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THE WHITE HOUSE

WASHINGTON

March 25, 1976

MEMORANDUM FOR : DICK CHENEY
FROM : JIM CANNON *Jin*
SUBJECT : New River Decision

The effect of the decision by the Federal Court of Appeals yesterday was to nullify Secretary Kleppe's designation of parts of the New River for inclusion in the Wild and Scenic Rivers System.

Interior received the decision late today, and has not yet made a detailed analysis. But it appears certain that the court ruling, if not overturned by the Supreme Court, would allow the construction of two hydro-electric dams on a part of the New River which is in Virginia.

Since the effect of the dams would be to flood parts of North Carolina, the Attorney General of North Carolina has announced he will appeal the decision.

Interior is considering the pros and cons of entering the case as a friend of the court.

Kent Frizzell tells me that Interior's counsel does not feel the Department has any legal basis for appealing, but can enter the case if the President wants the Department to do so.

Congressman Stephen Neal (N.C.) and Ken Hechler (W. Va.) have stated their intention to seek Congressional action to keep the New River in the Wild and Scenic System.



THE WHITE HOUSE
WASHINGTON

September 8, 1976

MEMORANDUM FOR:

JIM CANNON

FROM:

MAX FRIEDERSDORF

SUBJECT:

New River Signing Ceremony

I am advised by Bill Nicholson that the signing ceremony for the New River legislation has been moved from the Oval Office to the Rose Garden for noon on Saturday, September 11th.

Due to this move, we can now expand our invitation list to include the appropriate environmental and other outside interest groups. Nicholson advises me that George Humphreys of your staff will be the focal point for this ceremony.

cc: Jack Marsh
Jim Lynn
Bill Baroody
Bill Nicholson
George Humphreys
Bill Kendall
Charlie Leppert
Bob Wolthuis

George -
FY!
[Signature]

2908-5

THE WHITE HOUSE

WASHINGTON

SIGNING CEREMONY

H.R. 13372 - TO INCLUDE THE NEW RIVER INTO THE NATIONAL
WILD AND SCENIC RIVERS SYSTEM

SATURDAY, SEPTEMBER 11, 1976

12:00 Noon

The Rose Garden

From: James M. Cannon

I. PURPOSE

To highlight publicly your support and approval of H.R. 13372, a bill "To amend the Wild and Scenic Rivers Act" (82 Stat. 906; 16 U.S.C. 1271).

II. BACKGROUND, PARTICIPANTS, PRESS PLAN

- A. Background: On August 30, Congress passed the bill to (1) include a 26.5 mile segment of the New River (North Carolina) within the National Wild and Scenic Rivers System, and (2) prohibit Federal licensing of water resource development projects adversely impacting the designated area.

For over a decade, the New River has been the subject of proposals for hydroelectric development. On June 14, 1974, following extensive hearings, the Federal Power Commission granted a license to the Appalachian Power Company to construct a hydroelectric project, known as the Blue Ridge Project, on the upper New River. The project would provide 1.8 million kilowatts of power for peak load demands on the American Electric Power Service Corporation system. As a result, over 94 miles and 42,000 acres would be inundated displacing some 3,000 local residents.

On April 13, 1976, Secretary Kleppe approved North Carolina application to include the New River segment within National Wild and Scenic Rivers System. You publicly supported this decision. However, in light of Court of Appeals decision validating the Appalachian Power Company's license for the Blue Ridge Project, the issue of a free-flowing river remained open.

The enrolled bill is intended to resolve this problem by providing specific statutory recognition of the Secretary's earlier designation of the 26.5 mile segment of the New River as a component of the National Wild and Scenic Rivers System. H.R. 13372 also expressly invalidates any existing or future FPC license issued for projects which would inundate or adversely affect this river segment.

Attached at Tab A is the OMB memorandum giving a fuller discussion of the bill with agency comments.

- B. Participants: Governor Holshouser, Under Secretary Kent Frizzell, Members of Congress, citizen activists, public interest group representatives. See list attached at Tab B.
- C. Press Plan: To be announced.

