thereof "Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line."

(2) In section 7(a) after the third sentence insert the following: "Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate, or otherwise adversely affect such river segment."

## 2. Amend the title so as to read:

A bill to amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River, North Carolina, as a component of the National Wild and Scenic Rivers System.

### I. PURPOSE

S. 158, as amended, would amend the Wild and Scenic Rivers Act (82 Stat 906; as amended, 16 U.S.C. 1271 *et seq.*) to designate as a component of the National Wild and Scenic Rivers System a 26.5 mile segment of the South Fork and main stem of the New River in the State of North Carolina.

### II. BACKGROUND AND NEED

#### A. THE WILD AND SCENIC RIVERS ACT AND THE ADMINISTRATION OF DESIGNATED RIVERS

Very few of the 3 million miles of rivers and tributaries of the United States appear as they did two or three centuries ago. Rivers have been altered and dammed for flood control, navigation, hydro-electric power, water supply, and irrigation. These uses of rivers were clearly necessary for the development and settlement of this nation. Our modern economy, despite its intensive use of advanced technology, has not lost its dependence on our water resource.

Early in the sixties, however, there developed a new concept in our national management of water resources: the protection of free-flowing rivers or river segments. In 1965, a study by the Secretaries of Agriculture and the Interior recommended that some rivers be protected from dam construction and be preserved in a "wild and free flowing" state. In 1968, Congress enacted legislation which embodied this recommendation—the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1271 *et seq.*).

The new management concept of preserving free-flowing rivers was forcefully expressed as national policy in the Act's introductory provisions:

... certain selected rivers of the Nation which with their immediate environments, 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. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. (Section 1(b).)

The Act achieved this new national policy by establishing a new land management system: the Wild and Scenic Rivers System. Although the Act listed eight rivers which would be the original components of the System, it also provided two alternative procedures for

including additional rivers in the system. Wild and scenic rivers which are to be administered in whole or in part by a Federal agency may be added to the System by Acts of Congress. Any wild and scenic river proposed for State administration must first be designated by an act of the State legislature. The Governor must then file an application with the Secretary of the Interior. Finally, the Secretary may approve the river's inclusion in the system if he or she finds that the river meets the criteria for inclusion contained in section 2(b) of the Wild and Scenic Rivers Act. As of June 1, 1976, four rivers have been designated wild and scenic rivers by Acts of Congress and two rivers have been added to the system by administrative action.

(Because of the word "wild" is found in the title of the Wild and Scenic Rivers Act, many assume that the wild and scenic rivers are managed as wilderness areas. It is, however, inaccurate to make an analogy between the Wild and Scenic Rivers Act and the Wilderness Act. The Wild and Scenic Rivers Act should more properly be considered a multiple-use statute, save one use. The only use generally prohibited is impoundment; the river segment must remain free-flowing.)

The Wild and Scenic Rivers Act sets forth three management categories into which various sections of a wild and scenic river may be placed by the Federal agency or the State which develops the river's management plan:

The "recreational" river category refers to river sections readily accessible by road or railroad which may have some development along shorelines and which may have undergone some impoundment or diversion in the past.

The "scenic" river category is given to sections of rivers free of impoundments with shorelines and watersheds largely undeveloped but accessible in places by roads.

The "wild" river category is reserved for those river sections which are free of impoundments and generally inaccessible except by trail, with watershed and shorelines essentially primitive and unpolluted.

In the first two categories, most traditional uses—roads, bridges, residences, farming, grazing, timber harvesting, hunting and fishing, and various commercial activities—may be allowed. Even the most restrictive management category—that of "wild" river—limits development activities less than do the management provisions of the Wilderness Act for wilderness areas.

The managing agency, Federal or State, of a component of the National Wild and Scenic Rivers System may acquire only those interests in land which are necessary to ensure protection of the river resource. Fee acquisition of lands is limited to an average of no more than 100 acres per river mile, and the power of eminent domain is suspended when public ownership of 50 percent of the authorized area is reached. Additionally, scenic easements may be acquired, but only so long as the total of all acquisitions does not exceed 320 acres per mile.

The effect of these limitations on acquisition is to ensure that the agricultural, residential, and other uses of private land permitted under the management categories in the Wild and Scenic Rivers Act and the management plan for the particular river will continue unim-

paired, and that Federal acquisition, particularly acquisition by eminent domain, is limited to only those lands which are to support heavy development which would seriously impair the river values cited above in the quoted portion of section 1(b).

#### B. THE NEW RIVER: ITS VALUES AS A WILD AND SCENIC RIVER

Rising in the mountainous country of northwestern North Carolina, the headwaters of the New River flow in two distinct drainages in a generally northerly direction past ancient Appalachian peaks which rise to elevations of more than 5,000 feet. The two forks of the river, each over 60 miles in length, join to form the main stem of the New River, which then flows into Virginia, where it twists and turns through six southwestern counties before heading northwest into West Virginia and through the famous New River Gorge. Above Charleston, W. Va., the New and Gauley Rivers merge to form the Kanawha, which continues in a northwesterly direction to the Ohio River.

The New River was named by Peter Jefferson, the father of Thomas Jefferson, who discovered the river while surveying southwestern Virginia and northwestern North Carolina in the 1700's. The river is misnamed. The river channel is estimated by geologists to be the oldest in the western hemisphere and perhaps the second oldest in the world—second only to the Nile. Exposures of strata at points in the channel are dated as being 500 million years old.

In prehistoric times, the New River formed the headwaters of a mighty river—called the Teays—which traversed almost half a continent. The Teays drained essentially the same territories as those drained by the Ohio and Mississippi systems today—from the Appalachians to the Great Plains, and from the Great Lakes to the Gulf of Mexico. More than 1,000 miles long, the Teays extended from North Carolina northwestward across Virginia, West Virginia, Ohio, Indiana, and Illinois. There it turned south toward St. Louis to enter a northern arm of the Gulf of Mexico, which then extended up the present lower Mississippi Valley as far as southern Illinois.

The last Ice Age drastically altered the face of North America and with it the Teays. The great glaciers, in spreading as far south as the southernmost tip of Illinois, moved over the lower half of the Teays River—from Chillicothe, Ohio, to its mouth below St. Louis—burying it beneath the ice sheet and filling its valley completely with glacial moraine. Only that portion of the Teays known as the New River survives in more or less its original state.

S. 158, as amended, would designate a 26.5 mile segment of the upper reach of the New River as a component of the National Wild and Scenic Rivers System. The designated segment begins on the South Fork at the confluence of a tributary stream, Dog Creek, in Ashe County, North Carolina, continues 22 miles to the confluence of the North Fork; and, then, as the main stem, proceeds an additional 4.5 miles, ending in Alleghany County, North Carolina, at the Virginia State line. The land along the segment is almost equally divided between forested areas and pastures and cultivated areas. In addition, there is a wildlife management unit in the Cranberry Creek area. The segment contains many rapids and approximately 10 outstanding rock

outcrops, of which the two most spectacular are located on the main stem near the Virginia line. There are five highway bridges over the river, but no pipelines, gas lines, overhead transmission lines, or similar intrusions cross the segment.

This river segment is rich in the values set forth in section 1(b) of the Wild and Scenic Rivers Act:

It is an excellent biological resource. A number of botanists have declared it to be a truly unique area in terms of the variety of flora. The same glaciers that changed the course of the Teays but stopped short of the New River are given credit for producing the unique combination of northern and southern vegetation in the area—the theory being that the area was close enough to the glaciers to maintain the northern evergreens and pines and yet far enough away to retain the flowering bushes and trees of the south.

The topography of the 26.5 mile segment, ranging from a broad flood plain to narrow valleys with a subsequent change in sites from wet to dry, ensures a truly diversified vegetation. Approximately 60 percent of the segment's banks is in forest cover; the rest is primarily cleared lands devoted to pasture or crops.

The New River supports a significant fishery, with some 68 species of fish having been identified. Eleven of these species are thought to be rare and endangered. The North Carolina Department of Natural and Economic Resources has stated that the reach of the New River in Ashe and Alleghany Counties, N.C., to be designated by S. 158, is the largest and highest quality smallmouth and rock bass riverine habitat in the State.

Wildlife found along the river segment is varied. Both big game, including white-tailed deer and wild turkey, and small game species, including grey squirrel, ruffed grouse, rabbit, quail, dove, and wood duck, live in the area. Also found there are furbearers—opossum, raccoon, beaver—and many forms of nongame wildlife, such as song and other birds, small mammals, reptiles, and amphibians. The area harbors 16 animals on the State rare and endangered list, including salamanders, reptiles, invertebrates, fish, and one species of bird. Four species are under consideration for the United States "List of Endangered Fauna".

