Dear Chairman Reed, July 10th 2012

I write this letter to express my concern about the Virginia Game Commission's apparent lack of interest in what many Virginia sportsmen believe is a looming threat to our cherished freedoms. No doubt you are aware of the particulars of a case currently working its way through the Alleghany District Court: North South Development v Crawford has captured the attention of thousands of anglers, hunters, and paddlers across the mid-Atlantic.

The defendants in the case are a pair of anglers who are being sued for trespassing. The plaintiffs are landowners who claim to possess a 17th-century deed from the King of England—commonly referred to as a crown grant—granting them ownership of the bottom of the river. They argue that the defendants stepped on the bottom of the Jackson River, the plaintiffs' private property, while fishing. The Virginia Game Commission is familiar with crown grants: In 1996, the Virginia Supreme Court adjudicated (in favor of the plaintiffs) Kraft v Burr, also on the Jackson and also involving disputed access to and usage of crown grant property.

In June of 2009, Gary Martel, Director of Fisheries for the Virginia Department of Game and Inland Fisheries (VDGIF), wrote a letter to the landowners, stating that

- the VDGIF knew the landowners were posting the river as private property, which they had no right to do,
- state codes prevented the landowners from denying the public use of the river,
- state code asserts the river bottom belongs to the commonwealth,
- the VDGIF felt that the landowners might be engaged in angler harassment, and
- their crown grant claim was different from that recognized by the courts in the 1996 case.

In other words, the VDGIF made it clear then—and has maintained since then—that the river bottom in question was and is considered public land. Criminal proceedings against the defendants were thrown out of court because there is no indication that the anglers ever went beyond the river's high-water mark or trespassed on the privately owned riverbank property. Nevertheless, the plaintiffs are now suing the anglers in civil court for trespassing on what they claim is privately held Jackson River bottom.

In June of 2012, Judge Malfourd Trumbold ruled in partial summary judgment on behalf of the landowners, who have prima facie title—that is, the plaintiffs appear to have a stronger case for possession of the property than do the anglers. But the defendants never claimed to have any possession in the case: They took the Commonwealth at its word that, armed with a valid fishing license, they had the right to fish on property the state has deemed public.

As an avid sportsman, the facts in the case alarm me:

- Clearly the Game Commission has known for some time that the landowners claim possession of the river bottom and post it as private property. The landowners in question have attempted to prevent its public use.
- The defendants entered the river at a public put-in—a put-in purchased with taxpayer dollars and managed by the Commonwealth of Virginia.

- The anglers had paid for and held valid Virginia fishing licenses when the landowners confronted them.
- The anglers contacted the VDGIF before they fished the Jackson River to ensure that they were fishing on public property. VDGIF staffers assured the anglers that if they observed state-posted signs and steered clear of the recognized Kraft v Burr crown grant section of the river, they would be fishing legally in public water.
- The VDGIF website and VDGIF-posted signs along the river clearly stated then (and continue to state now) that the area the anglers fished in—the area they are currently being sued for trespassing in—remains in trust for public use and enjoyment.

Now, I am neither an attorney nor a judge nor a politician. I do not pretend to know all the precedents involved in crown grant disputes. I imagine that the plaintiffs, too, are frustrated that the only recourse left to them by the Commonwealth to demonstrate their alleged ownership of the river bottom appears to be to sue hapless sportsmen. The case raises a number of very important questions:

- Who determines what water is public in Virginia?
- Has the Game Commission asked the Attorney General's Office to intervene in the case to protect the rights of Virginia sportsmen to use resources the state insists are public?
- If the Game Commission asked the Attorney General's Office to intervene in this case when did this occur?
- What is the Game Commission's policy on assisting sportsmen who are facing legal action for engaging in legal activity with a valid state license on public property?
- Other Jackson River landowners have begun posting their property as private. How are anglers to determine where they can and cannot fish if they cannot trust the VDGIF-posted signs?
- If the state-posted signs along the Jackson River are not reliable, can anglers rely on the validity of VDGIF-posted signs on other rivers or hunting areas across the Commonwealth?
- At this writing, the defendants in North South Development v Crawford have incurred nearly $80,000 in legal fees defending themselves from criminal and civil prosecution. Can you explain why any Virginia sportsman should purchase a hunting or fishing license if the Commonwealth has no intention of defending them from legal action for engaging in the very activity for which the state has sold them a license?

No doubt the issues surrounding this case are more complicated than they at first appear. And yet on one salient point, surely we can all agree: Sportsmen with valid state-issued licenses must be able to trust that, so long as they obey the law, they can hunt and fish without fear of prosecution on public land. If sportsmen cannot so trust, then we may anticipate that this case will have a chilling effect on Virginia sporting tourism even before the case itself is settled: If anglers know that the Commonwealth, while happy to sell them a license, will not lift a finger to protect them from prosecution for using that license, then any stretch along a colonial-era river—like the

Cowpasture, York, Elizabeth, Hazel, and even the James and Shenandoah—may be privatized de facto simply by posting it so.

As an outdoor writer, I am frustrated by the Game Commission's apparent inaction in this case. As a guidebook author, I am concerned that my books (and maps) accurately reflect where fellow anglers may safely fish. As an avid sportsman, I am afraid of stumbling into a similar mess on one of my many fishing trips across the state. And as a Virginian, I am absolutely nonplussed that the courts appear to be the only place that something as significant as a crown grant will be recognized, forcing fellow Virginians into a needlessly adversarial relationship to undertake by proxy what should be the responsibility of the state legislature.

The VDGIF by and large enjoys an excellent relationship with sportsmen across Virginia which is well deserved. The current court case however has thrown a cloud of suspicion on what waters remain open to the public, and just what the public can legally access and use once they have purchased their license. Mr. Chairman, Virginia sportsmen across this great Commonwealth await your response to these pressing questions. I respectfully ask that you respond to my letter as soon as possible.

Respectfully,

Beau Beasley
Author, Fly Fishing Virginia