



Who Owns the River?

*An Angler's Guide to
Staying on the Water
and Out of Court
by Beau Beasley*

“You having any luck today?”

Startled, I turned to find a man standing right behind me. I hadn't been paying much attention to my surroundings, and instead was focused on the crayfish pattern I'd been meticulously retrieving near an old stump on the far side of the stream.

“Yes, I have,” I replied, eyes fixed on my line as I continued to fish. “I've had a very good morning.”

“Have you kept anything?” he asked. It was then I realized I was not talking to a curious angler, but someone who obviously believed I was up to no good.

“No,” I replied confidently, turning to face my inquisitor. “Douglas doesn't allow folks to keep any fish.” I knew I was on private property but believed that dropping the name of the property owner would alleviate the man's concern. I was wrong.

“This ain't Douglas's property. Now you need to leave before I call the law!”

I tried to explain that I'd made an honest mistake, that I hadn't seen any NO TRESPASSING signs, and that I had no idea I was on his property. I broke down my rod immediately and left, feeling a bit ashamed—but also angry that he had spoken to me as though I were a criminal. To make matters worse, the Madison County sheriff's office later called to tell me that if I came back, I'd be cited for trespassing.

Unfortunately, such conflicts between anglers and property owners appear to be increasing in frequency as more water becomes inaccessible to the public. The North American Wildlife Model of Conservation, sometimes called the North American Plan, is grounded in the Public Trust Doctrine resulting from a United States Supreme Court ruling in 1842. The North American Plan stipulates, among other things, that the public may hunt and fish and in other ways recreate on lands that state and federal agencies purchase. It further stipulates

that wildlife areas belong to no particular person and are more or less held in trust for the public. This is a very different approach than what is common in much of Europe, for example, where access to many waterways is restricted to the wealthy. As a British angler once joked to me, “In England, the common man golfs and the wealthy fish. Here in the States, the reverse seems to be true.”

Anglers across the country have had run-ins with hostile landowners. In most cases, those anglers have trespassed unknowingly, made an honest mistake, and are at a loss as to what to do. From Tennessee to Montana and Virginia to Utah, miles and miles of river are being closed to public fishing, in many cases so that the owners can market the river to those willing to pay to fish on it. So, what should you do when you arrive at your favorite fishing hole only to learn that you are no longer welcome? Whose river is it, after all? And what exactly constitutes trespassing? Once you enter the river, are you safe as long as you stay below the high-water mark? What exactly are our rights?

The Water Wars

Each season anglers find it more difficult to pursue their passion on public waters. Private fishing clubs and other exclusive properties are on the rise—a boon to those who can afford them, certainly. But three recent case studies from Virginia, Tennessee, and Utah serve to illustrate the problem and its ramifications for everyday anglers nationwide.

Crown Grants

On the Jackson River in Virginia's Alleghany County, private developer River's Edge is suing two anglers for trespassing on what it claims is its property. In June of 2010, the anglers accessed the river at a public put-in, used their kayaks to float to a certain section of the navigable river, and began fishing. The landowner approached the anglers and said that they had to leave immediately. The anglers explained that they were in the river and not on his property, and pointed out that according to maps from the Virginia Department of Game and Inland Fisheries (VDGIF), which they checked before going fishing, this section of the river was open to the public. The landowner called the local sheriff's office; deputies checked the

write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all.



anglers' fishing licenses and let them go.

The landowner claims to possess a Crown Grant—a special deed from King George II to the original landowner passed down to the current landowner—granting him title to the bottom of the river. He also pays taxes on the river bottom and has decided to sue the anglers in civil court for \$10,000. Local authorities refuse to press criminal charges because they believe that the state owns the river bottom, which is probably cold comfort to the anglers who now must defend themselves in court.

The Virginia Supreme Court's 1996 *Kraft v. Burr* decision held that another landowner upstream

of the area currently in dispute did indeed have a legitimate Crown Grant title that enabled him to restrict public usage of the river. The VDGIF contends, however, that *Kraft v. Burr* has no bearing on this new contested section of river and that the river bottom in question belongs to the state. In a letter dated June 2009, the VDGIF officially informed River's Edge that its NO TRESPASSING signs were illegal and unenforceable. The case is currently working its way through the courts, but anglers across the state are outraged. Virginia's Attorney General, Ken Cuccinelli, issued a statement that read in part, "We understand the issue at hand; however, this is a civil trespassing case between private parties, and the Commonwealth of Virginia generally does not intervene in disputes between private parties." In other words, the anglers are on their own.

