



Douglas W. Domenech  
*Secretary of Natural Resources*

**COMMONWEALTH of VIRGINIA**  
*Board of Game and Inland Fisheries*

Robert W. Duncan  
*Executive Director*

August 2, 2012

Mr. Beau Beasley  
6729 Eckhart Court  
Warrenton, Virginia 20187

Dear Mr. Beasley:

This letter is in response to your letter of July 10. Thank you for your letter and your comments at the Board's July meeting regarding the ongoing Jackson River case. Like you, the Board and the Department are very concerned about cases where anglers and other constituents of the agency face conflict with landowners who claim ownership of what have historically been understood to be state bottomlands. I want to assure you that the current litigation is of great interest to us.

As you are aware, the current action is based in civil trespass. While it does not directly involve fishing rights on the Jackson River, and in fact may not ultimately address title to the river bottom in dispositive fashion, we are obviously aware of the practical impacts that it could have on anglers and others wishing to use the section of the river in question. It is likewise of concern to us that the wade fishermen in this case now find themselves involved in civil litigation and its associated costs. It is, however, important for you to understand the limits of the Department's potential involvement in this case. Though the Department is the state agency with responsibility for freshwater fishing, in contrast to our lakes, boat ramps, and wildlife management areas, it does not own the bottomlands under the state's rivers. Title is rather held by the Commonwealth itself. Nor, even assuming it had some ownership interest of its own, could the Department unilaterally forward intervention by the Commonwealth in this or any other judicial proceeding. It would therefore be inappropriate to interpret the Department's lack of direct involvement in the current case as a lack of interest. Moreover, as you are aware, at one point the defendants to the case sought to have the Commonwealth joined, and the motion to achieve this was denied by the Alleghany County Circuit Court.

Your letter includes questions regarding the Department's contact with its counsel, the Office of the Attorney General, which serves as our source of legal advice and representation. Since the commencement of the present action, the Department has been in close contact with that Office to be advised regarding the case and potential impacts upon constituents.

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Communications between the Department and the Office of the Attorney General are privileged and it would be inappropriate for us to directly discuss those conversations. Our thoughts and concerns regarding the potential impacts of this case have been expressed to that Office, and ongoing contact has been maintained throughout this time period as we continue to monitor developments in the case.

You additionally reflect the understanding to this point that the contested section of the Jackson River is held in public ownership and that it is available for public access, including wading on the river bottom. This has been the presumed state of ownership of the river bottom, as it is in all instances unless ownership is shown to have been conveyed otherwise, as is indicated in §28.2-1200 of the Code of Virginia. As you may or may not understand, however, the Department itself does not make, nor does it have the legal authority to make, determinations related to the ownership of the Commonwealth's river bottoms. Rather, we can only rely on the information as to ownership that is known. All communications and signage from the Department related to available public fishing opportunities are based upon the best information that is available, and that will continue to be the practice going forward. Indeed, past communications between the Department and the Plaintiffs in the current action have likewise been based upon the best knowledge to be had at that point. The Plaintiffs in the current litigation seek to change that understanding. Upon its completion, the pending civil action may increase our knowledge as to the status of the contested river bottom and implications for our constituents in as much as civil trespass actions are concerned. We will of course seek guidance from the Office of the Attorney General as the case progresses and concludes to learn of how our constituents may best be advised, including any signage and notification changes that may be shown appropriate now or in the future.

Finally, you note in several instances that the anglers in the current action were license holders utilizing a public resource, and express dismay that they could face litigation as a result of engaging in that use. As I hope is very clear above, the Department is truly concerned over the circumstances of the current case. As other parts of your letter indicate you clearly understand, however, this characterization greatly oversimplifies the current circumstances. A fishing or hunting license issued by the Department is not a mechanism for granting access to property, but rather affords the holder the opportunity to lawfully engage in hunting or fishing on property where those activities are permitted. Rivers that are public and available for fishing and other uses are made so by the Commonwealth's ownership of them, not by the Department's issuance of a license. The ongoing civil litigation does not challenge whether the anglers were licensed, or indeed directly whether they may fish in the affected area. Instead, what is alleged is that the bottomland lying beneath that river is not publicly owned, and that private ownership bars a private party from trespassing upon the river bottom without the private landowner's permission, as is the case with other private lands across the state.

In closing, let me reiterate that the Department and the Board are very concerned regarding the current litigation and any implications that it may have for our constituents. It is

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absolutely untrue that a lack of direct involvement indicates apathy or disinterest in the matter. As I have discussed above, your contentions to this effect need to be informed by the Department's legal authorities, the realization that it is the Commonwealth, and not the Department, that holds title to public bottomlands, and the understanding that determinations as to legal involvement are not within the Department's abilities, but are left to others with greater expertise in those matters (including, in this case, the Alleghany County Circuit Court). Nevertheless, we will continue to remain interested in this action until its completion, and as noted above, discussions regarding this topic remain ongoing. It is our hope that a solution for addressing these types of circumstances can be developed for the benefit of both private property rights and sportsmen's interests. Such a solution is beyond our current authority and may well require action by the Virginia General Assembly. In any case, we look forward to the opportunity to lend whatever assistance we may in order to help avoid these types of conflicts in the future.

Sincerely,



F. Scott Reed  
Chairman, Board of Game and Inland Fisheries

FSR/

C: Members, Board of Game and Inland Fisheries