III. TALKING POINTS

1. I know many of you have come a long way on short notice. You have won a great victory and I share with you the excitement of this occasion.
2. It is particularly good to be here with Jim Holshouser and your Congressional leaders who have stood with you in the effort to save the New River.
3. I'm sorry Tom Kleppe could not be here, but representing him is Under Secretary Kent Frizzell, along with Doug Wheeler and others from the Department of Interior. Administrator Russ Train from EPA is a long time advocate of New River protection, and I'm happy to see him join us today.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON D.C. 20503

SEP 13 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13372 - Wild and Scenic
Rivers Act Amendment (New River)

Sponsor - Rep. Neal (D) North Carolina and
14 others

Last Day for Action

September 13, 1976 - Monday

Purpose

Amends the Wild and Scenic Rivers Act to (1) include a segment of the New River within the National Wild and Scenic Rivers System and (2) prohibit Federal licensing of water resource development projects adversely impacting the designated area.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Agriculture	Approval
Council on Environmental Quality	Approval
Federal Power Commission	No objection
Federal Energy Administration	No objection

Discussion

Under provisions of the Wild and Scenic Rivers Act of 1968, certain rivers in the nation possessing outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, are to be preserved in free-flowing condition, and their immediate environments protected for the benefit and enjoyment of future generations.



Eight rivers were originally designated to compose the National Wild and Scenic Rivers System. Additional rivers, meeting these criteria, may be included within the system by (1) Acts of Congress in the case of rivers to be administered in whole or in part by a Federal agency, or (2) by approval of the Secretary of the Interior in the case of rivers proposed for State administration by the Governor and State legislature. As of June 6, 1976, a total of six rivers have been added to the original system, four by Acts of Congress and two by administrative action.

The New River flows from North Carolina through Virginia and West Virginia eventually merging with tributary waters of the Ohio River. The channel of the New River is estimated by geologists to be the oldest in western hemisphere. Largely undeveloped, the river basin supports a rich variety of plant and animal life, including several rare species. Current recreational uses include canoeing, hiking and fishing. In addition, there are indications that the basin contains sites and artifacts of great significance to the study of early American Indian life.

For over a decade, the New River has been the subject of proposals for hydroelectric development. On June 14, 1974, following extensive hearings, the Federal Power Commission granted a license to the Appalachian Power Company to construct a hydroelectric project, known as the Blue Ridge Project, on the upper New River. The project would provide 1.8 million kilowatts of power for peak load demands on the American Electric Power Service Corporation system. As a result, over 94 miles and 42,000 acres would be inundated displacing some 3,000 local residents.

However, in order to preserve the existing character of the area, the North Carolina legislature in 1974 included 26.5 miles of the river in the wild and scenic rivers system administered by the State. In a subsequent suit brought by the State of North Carolina, to block construction of the project, the Court of Appeals for the District of Columbia upheld (March 24, 1976) the validity of the Federal



Power Commission license. In support of its determination to proceed with the project, the power company has cited significant existing investment in preliminary planning and land acquisition as well as the estimated additional costs of constructing an alternate coal-fired facility.

Subsequently, pursuant to the Wild and Scenic Rivers Act, application was made to the Secretary of the Interior to designate the river as a component of National Wild and Scenic Rivers System. Upon a full review of the suitability of the river for inclusion in the system, the Secretary formally approved the application on April 13, 1976. However, in light of the Court of Appeals decision validating the Appalachian Power Company's license for the Blue Ridge Project, the issue of a free-flowing river remained open.

The enrolled bill is intended to resolve this problem by providing specific statutory recognition of the Secretary's earlier designation of the 26.5 mile segment of the New River as a component of the National Wild and Scenic Rivers System. H.R. 13372 also expressly invalidates any existing or future FPC license issued for projects which would inundate or adversely affect this river segment.

In its enrolled bill letter, Interior indicates its strong support of H.R. 13372 noting that its enactment will ensure that this valuable resource is preserved for future generations of Americans. The Federal Power Commission reports no objection to the bill stating that:

"Under the Wild and Scenic Rivers Act, there is no question that the Congress and the President may in effect nullify the Commission's license by declaring the affected reach of the New River a Wild and Scenic River. The Congress has



addressed the issues between the development of the water power and preserving this unusual river in its natural state."