Defendants Frank Garden and Dargan Coggeshall say that they have racked up nearly \$40,000 in legal fees defending themselves for fishing in water that the state of Virginia says is public. "Despite all of the press we've attracted, the conversations on message boards, Virginia anglers, and businesses that make a living off of public fishing, our elected officials have been awful slow to respond to our calls for assistance . . . if they even return our calls," said Coggeshall. The anglers have set up a website to plead their case to the public: www.virginiariversdefensefund.org.

This latest Jackson River case could have far-reaching effects in the Old Dominion and beyond. The Crown of England granted much of the property running alongside such venerable Virginia waterways as the James, Elizabeth, and Shenandoah—and it, too, may be subject to privatization. Similarly, Spanish land grants may be actionable in some Western states.

write to fit for all. write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all. write to fit for all.
write to fit for all. write to fit for all. write to fit for all. write to fit for all.

Redrawing the Lines

In Sullivan County, Tennessee, a landowner whose property is adjacent to the South Holston River has told anglers that they can no longer fish in places that have been open to the public for as long as any local can remember. This landowner, whose property is directly across the South Holston from River's Way—a popular nonprofit organization that helps troubled youth—claims that he owns and pays taxes on the bottom of the river, and that his deed extends to the middle of the river and encompasses part of a large island that anglers favor.

The South Holston is a tailrace fishery, and when water levels are low, about 95 percent of the flow runs between the island and the edge of this landowner's property. The landowner usually hails errant anglers and informs them that they need to be on their side of the river while fishing. He correctly points out that the land where they are standing is, in fact,

on an island and not on the opposite riverbank. According to him, they are trespassing. This dispute has resulted in numerous verbal conflicts, some of which have been quite heated.

Is the landowner correct that he owns the bottom of that stretch of the South Holston? It's hard to know. This isn't a Crown Grant dispute, as in Virginia. Instead, property lines adjacent to a river are in dispute: Do those property lines extend into the center of the river? Despite the landowner's claim to the contrary, Bob Icenhou, Property Assessor for Sullivan County, contends, "The property owner has paid no taxes on the river bottom or the island in question." Furthermore, the Sullivan County Assessor's Office doesn't recognize his property lines as extending farther than the riverbank. Aside from his most recent deed filings, there is no mention of this large island or the center of the river in the history of his deed, dating back as far as 1908. In fact, the large island he claims to own is deeded to River's Way and at least two other individuals who have been paying taxes on it since the 1980s. "In all the time I have worked in this office," says Icenhou, "I have never seen anyone attempt to claim the bottom of the river. There is no history of this occurring previously anywhere in this county that I know of."

Court records indicate that the current landowner took possession of the property in 2008 and had his property lines redrawn to the middle of the river. In 2009 the landowner appears to have begun asserting his "property rights," informing anglers that they could neither fish on the disputed section of the river nor anchor their driftboats while fishing (because this would necessitate them touching the river bottom). In Tennessee as in many other states, state law prohibits private landowners

from owning the river bottom of navigable rivers. However, the water laws in Tennessee are so vague that not even the Tennessee Wildlife Resources Agency could tell me if someone could be prosecuted for trespassing along this river. Tennessee law is quite clear on one point, though: A property owner cannot claim new property by simply redrawing his property lines. To be valid, the property lines must be recognized by a Tennessee court.

Holbrook Surveyors submitted the new property lines to Sullivan County on behalf of the landowner, but numerous attempts to reach the company for comment went unanswered.

Undoubtedly, the landowner, who was interviewed but asked not to be quoted or named, believes he owns the bottom of the river and is merely asking others to respect his property rights. He claims that anglers have been rude to him; that when he has fished what he considers his own property, he has even been asked to move farther downstream to give other anglers more space; that anglers have left behind trash; and that many have used the property as a bathroom.

Property disputes are common, but water boundaries are particularly perplexing. First, the boundary line is often not visible. And second, property lines along rivers can change significantly as a result of erosion or the deposit of sediments. A simple search for the landowner's deed and a peek into the state's riparian property laws can often clarify boundary lines, public access, and usage rights.

Legislative Logjams

If the situation seems dicey in Virginia and Tennessee, Utah is a mess. The Utah Supreme Court's 2008 *Conatser* decision unani-



mously reversed a lower court's conviction of Jodi and Kevin Con-
atser for trespassing while fishing in the Weber River. According to
the court:

*We hold that the scope of the easement provides the public the
right to float, hunt, fish, and participate in all lawful activities
that utilize the water. We further hold that the public has the
right to touch privately owned beds of state waters in ways inci-
dentally to all recreational rights provided for in the easement,
so long as they do reasonably and cause no unnecessary injury to
the landowner.*

Outdoor enthusiasts in Utah were jubilant—but their celebra-
tion was short-lived. In 2010, the Utah state legislature passed
House Bill 141, rather ironically titled the Utah
Stream

ered public property. Recently, the USAC filed two lawsuits that
they hope will clarify where the public can and cannot fish.

