

The original documents are located in Box 55, folder “9/11/76 HR13372 Wild and Scenic Rivers Act Amendment” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED

SEP 11 1976

*ceremony - Rose Garden -
(12 noon) - remarks
James 9/11/76*

THE WHITE HOUSE

ACTION

WASHINGTON
September 10, 1976

Last Day: September 13

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON *Juc*

SUBJECT:

H.R. 13372 - Wild and Scenic
Rivers Act Amendment

Attached for your consideration is H.R. 13372, sponsored by Representatives Neal and fourteen others.

The enrolled bill amends the Wild and Scenic Rivers Act to:

- include a segment of the New River within the National Wild and Scenic Rivers System (the New River flows from North Carolina through Virginia and West Virginia eventually merging with tributary waters of the Ohio River);
- prohibit Federal licensing of water resource development projects adversely impacting the designated area.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill and the attached signing statement which has been cleared by the White House Editorial Office (Smith).

RECOMMENDATION

That you sign H.R. 13372 at Tab B.

That you approve the signing statement at Tab C.

Approve *[Signature]*

Disapprove _____



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 3 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 (Informally)
Federal Power Commission	No objection
Federal Energy Administration	No objection (Informally)

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

STATEMENT BY THE PRESIDENT

It is with great pleasure that I sign into law a bill that will ensure the preservation -- in its natural state -- of a segment of one of the oldest rivers in the world.

The New River which flows through North Carolina, Virginia, and West Virginia is a unique and valuable natural resource. The River is a natural feature of considerable archaeological importance and is one of the few rivers in the eastern United States which remains basically in its natural state, largely undisturbed by the works of man.

The New River, a descendent of the Teays River System, is regarded by scholars to be the oldest river in the Western Hemisphere, being 100 million years old, and the second oldest in the world, surpassed in longevity only by the Nile. This Act will ensure the preservation of the New River in North Carolina as a free-flowing stream and protect the national river scenery of riverside farms and pastures.

This segment of the New River has been found by the Secretary of the Interior to meet the criteria of national significance established by the Wild and Scenic Rivers Act. 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 Act I sign will statutorily recognize and affirm this Administration's designation of this segment of the New River as a State-administered component of the System.

Despite the designation of this 26.5 mile segment of the New River as a component of the Wild and Scenic Rivers System, the preservation of that segment of the River in

its natural, free-flowing state has remained uncertain because of legal issues surrounding the Federal Power Commission's issuance of a license, which would have permitted the construction of a hydroelectric power project on the River.

The effect of my action today will be to give the designation of the River as a component of the National Wild and Scenic Rivers System legal precedence over the use which would be permitted by the Federal Power Commission license.

My Administration has wholeheartedly endorsed this legislation in the Congress and has worked with the Congress to preserve the integrity of the Administration's designation of the New River by protecting the designated segment from inundation by the proposed dam construction. This Act will further ensure that the more than 3,000 people living in the proposed reservoir area will be able to stay in their homes and on their farms. These families will not be uprooted and face the agony of relocation.

The preservation of the New River has been urged by Governor Holshouser of North Carolina, countless thousands of citizens in every region of the country, and by the state legislatures of North Carolina and West Virginia. In signing this bill into law, it is with great pride that I personally join with all Americans who have fought so long and so hard to preserve this valuable natural resource. In this Bicentennial year, it is imperative that we rededicate ourselves anew to continue to conserve and protect our irreplaceable natural resources for the generations of Americans who will come after us. I pledge you my full support in this continuing endeavor.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Carroll
9/11

To: *J. Johnston*
9-7-76
5:00 P.M.

SEP 8 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 develop-
ment of the water power and preserving
this unusual river in its natural state."

James M. Frey
Assistant Director for
Legislative Reference

Enclosure

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

Jim 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 ^(this is the OMB Bill Report) 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 3 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 develop-
ment 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. 20240

SEP 2 - 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 Alleghany Counties of North Carolina as a component of the National Wild and Scenic Rivers System. H.R. 13372 provides that any license heretofore 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 adversely 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(a)ii of the Wild and Scenic Rivers Act.

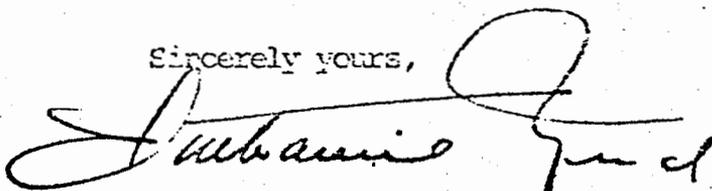
Despite the Secretary's designation of the 26.5 mile segment of the New River as a component of the Wild and Scenic Rivers System, the preservation of this segment of the River in its natural, free-flowing state is uncertain, because of legal issues surrounding the Federal Power Commission's issuance 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. 74-1941, (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 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 mile segment of the river. The effect of the enactment of this bill will be to give legal precedence to the designation of the New River over the Federal Power Commission license.

This Department wholeheartedly endorses this 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. 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 hydroelectric 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 is preserved for future generations of Americans.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Stuart Harris". The signature is fluid and cursive, with a large, sweeping initial "S".

Assistant 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:

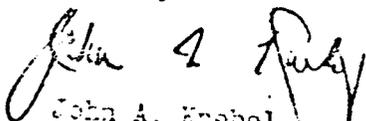
As requested by your office, here is the report of the Department of Agriculture on the enrolled enactment H.R. 13372, "To amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes."

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. Knobel
Under Secretary

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



Honorable James T. Lynn

- 2 -

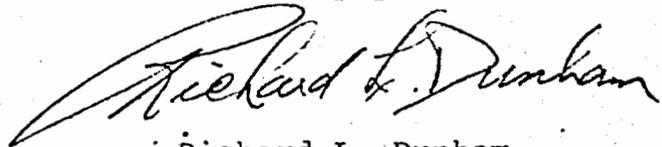
that the environmental consequences of building the project, while profound, would on balance be beneficial. The Commission's opinion found that the Blue Ridge upper powerhouse would be a significant and desirable source of energy that would provide 6 to 8 hours a day of pumped storage in a range of 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 cursive script that reads "Richard L. Dunham". The signature is written in dark ink and is positioned above the typed name.

Richard L. Dunham
Chairman

LIST OF ATTENDEES

Department 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

Congressional Staff

Christine Allwine
Evelyn Bertorello
Charles Conklin
William Crosby
Jonna Cullen
Carl Gullick
Harold Hatfield
Lee McElvain
Tom Mallonee
Michael Marden
Patricia Murray
Betty Nevitt
Gregory Nicosia
Janet Niebel
Clay Peters
Cleve Pinnix
Steve Steinbach
Ed Stump
Thomas Williams

White House Staff

Congressional Relations

Max Friedersdorf
Bob Wolthuis
Charlie Leppert
Tom Loeffler
Pat Rowland
Bill Kendall
Joe Jenckes

Domestic Council

Jim Cannon
Art Quern
George Humphreys

STATEMENT BY THE PRESIDENT

It is with great pleasure that I sign into law a bill that will ensure the preservation -- in its natural state -- of a segment of one of the oldest rivers in the world.

The New River which flows through North Carolina, Virginia, and West Virginia is a unique and valuable natural resource. The River is a natural feature of considerable archaeological importance and is one of the few rivers in the eastern United States which remains basically in its natural state, largely undisturbed by the works of man.

The New River, a descendent of the Teays River System, is regarded by scholars to be the oldest river in the Western Hemisphere, being 100 million years old, and the second oldest in the world, surpassed in longevity only by the Nile. This Act will ensure the preservation of the New River in North Carolina as a free-flowing stream and protect the national river scenery of river-side farms and pastures.

This segment of the New River has been found by the Secretary of the Interior to meet the criteria of national significance established by the Wild and Scenic Rivers Act. 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 Act I sign will statutorily recognize and affirm this Administration's designation of this segment of the New River as a State-administered component of the System.

Despite the designation of this 26.5 mile segment of the New River as a component of the Wild and Scenic Rivers System, the preservation of that segment of the River in

its natural, free-flowing state has remained uncertain because of legal issues surrounding the Federal Power Commission's issuance of a license, which would have permitted the construction of a hydroelectric power project on the River.

The effect of my action today will be to give the designation of the River as a component of the National Wild and Scenic Rivers System legal precedence over the use which would be permitted by the Federal Power Commission license.