In prehistoric and historic times, the New River served as a major migration route; today this segment of the river is rich in archaeological and historical resources. There have been four preliminary reconnaissance archaeological surveys made of the New River since 1964. Eighteen sites in Ashe and Alleghany county have already been identified; although the surveys were not extensive and were accomplished within a limited time frame. A variety of cultures and time periods are represented at these sites. They indicate that several different types of habitats were used by prehistoric Indians. In addition, this drainage was an important center in early historic times and the remains of several structures and farmsteads have been identified.

A variety of recreation uses currently takes place along the river. The relatively light amount of development on the river banks has meant that the water quality of the stream has been little affected by man, and is well suited for recreational use. Assistant Secretary of the Interior, Nathaniel Reed, in testimony before the Committee, iden-

tified the unique recreational opportunities which would be permitted by designation of the river as a wild and scenic river:

The State of North Carolina has adopted a management plan which contemplates the development of four recreation activity areas in this 26.5 mile segment. These centers would total approximately 400 acres and would offer hiking and horseback riding trails, campsites, picnic tables, shelter areas and sanitary facilities. Annual public use is projected to include 50,000 visitors.

Recognition of the values of this area as a potential wild and scenic river has become widespread. In February 1974, the North Carolina General Assembly passed legislation which included the four and a half miles of the main stem of the New River in North Carolina in the State Natural and Scenic Rivers System. In April 1974, the General Assembly passed further legislation which directed that a study be made of the entire South Fork of the river for potential inclusion in the State system. The 26.5 mile segment which would be protected under S. 158, includes 4.5 miles of the main stem and 22 miles of the South Fork all which have been placed in the State system by an Act of the North Carolina General Assembly.

The first Federal recognition of the North Carolina portion of the New River came on September 19, 1973, when Senator Helms introduced S. 2439 to designate some 70 miles of the river in both North Carolina and Virginia for study as a potential addition to the National Wild and Scenic Rivers System. The measure was ultimately passed by the Senate in 1974, but a counterpart House measure failed of passage under suspension of the rules. This year, Secretary of the Interior Thomas Kleppe formally designated the 26.5 segment as a wild and scenic river. The river would be managed by the State under a management plan developed by the State and approved by the Secretary. The plan places the entire river segment in the less restrictive "scenic" river management category. As an FPC license has already been issued for a pumped-storage hydroelectric facility (see discussion below in "C. An Alternative Use: The Blue Ridge Project"), the Congress must protect this designation by legislative action. If enacted, S. 158, as amended, and an identical bill which has been reported by the Committee on Interior and Insular Affairs in the House of Representatives would effect such action. (See section D. "Legislative, Administrative, and Judicial History" for a more complete history of the Federal efforts to designate the North Carolina segment of the New River as a component of the National Wild and Scenic Rivers System.)

#### C. AN ALTERNATIVE USE: THE BLUE RIDGE PROJECT

An additional, significant value of the river segment to be designated by S. 158, as amended, is its potential as a site for a reservoir for a hydroelectric facility. Such a facility, known as the Blue Ridge project, is proposed for construction downstream in Virginia.

The Blue Ridge project to be built by Appalachian Power Company, a subsidiary of American Electric Power Company, is a pumped storage hydroelectric power facility. The proposed project had been pend-

ing before the Federal Power Commission for nine years and had received three favorable recommendations from the FPC administrative law judge when, on June 14, 1974, it was licensed by the Commission. The license was issued 17 days after Senate passage of the protective legislation and 11 days after the House hearings on the counterpart measure. The Congress was given less than six months to complete action on the legislation by virtue of a condition in the license which provided that the license would become valid if Congress had not acted by January 2, 1975.

The project would consist of two impoundments, both in Virginia, and two reservoirs, the upper one extending 70 miles into North Carolina. During periods of peak demand, water would be permitted to flow from the upper reservoir to generate electricity. During periods of low demand, excess generating capacity from powerplants elsewhere in Appalachian's system would be used to pump the water in the lower reservoir back to the upper reservoir. The project's installed generating capacity would be 1,800 megawatts, consisting of eight reversible pump turbines at the upper impoundment having an installed capacity of 200 megawatts each, and two conventional units at the lower impoundment having an installed capacity of 100 megawatts each.

Favoring the project at the Committee hearing, principally for the energy and employment it would provide, were, among others, the American Electric Power Company, the parent company to Appalachian; the Virginia Senators; the Governor of Virginia, Mills E. Godwin, Jr.; and a representative of the AFL-CIO.

Opposition to the project is based, in part, on the damage it would inflict on the river values listed in section 1(b) of the Wild and Scenic Rivers Act and found along the 26.5 mile segment. The project would flood most of the North Carolina portion of the river—approximately 5,800 acres in Allegheny County and some 8,400 acres in Ashe County, North Carolina. It would eliminate, in all, 44 miles of the river and 212 miles of tributary creeks and remove or reduce many of the archeological, historical, wildlife, and vegetation values of the river area. Assistant Secretary of the Interior Reed assigned the following value to these potential losses:

"These deleterious impacts are offset by a minimal increase in the utility's peaking power capacity. Some advocates of the project are attracted by the flatwater recreation opportunities that would be created, and by the potential for second home development around the reservoirs. It is our judgement that the Federal Power Commission failed to balanced these minimal benefits against the adverse impact of the project, and that the FPC gave virtually no consideration to preservation of the New River in a free-flowing state.

Perhaps the most vehement opposition comes from the people of the region, many of whose families have lived there for generations. Construction of the Blue Ridge project would result in the relocation of more than 3,000 individuals and the loss of thousands of acres of fertile farmland. For 1973, the estimated value of raw agricultural products from the North Carolina lands to be inundated amounted to \$8.5 million.

Among the opponents of the Blue Ridge project are the Administration; the North Carolina congressional delegation; the Governor of North Carolina, James E. Holshouser, Jr.; the North Carolina and West Virginia legislatures; the Commissioners of the affected North Carolina counties; the supervisors of Grayson County, the Virginia county in which the impoundments would be built; and the National Committee for the New River, the Sierra Club, and other environmental organizations.

#### D. LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL HISTORY

##### 1. The Congress

On September 19, 1973, Senator Helms introduced S. 2439 to designate some 70 miles of the New River in both North Carolina and Virginia for study as a potential component of the National Wild and Scenic Rivers System. A hearing was held on the proposal by the Public Lands Subcommittee on February 7, 1974.

In an April 4, 1974, letter to Senator Helms, Secretary of the Interior Rogers C. B. Morton stated the Administration's position favoring the legislation's enactment. The Committee on Interior and Insular Affairs, in a May 2, 1974 markup session, unanimously ordered S. 2439 reported favorably to the Senate. The Senate, by a vote of 49-19, passed the bill on May 28, 1974. The counterpart proposed in the House of Representatives was reported by the House Interior Committee, but failed to pass the full House under suspension of the rules.

S. 158 was introduced by Senator Helms on January 15, 1975, and was referred to the Committee on Interior and Insular Affairs. This proposal, identical to S. 2439 of the previous Congress, would also designate for study the seventy mile segment of the New River in North Carolina and Virginia.

On March 31, 1976, Senator Helms introduced Amendment No. 1549. This amendment in the nature of a substitute to S. 158 would designate as a component of the National Wild and Scenic River System the 26.5 mile stretch of the New River which the State of North Carolina placed in its State Natural and Scenic Rivers System. The amendment also specifically invalidates the Federal Power Commission license to construct the Blue Ridge Project. (See below under "2. The FPC, the State of North Carolina, and the Secretary of the Interior" for a discussion of the State and FPC actions.)

On May 13, 1976, the Department of the Interior submitted a report recommending that the Administration's draft bill be enacted in lieu of S. 158. This draft bill, identical to H.R. 13372, as reported by the Committee on Interior and Insular Affairs of the House of Representatives, was introduced as a second amendment in the nature of a substitute (Amendment No. 1667) to S. 158 by Senator Helms on May 21, 1976. Amendment No. 1667 defines with more specificity the 26.5 segment of the New River to be designated as a wild and scenic river and provides that the FPC license will remain effective for that portion of the New River not included in the 26.5 mile segment.

The Interior Committee held hearings on May 21 and 22, 1976, on S. 158, Amendment No. 1549, and Amendment No. 1667.

In subsequent markup session, the Committee agreed to Amendment No. 1667 and ordered reported favorably to the Senate S. 158, so amended.

