



"TROUT LINES"



Virginia Fly Angler Loses Jackson River Case

by Beau Beasley

(Editor's note: I've fished the Jackson River a few times during the time I resided in Virginia, I thought it to be relevant to WV fishermen with the close proximity and these same laws have been questioned in WV streams as well)

With the exception of his two attorneys, Dargan Coggeshall stood in the courtroom completely alone as the decision in *North/South Development v Crawford* was handed down. The avid Virginia fly angler has been embroiled in a lawsuit for the past two years over the use of the Jackson River, and in particular his ability (and that of the public) to wade in a certain section of the Jackson River. Considered one of the best wild trout fisheries in the east, and the only trout stream in the Old Dominion large enough to float a drift boat, the Jackson River draws visiting anglers from multiple states.

Covington.

Coggeshall's trouble began in June of 2010 when he was charged with criminal trespassing by North South Development, a small family owned company which sells river front lots. According to the owner of the company Coggeshall was warned multiple times not to return to an area which they had posted as private property between two public access points from Smith Bridge to Indian Draft. Coggeshall who had fished the river for years claimed he had every right to be in the river since the Virginia Department of Game and Inland Fisheries (VDGIF) advertised it as public water. Indeed multiple signs still exists at the public put ins along the river, and on state created maps informing anglers they could fish in the same area where the angler was charged with trespassing.

Once Coggeshall was served with a criminal charge of trespassing he contacted the VDGIF and was shocked to find out that while they had been happy to sell him a license, they had no authority to represent him in court. The embattled angler eventually had his day in criminal court and was relieved when the case was nol-prossed due to lingering questions as to river bed ownership. Failing a criminal conviction however, North/South Development refilled civil charges and sued the angler for \$10,000. During his ordeal the angler eventually contacted the Virginia Attorney General's Office as well, but was told since the state was not a party to the case they had no reason to be in court much less represent him.



Virginia's Jackson River

Sportsmen around the state were outraged to discover a license holding angler, who was obeying game laws while fishing in waters the state claimed was public, would not be aided in any way by state authorities. Members of several TU chapters, private citizens as well as companies like Patagonia chipped in funds to mount a legal defense, but this effort proved to be inadequate and in the end the angler stated lack of

funding as a major reason he was abandoning his case. Prior to and during the case the riparian landowner claimed to have a chain of title leading back to a pair of 18th century land grants issued by King George II. Virginia law which asserts state ownership of river bottom, didn't occur until 1802 long after numerous crown grants had been issued. These grants have led to some landowners claiming the state has over stepped its authority by intentionally sending sportsmen on to private proper-

Friction between landowners and anglers is nothing new along the Jackson River and started almost immediately with the creation of the Gathright Dam. The dam built in the late 1970's turned what was once a warm and shallow water bass stream, into a blue ribbon trout fishery with browns occasionally pushing 20 inches. Kayaks, rafters and float tubers are also frequent visitors to the river and local businesses seem eager to draw tourist to the tiny towns of Clifton Forge and the larger town of



ty. VDGIF officials recently disclosed in a white paper written in response to concerns about the case, that state officials presume to own the state’s riverbeds. Uncertainty remains however as to which riverbeds they specifically own in whole or in part due to the expense of investigating such crown grant claims.

Crown grant or king’s grant cases as they are often called, rarely lead to litigation in Virginia. Thus named because the land grants were originally deeded from monarchs in Great Britain, king’s grants have become a flash point between landowners and river users across the state. Virginia was one of the original 13 colonies and much of its laws are rooted in English Common Law, especially as it pertains to property. Two previous cases involving anglers on the Jackson River were decided in 1955 and 1996 and in both cases landowners won. Though the state of Virginia claims to have ultimate ownership, these riparian landowners proved prima-facia title, a legal term meaning they “appear on the face” to have superior claim to river bottom than the public. The ultimate decision as to who has actual ownership of the riverbed was left undecided since the state of Virginia refused to enter the case.

Some have speculated that since *North/South v Crawford* was a civil case, it doesn’t apply to others in the general public. This assumption is incorrect and those that return to this section of the river and touch bottom without prior approval of North/South Development are now subject to criminal prosecution. Some in the sporting community have decided not to return to the Jackson River and all and some fly shops have stopped taking clients there stating the ambiguity of the situation. There is however several miles of river below the dam which are not posted by landowners and these owners have no objection to anglers fishing as long as they stay in the river.

