Fishing For Clarity, Not Litigation

On July 10, 2012, I wrote an open letter to the Virginia Game Commission, the governing body for the Virginia Department of Game and Inland Fisheries (VDGIF), asking for clarity on where anglers can safely fish in Virginia without fear of litigation. The genesis for this letter was *North South Development v Crawford,* a case that pitted a riparian landowner against an angler on the Jackson River. The landowner believes he owns a portion of the Jackson River bed by virtue of a 18th-century crown grant issued by the King of England prior to the Revolutionary War. The angler felt that he had no reason to leave the center of the river where he was fishing because the state has advertised that part of the river as public property. The angler now owes $100,000 in legal fees and is accepting donations at Virginia Rivers Defense Fund (www.virginiariversdefensefund.org).

This is a case that only a lawyer could love; sportsmen, by contrast, find it highly troubling. Four facts in the case are not in dispute. First, the angler purchased a valid fishing license from VDGIF and used a public canoe launch to enter the river. Second, the angler used VDGIF-provided maps, posted online and still to be found in kiosks on the river, to determine where he could fish safely. Third, the angler stood his ground when told to leave the river by the landowner because he knew that the state advertised that area as public property. Fourth and finally, as soon as the angler was sued, the state of Virginia refused to assist him in any way.

As the outdoor writer who broke this story and the only journalist to date to get an in-depth interview with both plaintiff (the landowner) and defendant (the angler), I wrote to the VDGIF seeking clarity on the issues raised by the case. In response, the VDGIF issued a white paper that raises more questions than it answers. The Game Commissioners make it clear that the VDGIF has no authority to defend sportsmen and that those who take the state at its word do so at their own peril:

[W]hile much discussion has been had over the effect of a fishing license issued by the Department, in no case does a Department hunting or fishing license grant access to private property.

No rational sportsman believes that purchasing a Virginia hunting or fishing license means he is entitled to hunt or fish on private property. Rather, the purchaser of such a license believes it entitles him to hunt or fish on *state property*—that is, on property held in trust by the state for public use (in accordance, obviously, with all appropriate regulation). The latter continues:

They [that is, state-issued hunting and fishing licenses] *are instead authorizations to engage in the hunting or fishing activity in a lawful manner; the decision as to where to hunt or fish is a separate issue that must be addressed by the sportsman.*

The defendant in the case in question made the decision to fish in an area *designated by the state as public*. How exactly is the sportsman expected to know better than the state what is and what is not public property?

In fact, all we learn from the VDGIF white paper is that it is the position of the Commonwealth of Virginia that its responsibility to law-abiding sportsmen ends as soon as it has collected licensing fees. After that, you're on your own. And the Commonwealth's position affects not only anglers but all river users, including duck hunters, kayakers, birdwatchers—in short, anyone who may touch the bottom of a state river while recreating there.

Furthermore, crown grant ownership issues extend beyond the Jackson River. Because Virginia was a large, powerful, and prosperous English colony, nearly every river in the state was at one time conveyed by the crown to someone. Could large sections of venerable waterways like the James, Shenandoah, York, Hazel, Elizabeth, Rappahannock, and Rapidan be closed to the public because a landowner merely asserts crown grant ownership? Perhaps. In fact, the Hazel River in Culpeper County was closed to the public in direct violation of federal navigability laws for five years by an errant commonwealth's attorney. He eventually rescinded his own illegal decision when public outcry forced him to investigate the matter more fully.

In truth, the Jackson River riparian landowner, the plaintiff in *North South Development v Crawford,* did not want to sue. But as no other mechanism is in place in Virginia to determine the validity of a crown grant, he felt compelled to sue the angler. Why should any landowner be put in this position? Indeed, why should anyone legally enjoying Virginia's natural bounty risk a lawsuit? The Virginia legislature is currently grappling with this dilemma, and I hope for all our sakes that they remedy it sooner rather than later. Either that or change the state motto to "Virginia is for Lawyers."

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