My Administration has wholeheartedly endorsed this legislation in the Congress and has worked with the Congress to preserve the integrity of the Administration's designation of the New River by protecting the designated segment from inundation by the proposed dam construction. This Act will further ensure that the more than 3,000 people living in the proposed reservoir area will be able to stay in their homes and on their farms. These families will not be uprooted and face the agony of relocation.

The preservation of the New River has been urged by Governor Holshouser of North Carolina, countless thousands of citizens in every region of the country, and by the state legislatures of North Carolina and West Virginia. In signing this bill into law, it is with great pride that I personally join with all Americans who have fought so long and so hard to preserve this valuable natural resource. In this Bicentennial year, it is imperative that we rededicate ourselves anew to continue to conserve and protect our irreplaceable natural resources for the generations of Americans who will come after us. I pledge you my full support in this continuing endeavor.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

SEP 3 1976

MEMORANDUM FOR JAMES M. FREY
OFFICE OF MANAGEMENT AND BUDGET

ATTN: Ms. Ramsey

Subject: Enrolled Bill, "To amend the Wild and Scenic Rivers Act (82 Stat. 906; U.S.C. 1271), and for other purposes."

The Council on Environmental Quality strongly supports the enactment of this enrolled bill, H.R. 13372, which would add the New River in North Carolina to the National Wild and Scenic Rivers System as a scenic river.



Gary Widman
General Counsel

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 9

Time: 100pm

FOR ACTION: Jim Frey *gh*
Max Friedersdorf *gh*
Ken Lazarus *ar*
Robert Hartmann *gh*

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 10

Time: 930am

SUBJECT:

H.R. 13372-Wild and Scenic Rivers Act Amendment

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 2 - 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 Allegheny Counties of North Carolina as a component of the National Wild and Scenic Rivers System. H.R. 13372 provides that any license heretofore 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 adversely 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(a)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. 74-1941, (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 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 mile segment of the River. The effect of the enactment of this bill will be to give legal precedence to the designation of the New River over the Federal Power Commission license.



This Department wholeheartedly endorses this 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. 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 hydroelectric 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 is preserved for future generations of Americans.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Julianne J. ...". The signature is written in black ink and is positioned above the typed name of the Assistant Secretary of the Interior.

Assistant 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:

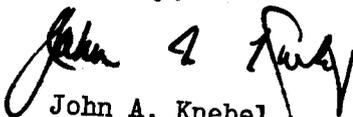
As requested by your office, here is the report of the Department of Agriculture on the enrolled enactment H.R. 13372, "To amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes."

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. Knebel
Under Secretary

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



Honorable James T. Lynn

- 2 -

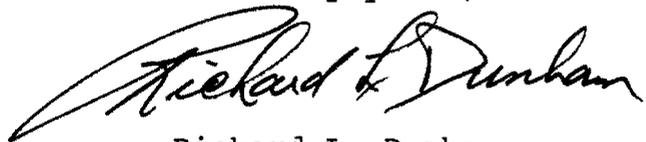
that the environmental consequences of building the project, while profound, would on balance be beneficial. The Commission's opinion found that the Blue Ridge upper powerhouse would be a significant and desirable source of energy that would provide 6 to 8 hours a day of pumped storage in a range of 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 cursive script that reads "Richard L. Dunham". The signature is written in dark ink and is positioned above the typed name and title.

Richard L. Dunham
Chairman

AMENDING THE WILD AND SCENIC RIVERS ACT (82
STAT. 906; 16 U.S.C. 1271), AND FOR OTHER PURPOSES

JUNE 14, 1976.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

MR. HALEY, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 13372]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 13372) to amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 9 through page 2, line 2, strike the present text and insert in lieu thereof

“lade 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.

Page 2, line 3, strike out “In section 7 after the second sentence” and insert “In section 7 (a), after the third sentence.”

H.R. 13372

PURPOSE

The purpose of H.R. 13372¹ is to give specific statutory recognition to that segment of the New River in the State of North Carolina which has recently been designated as a part of the National Wild and Scenic Rivers System by the Secretary of the Interior. An amendment is also made to the Wild and Scenic Rivers Act which would preclude the inundation of this segment of the river by any project now or hereafter authorized by the Federal Power Commission.

BACKGROUND AND NEED FOR LEGISLATION

Rising in the mountainous country of northwestern North Carolina, the headwaters of the New River flow 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 northward through North Carolina, Virginia, and West Virginia before merging with other tributary waters of the Ohio River drainage.

The New River, however, predates the drainage system of which it is a part. The prehistoric river existed as a part of the preglacial Teays River System. Although the advancing glaciers of the Pleistocene era drastically altered the major drainage and resulted in the development of the Ohio River System, the New River escaped the glacial advances. The river channel is estimated by geologists to be the oldest in the western hemisphere. Exposures of strata at points in the channel are dated in the era of 500 million years old.

During the prolonged occupancy of its course, the river has developed numerous impressive meanders, winding through hairpin turns in several locations. At other points, the course of the stream runs through water gaps carved through the ridges, making spectacular gorges on its way. The rate of fall of the stream is not particularly severe, with the river passing over numerous small ledges, riffles, and moderate rapids.

Due to the lack of disturbance of the drainage during glacial periods, the river basin supports a notably rich and varied assemblage of plant life. In addition, several rare species of animal life are known to occur there and the valley is also the repository of numerous traces of early human habitation. While the archeological resources of the basin have not been completely inventoried, there are indications that the basin contains sites and artifacts of great importance to our understanding of early American Indian life.

¹ H.R. 13372 was introduced by Representative Neal and cosponsored by Representatives Andrews of North Carolina, Broyhill, Fountain, Hefner, Henderson, Jones of North Carolina, Martin, Preyer, Rose, Taylor of North Carolina, Fisher, Harris, Hechler of West Virginia and Whitehurst. Also before the Committee during its deliberations were: H.R. 780 by Representatives Neal, Andrews of North Carolina, Broyhill, Fountain, Hefner, Henderson, Jones of North Carolina, Martin, Preyer, Rose and Taylor of North Carolina; H.R. 781 and H.R. 782 by Representative Neal; H.R. 1687 and H.R. 1688 by Representative Hechler of West Virginia; H.R. 9789 by Representatives Neal, Andrews of North Carolina, Broyhill, Fountain, Hefner, Henderson, Jones of North Carolina, Martin, Preyer, Rose and Taylor of North Carolina; H.R. 12958 by Representative Neal; and H.R. 13227 by Representative Hechler of West Virginia.

A variety of recreation use currently takes place along the river. The North Carolina Department of Natural and Economic Resources has ranked the smallmouth bass fishery on the New River as the finest in the entire State. The relatively light amount of development along the river area has meant that the water quality of the stream has been little affected by man, and is well suited for recreational use. Canoeists have found that the easy rapids and pastoral character of the stream make it ideal for family outings or inexperienced parties. Users have also found that the stream can be canoed all year long, as water volumes are generally sufficient in every season.

In recognition of the unique character of this resource, North Carolina included some 26.5 miles of the river in the natural and scenic rivers system administered by the State. Pursuant to a provision of the Wild and Scenic Rivers Act permitting it to do so, the State then requested the Secretary of the Interior to designate this segment of the river for State administration as a component of the National Wild and Scenic Rivers System. After conducting a full review of the suitability of the river for inclusion in the system, Secretary Kleppe so designated the river on April 13, 1976.

The New River has also been the subject of proposals for hydroelectric development. On June 14, 1974, the Federal Power Commission granted a license to the Appalachian Power Company to construct a two-dam pumped storage hydroelectric project, known as the Blue Ridge Project, on the upper New River. The lower reservoir, with a normal maximum pool covering about 11,000 acres, would be impounded behind a dam approximately 250 feet high; the upper reservoir would cover some 26,000 acres behind a dam approximately 300 feet high. Some 44 miles of the main stem of the New River, 27 miles of the South Fork, and 23 miles of the North Fork would be inundated by the project. Total land area committed to the project would be in excess of 42,000 acres.

The Blue Ridge Project as licensed would serve to provide power for peak load demands on the system of the American Electric Power Service Corporation. During periods of relatively low demand, other generating facilities in the system would produce power which would be used to pump water from the lower reservoir uphill to the upper lake. During times of high demand, the stored water would be used to supply additional capacity to the system. The anticipated use of the pumped storage power which would be available would be during peak demand hours on weekdays. Recovery pumping would occur during hours of slack demand on weekdays, and throughout weekend periods.