##### 2. The FPC, the State of North Carolina, and the Secretary of the Interior

On June 20, 1962, Appalachian Power Company sought a preliminary permit for the Blue Ridge project. A preliminary permit was granted, and on February 27, 1965, following investigations, Appalachian filed an application for a license under section 4(e) of the Federal Power Act (16 U.S.C. § 797(e)).

As originally proposed, the project would have cost \$140 million and would have had a lower reservoir of 2,850 acres and an upper reservoir of 16,600 acres. Installed capacity would have been 980,000 kilowatts.

Hearings on the original proposal commenced in May of 1967. Intervenor included the Department of the Interior and the States of North Carolina and Virginia. In order to meet concerns expressed by Interior relating to water quality control and recreational benefits, the Commission staff suggested a modified Blue Ridge project that expanded the upper reservoir to 26,000 acres and the lower reservoir to 12,390 acres. The enlarged upper reservoir would, it was reasoned, provide improved esthetic and recreational benefits because it would reduce the maximum draw-down in the upper reservoir from 40 feet to 10 feet. Installed capacity of the modified project would be 1,800,000 kilowatts. The expanded upper reservoir would, however, extend 70 river miles into North Carolina, a State that is not directly served by Appalachian. Estimated costs for the modified project were \$430 million.

Appalachian filed for the modified Blue Ridge project in February, 1969. Following three hearings and three separate decisions of the administrative law judge, including hearings held to permit cross-examination of the FPC staff's environmental impact statement, the Commission, in Opinion No. 698, 51 F.P.C. 1906, authorized the license on June 14, 1974 (as noted above, 17 days after Senate passage of S. 2439 and 11 days after the hearing in the House of Representatives on the counterpart bill). The effective date of the license was January 2, 1975, a six month postponement imposed by the Commission to permit the Congress to complete action on the legislation to designate the New River as a study river under section 5(a) of the Wild and Scenic Rivers System Act.

The State of North Carolina and several other intervenors filed motions for rehearing, and the FPC rejected all of the contentions raised by North Carolina and other intervenors on August 12, 1974. North Carolina appealed. On March 24, 1976, the Court of Appeals affirmed the FPC, subject to modification of the license "to require that Appalachian provide the necessary time and funding for complete research, excavation and salvage" of archeological sites in the project area. On May 14, 1976, North Carolina filed its petition for certiorari in the U.S. Supreme Court to review the decision of the Court of Appeals.

During consideration of the case by the Court of Appeals, the North Carolina legislature enacted a statute making the New River part of



the State Natural and Scenic Rivers System. On December 12, 1974 the Governor nominated the New River main stem in North Carolina to the Secretary of the Interior for inclusion in the National Wild and Scenic Rivers System under section 2(a)(ii) of the Wild and Scenic Rivers Act. The Governor's nomination was amended in July of 1975 to include a 26.5 mile segment of the main stem and South Fork of the New River. In November of 1975, the Secretary of the Interior circulated the proposal to various federal agencies, accompanied by a draft environmental impact statement, and on April 13, 1976, following receipt of the comments and publication of the final EIS, Secretary Kleppe included the 26.5 mile New River segment as a State-administered component of the National Wild and Scenic Rivers System.

Despite the Secretary's designation, the preservation of this segment of the river in its natural, free-flowing state is uncertain, because the Federal Power Commission's license for the Blue Ridge project preceded the addition of the river to the National System. Enactment of S. 158, as amended, will preserve the integrity of the Secretary's designation by revoking the FPC license for the Blue Ridge Project as currently planned. The bill, as amended is intended to permit the FPC to consider a smaller version of the project in Virginia, if it would not affect the designated river segment in North Carolina.

#### E. CONCLUSION

The Interior Committee, in ordering S. 158, as amended, reported favorably to the Senate, finds the 26.5 segment of the South Fork and main stem of the New River in North Carolina to be worthy of inclusion in the National Wild and Scenic Rivers System. The New River which flows through North Carolina, Virginia, and West Virginia is a unique natural resource. It is one of the oldest rivers in the world and the designated segment is one of a very few rivers in the eastern United States which remains basically in its natural state, relatively undisturbed by the works of man. It has been found by the Secretary of the Interior to meet the criteria of national significance established by the Wild and Scenic Rivers Act, and its preservation has been urged by citizens in every region of the country. The enactment of S. 158, as amended, would insure that this valuable resource is preserved for future generations of Americans.

The Committee recognizes that the Blue Ridge Project, which would be severely curtailed, if not eliminated, by the enactment of S. 158, would make a significant contribution to meeting regional energy needs. The effectiveness of the project in this respect has been evaluated and approved by the Federal Power Commission. What the FPC did not do, as the comments of the Interior Department and the Environmental Protection Agency make clear, is fully consider the merits of preserving this "outstanding river reach by developing alternative generating facilities and/or an alternative pumped storage site in an area where the destruction of natural values would be less significant" (EPA comments on the environmental impact statement for the Blue Ridge projects.)

A decision by the FPC on the merits of the Blue Ridge Project as a power project does not foreclose a judgment by the Congress

that the preservation of this stretch of the New River takes priority over a pumped storage project. While the Committee is aware of the benefits of the project, it also recognizes the availability of other alternatives for meeting regional energy needs. We believe that the preservation of a historic national asset, the upper New River, should take precedence in this case. In the final analysis, the Blue Ridge Project is replaceable and the upper New River in its unique natural state is not.

One of the basic aims of establishing the National Wild and Scenic Rivers System is the preservation of free-flowing rivers of exceptional quality while we still have this choice. The number of such rivers is dwindling and the opportunities to preserve them are few and far between. Therefore, the Committee concludes that the 26.5 mile segment of the New River described in S. 158 should be designated as a component of the National Wild and Scenic River System.

#### III. COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Interior and Insular Affairs Committee, in open business session on June 3, 1976, by majority vote of a quorum present, recommended that the Senate enact S. 158, if amended as described herein. Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee during consideration of S. 158:

The bill, as amended, was ordered favorably reported to the Senate on a roll call vote. The vote was as follows:

#### YEAS—7

Jackson  
Metcalf  
Johnston  
Abourezk  
Haskell <sup>1</sup>  
Stone <sup>1</sup>  
Bumpers

#### NAYS—3

Fannin  
Hansen  
Hatfield

#### IV. ANALYSIS OF THE COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 158, AS INTRODUCED

Set forth below is an analysis of Amendment No. 1677 which the Committee adopted in lieu of the text of the original bill. The differences between Amendment No. 1677, S. 158, as introduced, and Amendment No. 1549 are discussed above in section II. D. "Legislative, Administrative, and Judicial History".

Section 1 of S. 158, as amended, would amend the Wild and Scenic Rivers Act to statutorily recognize and affirm the Secretary of the Interior's designation of the 26.5 mile segment of the New River as a State-administered component of the System. The river would be managed by the State of North Carolina in accordance with a management plan developed by the State and approved by the Secretary. The

<sup>1</sup>Indicates voted by proxy. (NOTE.—Although not present for their vote, Senators McClure and Bartlett subsequently indicated that if present and voting they would have voted "nay".)



plan places the entire segment in the less restrictive "scenic" river management category.

Section 2 of S. 158, as amended, provides that any license issued by the Federal Power Commission before or after enactment of S. 158 affecting the New River in North Carolina would remain in effect only for that portion of the river which is not included in the National Wild and Scenic Rivers System, and that no licensed project would be permitted to invade, inundate or otherwise adversely affect the designated 26.5 mile segment. Thus, it would leave unimpaired the authority of the FPC to license a hydroelectric project which does not adversely affect the designated river segment. It would, however, effectively nullify the FPC license insofar as it authorizes the construction of dams which would cause irreparable damage to the designated 26.5 mile segment of the river. The effect of this provision would be to give legal precedence to the designation of the New River over the FPC license.

During the hearings on S. 158, the American Electric Power Company raised the possibility that the United States would incur a \$500 million liability (the difference between the cost of the Blue Ridge project and an alternate coal-fired generating plant) to the Appalachian Power Company. The utility submitted a memorandum by its attorneys which contains the argument that the FPC license is a contractual right and thus legally-protected property within the meaning of the Fifth Amendment and its just-compensation requirement.

On the other hand, the Department of the Interior submitted a memorandum from the Associate Solicitor which argues that no taking would occur. This argument is based on the well-settled rule of law that a license is a privilege not a contract or property right and that no contract implied in fact can be found. In particular, it cites a string of cases which have established that the Congress may grant, deny, or revoke a license to obstruct or use navigable waters and that such action does not incur liability on the part of the United States Government.

