

**SAVE YOUR  
PROPERTY RIGHTS  
SUPPORT C.U.R.B.  
WWW.CURB-FERC-AEP.COM**

# CURB UPDATE



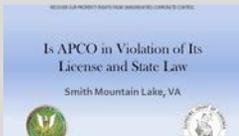
81 LIGHTHOUSE LN MONETA, VA 24121

[CONTACT-US@CURB-FERC-AEP.COM](mailto:CONTACT-US@CURB-FERC-AEP.COM)

JULY 18, 2016

OUR MISSION IS TO EDUCATE AND INFORM ...

VOLUME 2 NUMBER 3



[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](#)

## NEXT CURB MEETING – THURSDAY 18 AUGUST WESTLAKE LIBRARY 6:00 TO 8:00PM

**IMPORTANT UPDATE** -- On Friday July 15<sup>th</sup> we heard from the US 4<sup>th</sup> Circuit Court of Appeals that it scheduled oral arguments for the Pressl appeal during the week of October 23<sup>rd</sup>. Although this news was expected, **IT IS GREAT NEWS!** The Court had the ability to rule without the benefit of oral arguments, but in those instances, rulings are often against the appellant. However, in the Pressl case, the Court must feel Pressl's appeal has merit and it gives our attorneys the opportunity to explain the unjust and illegal taking of property rights supported by Judge Moon in the Western District of Virginia Federal District Court.

Pressl and Nissen are the first to appeal Judge Moon's decisions based upon the absence of federal jurisdiction and the authority of state courts to determine state property law. Both cases will be heard by a panel of three appellate justices who are guided purely by law. [Pressl's appeal](#) asks the appellate justices to correct the mistakes the lower court made when it issued its decisions.

The exact day for oral arguments will be scheduled later. If there is interest in witnessing the oral arguments, C.U.R.B. may arrange for transportation to take supporters to Richmond, VA.

**Background** -- Recall that Rick and Terry Pressl first filed their lawsuit in Franklin County Circuit Court on **June 2<sup>nd</sup> 2015**, which asked the court to determine if APCO's flowage easement was sufficient for APCO to impose shoreline management regulations upon Pressl's property. APCO immediately removed the suit to Federal District Court on June 23<sup>rd</sup> 2015. Following a series of motions, on **October 6<sup>th</sup> 2015** Judge Moon denied Pressl's motion to remand the case back to Franklin County Circuit Court where it was originally filed. Judge Moon reached his erroneous conclusion claiming that since APCO has a federal license, the Court has jurisdiction over all of Pressl's complaints, including purely state-law property claims. To reach this conclusion the Court ignored Article III of the U.S. Constitution, U.S. Supreme Court and U.S. Fourth Circuit Court of Appeals legal precedent, and relevant U.S. Code that precludes federal district courts from deciding purely state-law property claims.

Then Judge Moon granted APCO's motion to dismiss the case. In doing so Judge Moon reached two erroneous conclusions: (1) that the flowage easement requires the Pressl agree to and sign APCO's dock permit; and (2) because the Pressl's failed to obtain an APCO permit, they did not exhaust all administrative remedies through FERC and are required to do so. The Court failed to follow state property and easement law. The bedrock document, being the 1960 flowage easement, does not require the Pressl's or anyone else to agree to and accept the APCO permit's terms and conditions. APCO's permit is not a part of their license and has not been approved by the FERC. Every flowage easement clearly states there is no requirement for the landowner to seek a revocable license from APCO for recreational purposes. In the second conclusion, for the Court to rule that the Pressl's failed to exhaust administrative remedies, the court failed to recognize that established federal law prohibits FERC from adjudicating state-property rights and consequently FERC cannot and will not hear Pressl's state-law property complaint.

We fully expect the 4<sup>th</sup> Circuit to vacate Judge Moon's dismissal order and to immediately order remand to Franklin County Circuit Court.

The Nissen appeal follows Pressl in the 4<sup>th</sup> Circuit. A favorable ruling for Pressl will bode **BAD NEWS** for APCO. The essential arguments in both cases are that Federal District Court Justice Moon lacked jurisdiction to decide purely state property law disputes and that a landowner cannot violate the federal power act, as it only applies to FERC and its licensees. Victories here will forever preclude APCO from dragging property owners into federal court to determine a landowner's right to use their easement for any purpose that does not violate APCO's right to flood.

**WHY IS THIS IMPORTANT** -- Victories in both Pressl and Nissen will benefit all lake front property owners in several ways. Foremost is that APCO will no longer be able to intimidate property owners into signing away their rights to use the flowage easement for any purpose so long as that purpose does not prevent APCO from flooding, operating and maintaining the dam and power station. APCO will no longer 'own' your dock and will not be able to order you to remove it, should APCO determine your dock is "no longer in the public interest." APCO will no longer be able to tell you when and how you landscape your property below the 800' contour. APCO will no longer be able to issue revocable licenses and require landowners to abide by its federal license and all future amendments and new licenses. **No more permits, no more arbitrary inspections, no more ridiculous rules, no more interference in the sale of your property.** If APCO disputes your use of the easement, they will be forced to take their dispute to state court in the county where you reside, and be required to prove that your use violates the flowage easement agreement and materially prevents them from flooding, operating and maintaining the dam and power station. There are over 7,500 docks on Smith Mountain and Leesville Lakes, most unpermitted by APCO, and APCO has successfully flooded, operated and maintained the dam and power station for over 55 years! Good luck proving that a dock violates the limited flowage rights APCO was granted by the landowner.

Our Property Values will start to recover once APCO's arbitrary and inconsistent regulations are found not apply to private properties with recorded flowage easements. APCO will be forced to honor the flowage agreements they made with property owners in 1960 and will have to answer to FERC why it misrepresented property rights when it applied for its new license in 2010.

---

**DONATIONS ARE NEEDED** – We need your continued financial support to continue these legal fights. Everyone will benefit from these victories and it's only right that everyone shares the cost of this legal defense of our property rights. For those that have already signed APCO's permits and encumbered your property rights, victory will mean the terms of the flowage easement holds precedence over the permit and render any conflicts invalid. 100% of your contribution goes to fund legal expenses. CURB Officers and Directors are legally bound not to financially benefit. 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 the first page of this update. Thanks for your continued support. *For Our (Your) Property Rights ...*

---

**ELIMINATE IGNORANCE** – Before you agree to sign any APCO's property stealing revokable permits, at least read the permit and your flowage easement. Seek the professional advice of a competent attorney. We know several. If you can postpone efforts for another few months, do so to avoid signing away your property rights without being compensated. Remember APCO will allow you to maintain or repair your dock without interference, so long as you don't change its footprint. Be patient, vigilant and informed.

For a more in-depth understanding, we recommend viewing the following CURB videos: [Read Your Flowage Easement](#) [Read APCO's Dock Permit](#) [History of Regulation](#) [What Did APCO Permit](#) [APCO Manipulated the Judicial System](#)

*Bill Brush*