

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY FRANKLIN**

**CIVIL DIVISION**

**RICHARD A. PRESSL and  
THERESA M. PRESSL**

**Plaintiffs,**

**v.**

**Case Number: \_\_\_\_\_**

**APPALACHIAN POWER COMPANY**

**Defendant.**

**ATTACHMENT TO PLAINTIFFS' SUBPOENA DUCES TECUM  
ISSUED TO BANK OF THE JAMES**

For the purposes of this subpoena *duces tecum*, the terms used herein shall have the following meanings unless context requires otherwise.

A. "Bank of the James" means the Bank of the James its successors, predecessors, agents and employees and all other persons acting on behalf of the Bank of the James.

Prepared by: Steven C. Wandrei  
VSB # 66052  
RADFORD & WANDREI, P.C.  
ATTORNEYS AT LAW  
BEDFORD, VIRGINIA

FILE COPY

B. "Document" or "documents" means all written, printed, typed or other graphic matter in your possession, custody or control, whether or not prepared by Bank of the James. "Document" or "documents" include, but are not limited to, all agreements, memoranda, reports, notes, diaries, calendars, internal communications, inter-office communications, telegrams, letters, data, books, manuals, directives, bulletins, accounts, reports, vouchers, invoices, bills, ledgers, minutes, and summaries of meetings, conversations or communications of any type, including telephone conversations. "Document" or "documents" also include all copies which are not identical to the original.

C. "Communication" or "communications" means all oral, visual, written or other sensory means of transmitting information, messages or statements.

TO THE BANK OF THE JAMES YOU ARE COMMANDED TO MAKE AVAILABLE THE FOLLOWING DOCUMENTS AND TANGIBLE THINGS DESCRIBED BELOW:

- 1.) Copies of all communications and correspondence to Bank of the James, its employees and agents from Appalachian Power Company a subsidiary of

American Electric Power in regards to the property located at 240 Lakeland Drive designated as Tax Map 030010200 Franklin County Virginia being further described as a parcel of land containing 2.663 acre and +/- ½ acre, more or less, below the 800' contour Gills Creek Magisterial District Franklin County, Virginia. Said property was conveyed to Bank of the James by John R. Alford, Jr. by deed dated August 1, 2011.

- 2.) Copies of all communications and correspondence from Bank of the James, its employees and agents to Appalachian Power Company a subsidiary of American Electric Power in regards to the property designated as Tax Map 030010200 Franklin County Virginia being further described as a parcel of land containing 2.663 acre and +/- ½ acre, more or less, below the 800' contour Gills Creek Magisterial District Franklin County, Virginia.
- 3.) Copies of any communications, correspondence, emails, notes, memoranda, title reports or any other documents which in any way pertain to or relate to access to Smith Mountain Lake from the parcel of land designated as Tax Map 030010200 Franklin County Virginia being further described as a

parcel of land containing 2.663 acre and +/- ½ acre, more or less, below the  
800' contour Gills Creek Magisterial District Franklin County, Virginia.

Respectfully submitted,

---

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DUVAL RADFORD  
(1908-1993)

June 2, 2015

**HAND DELIVERED**

Hon. Teresa J. Brown, Clerk  
Franklin County Circuit Court  
275 S. Main Street, Suite 212  
Rocky Mount, Virginia 24151

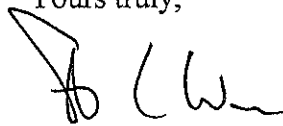
Re: Richard A. Pressl and Theresa M. Pressl v. Appalachian Power Company

Dear Ms. Brown:

Please find enclosed one original and one copy of the complaint I should like to file in regards to the above captioned matter. I am requesting that the court prepare the subpoena and forward the complaint to the Henrico County Sheriff's Office for service upon the registered agent. I should also like to file a copy of the subpoena *duces tecum* to be served on Bank of the James.

Should you have any questions please do not hesitate to contact me.