The mechanical losses involved in pumping operations mean that the pumped storage operation will use approximately 3 units of energy for every 2 units that are produced. There will also be power generation available from the natural streamflow into the reservoirs, so that the total operation in its early years will use about 4 units of energy for every 3 units produced.

The State of North Carolina has contested the issuance of the license for the Blue Ridge Project, and the matter is currently under judicial review. Construction of the project in its currently licensed form would inundate the segment of the river now included in the national wild and scenic rivers system. Although components of the system are

normally protected from Federally licensed water development projects, the issuance of the license prior to the designation of the river segment has left its ultimate protection in doubt.

H.R. 13372 would affirm the decision of the Secretary in this case, and would specifically provide that any license issued by the Federal Power Commission affecting the New River would not be permitted to adversely affect the particular segment which is now a part of the national system. Since there is a question as to whether the designation as a wild and scenic river would protect this area from the existing Federal Power Commission license, H.R. 13372 would guarantee that no inundation of this area will occur. The bill does not affect the downstream segment of the river, located in Virginia, and would therefore leave the option of hydroelectric development open for this remaining area.

LEGISLATIVE HISTORY

Federal legislative efforts to ensure the protection of the New River began in the 93rd Congress. The Senate passed legislation placing the entire headwaters basin of the river, including the area under consideration for the Blue Ridge Project, in the study category of the wild and scenic rivers system. In the House of Representatives, the Committee on Interior and Insular Affairs reported similar legislation. The House Rules Committee declined to grant a rule for the consideration of the measure, however, and the bill failed to receive the two-thirds margin needed to suspend the rules and pass the House.

In the 94th Congress, action was deferred on several measures introduced to protect the river, so that the Secretary of the Interior would have the opportunity to evaluate the merits of the proposal of the State of North Carolina that a portion of the river be designated as a part of the national system. On April 13, 1976, the Secretary designated the 26.5 mile segment of the river as proposed by the State as a component of the national system.

The Subcommittee on National Parks and Recreation then conducted public hearings on H.R. 13372 and a companion measure on May 6, 1976. In testifying in support of the measure, the witness for the Department of the Interior emphasized that a professional evaluation by the Bureau of Outdoor Recreation had concluded that the designated stretch of the New River fully qualifies as a component of the national system. The Department strongly endorsed the enactment of H.R. 13372 to ensure the continued protection of the New River.

The Committee also heard testimony from representatives of the American Electric Power Service Company and others who are opposed to the bill. The Committee concluded, however, that although enactment of H.R. 13372 would not permit full implementation of the currently licensed Blue Ridge Project, the bill as reported does not preclude the construction of a modified version of the facility, which would not inundate the designated wild and scenic river segment of the North Carolina headwaters of the river.

The merits of the Blue Ridge Project as opposed to alternate solutions are subject to varying interpretation. The Federal Power Commission contention is that, although the pumped storage portion of the project will use energy in a 3 to 2 ratio to that which it produces, portions of the energy used for pumping would otherwise be wasted

as excess to need. Further, the pumping operation will allow full capacity and more efficient operation of other generating plants. The contention is that this will mean less air pollution than alternate methods of producing the additional power.

However, the Environmental Protection Agency, in commenting on the final environmental impact statement for this project, takes strong exception to these conclusions. The agency specifically questions the contention that less air pollution would be emitted than with the alternate of additional coal-fired capacity. The point is made that Blue Ridge will require existing generating units to operate for a longer period of time than at present. These units operate subject to much less stringent standards than that required of new generating stations. EPA is further concerned that increased use of these older plants will contribute substantially to widely dispersed sulphur oxides which are of increasing concern in their role of causing acid rainfalls.

The FPC has stated that there are other potential pumped storage sites which could provide the peaking power at lower cost than the Blue Ridge Project. However, the Commission concludes that it is the other benefits, such as recreation, that make the project worthwhile. The recreation benefits were emphasized as being of both great social and economic value. The cost-benefit computations used by the FPC assume that there will be nearly 2.4 million visitor days of recreation use in the first year of the project, and this will rise to over 13.2 million visitor days per year by the 50th year of the project.

The witness for the Department of the Interior, however, pointed out that there are already nearly 500,000 acres of flatwater reservoirs within 150 miles of the project, affording ample opportunities for flatwater recreation. Free-flowing streams of the quality of the New River, on the other hand, are becoming increasingly scarce. The opportunity to retain this river, with its rich assemblage of cultural, biological, archeological, and recreational attributes, should not be foregone.

In considering H.R. 13372, the Committee recognized that the determination of the ultimate fate of this segment of the river is not an easy decision. The FPC has made a considered judgment that the Blue Ridge Project is meritorious for its contribution to peaking power demands. The Department of the Interior has concluded that the highest and best use of the designated segment of the river is to protect it from development by including it in the Wild and Scenic Rivers System. The final determination on the ultimate fate of the New River now quite properly rests with the Congress. Without congressional action, it is apparent that the issue may well be in litigation for a protracted period of time. The actions of the Secretary of the Interior and of the Federal Power Commission are not compatible. All parties agree that a conclusion should be reached in this matter, and the Congress can do so by enacting H.R. 13372.

ANALYSIS

The bill consists of two amendments to the Wild and Scenic Rivers Act.

First, a reference is included in section 2 of the Act which identifies the 26.5 mile segment of the New River in North Carolina and specifi-

cally sanctions its designation by the Secretary of the Interior as a part of the National Wild and Scenic Rivers System.

The second amendment adds protective language to section 7 of the Act, specifically directing that any license issued at any time by the Federal Power Commission will be effective for only that part of the New River not included in the national system. No licensed project or undertaking is to invade, inundate, or otherwise adversely affect the segment designated as a component of the system.

COST

The Committee has concluded that no significant costs will be attributable to the enactment of H.R. 13372.

There will be no Federal expenditures for the acquisition of lands, development of facilities or operation and maintenance of the scenic river if H.R. 13372 is enacted.

The segment of the New River designated as a wild and scenic river is entirely within the State of North Carolina. Under the Wild and Scenic Rivers Act, such a river may be administered for scenic river purposes by the State. For this reason, H.R. 13372 does not authorize the appropriation of any Federal funds.

Notwithstanding statements to the contrary, the United States will not be liable to the Appalachian Power Company if the license issued by the Federal Power Commission is modified or revoked by the Congress.

It is well settled law that the Congress has absolute authority under the power "To regulate Commerce . . . among the several States" to control improvements in any navigable waters. It may legislate to forbid or to license dams on navigable streams. As the Supreme Court stated in *Gilman v. Philadelphia* (3 Wall 713) :

The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all requisite legislation by Congress. This necessarily includes the power to keep them open and free from any obstruction to their navigation, interposed by the States or otherwise; to remove such obstructions when they exist; and to provide, by such sanctions as they may deem proper, against the occurrence of the evil and for the punishment of offenders. For these purposes, Congress possesses all the powers which existed in the States before the adoption of the national Constitution, and which have always existed in the Parliament in England.

To assist it in carrying out its responsibilities in this regard, the Congress created the Federal Power Commission and empowered it to license dams subject to certain statutory conditions. If all of the requirements of the law are met and if the Commission grants its permission, then construction can go forward, but construction of a dam on a navigable stream cannot commence without a valid license.

In this case, the Commission has granted its permission and construction might be underway if everyone agreed that all of the requirements of the law had been met, but it is not so agreed. The State of North Carolina has sought remedies in the courts and the issue is now on appeal to the United States Supreme Court. Until that litigation is settled, the license granted by the Commission is not final. If the license is found invalid, Appalachian Power Company will not be entitled to any reimbursement for any expenditures it has made and the United States will not be liable in any way for not issuing the requested license.

It is now suggested that the Congress cannot act to modify the license before it becomes final and that it may become liable for damages to the Appalachian Power Company if it does so. Such a conclusion is contrary to all reason and logic, as well as being contrary to well settled law.

As noted above, Congressional authority over navigable waters is absolute. The fact that it has created the Federal Power Commission to assist it in carrying out its responsibilities cannot be construed to suggest that the Commission is now the master and the Congress the servant. The Congress can, at any time, resume control over this important Constitutional power.