James M. Frey
Assistant Director for
Legislative Reference

Enclosure



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20540

57 - 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on H.R. 13372, an enrolled bill "To amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes."

We recommend that the President approve this bill.

H.R. 13372 would designate by statute a 26.5 mile segment of the New River in Ashe and Watauga Counties of North Carolina as a component of the National Wild and Scenic Rivers System. H.R. 13372 provides that any license hereinafter or hereafter issued by the Federal Power Commission affecting the New River shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System of the Act and that no project or undertaking so licensed shall be permitted to invade, inundate or otherwise severely affect the designated river segment.

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. H.R. 13372 would statutorily recognize and affirm the Secretary's action, which is authorized by section 2(c)ii of the Wild and Scenic Rivers Act.

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, 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. 74-1041, (D.C. Cir. 1976), the Court of Appeals for the District of Columbia Circuit upheld the validity of the Federal Power Commission license.

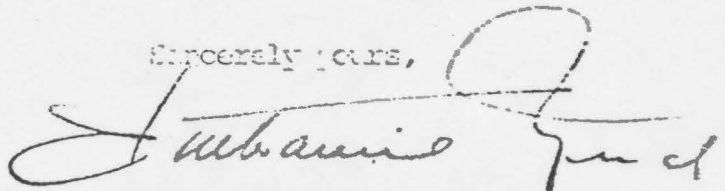
H.R. 13372 has a potential which would effectively nullify the Federal Power Commission's authority as it authorizes the construction of dams which would cause irreparable damage to the designated 26.5 mile segment of the River. The effect of the enactment of this bill will be to give local precedence to the construction of the New River over the Federal Power Commission license.



This Department wholeheartedly supports this legislation which will preserve the integrity of the Secretary's dedication of the New River by protecting the designated segment from inundation which is authorized by the Federal Power Commission license. It should be noted, in this connection, that H.R. 13372 does not purport to invalidate in its entirety the Federal Power Commission license for the Blue Ridge project. Rather it would leave unimpaired the authority of the Federal Power Commission to license a hydro-electric project which does not adversely affect the outstanding natural qualities of the designated segment.

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 signing into law of H.R. 13372 will insure that this valuable resource be preserved for future generations of Americans.

Sincerely yours,



United States Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503



DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20250

Honorable James T. Lynn
Director, Office of Management
and Budget

September 2 1976

Dear Mr. Lynn:

As requested by your office, here is the report of the Department of Agriculture on the enrolled enactment H.R. 13372, "To amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes."

Since the State of North Carolina has confirmed its determination to preserve the free-flowing nature of the New River and since this Department has no conclusive data to indicate the impacts on energy development, the Department of Agriculture reluctantly recommends the President approve the enactment.

The enactment provides that the segment of the New River in North Carolina extending from its confluence with Dog Creek downstream to the Virginia State line will be added to the National Wild and Scenic Rivers System upon application of the Governor of North Carolina. It further protects the designated segment of the New River from any action which would invade, inundate or otherwise adversely affect such river segments.

The Department recognizes, in this Act, the hard choice between the energy benefits and the environmental and preservation aspects associated with this segment of the New River. Although the Federal Power Commission gave long consideration to the hydroelectric power potential involved, we are concerned that the trade-offs between designation of the river as a component of the National System and the development and use of the water resources have not been adequately identified and assessed. However, if the New River is designated a unit of the National Wild and Scenic Rivers System, we anticipate no direct conflicts with programs administered by this Department. The river appears to meet the criteria for such designation, and the State of North Carolina's management and development plan for the river confirms the intent of the State and local governments to preserve and protect the free-flowing river values.

Sincerely,

John A. Engel
John A. Engel



FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

ENROLLED BILL, H.R. 13372 -- 94th Congress
To amend the Wild and Scenic Rivers Act
(82 Stat. 906; 16 U.S.C. 1271), and for
other purposes.

