



COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.
Secretary of Natural Resources

Department of Game and Inland Fisheries

Robert W. Duncan
Executive Director

June 19, 2009

Matthew F. Sponaule
North South Development, LLC
227 Pioneer Road
Covington, Virginia 24426

Dear Mr. Sponaule:

A number of constituents have contacted this Department regarding the posting of the Jackson River in the area now known as The Rivers Edge. It is our understanding that you are leading this development effort and suggest that you share our comments with your other Board members. We have reviewed the rules and operating agreement of the Jackson River Fly Fishing Club LLC. After reviewing this situation with the Attorney General's Office, we offer the following guidance:

1. Pursuant to § 28.2-1200 of the *Code of Virginia*, all the beds of rivers within the jurisdiction of the Commonwealth that have not been conveyed by grant or otherwise in accordance with law remain the property of the Commonwealth and may be used as a common by the people of the Commonwealth for purposes stated therein, including fishing.
2. Within The Rivers Edge the Jackson River is navigable; moreover the ruling of the Virginia Supreme Court in *Kraft v. Burr*, 252 Va. 273 (1996) does not apply to that portion of the River.
3. Of course an owner of riparian property can post and restrict access to private land. However, unless such an owner can establish that a particular portion of a river is the subject of a conveyance or grant as described by the statute above, it is the position of this Department that it is available for public fishing by persons who legally access that river. Since as noted the Commonwealth is presumed to own the river bottom, any effort to post the use of that land could be considered a violation of § 18.2-119.1 of the *Code of Virginia*. Furthermore, any attempt to interfere with public fishing rights could also be construed as a violation of § 29.1-554.1 of the *Code of Virginia*.

Matthew E. Sponaugle

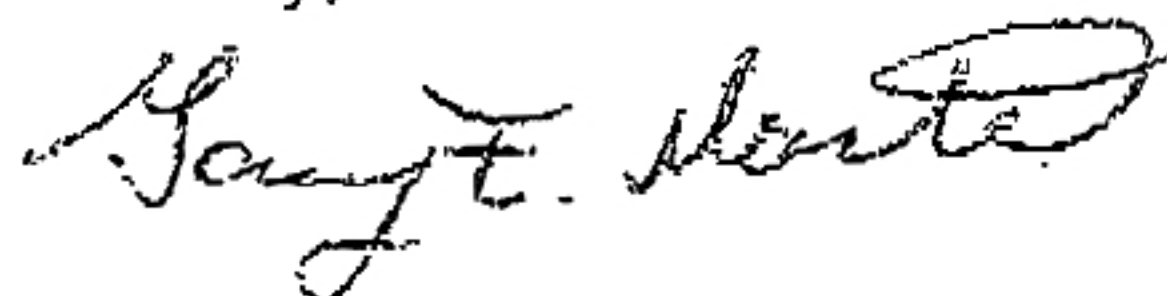
June 19, 2009

Page 2

4. Management of fisheries on the public waters of the Commonwealth is the responsibility of this Department, consistent with regulations adopted by the Board of Game and Inland Fisheries. As to the applicable provisions of the *Code*, those regulations have the force and effect of law. Therefore, while a private club may make and enforce whatever rules it desires for its members, such rules - even if they are more restrictive than the Board's regulations - cannot in any way affect or replace the duty to comply with the applicable statutes and regulations.

I will be happy to discuss at your convenience.

Sincerely,



Gary Martel
Director, Fisheries Division

GFM/fha

cc: Roger L. Chaffe

Robert W. Duncan

Larry O. Mohn

cc. D.R. WHITEHURST