The first lawsuit involves Victory Ranch, which offers luxury
home sites and is barring the public's use to more than four miles
of trout water on Utah's famed Provo River. Prior to House Bill
141, the public had access to this area, but as soon as the new law
was signed, recreational anglers began to notice NO TRESPASSING
signs. The USAC claims that the House bill conflicts with the state's
historic position that rivers were to be held in public trust and could
not be privately owned. The USAC cites no less an authority than
Brigham Young, who articulated this position in the first week that
he and other pioneers settled what would later become Utah.

The second lawsuit seeks to determine the navigability of
the Weber River in Summit County. The USAC argues that the
Weber River has long been a public highway for commerce and
for recreational use. Landowners near the Weber River have
posted signs at public road crossings claiming the riverbanks
and bottoms are privately owned. One landowner has even put
up a barbed wire fence across the river, which is a hazard to
boaters and anyone wading in the river. If the courts deem the
river navigable, this action clearly violates federal law even if
the streambed is privately owned.

Bad News, Good News

So what can you do to ensure that you don't run afoul of the
law? Well, the bad news is that no national standard exists
in water usage laws. The good news, however, is that a little
research may prevent any unfortunate run-ins with private
landowners and the law.

Generally speaking, rivers are deemed navigable or non-
navigable. Navigable rivers are fit for commercial use or have
been used for commercial purposes in the past. The Missis-
sippi River is obviously navigable, although navigable rivers
need not be so large. In the past, loggers often used rivers to
float logs downstream, and so many states contend that rivers
used in such a way in the past are therefore deemed navigable;
Tennessee, however, argues that the fact that the river has been
used to float logs does not determine its navigability.

Nonnavigable rivers are generally much smaller in size
and are commonly seen on farmland but are certainly large
enough to float watercraft like kayaks. Nearly every state
permits private ownership of river bottoms of nonnavigable
rivers. In many cases, such waters have fences across them
to contain cattle or divide property. While you may be able
to float your kayak or canoe down a nonnavigable waterway,

this doesn't necessarily mean you have the right to do so. A good rule of
thumb might be to avoid nonnavigable rivers altogether unless you
have obtained permission from adjacent landowners.

Section 10 of the Rivers and Harbors Act of 1899 gives the
Army Corps of Engineers the authority to deem a river navi-
gable. Consequently most states recognize the Army Corps of
Engineers as the prevailing authority on the issue of navigability;
states may retain the right to deal with the riverbeds themselves,
however, which is why riverbed ownership has become such a
big issue. If a state owns the riverbed in trust for the public, then
the public is free to walk up and down the river as long as we
stay in the river. If the river is nonnavigable, you may be trespass-
ing without knowing it, which is why I recommend avoiding

nonnavigable waters without the permission of the landowner.
Even if you are fishing a navigable waterway, once you get out of
the river and venture onto dry land, all bets are off.

Where to Begin

To play it safe, start with your state's game department. Most such
agencies are a wealth of information and should be alert to areas
that are either privatized or are in dispute along certain waterways.
Sometimes officials will even direct you to public places that are off
the beaten path. For the most up-to-date information, contact the
game warden in the county where you plan to fish. Game wardens
are intimately involved with the rivers they manage and can offer
tips on where to fish and what places and pitfalls to avoid.

Let's say that you arrive at a spot you've fished before and notice
a new addition: The riverbank has now been posted. What to do?
First, ignoring the signs is a sure way to land in hot water and may
even get you arrested. Look around for nearby houses and ask the
landowner for permission to fish the area, if you have the opportu-
nity to do so. Make your request at a reasonable time of the day—
and when you're dressed appropriately. Explain to the landowner
that you're a fly angler and have no desire to keep any fish unless
he or she allows it. You can also offer to bring the landowner some
cleaned fish—just to sweeten the deal if you're so inclined.

But what if you aren't sure who owns the property or how to
get in touch with the owner? Well, Sherlock, it's time to hunt for
clues. Note the address, if you can find it, or a nearby location
like a route number that intersects a nearby road. Take this infor-
mation to the local courthouse and search the tax records. Most
tax assessors' offices will be glad to help you. Tax information
is a matter of public record, and you'll be able to find out who
owns the property. Armed with this information, you can now
approach the landowner and seek permission.