SEP 1 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Miss Martha Ramsey
Legislative Reference Division
Room 7201, New Executive Office Building

Dear Mr. Lynn:

This letter responds to Mr. Frey's request of August 31, 1976, for the Commission's views on H.R. 13372, an Enrolled Bill, designating as a Wild and Scenic River a segment of New River, North Carolina, and invalidating any past or prospective license issued by the Federal Power Commission affecting the portion of the New River which is included in the National Wild and Scenic Rivers System.

For twelve years, the Federal Power Commission had before it the proposal to build a hydroelectric pumped storage project on certain portions of the New River. In Appalachian Power Company Project No. 2317, 51 FPC 1906, issued June 14, 1974, the Commission approved the granting of a license for the modified Blue Ridge Project to the Appalachian Power Company. There, we decided that the modified project met the requirements of Section 10(a) of the Federal Act: "that the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways * * *" and



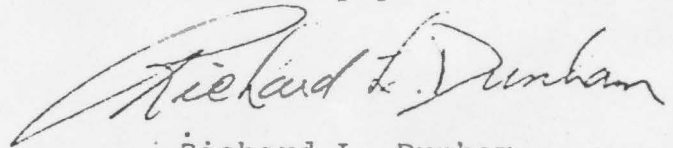
that the environmental consequences of building the project, while profound, would on balance be beneficial. The Commission's opinion found that the Blue Ridge upper powerhouse would be a significant and desirable source of energy that would provide 6 to 8 hours a day of pumped storage in a range of 1,600,000 to 1,800,000 kilowatts of generating capacity depending upon available head.

The license for Project 2317 became effective January 2, 1975.

Under the Wild and Scenic Rivers Act there is no question that the Congress and the President may in effect nullify the Commission's license by declaring the affected reach of the New River a Wild and Scenic River. The Congress has addressed the issues between the development of the water power and preserving this unusual river in its natural state.

The Commission has no objection to the enactment of the Enrolled Bill.

Sincerely yours,

A handwritten signature in dark ink, reading "Richard L. Dunham". The signature is fluid and cursive, with a large, sweeping initial "R".

Richard L. Dunham
Chairman



LIST OF ATTENDEESDepartment of Interior

Kent Frizzell, Under Secretary
Loren J. Rivard, Executive Assistant
John Kyl, Assistant Secretary
Nathaniel P. Reed, Assistant Secretary
Douglas Wheeler, Deputy Assistant Secretary
John W. Crutcher, Director, Bureau of Outdoor Recreation
Mary Lou Grier, Deputy Director, Bureau of Outdoor Recreation
John Griggs, Attorney Adviser, Solicitors Office
Robert Eastmen, Chief, Division of Resource Area Studies

Council on Environmental Quality

Warren Eisenberg, Director, Public Information
Helen Redholz, Secretary for Public Information
Robert Smythe, Staff Member

Special Interest Groups

Hamilton Horton, President, National Committee for the New River
Cynthia E. Wilson, National Audubon Society
Rita E. Molyneaux, National Parks and Conservation Association
Constance E. Everett, Conservation Council on Natural Resources
Thomas R. Garrett, Friends of the Earth
Donald Kanak, National Committee for the New River
Arthur T. Wright, Wilderness Society
John Robbins Lorenz, Izaak Walton League
Michael Lee Horn, Editor, "Outdoor America" - Izaak Walton League
Marian Herr Holbrook, Environmental Associate - Izaak Walton League
Joe C. Matthews, National Committee for the New River
Edmund I. Adams, Attorney, Ashe and Alleghany Counties
Louis S. Clapper, National Wildlife Federation
Frank C. Champon, American Conservation and Rivers Association
Charles M. Clusen, Sierra Club

Environmental Protection Agency

Russell E. Train, Administrator

Plus 40 - 45 additional citizen activists and public officials
from North Carolina, Virginia and West Virginia.



House

Ike Andrews
L. H. Fountain
James Haley
Ken Heckler
Robert Kastenmeier
Robert Lagomarsino and wife
Stephen Neal and wife
Piper Neal (daughter)
Steve Neal, Jr. (Son)
Ray Madden
Wilmer Mizell
Jerry Pettis
Roy Taylor

Senate

Jesse Helms
Frank Church

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