



## News

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### **SUIT THREATENS PUBLIC'S RIGHT TO ENJOY VIRGINIA'S RIVERS AND STREAMS**

- *Jackson River dispute could set precedent for other state waterways*
- *Attorney General's office urged to defend citizens' right to recreate*

COVINGTON, Va. -- A civil case against three Virginia anglers starting July 25 in Covington could set a precedent that would limit the public's right to use and enjoy rivers and streams across the state.

The proceedings in Alleghany Circuit Court will determine whether the state of Virginia, which owns the river bottom on public waters, will be a party to the suit going forward. The Attorney General's office has not filed papers with the court or expressed an intent to defend the Commonwealth's interests.

Dargan Coggeshall, one of the anglers named in the civil case, said: "I was fishing a section of the Jackson River that I have fished for years and an area that the Virginia Department of Game and Inland Fisheries has said was public water. I was told by a game warden that I could paddle and wade so long as I stayed within the high water mark. I don't understand how a private entity can usurp the public's right and in effect seize state-owned property that all citizens have the right to enjoy."

The case, North South Development, LLC, et. al. v. Frank Garden, et. al., has been brought by a development company seeking to create a private trout fishery for purchasers of its properties on a stretch of the Jackson River that historically has been patrolled, managed and promoted as public water by the Virginia Department of Game and Inland Fisheries. The suit charges the anglers with civil trespass for getting out of their kayaks and wading the river while fishing and seeks \$10,000 in damages.

North South Development owns River's Edge, a private community and golf course on the banks of the Jackson River several miles upstream of Covington. The company claims it owns the river bottom through a King's Grant on a 3-mile stretch that flows past its second-home lot sites and golf course development.

If the Commonwealth is not compelled to join the case on July 25, then it will be up to the defendants to prove that the North South Development does not own the river bottom and that it belongs to the state. Since none of the defendants claim to own the river bottom, their lawyers have asked the court to attach the state as a third-party defendant to the suit.

"If the developer wins, it could serve as precedent to privatize other riverbeds in the state," Said Bill Tanger, chairman of the Friends of the Rivers of Virginia. "It could embolden other landowners to post streams and assert ownership of the bed."

That concern mobilized fishing, hunting, paddling and conservation organizations to create the Virginia Rivers Defense Fund.

The Defense Fund:

- Has launched a website: [www.virginiariversdefensefund.org](http://www.virginiariversdefensefund.org). Those interested in learning more about the case and its implications will be able to keep tabs on the case as it progresses.
- Started a campaign to raise money to help pay the legal bills of the anglers who are fighting to preserve river rights for all Virginians. To contribute, please visit the website and click on the donation button.
- Is urging all those who enjoy Virginia's public rivers to contact their state-elected officials and to write Attorney General Ken Cuccinelli urging his office to protect the rights of its citizens to recreate on public waters. To contact the attorney general:

Mail: Office of the Attorney General  
900 E. Main Street  
Richmond, VA 23219  
(804) 786-2071 OR Toll free in Virginia only: (800)-451-1525

Email: [KCUCCINELLI@OAG.STATE.VA.US](mailto:KCUCCINELLI@OAG.STATE.VA.US)

"This is a case in which everyone who enjoys Virginia's rivers and streams has a stake," said Jeff Kelble, Shenandoah Riverkeeper. "Although the suit deals with the Jackson River, I am concerned about how a decision against the anglers might be used to restrict the enjoyment of public waters such as the Shenandoah, James, New River, Roanoke, Chickahominy, Rappahannock and scores of others."

For more than two years, the developer of the River's Edge golf community along the Jackson River has been posting "No trespassing, fishing, boating or wading" signs along a stretch of the river, just below a Virginia Department of Game and Inland Fisheries' boat ramp at Smith's Bridge.

On its website, the fish and game department lists that stretch of the river as public water. Anglers have understood for years that they could fish and wade in that area so long as they did not go above the high-water line.

Over the course of more than a year and several fishing trips, one of the defendants, Coggeshall of Charlottesville, had several encounters with the owners of the development after launching his kayak at Smith Bridge and floating downstream. At productive looking spots, he would get out of his kayak and stand in the river to fish, which is where the developers would approach him from the bank, claiming he was trespassing, threatening to call law enforcement and snapping pictures.

Coggeshall said, "Although I had checked several times with the VGDIF and the Alleghany Sheriff's Department to substantiate my right to stand in that section of the Jackson River and fish, the harassments continued. I didn't ask to be sued. I just wanted to fish in a river which the state promotes as a public fishery."

On August 16, 2010, the anglers were served with warrants charging them with a Class 1 Misdemeanor of criminal trespass. In October, 2010 a General District Court judge dismissed the charges against all three men.

In February 2011, the development company and one of its lot buyers filed the civil trespass case in the Alleghany Circuit Court.