Yours truly,



Steven C. Wandrei

Enclosure

cc: Mr. & Mrs. Richard A Pressl

**FILE COPY**

**VIRGINIA**

**IN THE CIRCUIT COURT FOR THE COUNTY FRANKLIN  
CIVIL DIVISION**

**RICHARD A. PRESSL and  
THERESA M. PRESSL**

**Plaintiffs,**

**v.**

**COMPLAINT**

**Case Number: \_\_\_\_\_**

**APPALACHIAN POWER COMPANY**

**SERVE: CT CORPORATION SYSTEM, Registered Agent  
4701 Cox Road, Suite 285  
Glen Allen, Virginia 23060  
PERSONAL SERVICE REQUIRED  
(Henrico County, Virginia)**

**Defendant.**

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## **COMPLAINT FOR DECLARATORY JUDGMENT**

Comes now your plaintiffs, Richard A. Pressl and Theresa M. Pressl, by counsel, and in support of their prayer for declaratory judgment pursuant to the provisions of section 8.01-184 of the Code of Virginia 1950, as amended, would state the following facts to-wit:

### **PARTIES, JURISDICTION AND VENUE**

1. That your plaintiffs, Richard A. Pressl and Theresa M. Pressl, hereinafter collectively referred to as the "Pressls," are the owners of a lot which fronts and extends into the waters of Smith Mountain Lake.
2. The plaintiffs' lot is located in Lakeland Park, Gills Creek Magisterial District, Franklin County, Virginia. The plaintiffs' lot contains 2.663 acre plus  $\frac{1}{2}$  acre more or less below the 800' contour line extending out into the waters of Smith Mountain Lake. The plaintiffs' property is more particularly described as follows:

All that certain parcel of land containing 2.663 acre and +/-  $\frac{1}{2}$  acre, more or less, below the 800' contour as shown on a map of a survey dated March 11, 2005, made by Warner-Everett, Land

Surveyors, and recorded in the Office of the Circuit Court of Franklin County, Virginia in Deed Book 851, at page 1254

3. The Pressls' lot was created by combining the western portion of Lot 11 Lakeland Park with a parcel of land containing 0.761 acre and deducting 0.068 acre below the 800 foot contour. The resulting lot now owned by the Pressls contains 2.663 acres above the 800 foot contour and +/- of land below the 800 foot contour. The map of Lakeland Park is of record in the aforesaid clerk's office in Plat Book 3, at page 191.
4. A copy of the Pressls' deed is attached hereto as **Exhibit A** and by this reference made a part hereof. Copies of the survey prepared by Warner-Everrett Land Surveyors dated March 11, 2005 and the map of Lakeland Park are attached hereto as **Exhibit B** and **Exhibit C** respectively and by this reference made a part hereof. Both plats show that the plaintiffs' property extends below the 800 foot contour into Smith Mountain Lake.
5. That your defendant, Appalachian Power Company, hereinafter referred to as "APCO," is a corporation organized and existing under the laws of the Commonwealth of Virginia.

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6. That APCO operates the Smith Mountain Hydroelectric Project on Smith Mountain Lake and Leesville Lake in Bedford, Campbell, Franklin, Pittsylvania and Roanoke Counties, Virginia. That APCO has constructed a dam at Smith Mountain which is designed such that the impounded waters of the Roanoke and Blackwater rivers will not exceed the elevation of 800 feet above mean sea level as determined in accordance with the system of elevations used locally by the United States Geological Survey.
7. APCO completed construction of the dam at Smith Mountain in 1963. The impounded waters of Smith Mountain Lake reached normal water level in March 1966. The dam is located approximately nine miles downstream from the plaintiff's property.
8. The Pressls' property is subject to a Flowage Right and Easement Deed Smith Mountain Combination Hydro Electric Project Upper Reservoir, herein after referred to as the "flowage easement," dated April 18, 1960 which is recorded in the aforesaid clerk's office in Deed Book 175, at page 355. The flowage easement specifically provides that the Pressls shall have

the right to cross beyond the 800 foot contour to reach the impounded waters for recreational purposes. The water levels in Smith Mountain Lake vary depending upon seasonal conditions and demand for power generation.<sup>1</sup>

9. A copy of the Flowage Right and Easement Deed Smith Mountain Combination Hydro Electric Project Upper Reservoir is attached hereto as **Exhibit D** and by reference made a part hereof.
10. That there is an actual case or controversy between the parties regarding the rights granted to the parties pursuant to the terms of the aforesaid flowage easement. Specifically, your plaintiffs' would allege and aver that the flowage easement does not give APCO the right to regulate any use which they may make of their property below the 800 foot contour. Furthermore,

---

<sup>1</sup> The water level in Smith Mountain Lake fluctuates from time to time with a normal maximum elevation of 795 feet "full pond." The water level of Smith Mountain Lake an regularly and often goes below full pond as a result of APCO's activities. APCO is able to generate power by releasing water from Smith Mountain Lake into Leesville Lake. Most of the water released into Leesville Lake is retained and later pumped back into Smith Mountain Lake for re-use.

the flowage easement does not restrict how or by what means the plaintiffs may use their property to access the waters of Smith Mountain Lake for recreational purposes.