The truth is that the Appalachian Power Company must recognize the weakness of its position. In fact, in 1940, it was involved in litigation concerning the New River. In *U.S. v. Appalachian Power Company* (311 U.S. 377) Justice Reed, speaking for the Court, stated:

The State and respondent, alike, however, hold the waters and the lands under them subject to the power of Congress to control the waters for the purpose of commerce. The power flows from the grant to regulate, i.e., to "prescribe the rule by which commerce is to be governed." This includes the protection of navigable waters in capacity as well as use. This power of Congress to regulate commerce is so unfettered that its judgment as to whether a structure is or is not a hindrance is conclusive. Its determination is legislative in character. *The Federal Government has domination over the water power inherent in the flowing stream. It is liable to no one for its use or non-use. The flow of a navigable stream is in no sense private property; "that the running water in a great navigable stream is capable of private ownership is inconceivable."* Exclusion of riparian owners from its benefits without compensation is entirely within the Government's discretion. [Emphasis added.]

Possessing this plenary power to exclude structures from navigable waters and dominion over flowage and its product, energy, the United States may make the erection or maintenance of a structure in a navigable water dependent upon a license. (Pp. 423-4.)

* * * * *

Even if there were no such relationship the plenary power of Congress over navigable waters would empower it to deny the privilege of constructing an obstruction in those waters.

It may likewise grant the privilege on terms. It is no objection to the terms and to the exertion of the power that "its exercise is attended by the same incidents which attend the exercise of the police power of the states." The Congressional authority under the commerce clause is complete unless limited by the Fifth Amendment.

The respondent urges that as riparian owner with state approval of its plans, it is entitled to freedom in the development of its property and particularly cannot be compelled to submit to the acquisition clause with a price fixed at less than a fair value, in the eminent domain sense, at the time of taking. Such a taking, it is contended, would violate the Fifth Amendment. It is now a question whether the Government in taking over the property may do so at less than a fair value. It has been shown, note 77, *supra*, that there is no private property in the flow of the stream. This has no assessable value to the riparian owner. If the Government were now to build the dam, it would have to pay the fair value, judicially determined, for the fast land; nothing for the water power. (P. 427.)

Here, Appalachian Power Company has not yet commenced construction. Most of its investment represents acquisition of lands which it purchased on the presumption that its license would be granted. The United States cannot be held liable for such speculation. There could be any number of reasons why the license would not be issued and, thus, result in problems for the company. Since H.R. 13372 does not authorize Federal acquisition of any property rights, and since Appalachian Power Company has not commenced construction, and since there can be no property right in the flow of a navigable stream, no liability can logically be charged against the United States if the Congress decides, in its wisdom, to prohibit any structure which would destroy the segment of the New River which is designated as a wild and scenic river pursuant to law.

BUDGET ACT COMPLIANCE

No additional Federal expenditures are authorized by H.R. 13372.

INFLATIONARY IMPACT

The bill confirms a designation made by the Secretary which provides for management of the river by the State of North Carolina. State land acquisition planning indicates that very little land will need to be purchased. Inflationary impacts are therefore expected to be minimal.

OVERSIGHT STATEMENT

No Federal management exists of the river area which is the subject of H.R. 13372. No recommendations were submitted to the Committee pursuant to Rule X, Clause 2(b)2.

COMMITTEE AMENDMENTS

Two amendments were adopted by the Committee during the consideration of H.R. 13372, both of a technical nature. One amendment more specifically describes the segment of the river which the Secretary of the Interior has designated as a component of the national system. The second amendment modifies the placement of a new sentence in the Wild and Scenic Rivers Act so as to maintain the continuity of an existing paragraph in the statute.

DEPARTMENTAL REPORT

The favorable report of the Department of the Interior, dated May 5, 1976, is here printed in full:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 5, 1976.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR JIM: This responds to the request of your Committee for the views of this Department on H.R. 12958, a bill "To amend the Wild and Scenic Rivers Act by designating a segment of the New River in North Carolina as a component of the National Wild and Scenic Rivers System, and for other purposes," and H.R. 13372, a similar bill "To amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes."

We strongly recommend that H.R. 13372 be enacted.

H.R. 12958 and H.R. 13372 would designate by statute 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.

H.R. 12958 provides that upon the date of enactment of the bill, any license issued by the Federal Power Commission before such date for any dam or project on or which directly affects this 26.5 mile segment of the New River shall cease to have force and effect. H.R. 13372 provides that any license heretofore 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 adversely 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 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)ii of the Wild and Scenic Rivers Act. Because the language of H.R. 12958 could be construed to constitute a

redundant designation pursuant to another section of the Act, however, we prefer the analogous provision (paragraph (1)) of H.R. 13372.

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 H.R. 12958 and H.R. 13372 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 mile 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 H.R. 13372 would resolve beyond dispute any question as to the effect of the Secretary's designation. 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 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 H.R. 13372 will insure that this valuable resource is preserved for future generations of Americans.

We would note the following technical amendment which should be made to H.R. 13372 to clarify that the entire 26.5 mile segment of the

New River designated by the Secretary is to be designated by statute in section 2 of the Act :

Delete all from page 1, line 9 through page 2, line 2, and insert in lieu thereof the following: "lade 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."

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,

TOM,
Secretary of the Interior.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (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) :

ACT OF OCTOBER 2, 1968 (82 STAT. 906; 16 U.S.C. 1271)

* * * * *

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 Rivers in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line.*

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following :

(1) Wild river areas—Those rivers or section of rivers that are free of impoundments and generally inaccessible except by trail,

with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

* * * * *

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 administration. 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.

(b) 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, as amended on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construc-

tion of any water resources project that would have a direct and adverse affect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the ten-year period following enactment of this Act or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided*, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 2(a) (ii) of this Act, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of approval of this Act. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so 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 purpose of this Act and would affect the component and the values to be protected by it under this Act.

(c) The Federal Power Commission and all other Federal agencies shall promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secre-

tary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5, subsection (a), of this Act. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-5 et seq.).

* * * * *

ADDITIONAL VIEWS

I feel it is time the United States Congress was made aware of the need for increased energy development in this country and, furthermore, that the Congress begin to address these needs. It has become the responsibility of Congress to strike an equitable balance between the competing pressures of conservation of our natural resources and the development of needed energy from these same resources. Over the years it has proven to be a demanding and frustrating responsibility for Congress, for it is a responsibility which demands an objective and clear analysis of this country's energy needs and a corresponding energy blueprint to meet these needs. Indeed, conservation and preservation of our nation's natural beauty is a critical item on our nation's agenda. Equally important, however, for this country is the development of our energy potential, a potential that will be severely hampered by enactment of H.R. 13372.

I do not intend to oppose the goals and well meaning intentions of the National Wild and Scenic Rivers System when it is used in the context that Congress originally intended. I do oppose that System when it is used as a vehicle to block construction of Appalachian Power Company's Blue Ridge Project. The numerous and varied benefits derived from construction of the Project will be available to not just the East Central region of this country, but to the entire nation as well. While recognizing the value and importance of the economic, recreational, flood control and low flow supplementation assets of the project, I am convinced it will be the power benefits derived from construction of the Project which will hold the most significance.

It is estimated the Blue Ridge Project will have a generating capacity of 1.8 million kilowatts. The project will provide needed peaking facilities for the existing 14.5 million kilowatts of capacity already in operation as well as the 8.7 million kilowatts under construction. It will also make available 4 million kilowatts to meet power emergency situations. 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." Blue Ridge will enhance the reliability of electric service not only from Appalachian Power and the full American Electric Power System network, but also to the entire Eastern seaboard, East Central and near South areas of the United States. There is little doubt that if we are to continue to have the growth and development necessary for this country's prosperity then we must also be capable of providing the energy to meet today's and tomorrow's demands. I strongly

feel enactment of H.R. 13372 would further hamper development of this country's energy potential, a potential which may have already been jeopardized too often in the past by the actions of Congress.

Over the years Congress has denied or failed to agree upon potential sites for development of hydroelectric power in this country. On successive occasions the House Interior and Insular Affairs Committee:

- (1) Considered Echo Park, but voted against it because of the prehistoric significance attached to it;
- (2) decided against energy development in Spruce Park on the Flathead River in favor of creating a wilderness area;
- (3) denied a site in Colorado for future energy development because of potential visual pollution; and
- (4) considered a dam on the Middle Snake River, but subsequently voted against it in favor of increased outdoor recreational benefits.