The Committee wishes to emphasize that no one has challenged the Congress's constitutional authority to revoke an FPC license. Congressional revocation of the license is a valid exercise by Congress of its power under the Commerce Clause to regulate the navigable waters of the United States. As a memorandum of law submitted by the American Law Division, Congressional Research Service, Library of Congress, points out, the FPC has made an express finding that the portion of the New River which would be affected by the Blue Ridge project is navigable water of the United States (29 F.P.C. 445 (1963), cited in F.P.C. Opinion No. 698, June 14, 1973 at 3).

The Committee recognizes the right of the utility to press a claim for compensation by the Federal Government. It also recognizes the strong differences of opinion as to the chances of success of such action and, if successful, the measure of damages.

No provision, however, is needed in S. 158, as amended, to permit the utility to exercise this right. Under the Tucker Act (28 U.S.C. §1491 (1970)), the Court of Claims has jurisdiction to award compensation for claims based on a governmental taking of private property for

public use. As S. 158, as amended, does not repeal the Tucker Act or exempt the bill from the Act's application, relief from the Court of Claims is available to the utility. The availability of a Tucker Act remedy would also preclude a court from entering an injunction against the license revocation, since the equitable injunctive remedy is not normally available when the aggrieved party has an adequate and assured remedy at law. Finally, even if a court found that the revocation or voiding of the license itself amounted to a taking of property requiring compensation, the availability of the Tucker Act remedy would cure the possible unconstitutional effect and assure the utility of compensation.

#### V. COST

S. 158, as amended, does not authorize the appropriation of any funds. As the river segment is to be administered by the State of North Carolina under a management plan already formulated by the State and approved by the Secretary of the Interior, designation of the river as a component of the Wild and Scenic Rivers System should not result in the expenditure of any federal funds. (See section IV, "Analysis of the Committee Amendment in the Nature of a Substitute to S. 158, as Introduced," for a discussion of a possible action under the Tucker Act.)

#### VI. EXECUTIVE COMMUNICATION

The reports of the Department of the Interior and the Office of Management and Budget on S. 158 are set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 13, 1976.

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to the request of your Committee for the views of this Department on S. 158, a bill "To amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a potential component of the National Wild and Scenic Rivers System," and Amendment No. 1549 to S. 158.

We recommend that the enclosed draft bill be enacted in lieu of S. 158, and Amendment No. 1549.

S. 158 would designate a segment of the New River in the States of North Carolina and Virginia as a potential addition to the National Wild and Scenic Rivers System.

Amendment No. 1549 to S. 158 would strike all after the enacting clause of S. 158 and provide for the designation of a 26.5 mile segment of the New River in Ashe and Allegheny Counties of North Carolina as a component of the National Wild and Scenic Rivers System, under section 3(a) of the Wild and Scenic Rivers Act (82 Stat. 907), as amended (16 U.S.C. 1271, 1274(a)). Subsection (b) of Amendment No. 1549 revokes any license heretofore issued by the Federal Power Commission to construct a power project on or directly affecting this 26.5 mile segment of the New River.

On April 13, 1976, the Secretary of the Interior designated this 26.5 mile segment of the New River as a State administered component of the National Wild and Scenic Rivers System. The draft bill which we recommend would statutorily recognize and affirm the Secretary's designation of this segment of the New River as a State administered component of the System. We support such a statutory recognition of the Secretary's action, which is authorized by section 2(a)(1) of the Wild and Scenic Rivers Act. Because the language in subsection (a) of Amendment No. 1549 could be construed to constitute a redundant designation pursuant to another section of the Act, however, we prefer the analogous provision (paragraph (1)) of our draft bill.

Despite the Secretary's designation of the 26.5 mile segment of the New River as a component of the Wild and Scenic Rivers System, and even assuming Congressional affirmation of his action, the preservation of this segment of the River in its natural, free flowing state is uncertain, because of legal issues surrounding the Federal Power Commission's issuance of a license which would permit the construction of a two dam hydroelectric power project on the River. On March 24, 1976, in *State of North Carolina v. Federal Power Commission*, C.A. No. 74-1941, (D.C. Cir. 1976), the Court of Appeals for the District of Columbia Circuit upheld the validity of the Federal Power Commission license. An appeal of this decision to the United States Supreme Court is presently being prepared by the State of North Carolina. This Department has requested the Attorney General of the United States on behalf of the Department to join in support of the State of North Carolina in this appeal in the form of an amicus curiae brief.

Both our draft bill and Amendment No. 1549 to S. 158 have a provision which would effectively nullify the Federal Power Commission license insofar as it authorizes the construction of dams which would cause irreparable damage to the designated 26.5 miles segment of the River. The effect of the enactment of either bill will be to give legal precedence to the designation of the New River over the Federal Power Commission license.

This Department wholeheartedly endorses the enactment of legislation which will preserve the integrity of the Secretary's designation of the New River by protecting the designated segment from inundation which is authorized by the Federal Power Commission license. While there are significant legal issues yet to be argued concerning the validity and effect of that license, the enactment of the draft bill would resolve beyond dispute any question as to the effect of the Secretary's designation. It should be noted, in this connection, that our draft bill does not purport to invalidate in its entirety the Federal Power Commission license for the Blue River project. Rather it would leave unimpaired the authority of the Federal Power Commission to license a hydroelectric project which does not adversely affect the outstanding natural qualities of the designated segment. Such action by the Congress would be, in our judgment, clearly consistent with the letter and spirit of the Wild and Scenic Rivers Act.

The New River which flows through North Carolina, Virginia and West Virginia is a unique and valuable natural resource. It is one of the oldest rivers in the world and the designated segment is one of a very few rivers in the eastern United States which remains basically

in its natural state, undisturbed by the works of man. It has been found by the Secretary to meet the criteria of national significance established by the Wild and Scenic Rivers Act, and its preservation has been urged by citizens in every region of the country. The enactment of this draft bill will insure that this valuable resource is preserved for future generations of Americans.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL REED,  
*Assistant Secretary of the Interior.*

Enclosure.

A BILL To amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Wild and Scenic Rivers Act (82 Stat. 906), as amended, (16 U.S.C. 1271 et seq.) is amended as follows:

(1) In section 2 delete "Maine, and that segment of the Wolf River, Wisconsin, which flows through Langlade County," and insert in lieu thereof "Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line."

(2) In section 7 after the second sentence, insert the following: "Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment."

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
*Washington, D.C., May 21, 1976.*

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,*  
*New Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget on S. 158, a bill "To amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a potential component of the National Wild and Scenic Rivers System," and Amendment No. 1549 to S. 158.

The Office of Management and Budget concurs in the views of the Department of the Interior in its report on these bills, and accordingly, we recommend enactment of the Department's substitute bill in lieu of S. 158 or Amendment No. 1549 to S. 158.

Sincerely yours,

JAMES M. FREY,  
*Assistant Director for*  
*Legislative Reference.*

## VII. MINORITY VIEWS ON NEW RIVER OF SENATORS FANNIN, HANSEN, HATFIELD, McCLURE, AND BARTLETT

S. 158, designating portions of the New River and the South Fork of the New River in North Carolina as a component of the National Wild and Scenic Rivers System is not in the best interest of the people of the United States. The concept of wild and scenic rivers is a noble one that we have supported innumerable times in the past. However, the inclusion of this particular segment of river will have the effect of blocking the needed Blue Ridge hydroelectric project that has already acquired a Federal license.

The passage of this legislation would raise significant questions of legislative policy that have been brushed aside during committee consideration of this measure. These questions are of significant import with far-reaching ramifications. A rational weighing of these issues forces us to oppose this legislation.

These issues are as follows:

1. The enactment will cause the loss of 1,800 megawatts of electrical generation capacity. This energy capacity would be inexpensive, non-polluting hydroelectric power. This power is needed to meet the peak power demands of the entire Central United States through the ninety-seven interconnectors of the American Electric Power Companies System.

The Federal Power Commission found that: "The need for Blue Ridge Power has been abundantly displayed in the record . . . A review of the evidence of the record makes clear that all of the power Blue Ridge can produce will fall far short of meeting the peaking needs of the AEP System in the early 1980's . . ." This power is essential to insure the reliability of the system.

Three full years have not passed since the spectre of the domestic crude shortage and the Arab Oil Embargo was upon the United States. Utilities, particularly in the eastern United States were dependent on oil for the generation of electrical power. Americans pondered the panorama of an America without power for productivity or play. Projections for the future portend even greater difficulties, yet by their actions, proponents of this measure are hiding their heads in the sand, refusing to face the realities of the energy crisis.

Peaking power has been criticized as being a net consumer of electrical power. However, the capacity of any system is dictated by the maximum load expected at the time of greatest demand. In addition, reserve is needed so that emergencies can be met. The use of peak generation facilities will insure that the most efficient use is made of current generation facilities. The agencies charged with considering American's power demands have chosen peaking power as one of the desired systems for meeting our power needs.

