

**SAVE YOUR  
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# CURB UPDATE



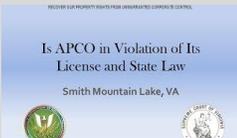
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**NOVEMBER 20, 2015**

**OUR MISSION IS TO EDUCATE AND INFORM ...**

**VOLUME 1, NUMBER 11**



**CURB YOUTUBE  
CHANNEL**



**LITIGATION STATUS**

## **IMPORTANT LINKS**

**Stakeholder Stories**

**APCO Authority**

**Property Owner Survey**

**Realtor Survey**

**CURB Handouts**

**Relevant Case Law**

**Sign Our Petition**

**Articles of Incorporation**

**FAQs**

**Timeline**

## **CURB Continues to Support Challenges in Defense of Our Property Rights**

The Federal Power Act (FPA) authorizes the Federal Energy Regulatory Commission (FERC) to award and enforce licenses for hydroelectric generation. APCO was issued its original 50-year construction/operational license in 1960. Also around this time, Appalachian Power Company (APCO) acquired easement rights to flood privately owned lands to build the two dams and impound the three rivers to form Smith Mountain and Leesville reservoirs. The original license did not require the company to regulate shorelines or uses within the project. Permits were not required nor issued to property owners to build residential docks, beaches, commercial marinas, boat ramps, retaining walls, restaurants, etc. For the first 40 years FERC oversight was consistent with the original license terms, and APCO operated the project while it honored the flowage easement terms and conditions. Then in August 2003 APCO rewrote the rules with their Shoreline Management Plan.

However, the underlying flowage easements were not changed and APCO failed to purchase additional property rights needed to regulate shorelines. Virginia easement law is unambiguous--shoreline property owners retain the right to use these easement lands for any purpose so long as that use does not prevent APCO from flooding. In 1996 the Virginia Supreme Court ruled: "In determining the scope of an easement, we have repeatedly held that the owner ... retains the right to use his land in any manner which does not unreasonably interfere with the use granted in the easement." (*Walton v. Capital Land, Inc.* 477 S.E.2d 499 (1996) 252 Va. 324 Record No. 952244. Supreme Court of Virginia) Under Virginia property law, no owner is required to seek APCO's permission or sign APCO's revocable permits to build a dock, landscape their property, graze cattle, or make recreational use of the land below the 800 foot contour.

APCO's license requires it to either own or control the lands within the project boundary, and FERC can only enforce license requirements through APCO's legally acquired property rights. It is impossible for a property owner to violate the FPA or APCO's license because neither applies to non-licensee property owners. Contrary to this undisputed law, APCO convinced the U.S. District Court for the Western District of Virginia that its federal license replaces private property rights and grants it regulatory authority over non-licensee property owners. The court's position is inconsistent with the 1954 U.S. Supreme Court ruling holding that one's "private property rights are rooted in state-law," and determining that neither [the FPA], nor the license issued under it, expressly abolishes existing property rights." (*Niagara Mohawk Power Corp.*, 347 U.S. 239, 250, 256 (1954), U.S. Supreme Court)

Unfortunately, the Western Virginia U.S. District Court has a history of exceeding its limited jurisdiction and reaching beyond its constitutional powers, regarding APCO's claimed regulatory authorities. In 1977 the U.S. Supreme Court ruled: "under our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States, and further dictating that the great body of law in this country which . . . defines the rights of its [property] owners in relation to the state or to private parties, is found in the statutes and decisions of the states." (*State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378 (1977), U.S. Supreme Court) By disregarding Virginia property law, this court is creating new general federal law, and in doing so, is violating constitutional and federal law.

Federal district courts have no business determining state property rights or enforcing APCO's license responsibilities upon private property owners. The U.S. 4<sup>th</sup> Circuit Court of Appeals, to which all appeals in this region are directed, has declared: "the interpretation of easements is a matter of state-law and "does not turn on some construction of federal law," and, as such, "federal-question jurisdiction under [28 U.S.C. 1331] will not lie" (*Columbia Gas Transmission Corp. v. Drain*, 191 F.3d 552, 558-59 (4th Cir. 1999), further reinforcing the fact that this federal district court lacks jurisdiction to adjudicate state property rights.

The Western Virginia U.S. District Court must be constrained to uphold established law and superior court rulings. However, the court ignored this body of law when it dismissed *Pressl v. APCO* on October 6<sup>th</sup>. It is ironic that the very court empowered to enforce constitutional and federal law and uphold the separation of federal and state powers, blatantly disregarded its principal duty. This is why appeal to the 4<sup>th</sup> Circuit Appellate Court is absolutely justified and underway. Recreational access through dock ownership and transfer with land title is our deeded property right. APCO's rights are limited to flooding for the purpose of hydroelectric generation. This is a protracted battle and CURB is in it for the long-haul. Our property rights must be defended.

*Definition of **Extortion** -- obtaining of property from another, with consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.* (18 U.S.C. § 1951)

For a more in-depth understanding, we recommend the following CURB videos be viewed:

1. [Read Your Flowage Easement](#)
2. [Read APCO's Dock Permit](#)
3. [History of Regulation](#)
4. [What Did APCO Permit](#)
5. [APCO Manipulated the Judicial System](#)

Please consider making a donation to support the ongoing legal effort and education programs. CURB is a registered 501c(4) not-for-profit Virginia Corporation. Your donations to support CURB efforts are not discoverable and remain anonymous. Use the donate button on this Update. Thanks for your continued support ... For Our Property Rights

**Bill Brush**