In view of this approach by the Committee toward the development of our nation's energy potential, it must be asked "At what point do we place any kind of priority on the development of energy in this country?" Congress seems bent on continually opting for some other value rather than the development of our energy resources. The fact this particular project represents one of the last remaining feasible sites for the generation of low-cost, non-polluting hydroelectric power only makes this legislation all the more difficult to support. Instead of asking Congress to protect yet another valuable energy source under the aegis of environmental concerns, we ask instead that Congress support the development of one of our nation's few remaining but virtually inexhaustible supplies of energy. In the past several years power development—be it nuclear, fossil fuel or hydroelectric—has been the focus of intense opposition throughout this country. I feel enactment of H.R. 13372 will only exacerbate this opposition and further jeopardize this nation's energy development. It is for these reasons I urge the defeat of H.R. 13372 and strongly support the construction of the Blue Ridge Project.

MANUEL LUJAN, JR.

DISSENTING VIEWS

We oppose the enactment of H.R. 13372. The only purpose of this legislation is to block the construction of Appalachian Power Company's Blue Ridge hydroelectric project. The Congress has already considered similar legislation on two previous occasions and both times rejected such legislation. The first occasion was an amendment to the Omnibus Rivers and Harbors Bill during the 2nd session of the 93rd Congress, and the second occasion was on consideration of S. 2439 later in that same session of the 93rd Congress. This third effort to kill the Blue Ridge Project should also be rejected for reasons which we submit are even more compelling than those which caused this kind of legislation to be defeated in the 93rd Congress.

When the 93rd Congress considered and rejected those legislative efforts to kill the Blue Ridge Project, the Appalachian Power Company did not have an effective license for that Project. The Company now possesses a license which on court review was held to be legally valid to build the Project. The license was issued by unanimous vote of the Federal Power Commission on June 14, 1974 and by its terms became effective on January 2, 1975. On March 24, 1976 the United States Court of Appeals unanimously affirmed the FPC's license order for this Project. Thus the legislation no longer raises simply an issue as to whether the Congress should preempt the authority of the FPC to license a project on the affected river; it raises new and very serious issues, whether Congress should for the very first time revoke or render valueless a license issued by the Federal Power Commission, whether the enactment of this legislation would constitute a taking of vested property and contract rights of the Company, and the effect of such taking on the consumers of power in the several States which would be served by the Project.

The Company has already incurred expenses of approximately \$10 million (exclusive of land acquisition costs) in obtaining a license for the project and Company officials have testified that the cost of designing and constructing equivalent alternative capacity may cost over \$500 million more than what it would cost to build Blue Ridge. The time required to obtain an alternative power could take another decade. The seriousness of the effect of the enactment of this legislation cannot be overstated.

This legislation is without precedent. If it is enacted, it will mark the first time that the Congress has revoked a license issued by the Federal Power Commission. This is something which the Congress stipulated in sections 6 and 28 of the Federal Water Power Act that it would never do when it passed that Act in 1920 (41 Stat. 1067, 1077), and again in 1935 when it reenacted those provisions (16 U.S.C. § 799, § 822). Under the circumstances, and especially in view of the very substantial possibility that passage of this legislation will entitle the Company to compensation under the Fifth Amendment,

we would have expected more than a brief and cursory consideration of this legislation by this Committee and by its Subcommittee on National Parks and Recreation. The fact of the matter is that practically no consideration whatsoever has been given to this legislation. A one day hearing was held on Thursday, May 6, 1976, before the Subcommittee at which the chairman was the only member who sat through even a small portion of the testimony. On Monday, May 10, only the second legislative day after the hearing, the Subcommittee met and with only 12 out of 25 members present approved the bill. On May 19, the full committee approved the bill by a vote of 15 to 2. There were 26 members of the Committee who were not present for that vote.

This hasty consideration cannot do justice to the substantial issues involved here. We do not believe that this kind of consideration should be substituted for the nine years proceeding before the Federal Power Commission, involving 40,000 man hours of that Commission's staff and which generated almost 7,500 pages of sworn expert testimony, almost 300 technical exhibits, all of which were subject to cross-examination, more than 50 legal briefs by counsel for the parties; three favorable decisions of an administrative law judge, and a long and thorough opinion by a unanimous Commission which was unanimously upheld by the Court of Appeals after extensive legal briefing and oral argument. The Federal Power Commission and the Court were not even faced with the additional and complex issue which is raised by this legislation, namely, the liability of the United States for compensation if the license lawfully granted to the Company is revoked by this Congress.

THE NEW RIVER

This bill will designate 4.5 miles of the New River and 22 miles of a tributary, the South Fork as a component of the National Wild and Scenic River system. Since 1968 when the basic legislation was enacted (Public Law 542, 90th Congress) only 12 river segments have been selected for inclusion in that system by the Congress. Two other rivers, the Little Miami and Little Beaver Creek in Ohio, have been included by the Secretary of the Interior as State administered scenic rivers. Ten rivers were originally named in the Act itself and earlier this year portions of the Snake and of the Rapid Rivers in Idaho were added by the Congress (Public Law 199).

Beginning in 1963 the Secretaries of the Interior and Agriculture, in cooperation with the states, prepared a list of 650 rivers which were thought to be worthy of consideration for inclusion in a National Scenic Rivers System. Eventually the Congress selected 10 of those Rivers for immediate inclusion and designated some 27 rivers for further study (later increased to 56 study rivers by subsequent legislation). H. Rept. 90-1623, at p. 708. The New River in North Carolina was not even on the original list of 650 rivers considered worthy of inclusion by the two Departmental Secretaries. A portion of the New River in West Virginia encompassing the New River Gorge was on that list. Now this Congress is being asked to elevate a small segment of river which did not even make the original list of 650 to the status of being the 15th river selected for inclusion in the National Wild and Scenic River system.

Plainly the Congress is not being asked to preserve a stretch of river because of some outstanding scenic qualities. It is simply being asked to utilize the National Wild and Scenic Rivers system as a device for blocking the construction of a Project.

The New River is 255 miles long from the confluence of its North and South Forks in North Carolina to the point where the New becomes the Kanawha near Charleston, West Virginia. The Project reservoirs will affect some 27 miles of the South Fork and about 24 miles of the North Fork. But it will inundate only 43 miles of the New River, 38.6 miles of which are in Virginia. More than 150 miles of the New River below the Project, including the New River Gorge in West Virginia, will remain as a free flowing river after the Project is constructed.

All of the Project works, including the two dams, the powerhouses and the transmission lines will be located in Virginia. Approximately 24,000 acres of the 37,000 acres to be affected by the Project reservoirs are in the State of Virginia. The State of Virginia vigorously supports the construction of the Blue Ridge Project. The short stretch of river in North Carolina which this legislation would include in the National system was selected by the State for the sole purpose of blocking the Blue Ridge Project. Interior Department Guidelines specify that a river segment nominated by a State must be at least 25 miles long. The segment nominated by North Carolina and which this Congress is being asked to designate is just 26.5 miles long. Originally when North Carolina developed the Scenic River approach to block this Project, after it was licensed by the FPC, it applied to Interior for inclusion of only 4.5 miles of the main stem of the New River in that State. Upon being advised by Interior that the segment selected was too short, North Carolina officials recommended the addition of 22.5 miles of the South Fork, just barely enough for a technical compliance with Interior guidelines which require that a river segment be at least 25 miles in length.

THE BLUE RIDGE PROJECT

This brings us to the real subject of H.R. 13372 which is the merit or lack of merit of the Blue Ridge Project. It also brings us to the key question of who should decide whether or not it should be built, based on the respective records before them, the Federal Power Commission or the Congress?

In 1920, the Congress created the Federal Power Commission and designated it as the expert Federal agency to encourage the private development of the Nation's water and power resources. At no time in our Nation's history has there been a greater need for such development. In 1965, the Appalachian Power Company applied to the FPC for a license to construct the Blue Ridge Project. On June 14, 1974, the FPC issued a license for the construction of the Blue Ridge Project which became effective on January 2, 1975. The license has been officially accepted by the Company. The FPC's decision was unanimous and was reached after careful consideration of an exhaustive evidentiary record developed over a nine-year period. This record was not confined to the power benefits of the project. Rather, it was comprehensive in scope covering all aspects of the project, in-

cluding environmental and social impacts as well as a full range of alternatives to the construction of the Blue Ridge Project which included among other things, the maintenance of the river in its present state.