11. The Circuit Court for the County of Franklin is the proper venue for this matter for the following reasons; 1.) the property which is the subject of this lawsuit is located in the County of Franklin, 2.) a portion of the Smith Mountain Hydroelectric Project is located in the County of Franklin, 3.) APCO maintains a service center located at 996 Old Franklin Turnpike Rocky Mount, Virginia which is in the County of Franklin and 4.) employees who are responsible for the regulation of the Smith Mountain Hydroelectric Project maintain limited office hours at the Smith Mountain Lake Association located at 400 Scruggs Road, Suite 2100 Moneta, Virginia 24121.

### **DECLARATORY JUDGMENT**

12. The allegations in paragraphs 1 through 11 are incorporated into this complaint as if fully restated herein.

13. It is clear that the plaintiffs may make any use of their property not inconsistent with APCO's right to maintain a hydroelectric dam downstream from your plaintiffs' property.
14. The Pressls desire to exercise their right to construct a dock to access the impounded waters of Smith Mountain Lake. The construction of a dock on the Pressls property does not interfere with APCO's ability to overflow the plaintiffs property or operate a hydro electric dam at Smith Mountain.
15. For well over 40 years the construction of docks on Smith Mountain Lake has been regulated by local governmental authorities having jurisdiction. These localities have in the past enforced existing zoning ordinances and building codes as they pertain to dock construction without any action by APCO. Many of the Pressls' neighbors and numerous other owners of waterfront property on Smith Mountain Lake have constructed docks to access Smith Mountain Lake for recreational purposes to include boating, fishing and swimming. The ability to construct and maintain a dock would have a positive impact on the value of the Pressls' property. The value of

the Pressls' property would likely increase if they have the ability to stabilize their shoreline and attractively landscape their property. These rights are not inconsistent with APCO's right to maintain a hydroelectric dam downstream or overflow your plaintiffs' property.

16. The flowage easement attached hereto specifically provides in relevant part:

Grantors hereby grant, bargain, sell and convey with covenants of general warranty, unto Appalachian forever the right to overflow and/or affect so much of said premises as may be overflowed and/or affected, continuously or from time to time in any manner whatsoever, as the result of the **construction, existence, operation and/or maintenance of the aforesaid dam and/or power station**, including pumping as part of any such operation.

ALSO, for the above mentioned considerations, Grantors hereby grant to Appalachian the further right to enter upon said premises at any time and from time to time and, at Appalachian's discretion, to cut, burn and/or remove therefrom any and all buildings, structures, improvements, trees, bushes, driftwood and other objects and debris of any and every kind or description which may hereafter be located on the portion of the said premises below the contour the elevation of which is 800 feet.

IT IS ALSO UNDERSTOOD AND AGREED BETWEEN THE PARTIES HERETO THAT:

1. Grantors shall have the right to possess and use said premises in any manner not inconsistent with the estate rights and

privileges herein granted to Appalachian, including (a) the right to cross said land to reach the impounded waters for recreational purposes . . .

17. That the flowage easement clearly states the purpose of the easement and provides in relevant part:

WHEREAS, Appalachian proposes to impound the waters of said river [Roanoke river (sometimes called Staunton river)] and tributaries by constructing a dam across said river at Smith Mountain downstream from said premises and to construction and operate in connection with such dam a hydro electric power station including provision for pumping, which dam is to be of such height and so designed that at such dam the elevation of the impounded waters, except on very rare occasions, will not exceed 800 feet.

18. That at the time APCO was preparing to acquire property rights to complete the Smith Mountain Hydroelectric Project it was understood that owners of waterfront properties would be compensated in part due to the fact that they would have shoreline property to enjoy for recreational purposes. During this time, employees of APCO made public statements regarding the positive economic and aesthetic value of Smith Mountain Lake. Notably, James L. White, Roanoke District Engineer for APCO, stated “We [APCO]

feel that the remaining property owners will be more than compensated by having the most ideal shoreline for recreational purposes on the entire project.” *Dam Runs into Opposition Residents Protest Bridge Plan*, Franklin News Post, 1 (1957). A copy of this article is attached hereto as **Exhibit E** and by reference made a part hereof.