Might he or she turn you down? Sure. Some landowners
are just ornery that way. Most, however, are just like the rest
of us, willing to accommodate others when it doesn't terribly
inconvenience us. Most landowners simply want to know who
is on their property. Wouldn't you question someone wandering
around in your backyard? So, while it's true that landowners of-
ten post their property as a matter of course, they are often quite
willing to allow strangers to fish there if those strangers assure
them that they'll treat the property respectfully.

If you gain access to prime water on private property, don't
take it for granted: Send the landowner a thank-you card—and
consider bringing a small gift on your return trip. One fellow
angler I know brought a local farmer thermal overalls as a way of
saying thanks. Yes, this thoughtful gift set the angler back nearly
\$100—but the private steelhead waters that he now has access to
contain fish in the 30-inch class.

What if the river in question flows through private property
but you stay in the river? Again, regulations differ by state. In
Montana, for example, as long as anglers stay below the high-wa-
ter mark, they may traverse the river regardless of who owns the
property under the water, providing that the water is of sufficient
depth to float a recreational craft like a boat or raft. On one point,
all states agree: Anglers must access public water from public ac-
cess points. You may not cross private property to fish in a public
river or creek. Fortunately many states have rights-of-way extend-
ing out a hundred feet in either direction of a state-owned bridge
or road, and these are considered legal access points.

So Just Where Can I Fish?

Ultimately you'll need to research your own state laws to determine
the navigability of the water and its access and usage regulations.
If your state prevents private ownership of a navigable river, finding
this out before you go could save a lot of headaches. Take the time to
investigate the water before you fish it. After all, an ounce of preven-
tion really is worth a pound of cure. American White Water (www.americanwhitewater.org), dedicated to conserving the country's
white-water resources and enhancing opportunities for the public to
enjoy them, is a helpful place to start. Follow the link to research your
particular state. (This list was created as a general guide; remember
that state laws change frequently.) Finally, always obey posted signs.

What about the Man?

Let's assume the worst: While fishing, you're visited by a law en-
forcement official. Above all, keep cool. Unless your new friend is
a game warden, he or she may know little or nothing about river
access and usage laws—which means that he is probably there to
prevent an altercation with a landowner. If he or she asks you to
leave, do so—but not before asking him for a business card. This
way you can contact this officer if, after further research, you
discover that you did have the right to fish in that spot. It is at
this point, too, that prior homework may pay off. Give the officer
the name of the game department official you spoke with before
you decided to fish there.

While it's true that river access and usage issues will continue
to plague anglers, we do not have to approach waterways with
anxiety. Get in touch with a group like the Utah Stream Access
Coalition—or get together with like-minded individuals and
form one in your own state or locality. Contact your state and
local elected officials and express your concerns about limits
to public access and usage. Join your local Trout Unlimited or
Federation of Fly Fishers chapter and work closely with game
officials to promote conservation easements among riverside
landowners; these can open up significant public fishing oppor-
tunities. Some of the best fishing in my home state of Virginia
is on private property that is open to the public at no charge.
Securing conservation easements takes time, patience, education,
and coordination among conservation groups, state and local of-
ficials, and landowners. They're worth the effort.

So you do everything right and still run up against an irate
landowner. Do what you can not to aggravate the situation.
Remain calm, and do not raise your voice. If the landowner ver-
bally threatens you or brandishes a firearm, leave immediately—
but remember that the law protects you, too. In many states, it
is against the law to interfere with hunters and anglers on public
property. While it's true that the purpose of such laws was to
protect sportsmen from harm by environmental extremists, a
landowner may not trample on your rights, either. In any case,
never forget that you are there to tangle with the local fish and
not with the local landowner. 🐟

*Beau Beasley (www.beaubeasley.com) is the author of Fly Fishing
the Mid-Atlantic: A No Nonsense Guide to Top Waters, and the
director of the Virginia Fly Fishing Festival. He lives with his wife
and children in Warrenton, Virginia.*



Access Law, which more or less
locked up hundreds and possibly
thousands of river miles that had
previously been open to the public
by giving riparian landowners
exclusive use and access to rivers adjacent to their property.

Fly anglers and outdoorsmen across the state felt betrayed by
the legislature and quickly formed the Utah Stream Access Coal-
ition (USAC), a nonprofit group whose mission is "to restore and
preserve the right of its members and the public to lawfully access
and use Utah's rivers and streams." Many members of the group
have been cited for fishing on what has historically been consid-

write to fit for all. write to fit for
all. write to fit for all. write to fit
for all. write to fit for all. write
to fit for all. write to fit for all.
write to fit for all. write to fit for
all. write to fit for all.