With respect to power benefits, the FPC, the expert agency in this field, concluded that:

The need for Blue Ridge power has been abundantly displayed in this record," that "... Blue Ridge . . . is essential for reliability" and that it "is needed by the American Electric Power System to meet its projected load growth. A review of the evidence of record makes clear that all of the power Blue Ridge can produce will fall far short of meeting the peaking needs of the American Electric Power System in the early 1980's . . . Appalachian has not exaggerated the need. The East Central Region of the United States . . . will require many times the output of the Blue Ridge if the needs of the 1980's and later years are to be satisfied.

In the course of the FPC proceeding, the provisions of the National Environmental Policy Act were fully complied with and on the basis of the record the Commission concluded that the environmental benefits of the project will substantially outweigh the environmental detriments.

Appalachian Power Company has agreed to acquire and donate to North Carolina and Virginia 6,300 acres of land for state parks to be situated at choice locations previously selected by the Parks Departments of the respective States on the shore of the project's upper lake. With these parks and with the addition of the Blue Ridge lakes, the Commission concluded that the project area "... is destined to become one of the principal recreation areas of the Eastern portion of the U.S." Contrary to statements made by proponents of the bill, reservoir drawdown will not detract from these values. Normal drawdown of the larger upper lake would be between 1.5 and 2.5 feet. Only under the most severe emergency power conditions, not expected to occur more than 1% of the time would drawdown even approach the ten foot maximum.

The issue becomes clear: Should a one day hearing before the Subcommittee on Parks and Recreation of the House Interior Committee be substituted for the nine year proceeding before the Federal Power Commission?

The Subcommittee's discussion of this bill has centered around such matters as the generating and pumping capability of the Blue Ridge Project, the nature of its peaking function, the source of its pumping energy, and whether or not it is an efficient source of peaking capacity. These are precisely the types of highly technical and complex matters which the Congress has committed to the expert judgment of the Federal Power Commission. To overrule that unanimous expert judgment on the basis of hasty consideration of emotional, unsworn, non-expert testimony would constitute a travesty of our governmental process.

The facts about the efficiency of the Blue Ridge Project, as tested in the crucible of the FPC proceeding, are as follows:

1. The FPC has found as a fact that the American Electric Power System with the Blue Ridge Project would consume less fuel than

would the American Electric Power System with a coal-fired alternative to Blue Ridge.

2. During the term of its license Blue Ridge will produce 85 billion kilowatt hours of electricity without the consumption of any oil or natural gas—our nation's scarcest fuels.

3. This \$845 million project will be built entirely with private capital; will have a construction payroll estimate at more than \$200 million; will provide 160,000 acre feet of flood control storage for the protection of a 150-mile reach of river where such protection presently does not exist, and will provide 130,000 acre feet of low flow augmentation storage to optimize recreation flows in West Virginia and remove constraints on industrial development in Virginia. These are in addition to the very substantial recreation benefits referred to previously.

Our Nation faces an energy shortage for the foreseeable future. Project Independence calls for the expeditious development of the Nation's water power resources. Congressional rejection of the Blue Ridge Project after issuance and acceptance of an FPC license would be unprecedented and totally inconsistent with the attainment of our Nation's goal of energy self-sufficiency. The Blue Ridge Project pumping energy will be supplied by coal-fired plants and will not result in the consumption of any gas or oil—our Nation's scarce fuels. Furthermore, to kill this badly needed energy project by what is in effect special legislation after an FPC license has been issued and accepted, establishes, in our view, a most undesirable precedent. It undermines the effectiveness of the hydro-power provisions of the Federal Power Act and can only discourage others from applying to the FPC for licenses to develop the Nation's water power resources. It thereby tends to defeat the goal of Project Independence.

COMPARISON OF BENEFITS

Enactment of this legislation will preserve a small stretch of river for the enjoyment of approximately 50,000 individuals a year which the Department of the Interior, estimated in its Environmental Impact Statement on North Carolina's proposal, would visit the river for recreational purposes. In comparison the Department of the Interior estimated that nearly 5,000,000 visitors would be attracted each year to the lakes to be created by the Blue Ridge Project. A figure of 6,230,000 was the estimate of the Federal Power Commission.

According to the FPC Environmental Impact Statement the use currently made by fishermen of the entire reach of river to be affected by Blue Ridge currently amounts to 48,550 mandays per year, whereas some 216,400 mandays of fishing per year are anticipated with the Blue Ridge lakes.

North Carolina proposed to the Department of the Interior that it would acquire 400 acres as a public park if the 26.5 miles of river were included in the National system. Under the conditions of its license Appalachian Power Company will acquire 6,300 acres for two public parks.

If the Company is unable to build Blue Ridge, it will be forced to design and construct a far more expensive plant to serve the electric needs of its customers in the seven States served by the American Electric Power System. The Company has testified that such an alternative

plant would, as a practical matter, have to be a coal-fired unit and would cost approximately \$1,375,000,000, over \$500 million more than the cost of Blue Ridge. If the taxpayers are not liable to the Company for that extra expenditure, it is certain that the customers of the Company will have to bear the cost. It would be strange indeed if a Congress which has prided itself on being consumer oriented were to choose to saddle the already beleaguered electric ratepayers with a \$500 million expense for preserving a 26.5 mile stretch of river. Truly this may become the most expensive 26.5 mile stretch of river in the nation or in the world.

Ironically, the Congress has before it a proposal to preserve another and far more beautiful reach of the New River, namely, a 66-mile stretch of the New River in West Virginia which includes the New River Gorge. On September 30, 1975 the Department of the Interior recommended to the Congress that it include that section of the New River into the National Wild and Scenic River System. We would suggest that enactment of legislation, H.R. 10448, to protect that stretch of the New River would produce far more benefits and be far less costly than enactment of H.R. 13372.

THE EQUITIES INVOLVED

The State of North Carolina participated actively in the FPC licensing proceedings. Up until July of 1973 North Carolina supported the construction of the Project subject to certain conditions, relating to reservoir drawdowns and shoreline acquisition, all of which were contained in the license eventually issued by the FPC. The State of North Carolina, however, officially ended its support of Blue Ridge on July 11, 1973, when its Governor so advised the FPC.

The Department of the Interior also participated actively in the FPC proceedings and repeatedly urged the Commission to license the Blue Ridge Project. In a news release issued on September 18, 1968, the Secretary of the Interior specifically endorsed the Project and described it as "a vastly improved and acceptable plan of development . . ." It was not until early 1974 that the Department began to revise its position on the Blue Ridge Project.

There can be little doubt that the Blue Ridge Project and the conditions of the license under which it must be operated are in large part the result of support given by both Interior and by the State of North Carolina when the matter was pending before the FPC. Under the circumstances we would suggest that it is a little late in the game to be asking the Congress to take away a license for which the Department of the Interior and the State of North Carolina are in large part responsible.

SUPREME COURT REVIEW

The State of North Carolina has filed a petition with the United States Supreme Court asking it to review the decision of the Court of Appeals affirming the license. The Company is not proceeding with the construction of any project works pending a decision by the Supreme Court. If the Supreme Court should reverse the lower Court, the license order will be vacated and this legislation will be unnecessary.

In view of the very substantial likelihood that the Company will be entitled to compensation if this legislation is enacted, we can perceive no reason for even considering this legislation until the Supreme Court has had an opportunity to act.

We urge the House to reject H.R. 13372.

SAM STEIGER.
DON YOUNG.

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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

[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, hydroelectric 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
Haskell¹
Stone¹
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

¹Indicates 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. S1491 (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)ii 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.



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

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. 905), 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."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 7

Time: 530pm

FOR ACTION: George Humphreys
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 8

Time: 500pm

SUBJECT:

HR 13372-Wild and Scenic Rivers Act Amendment

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

approved Kelley 9/8/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

September 9, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: HR 13372 - Wild and Scenic Rivers Act
Amendment

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed. (Ceremony scheduled for Sat. 9/11)

Attachments

THE WHITE HOUSE

WASHINGTON

September 9, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSTORF *mf*
SUBJECT: HR 13372 - Wild and Scenic Rivers Act
Amendment signing statement

The Office of Legislative Affairs concurs with the agencies
that the signing statement be issued.