19. That your plaintiffs have attempted unsuccessfully for almost three years to use their property for beneficial purposes to include the right to construct a dock to access the impounded waters for recreational purposes. A copy of the proposed dock location survey prepared by Todd S. Everett, land surveyor, dated January 20, 2013 is attached hereto as **Exhibit F** and by reference made a part hereof.
20. That APCO has made numerous and arbitrary demands upon the Pressls and their predecessors in title based upon APCO’s erroneous belief that it has the ability to regulate how the plaintiffs may make optimal use of their property including the construction of a dock. The following statements set forth the demands APCO has made of your plaintiffs.

- a. APCO is attempting to dictate to the Pressls the quantity, type and placement of plants which they would be required to plant on their property below the 800 foot contour. Despite ongoing discussions to resolve this matter, APCO has failed to provide any instruction or guidance to your plaintiffs regarding what plants should be planted appropriate.
- b. APCO would attempt to regulate the size and type of dock which could be constructed by the plaintiffs.
- c. APCO has required the Pressls to have their property surveyed under the auspices that they would be granted the right to construct a dock.
- d. APCO is attempting to dictate to the Pressls how they access the waters of Smith Mountain Lake for recreational uses.
- e. APCO is attempting to dictate to the Pressls how to stabilize the shoreline of their property. AEP would require the Pressls to plant vegetation below the 800 foot contour as opposed to placing rip-rap along the shoreline as many other waterfront property owners have



done. The planting of vegetation below the 800 foot contour would deny the Pressls a clear and unobstructed view of Smith Mountain Lake. Certainly, a clear and unobstructed view of Smith Mountain Lake would greatly enhance the value and desirability of the plaintiffs' property.

f. Demands similar to those outlined in items a. through e. have been made upon your plaintiffs immediate predecessors in title.

21. Despite not having any obligation to do so, the Pressls have expended time and considerable money in an attempt to comply with APCO's demands.

22. While the right to remove trees and brush below the 800 foot contour is not exclusive to APCO, the requirements that APCO is attempting to impose upon the Pressls seem at odds with the fact that APCO can at any time overflow and remove any trees and brush below the 800 foot contour as set forth in the flowage easement.

23. The flowage easement does not allow APCO to regulate the size and type of dock the plaintiffs may construct on their property.

24. The flowage easement does not allow APCO to regulate the ability of the Pressls to dredge sediment from their property to improve any dock which they may construct.
25. The flowage easement does not allow APCO to regulate how the Pressls may stabilize the shoreline of their property by installing rip-rap.
26. APCO now claims *post hoc* additional rights not encompassed or contemplated under the flowage easement.
27. APCO's demands of the Pressls are contrary to the terms of the flowage easement and completely ignore the simple fact that the Pressls are the fee owners of ½ acre below the 800 foot contour extending out into the impounded waters of Smith Mountain Lake. Any rights not specifically granted to APCO pursuant to the flowage easement are retained by the Pressls. Furthermore, the Pressls may make any use of the property below the 800 foot contour in any manner not inconsistent with the terms of the flowage easement.

28. Furthermore, APCO, as a condition of constructing a dock below the 800 contour, would require the Pressls to surrender valuable property rights without negotiation and additional consideration of any kind. Specifically, APCO would require the Pressls to apply for and obtain a permit for the construction and maintenance of a dock, revocable at APCO's sole discretion.
29. A sample of the proposed Occupancy and Use Permit is attached hereto as **Exhibit G** and by reference made a part hereof.
30. The Occupancy and Use Permit clearly sets forth that the Grantees are provided only a revocable license which may be revoked by the Grantor [APCO] for any act which violates any condition imposed by APCO at any time.
31. The revocable Occupancy and Use Permit would expand APCO's rights beyond those set forth in the flowage easement.
32. That the revocable Occupancy and Use Permit grants the Pressls only a personal right which cannot be transferred to subsequent owners.

33. The proposed Occupancy and Use Permit would have the Pressls enter into a revocable license agreement which would allow APCO to remove any dock or other structures which may be constructed by the Pressls or their successors to access Smith Mountain Lake for recreational purposes at any time.
34. That APCO's actions have denied your plaintiffs a valuable property right which if allowed to continue would significantly devalue the plaintiff's property. Furthermore, APCO's actions if allowed to continue will restrict the plaintiffs' ability to resell their property should they elect to do so in the future. APCO's actions also limit your plaintiffs from the full use and enjoyment of their property.
35. That for much of the time Smith Mountain Lake has been in existence APCO has not attempted to regulate the uses which waterfront property owners may make of their property. Because APCO had no recognized right of dock regulation in the past, instead relying upon local land use regulations for that function, waterfront property owners including your

plaintiffs relied upon their knowledge that they held then and still hold an absolute right to construct and own in fee a dock to access Smith Mountain Lake. Furthermore, waterfront property owners including your plaintiffs have the reasonable expectation that they can remove vegetation below the 800 foot contour and do such other acts as they may desire to enhance the natural beauty of their property and improve their view of the lake.