There are few viable alternatives to Blue Ridge Project power. The escalating costs and potential shortage of petroleum militate against oil as the primary fuel. The use of atomic power is increasingly under attack. The only viable alternative is a huge coal-fired generating plant that would be one of the largest in the country. Air and water environmental constraints have made this alternative tenuous at best in the eastern United States. In addition, the cost of a coal-powered plant would exceed the cost of the Blue Ridge Project by approximately one-half billion dollars. Those costs would ultimately be borne by the consumer.

We cannot stand by idly and contribute to our energy dilemmas. The need for this facility is readily apparent. The license for this facility has already been issued, and the company stands ready to meet the public need.

2. This is the first time that Congress to our knowledge has taken upon itself the burden of overruling a Federal Power Commission Permit. The usurpation of this regulatory function by Congress can have widespread ramifications.

The Federal Power Commission was created by Congress to oversee the production and generation of electric power utilized in interstate commerce. The agency was made independent so that it would be insulated from the political arena. Experts in electrical power are on the commission payroll to insure that decisions are knowledgeably made. The rights of appeal from agency decisions was strictly limited in order that finality be assured. The decision-making process intentionally has been kept at the agency level instead of elsewhere.

The question of the Blue Ridge Project was before the Federal Power Commission for twelve years. During this period, volumes of testimony was taken, and all parties were given the opportunity to be heard. The proper environmental impact statement was prepared. The final agency decision was unanimous—to build the Blue Ridge Project.

The decision has been fully challenged in the courts. The court decisions have, to this date, upheld the decision of the Federal Power Commission. Opponents of the project have had their day in court and have not convinced anyone of the justice of their claim.

It is inconceivable that the Congress would, on the basis of a few hours of legislative testimony, overrule the carefully considered decision of agency experts based on evidence produced over several years of intensive investigation.

Congressional revocation of a license granted by an independent regulatory agency could have serious repercussions. Under the precedent established here, any contestant in a case, unsatisfied with the decision of a regulatory agency or the court, will be tempted to carry his appeal to the Congress. The finality of agency decision will be doubtful. Who will make substantial investments based on license that may be revoked at any time by the Congress? Second guessing of independent regulatory agencies will create tremendous problems with the regulated industries.

We cannot support this undermining of the administrative process. We must be able to have confidence in the decisions made through the established regulatory process.

3. The passage of this bill could result in governmental liability for "taking" an amount that may possibly be as high as five hundred

million dollars. S. 158 limits the license granted by the FPC by forbidding it to flood the portion of the river designated for Wild and Scenic River classification. The limitation will preclude the project's being built. There is a significant legal question as to whether this is a "taking" under the Fifth Amendment of the Constitution that requires just compensation.

Legal counsel has advised the Power company that there is a significant argument for the position that the action herein contemplated will require compensation. Counsel notes that the license granted by the FPC has many of the earmarks of a franchise or a vested property right.

The question is not one of easy resolution, and if this act is passed, is one that will ultimately be resolved by the courts. This Committee cannot predict with any certainty the ultimate decision.

If a taking has occurred, the damages may be as much as the cost of an alternate facility, i.e. a coal-fired generation plant. That cost is estimated at \$500,000,000.

The payment of this compensation, although a contingent liability, is a question that must be carefully weighed.

4. The Blue Ridge Project would create one of the great recreational attractions in the eastern United States. Two lakes will have almost seven hundred miles of shoreline, with thirty-four wooded islands. The fisheries supported by the lakes would be many times greater than what is the "natural" river. Millions of Americans can use this recreation resource.

It is worthy of note that in the testimony supporting the Wild and Scenic River designation before the Committee, the proponents of the bill offered no pictures of the river segment in question. All the pictures offered in support of the designation of the New River as a component river were taken over one hundred miles away. The area of this river that is worthy of preservation is being saved—that is the portion of the river in the canyon in West Virginia. The only effect that the Blue Ridge Project will have on this superb section of river will be beneficial: the flows of the river will be augmented in summer for recreational use.

Almost half of the river segment proposed to be preserved is agricultural in nature and thus not unique or remarkable. The creation of mountain lakes would provide at least an equally valuable resource.

5. Construction of the Blue Ridge Project will provide significant employment opportunities for a depressed area. Construction of the Blue Ridge Project will provide jobs for twelve to fifteen hundred construction workers for a period of at least five years. In addition, there will be permanent jobs associated with the facility and with the increased recreational activities adjacent to the lakes. These would be permanent jobs, providing a boost by their economic impact to other areas of the local economy.

Unemployment in the counties affected by the Blue Ridge Project has run to a high of twenty-two percent, and currently is in the area of nineteen percent. Construction workers are unemployed at a rate approaching forty percent. Construction of this project would help reverse this trend, without a use of governmental monies.

## CONCLUSION

The designation of this segment of the New River as a portion of the National Wild and Scenic River System has had careful scrutiny over the past twelve years. This was not one of the segments chosen for study in the original act. Its recreational potential was fully considered in the Federal Power Commission deliberations.

The highly scenic portions of the New River located over one hundred miles downstream, in West Virginia, are being preserved. The Blue Ridge project will have no effect on the New River Canyon.

Preservation of the New River segment in question seems almost to be an afterthought by those who presented positions against the Blue Ridge project and lost. Passage of this legislation would give them another chance to defeat this needed project.

This project has been carefully considered in a number of forums over a period of years. Congressional action at this date would cast in doubt decisions by regulatory agencies made in the past and in the future. Passage of this bill might render the federal government liable for damages for the revocation of a power license.

Eighteen hundred megawatts of clean hydropower is so vital to our economic and social well-being that we cannot afford to ignore the tradeoff involved.

Consideration of the problems in this legislation will lead one to the same conclusion that we have reached—that this legislation is not in the best interests of the citizens of this country. We urge the defeat of this legislation.

PAUL FANNIN.  
CLIFFORD P. HANSEN.  
MARK O. HATFIELD.  
JAMES A. MCCLURE.  
DEWEY F. BARTLETT.

## VIII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, the Committee notes that the following changes in existing law are made by the bill, S. 158 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

## THE WILD AND SCENIC RIVERS ACT

Act of October 2, 1968 (82 Stat. 906; as amended, 16 U.S.C. 1271 *et seq.*)

## Sections 2(a) and 7(a)

SEC. 2. (a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned without expense to the United States, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, [Maine, and that segment of the Wolf River, Wisconsin, which flows through Langlade County.] *Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line.*

\* \* \* \* \*

SEC. 7. (a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a *et seq.*), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its admin-

istration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of approval of this Act. *Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.* No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.



# **Blue Ridge— The People's Project.**



**An energy project developed  
by industry, government, labor  
and environmentalists, in concert,  
to bring great benefits to a  
greater number of Americans.**

# Blue Ridge— its concept and genesis.

Blue Ridge is a proposed two-dam pumped storage and hydro-electric project on the upper reaches of the New River in Grayson County, Va., and Ashe and Alleghany Counties in North Carolina. The project will have a generating capacity of 1,800,000 kilowatts.

Both dams will be located in Virginia. The upper lake will cover about 26,000 acres extending upstream 42.5 miles. Fourteen thousand acres will be in Virginia, 12,000 acres in North Carolina. The upper lake shoreline will be 425 miles. The lower lake will have a surface of 11,000 acres; 9,800 in Vir-

ginia, 1,200 in North Carolina. The lake shore line will be 260 miles.

Blue Ridge is today a licensed project. The license was granted by the Federal Power Commission on the basis of a nine - year proceeding, during which every significant aspect and potential alternative were exhaustively explored. Scores of expert witnesses in numerous disciplines testified under oath and were subject to rigorous cross-examination. All parties wishing to intervene, testify or participate in cross-examination, including the State of N. Carolina, were permitted to do so.

During this nine year period, the project was modified, positive improvements were made and compromises were reached to satisfy government, industry and environmental concerns and to assure the best possible project with the most benefits for the most people.

When, in June of '74, the Federal Power Commission granted the license it did so by a unanimous 5-0 vote. This action has most recently been unanimously upheld by the United States Court of Appeals for the District of Columbia.



# Experience promises magnificent benefits.

The construction and the consequences of such a two-dam pumped storage and hydro-electric project is no fuzzy dream to the people at Appalachian Power Co. Their Smith Mountain Project on the Roanoke River in

Virginia, developed in the early 1960's, fortifies them with experience and offers persuasive examples of the benefits and beauty that can and will result from the development of the Blue Ridge Project.