Attachments

Rec. 9/9/76 - 2:15 pm

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 9

Time: 100pm

at/gm 10:00

FOR ACTION: Jim Frey
Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

*to Pres
9-10 8:30
Gfm*

*to DJS
9-10 10:10
Gfm*

FROM THE STAFF SECRETARY

DUE: Date: September 10

Time: 930am

SUBJECT:

ch
H.R. 13372-Wild and Scenic Rivers Act Amendment
signing statement

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

STATEMENT BY THE PRESIDENT

~~SUGGESTED REMARKS FOR THE PRESIDENT: NEW RIVER CEREMONY~~

ok It is with great pleasure that I sign into ok
law a bill that will ensure the preservation--in its
natural state--of a segment ok of one of the oldest rivers
in the world.

ok The New River which flows through North Carolina, ok
Virginia, and West Virginia ok is a unique and valuable
natural resource. The River is a natural feature of
considerable archeological importance and is one ok of the
few rivers ok in the eastern United States which remains
basically in its natural state, largely undisturbed by the
works of man.

ok The New River, a descendent of the Teays River ok
System, is regarded by scholars to be the oldest ok river in
the Western Hemisphere (100 million years) and the ok second
oldest ok in the world, surpassed in longevity only by the
ok Nile. This Act will ensure the preservation of the New
River in North Carolina as a free-flowing stream and protect
the national river scenery of riverside farms and pastures.

This segment of the New River has been found by the
Secretary of the Interior ok to meet the ok criteria of national
significance established by the Wild and Scenic Rivers Act. ok

343-5347
Doug
Wentler
D.O.I.

WP
7/27/76

W.S.
3/13/76

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. This Act will statutorily recognize and affirm this Administration's designation of this segment of the New River as a State-administered component of the System.

Despite the 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 has remained uncertain, because of legal issues surrounding the Federal Power Commission's issuance of a license which would have permitted the construction of a hydroelectric power project on the River.

The effect of my action today will be to give legal precedence to the designation of the New River over the Federal Power Commission license.

My Administration has wholeheartedly endorsed this legislation in the Congress and has worked with the Congress to preserve the integrity of the Administration's designation of the New River by protecting the designated segment from inundation by the proposed dam construction. This Act will further ensure that the more than 3,000 people living in the proposed reservoir area will be able to stay in their

Geo
Humphreys

Doug Whalen
D.O.I.
343-5247

WP
7/27/76

Rec. 9/9/76 - 2:15 pm
m

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 9

Time: 100pm

FOR ACTION: Jim Frey
Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

JS

FROM THE STAFF SECRETARY

DUE: Date: September 10

Time: 930am

SUBJECT:

H.R. 13372-Wild and Scenic Rivers Act Amendment
signing statement

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

9/9/76 - copy sent for researching. mm
9/10/76 - Researched copy returned

OK re edited
[Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please call James M. Cannon immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 9

Time: 100pm

FOR ACTION: Jim Frey
Max Friedersdorf
Ken Lazarus ✓
Robert Hartmann

cc (for information): Jack Marsh
Jim Connor
Ed Schmultz

FROM THE STAFF SECRETARY

DUE: Date: September 10

Time: 930am

SUBJECT:

H.R. 13372-Wild and Scenic Rivers Act Amendment
signing statement

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Barry Roth 9/10/76

PLEASE ATTACH THIS COPY TO ORIGINAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary (unreadable).

James M. Cannon
for the President

STATEMENT BY THE PRESIDENT

~~SUGGESTED REMARKS FOR THE PRESIDENT'S NEW RIVER CEREMONY~~

It is with great pleasure that I sign into law a bill that will ensure the preservation--in its natural state--of a segment of one of the oldest rivers in the world.

The New River which flows through North Carolina, Virginia, and West Virginia is a unique and valuable natural resource. The River is a natural feature of considerable archeological importance and is one of the few rivers in the eastern United States which remains basically in its natural state, largely undisturbed by the works of man.

The New River, a descendent of the Teays River System, is regarded by scholars to be the oldest river in the Western Hemisphere, ^{being} 100 million years ^{old,} and the second oldest in the world, surpassed in longevity only by the ~~Nile~~ Nile. This Act will ensure the preservation of the New River in North Carolina as a free-flowing stream and protect the national river scenery of riverside farms and pastures.

This segment of the New River has been found by the Secretary of the Interior to meet the criteria of national significance established by the Wild and Scenic Rivers Act.

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 Act will statutorily recognize and affirm *this* Administration's designation of this segment of the New River as a State-administered component of the System.

Despite the designation of *this* 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 has remained uncertain because of legal issues surrounding the Federal Power Commission's issuance of a license, which would have permitted the construction of a hydroelectric power project on the River.

The effect of *the designation of the river as a* my action today will be to give *legal* ~~precedence to the designation of the New River~~ *legal* ~~precedence to the designation of the New River~~ over the *case* ~~which would be permitted by the~~ Federal Power Commission license.

My Administration has wholeheartedly endorsed this legislation in the Congress and has worked with the Congress to preserve the integrity of the Administration's designation of the New River by protecting the designated segment from inundation by the proposed dam construction. This Act will further assure that the more than 3,000 people living in the *reservoir* area will be able to stay in their

homes and on their farms. These families will not be uprooted and face the agony of relocation.

The preservation of the New River has been urged by Governor Holshouser of North Carolina, countless thousands of citizens in every region of the country, and by the ~~state~~ legislatures of North Carolina and West Virginia. In signing this bill into law, it is with great pride that I personally join with all Americans who have fought so long and ^{so} hard to preserve this valuable natural resource. In this Bicentennial year, it is imperative that we rededicate ourselves anew to continue to conserve and protect our irreplaceable natural resources for the generations of Americans who will come after us. I pledge you my full support in this continuing endeavor.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: September 7

Time: 530pm

FOR ACTION: George Humphreys
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

Robert Hartmann on

FROM THE STAFF SECRETARY

DUE: Date: September 8

Time: 500pm

SUBJECT:

HR 13372-Wild and Scenic Rivers Act Amendment

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

STATEMENT BY THE PRESIDENT

~~SUGGESTED REMARKS FOR THE PRESIDENT. NEW RIVER CEREMONY.~~

It is with great pleasure that I sign into law a bill that will ensure the preservation--in its natural state--of a segment of one of the oldest rivers in the world.

The New River which flows through North Carolina, Virginia, and West Virginia is a unique and valuable natural resource. The River is a natural feature of considerable archeological importance and is one of the few rivers in the eastern United States which remains basically in its natural state, largely undisturbed by the works of man.

The New River, a descendent of the Teays River System, is regarded by scholars to be the oldest river in the Western Hemisphere, ^{being} 100 million years ^{old,} and the second oldest in the world, surpassed in longevity only by the Nile. This Act will ensure the preservation of the New River in North Carolina as a free-flowing stream and protect the national river scenery of riverside farms and pastures.

This segment of the New River has been found by the Secretary of the Interior to meet the criteria of national significance established by the Wild and Scenic Rivers Act.

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.

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~~This~~ Act will statutorily recognize and affirm this Administration's designation of this segment of the New River as a State-administered component of the System.

Despite the designation of ~~the~~ **this** 26.5 mile segment of the New River as a component of the Wild and Scenic Rivers System, the preservation of ~~this~~ **that** segment of the River in its natural, free-flowing state has remained uncertain, because of legal issues surrounding the Federal Power Commission's issuance of a license, which would have permitted the construction of a hydroelectric power project on the River.

the designation
The effect of my action today will be to give ~~legal~~ **of the River as a component of the National Wild and Scenic Rivers system** precedence ~~to the designation of the New River~~ over the **USE** which ~~would have been permitted by the~~ **would have be permitted by the** Federal Power Commission license.

My Administration has wholeheartedly endorsed this legislation in the Congress and has worked with the Congress to preserve the integrity of the Administration's designation of the New River by protecting the designated segment from inundation by the proposed dam construction. This Act will further ensure that the more than 3,000 people living in the proposed reservoir area will be able to stay in their

homes and on their farms. These families will not be uprooted and face the agony of relocation.

The preservation of the New River has been urged by Governor Holshouser of North Carolina, countless thousands of citizens in every region of the ~~Country~~, and by the ~~State~~ ~~Legislatures~~ of North Carolina and West Virginia. In signing this bill into law, it is with great pride that I personally join with all Americans who have fought so long and ^{so} hard to preserve this valuable natural resource. In this Bicentennial year, it is imperative that we rededicate ourselves anew to continue to conserve and protect our irreplaceable natural resources for the generations of Americans who will come after us. I pledge you my full support in this continuing endeavor.