Sportsmen across the state have grown more concerned as they’ve discovered the state is unsure as to what its ownership rights are as it pertains to riverbeds. Anglers have also expressed their displeasure at not being certain where they can and can’t fish if VDGIF signs are unreliable. This coupled with the states reluctance to assist anglers who are sued while following all VDGIF rules and regulations have led some sportsman to discuss burning their fishing licenses in a public protest. Anglers are hopeful the state’s legislative body the General Assembly will be willing to provide clarity in this coming session. Thus far however, the only legislator who has shown any leadership on the issue is Delegate Scott Lingamfelter (R) of Fauquier County. Lingamfelter, head of Virginia’s Sportsmen’s Caucus, is running for Lieutenant Governor in 2013. Lingamfelter has stated he is very concerned with the ambiguity of the situation where state inaction thus far has pitted landowners and sporting citizens against each other. In regards to crown grants Lingamfelter said “I’m ready, willing and eager to bring something about this issue to the legislature.” Though an avid sportsman himself, Lingamfelter is keen on protecting property rights and is known for his balanced approach to tough issues.

Anglers in Virginia are still trying to determine how this case may affect other rivers in the state where crown grants are known to exist. Popular rivers like the James, Shenandoah, Cowpasture, Rappahannock, Hazel and York are all subject to crown grants. While anglers are currently barred from touching bottom on this new section of the Jackson River between Smith Bridge and Indian Draft, they can still fish there from a boat since the act of fishing was not before the court. While Coggeshall agreed he would not touch bottom on that section of the river in the future, he was not required to pay damages. Virginia fly anglers have watched *North South Development vs. Crawford* since the beginning and no doubt some will return to the river while avoiding this section. Others however have sworn not to return to the Jackson River at all, fearing they too may end up standing in court all alone.

Congratulations Ernie!

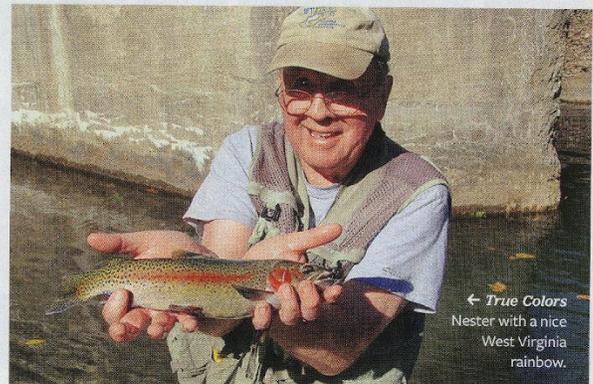
Ernie Nester was recently recognized in the December/January issue of Field and Stream magazine.

F&S

CONSERVATION // BULLET POINTS

Heroes of Conservation

A West Virginia fisherman cleans up one trout stream and bails out another > BY KRISTYN BRADY



← True Colors
Nester with a nice
West Virginia
rainbow.

Ernie Nester, Falls View, W.Va.

Not only does Nester organize a major trash cleanup on 4 miles of Elkhorn Creek with the Kanawha Valley chapter of Trout Unlimited every April—helping the stream’s rainbows, browns, and brookies—but he has also mobilized an annual volunteer bucket brigade to haul 10 tons of limestone sand, which neutralizes acid runoff, through a vehicle-restricted wilderness area to the Middle Fork of the Williams River. “In less than 10 years we’ve discovered young brookies in what used to be barren waters—that’s very satisfying,” says Nester.



Photo by Ernie Nester

Max Robertson

The Kanawha Valley Chapter (KVCTU) Access Team began a program to involve streamside landowners in a Voluntary Catch and Release (V C&R) in August of 2005 when the first signs were placed on Dunloup and Loop Creeks. Our objective, in undertaking this project, was to encourage landowners to continue to allow the public to fish while at the same time practicing trout conservation on their property. Today the vast majority of the residents along Dunloup Creek from the old campground to bridge on Red Star Church Road, almost 2 miles, are involved. This stretch receives brown trout fingerling stockings annually (a Chapter project in cooperation with the DNR).

The signs we have provided to the landowners belong to the landowner. Some of the 1st signs placed in the campground on Dunloup Creek in 2005 are still there! The campground, though now closed and posted no trespassing, is still open to fishing! Access the stream in the campground by fishing up from below and you will see V C&R signs throughout the campground and continuing up past the log house, where you can get out of the stream or continue to fish. This particular stretch of stream is a good example of a landowner posting property to no trespassing while still allowing fishing!

Over the 7 years that the program has been in existence, the Chapter has worked with around 30 different landowners in 5 different watersheds. Today there are over 20 landowners still involved. Our success has been in rural residential areas, such as along Dunloup Creek, where the streams are already open

to the public. Our initial hope was that we could get a landowner to open a stream on their property to the public. V C&R activities on streams like Dunloup Creek get the involvement of the landowner in the fishery, promoting catch and release, and keeping the stream available to the public. Those of us, who fish such waters, must respect the landowner’s property, thank them for allowing fishing, carry out trash, and continue to talk about the value of having trout on their property.