Sunset at Smith Mountain Lake. The beauty, tranquility and serenity of this scene can be anticipated at Blue Ridge Lake.



1

# Recreational benefits.



Boating and sailing are but a part of the recreational advantages of Smith Mountain Lake. Picnicking, fishing, water skiing satisfy the desires of thousands.

Present use of the Blue Ridge Project site for recreational purposes is limited and in many ways specialized. According to the FPC, "The recreational potential of the area is enormous. Even now there are great attractions for visitors, but when water is added it is destined to become one of the principal recreation areas for the eastern portion of the United States."

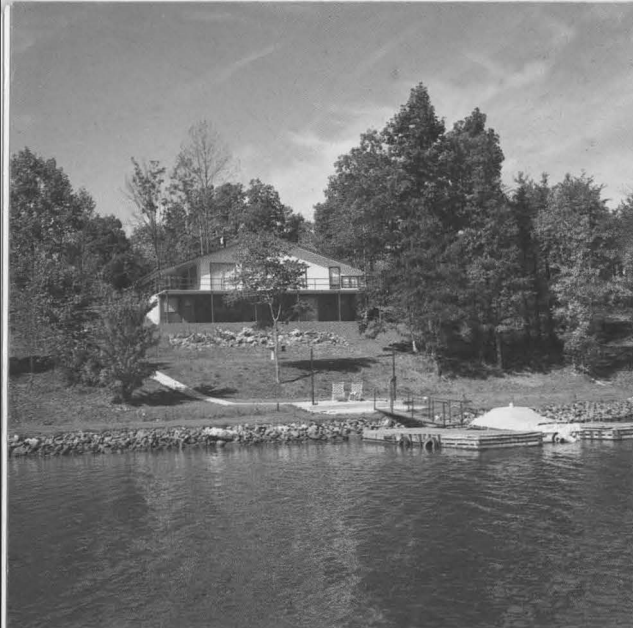


The Smith Mountain Project has proven to be a superb recreational area. The much larger Blue Ridge Project, FPC says, "...is destined to become one of the principal recreation areas for the eastern portion of the United States."

Appalachian Power will purchase and give land for state parks—2400 acres for Virginia—3900 acres for North Carolina. In addition, Appalachian will provide an overlook picnic area at each dam, two bank fishing areas below the lower dam, nine major boat launching sites, at least 21 additional access points, and canoe portages around the dams.

The total annual recreational benefits resulting from the project have been estimated at \$6.1 million by FPC's staff, \$2.8 million by the Department of Interior and greatly in excess of \$4 million by Appalachian's expert recreation witness, a former director of the National Park Service.

Fishery values alone are estimated at \$276,400 annually.



At Smith Mountain Lake hundreds of year-round and seasonal homes have been built. Some homes are valued at as much as \$80,000.



## ② Economic benefits.

The counties affected by the Blue Ridge Project today produce an annual per capita income well below the national average. Blue Ridge will offer much needed economic benefits for these areas. During the 5 to 6 year construction period the construction payroll is expected to exceed \$200 million.

Once in existence, the upper Blue Ridge Lake will offer great potential for economic growth. Year 'round and seasonal homes, motels, marinas and all types of commercial and service facilities will be built around the lake. These facilities will add to the tax base of the counties as well as provide employment and increased sales. Experience at Appalachian's Smith Mountain Lake is proof of the validity of these claims of economic benefits.

Finally, Appalachian Power, itself, will pay millions of dollars of property taxes over the life of its facilities. Taxes that will apply to the dams and all other associated facilities, as well as the land, including even that which is inundated.

Marinas, with service accommodations like this one at Smith Mountain Lake, will dot the 425 mile shore front of the upper Blue Ridge Lake. Along with motels and all types of commercial and service facilities, they will provide tax monies, employment and sales for the area.



# Road benefits. ③

Appalachian Power will contribute an estimated \$67.8 million, based upon current estimates, for the relocation of bridges and about 62 miles of primary and 54 miles of secondary roads in the project area. All roads will be built by

the respective State Highway Departments to present day standards. Since many of the roads were built many years ago, the net result will be an improved road system in the vicinity of the project.



Plans for the Blue Ridge Project call for Appalachian Power to contribute millions of dollars to relocate mile upon mile of roads—many built years ago.

# Flood control benefits. ④

Those who can recall the devastation of the 1940 flood of the New River can appreciate the tremendous benefit that is inherent in Blue Ridge's flood-control storage capacity. The FPC, in issuing the license, said, "A major public benefit of the project, and one beyond dispute, would be the 160,000 acre feet of flood-control storage capacity that it would provide for the upper New River area, an amount endorsed by the Army's Corps of Engineers. No flood control now exists between the lower reservoir site and the Federal Bluestone Dam at Hinton, West Virginia, and if the 1940 flood of record were to recur today, the Corps estimates that non-agricultural damage along the 146-mile route would total \$2.4 million; Blue Ridge's flood control storage of 160,000 acre feet would reduce that damage by 72 percent."

This scene, from the destructive New River flood of 1940, won't be repeated—thanks to Blue Ridge's 160,000 acre feet of flood control storage capacity.