STATEMENT BY THE PRESIDENT

It is with great pleasure that I sign into law a bill that will ensure the preservation -- in its natural state -- of a segment of one of the oldest rivers in the world.

The New River which flows through North Carolina, Virginia, and West Virginia is a unique and valuable natural resource. The River is a natural feature of considerable archaeological importance and is one of the few rivers in the eastern United States which remains basically in its natural state, largely undisturbed by the works of man.

The New River, a descendent of the Teays River System, is regarded by scholars to be the oldest river in the Western Hemisphere, being 100 million years old, and the second oldest in the world, surpassed in longevity only by the Nile. This Act will ensure the preservation of the New River in North Carolina as a free-flowing stream and protect the national river scenery of riverside farms and pastures.

This segment of the New River has been found by the Secretary of the Interior to meet the criteria of national significance established by the Wild and Scenic Rivers Act. 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 Act I sign will statutorily recognize and affirm this Administration's designation of this segment of the New River as a State-administered component of the System.

Despite the designation of this 26.5 mile segment of the New River as a component of the Wild and Scenic Rivers System, the preservation of that segment of the River in

its natural, free-flowing state has remained uncertain because of legal issues surrounding the Federal Power Commission's issuance of a license, which would have permitted the construction of a hydroelectric power project on the River.

The effect of my action today will be to give the designation of the River as a component of the National Wild and Scenic Rivers System legal precedence over the use which would be permitted by the Federal Power Commission license.

My Administration has wholeheartedly endorsed this legislation in the Congress and has worked with the Congress to preserve the integrity of the Administration's designation of the New River by protecting the designated segment from inundation by the proposed dam construction. This Act will further ensure that the more than 3,000 people living in the proposed reservoir area will be able to stay in their homes and on their farms. These families will not be uprooted and face the agony of relocation.

The preservation of the New River has been urged by Governor Holshouser of North Carolina, countless thousands of citizens in every region of the country, and by the state legislatures of North Carolina and West Virginia. In signing this bill into law, it is with great pride that I personally join with all Americans who have fought so long and so hard to preserve this valuable natural resource. In this Bicentennial year, it is imperative that we rededicate ourselves anew to continue to conserve and protect our irreplaceable natural resources for the generations of Americans who will come after us. I pledge you my full support in this continuing endeavor.

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

H.R. 13372 - A BILL TO INCLUDE A SEGMENT OF THE
NEW RIVER INTO THE WILD AND SCENIC RIVERS SYSTEM

The President today signed a bill designating a 26.5-mile segment of the New River in North Carolina as a State-administered unit of the National Wild and Scenic Rivers System. The bill will have the effect of vacating a Federal Power Commission license for a hydroelectric pump storage project that would have inundated the area now protected.

Secretary of Interior Kleppe, on April 13, 1976, designated the 26.5-mile segment as a State-administered component of the National Rivers System. The matter, however, was still before the courts; the U.S. Court of Appeals for D.C. had upheld the validity of the FPC license on March 25, 1976.

To ensure protection and affirm the Administration's decision of April 13, Congress with strong Administration support, passed H.R. 13372 which blocked dam construction and added the River to the National System under State administration.

HIGHLIGHTS OF H.R. 13372

- Includes a segment of the New River in North Carolina within the National Wild and Scenic Rivers System.
- Prohibits Federal licensing of water resource development projects adversely affecting the designated areas.

BACKGROUND

The New River originates in North Carolina; it flows north through Virginia, and into West Virginia where it merges with the Gauley and Kanawha Rivers at the terminus of the spectacular New River Gorge. The 26.5-mile segment for which North Carolina seeks protection includes 4-1/2 miles of the main stem and 22 miles of the South Fork; the area extends southward from the North Carolina/Virginia border.

In February 1965, the Appalachian Power Company (AEP) filed a license application with FPC for a pump storage hydroelectric project (Blue Ridge project) on the New River. Two dams would be built in Virginia. Water would be backed up along the River creating a reservoir that would extend into North Carolina and inundate the area for which the State sought Federal protection.

In June 1966, the Interior Department intervened, requesting modification of the project to provide for recreation development and public access, flow regulation for water quality control, flood control features, and fish and wildlife resource development. The project, as subsequently designed, satisfied most of Interior's requirements. The FPC license was issued June 14, 1974. It had an effective date of January 2, 1975. The project would generate 1.8 million kilowatts of power.

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The New River had not been included in an initial list of 650 rivers considered as potential wild rivers during studies in the mid-1960's leading to the development of wild and scenic rivers legislation. The first recognition of the North Carolina portion of the River came in mid-1974 when the Administration proposed to add new study rivers to the Wild and Scenic Rivers Act and include the entire New River, exclusive of reservoirs and the potential Blue Ridge project, if licensed by the FPC. In Senate hearings February 7, 1974, the Department had not supported legislation to designate the North Carolina portion of the New River for study under the Wild and Scenic Rivers Act. In House hearings on June 3, 1974, however, the Department supported a study of the River segment, contending that the Federal Power Commission's Environmental Impact Statement on the proposed Blue Ridge project license did not adequately consider the free-flowing character of the river. On June 14, 1974, eleven days after the hearings, FPC issued its license to the Appalachian Power Company authorizing construction of the Blue Ridge project, if Congress failed to enact legislation protecting the River through the National Wild and Scenic Rivers System. A study bill passed the Senate but failed in the House.

North Carolina challenged the validity of the FPC license on environmental grounds and the U.S. Circuit Court of Appeals enjoined construction of the Blue Ridge project pending its decision on the adequacy of the FPC Environmental Impact Statement.

On December 12, 1974 Governor Holshouser applied to have a 4-1/2 mile segment of the New River designated a State-administered component of the National rivers system. On June 11, 1975 that application was amended to add 22 additional miles on the South Fork making the total 26.5 miles, enough to meet minimum length requirements. Several technical questions were raised by Interior regarding the State's application. These were satisfactorily answered and the application and draft Environmental Impact Statement were circulated on November 28, 1975 for a 90-day review which ended February 28, 1976.

The Bureau of Outdoor Recreation subsequently prepared the final Environmental Impact Statement taking into consideration the views of Federal and State agencies, private organizations and individuals. The final EIS was submitted to the Council on Environmental Quality for a 30-day review as required by law.

The North Carolina General Assembly has met the requirements of the Wild and Scenic Rivers Act by passing legislation designating the river segment as a component of the State Natural and Scenic Rivers System.

Following the 30-day review period for the EIS, Secretary Kleppe, on April 13, 1976, named the New River in North Carolina a component in the National System.

Congressional action followed, with the House passing H.R. 13372 August 17, and the Senate passing the same measure August 30, thus clearing the bill for Presidential signature.

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OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
UPON SIGNING
THE NEW RIVER BILL - H.R. 13372

THE ROSE GARDEN

12:10 P.M. EDT

Senator Helms, Governor Holshouser, Members of
the House of Representatives:

I am delighted to welcome all of you here today
for a bill signing ceremony in the Rose Garden of the White
House.

In just a minute I will sign into law a bill to
protect the New River in North Carolina from destruction by
including it in the National Wild and Scenic River System.

This new law, as many of you know here, is the
culmination of years of efforts by a great many people, and
I congratulate all of you here and your many friends for
your persistence, your courage and your ultimate success.

Some very serious obstacles had to be overcome
for this legislation to be enacted. In a way, I think that
is the way it should be. When a decision has to be made
between energy production and environmental protection,
both sides have legitimate and very worthy points to be
made, and such decisions should never be made in haste.

But the most important consideration on this
issue or any other issue in a Government like ours is, what
is the will of the people involved? It should not matter
whether the people involved are rich or poor, famous or
anonymous, powerful or not. And, it is clear that in this
key case, the people wanted the New River like it is.

Through the tireless efforts of the North Carolina
delegation, past as well as present, through the combined
efforts of Governor Holshouser and the many, many people in
the State of North Carolina, the people's will has now been
done and the ancient and majestic river and the beautiful
lands that surround it has been saved for future generations
to enjoy just as we have.

With special pride and a great deal of pleasure,
I now sign this act into law, and I join you in the hope
that the New River will flow free and clear for another
100 million years.

END (AT 12:15 P.M. EDT)