We found that it is best for landowner, or the Chapter, to install the signs in such away that they are only seen from the stream. In addition to the signs, we provide three landowner guidance documents covering landowner participation, releasing trout, and sign installation. Voluntary Catch and Release can be practiced on property posted for no trespassing with proper sign placement. Such a stretch of stream might be a candidate for exploring the possibility of fingerling stocking.



Bill Hannabass on Loop Creek

NOTE

If anyone is replacing their old fly line please don’t throw it away. Please give your old line to Charlie Krepps so that it may be used in the winter educational classes.



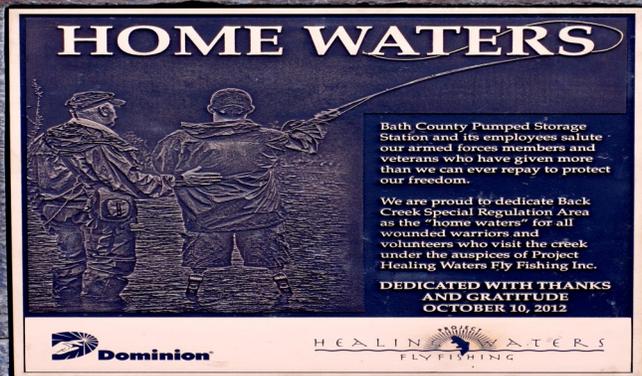
Bob White, Program Lead Huntington VAMC

Project Healing Waters Fly Fishing is the official and only name we use (as there is another charity group with the name "Healing Waters") so that no one would be confused about our activities, we added the obvious Fly Fishing.

The last Regional outing, the second this year, was something of a special event. Other than taking nine men and the first female veteran, there were two from Huntington and one from Beckley programs who each received all their fishing gear plus the special logoed 9' 5 wt. fly outfit to keep and use on any future fly fishing trip.

picture taken and it has been posted at the pump station to show the inaugural group of veterans enjoying the huge rock with the brass plaque designating the waters for future times to come.

Huntington will start meetings back up every Thursday at 6:00 at the VA recreation center. General info for awhile and in January we go right into rod building through April. Please take this as an invitation to anyone who would like to see this program in ac-



tion. You certainly would be most welcomed and I think it would serve as reinforcement to the commitment that TU has for these people who have served our country well.

In addition to everyone catching lots of trout, there was lots of socializing and pic-nicking under a large streamside tent. Talk about atmosphere for lunch and dinner, lots of sunshine, only a little wind but pleasant weather for all to enjoy.

This was a special time for the veterans as the Dominion Power employees erected and dedicated a monument with the inscription "Home Waters For Veterans". The Virginia Lieutenant Governor made a speech as the unveiling took place with press and TV cameras focused on the proceedings. The vets had a

Email Addresses Needed

The KVCTU board has voted to stop regular mail delivery of the Trout Lines Newsletter as of January 2013. With the recent Facebook and website creations along with email delivery, the added cost of mail outs was determined to be no longer acceptable.



UPCOMING KVCTU EVENTS

- December 11th, Membership Meeting, South Charleston Library 7:00PM-9:00PM Program will be "New River Gorge National River: Our Place of Heritage and Happenings" Presented by Jodi French-Burr an Interpretive Park Ranger with the National Park Service for over 25 years.
Bring a fly for the "DoorFly Drawing" and as always Charlie will have the fly sales before and after.
- There will not be a KVCTU board meeting for the month of December
- January 8th, Membership meeting, South Charleston Library 7:00PM-9:00PM, Program will be the annual fly tying prior to the Hunt show.
- January 18th through 22nd West Virginia Hunt and Fishing Show at the Charleston Civic Center
- January KVCTU Board Meeting , South Charleston Library 6:30PM-8:30PM

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Email: wvflyfishr@gmail.com

KVCTU Winter Classes

Winter Fly fishing Classes start January, Introduction to Fly Fishing, Beginning Fly Tying and Beginning Rod Building will be offered in the first session. The second session will immediately follow the first and include Intermediate Fly Fishing, including video taping and review of participant's fly casting, Intermediate Fly Tying and Intermediate Rod Building.

In past years, additional "specialty" classes, such as Winter Fishing and Wilderness Fishing, have been presented. If enough are interested.

Send you ideas and suggestions to Charlie Krepps at cmkrepps@suddenlink.net or Ken Eigenbrod at kene.wv@suddenlink.net.

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