# Recreational Assets.

6,300 ACRES, STATE PARK AREAS

685 MILES OF SHORELINE

9 BOAT LAUNCHING SITES

19 ACCESS POINTS

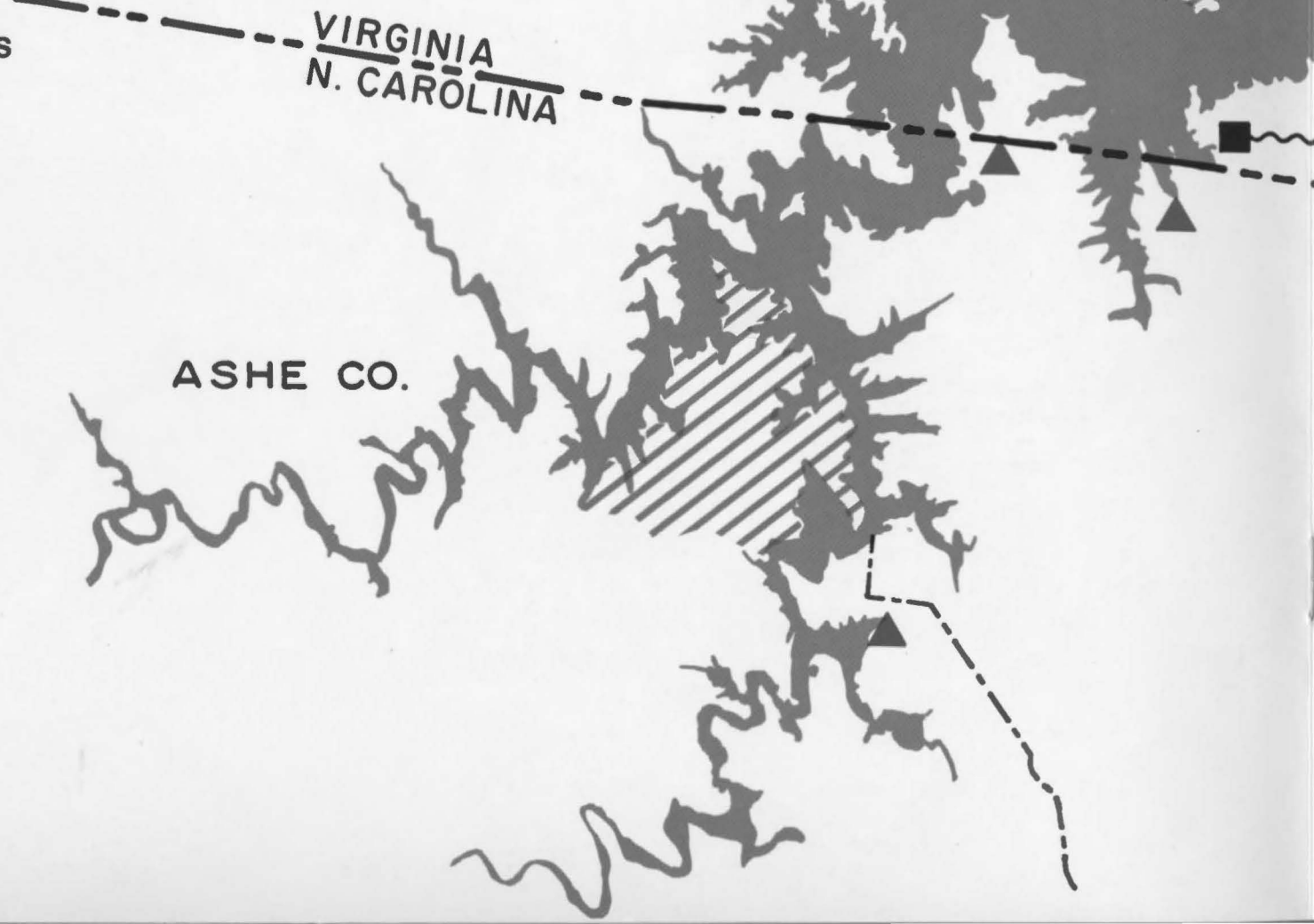
2 DAM OVERLOOKS & PICNIC AREAS

2 CANOE PORTAGES

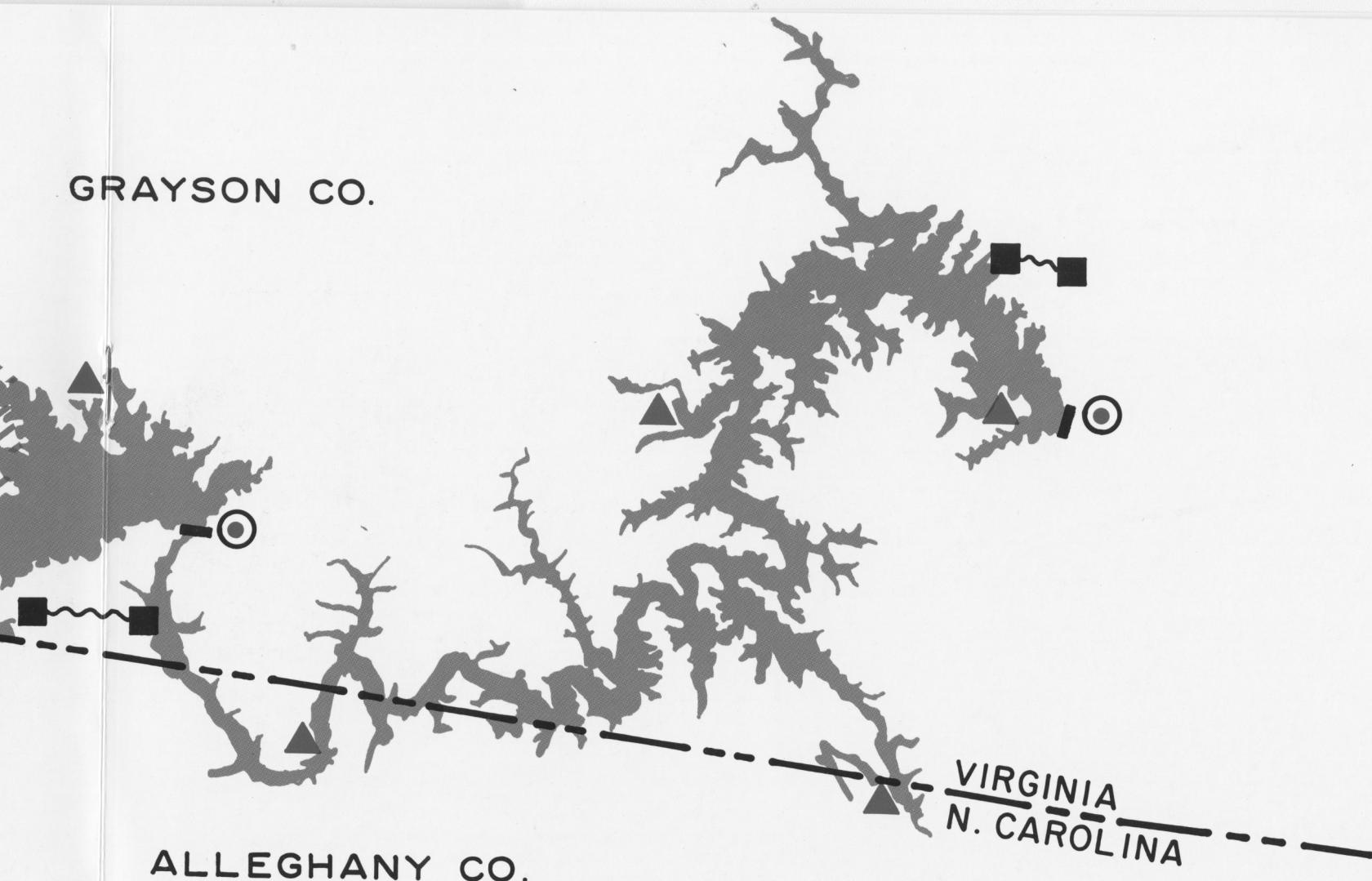
2 BANK FISHING AREAS

62 MILES, PRIMARY ROADS

54 MILES, SECONDARY ROADS



GRAYSON CO.



ALLEGHANY CO.

VIRGINIA  
N. CAROLINA



STATE PARK AREAS



CANOE PORTAGES



DAM OVERLOOKS



BOAT LAUNCHING SITES

# Low flow supplementation benefits. ⑤



Downstream in West Virginia the flow of water during peak recreational months is inadequate. Blue Ridge will store 130,000 acre feet of water to be released gradually during the summer, to assure better fishing and general recreational enjoyment.

The West Virginia Department of Natural Resources finds inadequate the present flow of water during the peak recreational months of July-September. They therefore suggested, and Appalachian Power agreed, that it would be beneficial if the lower lake (starting

on March 1) would gradually accumulate 130,000 acre feet of water to be released gradually from July 1 through September 30—thus assuring, for thousands of Americans, the optimum flow for improved fishing and general recreational enjoyment.



Pictured is the dam at Smith Mountain Lake. Similar Blue Ridge dams will have a generating capacity of 1,800,000 kilowatts. The FPC is wholly convinced the power is needed and that a sizeable part of the population of the nation will benefit.



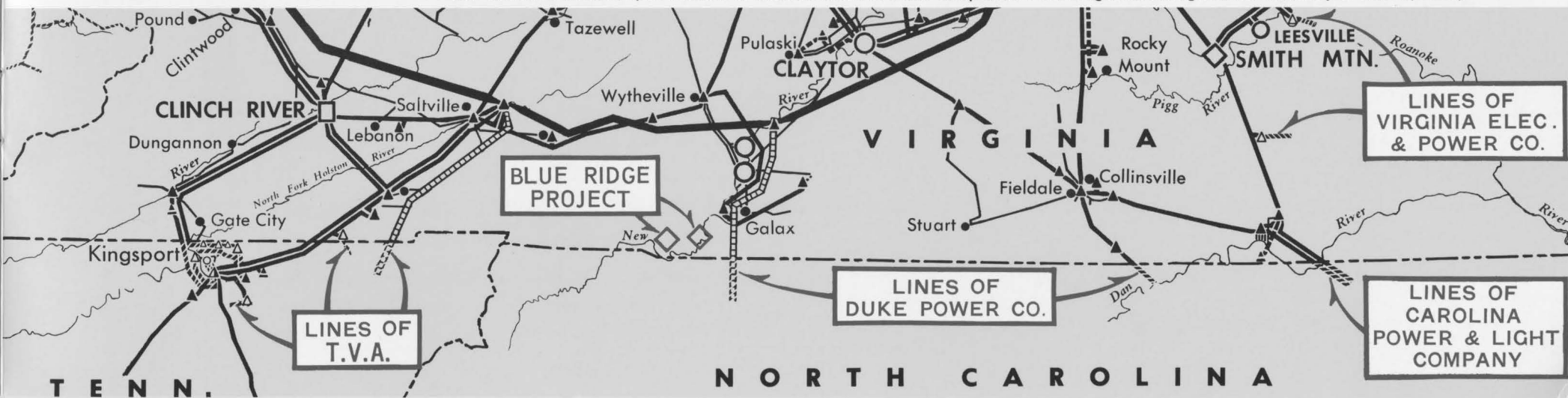
## ⑥ Power benefits.

The need for the electric energy from Blue Ridge has been definitively and resoundingly determined by the expert agency to which Congress delegated the task. The FPC has stated, "We are wholly convinced that the electric power to be generated by the project is needed, and that the potential beneficiaries of that power represent a sizable part of the population of the nation."