36. That there exists an actual justiciable case or controversy which is ripe for adjudication between the parties. Specifically, there exists a dispute between the parties regarding the interpretation of the flowage easement granted to the defendant and the rights which the defendant has to regulate the plaintiffs' use of their property.

37. That the plaintiff has no adequate remedy at law to resolve this matter.

38. If there are issues of fact to be determined in this cause a **TRIAL BY JURY IS DEMANDED** pursuant to Rule 3:21(b) of the Rules of the Supreme Court of Virginia and section 8.01-188 of the Code of Virginia, 1950, as amended.

WHEREFORE, your plaintiffs would pray:

- A. If there are issues of fact to be determined in this cause a **TRIAL BY JURY IS DEMANDED** pursuant to Rule 3:21(b) of the Rules of the Supreme Court of Virginia and section 8.01-188 of the Code of Virginia, 1950, as amended.
- B. That this Court find that there exists an actual justiciable case or controversy which is ripe for adjudication between the parties;
- C. That the Court further find that APCO lacks the authority to demand that your plaintiffs relinquish without compensation valuable property rights they and their predecessors in title retained by under the original flowage easement.
- D. That the Court further find that APCO lacks the authority to require the plaintiffs to enter into a revocable license agreement as a condition for accessing the waters of Smith Mountain Lake for recreational purposes;

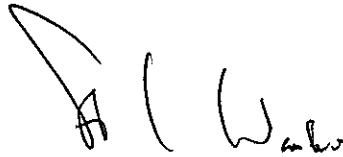
- E. That the Court find that APCO has no regulatory authority over the plaintiffs' property which lies below the 800 foot contour beyond those rights defined by the flowage easement, the contemporaneous expressions of the parties, and vested rights to build and own structures to access Smith Mountain Lake for recreational purposes;
- F. That the Court find that APCO cannot regulate the size and type of dock that the plaintiffs may construct on their property;
- G. That the Court find that APCO cannot regulate how the plaintiffs stabilize the shoreline of their property by requiring them to plant vegetation below the 800 foot contour;
- H. That the Court find that APCO cannot regulate whether the plaintiffs may dredge in front of their property to improve any dock which they may construct;
- I. That the Court find that the Pressls be allowed to use their property in any manner not inconsistent with the maintenance of a dam and hydro

electric power generation plant operated by APCO at Smith

Mountain;

- J. That the Court award your plaintiffs their costs expended in this action; and
- K. That the Court award your plaintiffs such other relief as the nature of its cause may require.

Respectfully submitted,



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Steven C. Wandrei  
Counsel for the Plaintiffs  
Richard A. Pressl and Theresa M. Pressl

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scv.06/02/2015 Pressl.Complaint

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OFFICIAL RECEIPT  
FRANKLIN COUNTY CIRCUIT COURT  
275 S. MAIN STREET SUITE 212  
ROCKY MOUNT, VA 24151  
540-483-3065

CIVIL

DATE: 06/02/15 TIME: 15:47:43 ACCOUNT: 067CL15000631-00 RECEIPT: 15000007450  
CASHIER: PEP REG: KF18 FILING: DECL TYPE: FULL PAYMENT  
CASE COMMENTS: PRESSL, RICHARD A V. APPALACHIAN POWER COMPA  
SUIT AMOUNT: \$ .00

ACCT OF: PRESSL, RICHARD A RECD: WANDREI, STEVEN C  
CHECK: \$98.00 16571

DESCRIPTION 1: PLAINTIFF: PRESSL, RICHARD A  
2: NO HEARING SCHEDULED

CODE	DESCRIPTION	PAID	CODE	DESCRIPTION	PAID
304	CLERK CIVIL FEE	50.00	049	WRIT TAX - CIVIL	5.00
106	TECHNOLOGY TRST FND	5.00	123	LEGAL AID FEE	9.00
147	INDIGENT ASSISTANCE	1.00	170	COURT TECH FUND	10.00
219	LAW LIBRARY	4.00	229	CHMF	2.00
206	SHERIFF FEES	12.00			

TENDERED : 98.00  
AMOUNT PAID: 98.00  
CHANGE AMT : .00

CLERK OF COURT: TERESA J. BROWN

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RECEIPT COPY 1 OF 2