Appalachian Power Co. is part of the American Electric Power System. Blue Ridge will enhance the reliability of electric service not only from Appalachian Power and the full A.E.P. network, but also to the

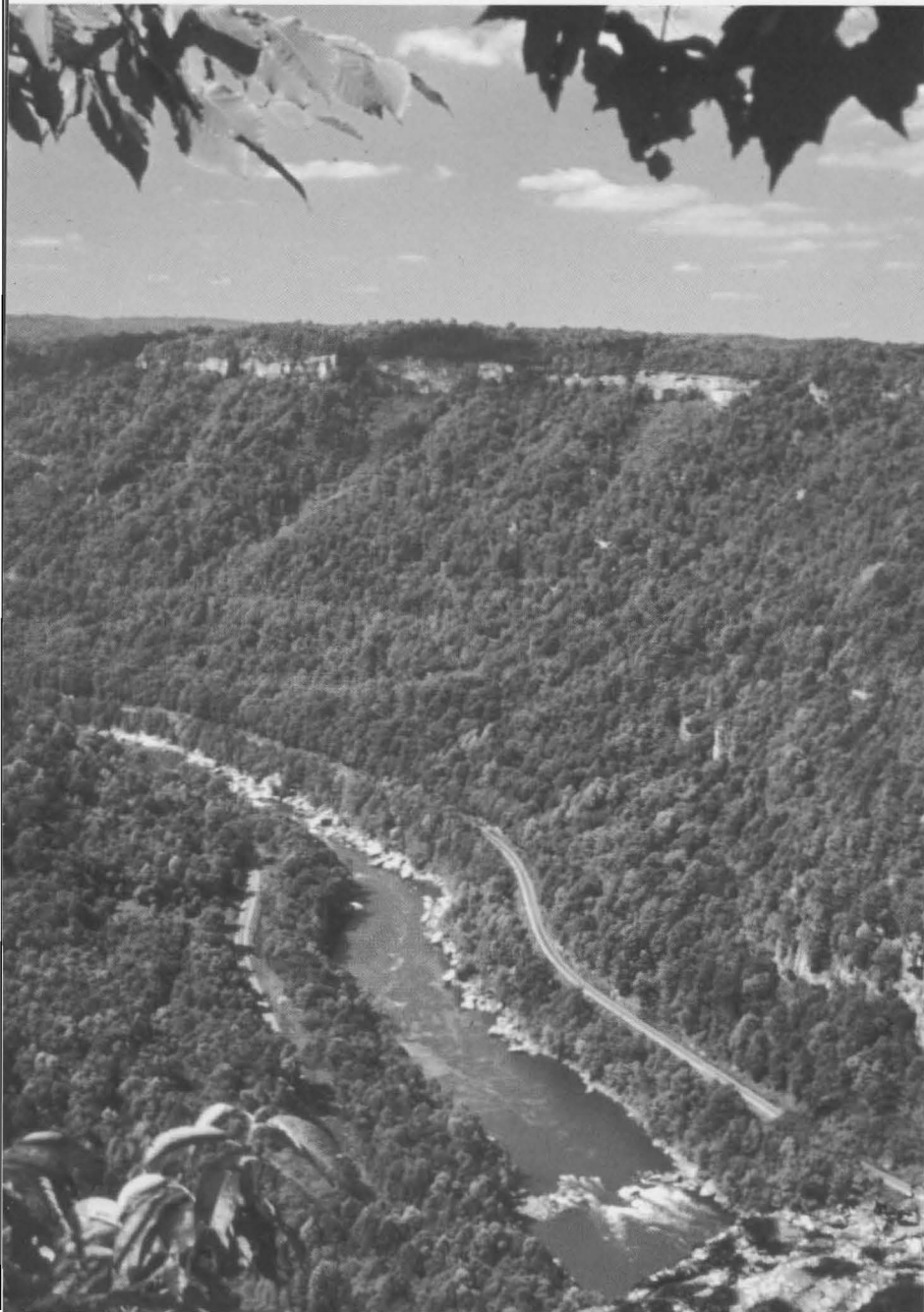
entire Eastern Seaboard, East Central and Near South areas of the United States. For example, the A.E.P. System is already inter-connected with four electric utilities which serve the public in North Carolina — Duke Power Company, Carolina Power and Light Company, Virginia Electric Power Company and the Tennessee Valley Authority. In recent years, Appalachian has delivered millions upon millions of kilowatt hours of electricity to these companies for use by their customers. Such deliveries and such benefits should continue after Blue Ridge is completed . . . with even greater reliability.

Appalachian Power is already inter-connected with four electric utilities serving the public in North Carolina. In recent years Appalachian has delivered millions upon millions of kilowatt hours to these companies. Blue Ridge will strengthen the reliability of this capability.





The marvelous West Virginia Gorge known as the "Grand Canyon of the East" will be enhanced by Blue Ridge's low flow supplementation during summer months.



# The New River... what is its future?

The Federal Power Commission rightly points out that the New River will *not* be eliminated with construction of the Blue Ridge Project.

Some 70 miles of the river would be replaced with lakes but over 200 miles of the river will remain in its present state. If there is to be any change in this vast stretch of river it will more than likely be an improvement resulting from the low flow supplementation and flood control features of the project.

The magnificent New River Gorge in West Virginia, with its rugged terrain and precipitous cliffs that have earned it the title of "Grand Canyon of the East", will flow on unaffected by Blue Ridge. Its waters will be as turbulent, white and inviting to adventurous float-trippers as ever. In short the New River will live on. The major difference will be greater use of this product of nature and thus greater benefits for more people.

# Pertinent Questions

- Is Blue Ridge worth it for 20 or 30 years of use?
- What of the contention that Blue Ridge is an inefficient energy producer that consumes more kilowatthours than it produces?
- Won't weekly drawdowns result in vast mud flats?

# Revealing Answers



- No such limited lifetime use has ever been anticipated. The project is licensed for 50 years, as is standard procedure with FPC. This license is renewable upon application to FPC, and Appalachian foresees a minimum useful life for Blue Ridge of at least 100 years.
- The American Electric Power System is the most efficient electric utility system in the United States. It can squeeze more kilowatthours from a given amount of fuel than anyone else. Can anyone imagine that we would propose the construction of an inefficient project which would worsen our nation's energy plight? Furthermore, does it make sense that the Federal Power Commission would unanimously license such a project? These questions answer themselves. The facts are that Blue Ridge, during the term of its license, will produce 85-billion kilowatthours of electricity without the consumption of any oil or natural gas—our nation's scarcest fuels.

And, finally, all of these 85-billion kilowatthours are the most valuable kind of electric energy—ready at a moment's notice to supply the requirements of its users when it is needed most, during the peak use periods.

- Under the terms of the license the maximum drawdown of the upper lake may not exceed 10 feet. It should be noted that such maximum drawdowns will only rarely occur. The record indicates no more than one percent of the time . . . and they will not be prolonged. The record further indicates that after 1985 drawdowns will be less than three feet 96% of the time, during summer recreation months. By the year 2000 they will be less than one-and-a-half feet 96% of the same period.

Appalachian Power's expert witness testified that the upper lake drawdown, "will actually be less than that which exists at many natural lakes as a result of natural causes.

- **Wouldn't a comparable steam electric plant cost less?**
- **What is to be done with the over 500 families who will be displaced?**
- **Was an environmental impact study conducted?**
- **What about archeological finds that might be lost?**
- **How will orderly development of the lakes be assured?**

- Not by a long shot. Today Blue Ridge, it is estimated, will cost \$845 million based on a completion date of 1983. A comparable steam electric plant would cost an estimated \$1.375 billion.
- The dislocation and relocation of these 500 plus families is not a matter one takes lightly. No major public improvement can be accomplished without disturbing some individuals. This is regrettable, and everything within reason should be done to ease the burden of these people. We are committed to providing—beyond the purchase of the property—financial assistance in connection with moving expenses, personal property loss, and increased mortgage-interest costs, among other things. We will be using as a guide the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Yes, the procedures of the National Environmental Policy Act were fully complied with and FPC said, "We conclude that, on the basis of this massive record, the adverse effects upon the environment that the Blue Ridge Project would cause are both numerous and substantial, but we also conclude that they are more than balanced by the environmental benefits that would be created."
- Under the provisions of the license, Appalachian Power is committed to consult the Smithsonian Institution and to fund an extensive archeological survey, excavation and salvage program which must precede each phase of construction. Any archeological treasures found will be preserved. Without the Blue Ridge Project this knowledge of the past would probably remain hidden.
- The FPC stated, in its license, that: "...we will require Appalachian (1) to acquire in fee a 3-foot vertical strip around the maximum elevation of each reservoir..., (2) to acquire, in fee or by easement, control of a 200-foot horizontal strip for a distance of about 80 miles around the upper reservoir..., and (3) to acquire, in fee or by easement, control of a 25-foot horizontal strip around the remainder of the upper reservoir, but Appalachian may be relieved of the second and third requirements if we subsequently conclude that adequate local zoning ordinances exist, and are adequately enforced. Appalachian will continue to be relieved, so long as the condition continues."

# **Appalachian Power Company**

A vital part of the 7-state American Electric Power System.