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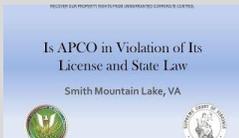


**81 LIGHTHOUSE LN MONETA, VA 24121
CONTACT-US@CURB-FERC-AEP.COM**

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OUR MISSION IS TO EDUCATE AND INFORM ...

VOLUME 2 NUMBER 6



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Be Aware of Your Dock Ownership and Land Rights

The recent US Fourth Circuit Court of Appeals decision in Pressl v APCO, Case No. 15-2348, 21 November 2016 ruled:

"... since FERC regulates only APCO, the Pressls themselves could not violate the Federal Power Act by constructing a dock. ... The Pressls challenge only whether the flowage easement by its terms allows APCO to prevent them from building a dock. ... State courts are just as able (perhaps more able) to interpret and enforce the property rights conveyed through instruments governed by state law. ... The interpretation of a state conveyance is a quintessential question of state property law, and Congress has limited our jurisdiction over such cases. ... For the foregoing reasons, we vacate the judgment of the district court and remand the case [back to Franklin County Circuit Court]."

APCO has gone to great extremes to avoid state court, presumably because APCO believed federal district court was more favorable to its property claims. We expect state court will determine that APCO lacks the flowage rights to regulate private landowner's property and require landowners to execute permits. This decision will be based on state easement law, without consideration of the federal license or shoreline management plan. Only the language of the easement, the understanding of the parties at the time of easement creation, and the 45 years of custom and practice recognizing shoreline owner's rights to construct, own and maintain docks without seeking APCO's approval, will be considered.

Virtually every shoreline property on Smith Mountain and Leesville Lakes is subject to a circa 1960 flowage right and easement deed. Every flowage easement contains the same language regarding landowner retained rights and APCO's limited rights. This easement grants Appalachian Power Company (APCO) the right to overflow, with water, the premises described in the easement, up to and occasionally beyond the 800 foot elevation on SML and the 620 foot elevation on LVL, for the purpose of operating and maintaining the dam and power station. Without this easement, APCO could not operate the Smith Mountain and Leesville dams. The standard flowage easement also reserves the right of the landowner to use the easement for any purpose, so long as that use does not interfere with APCO's flowage rights. The flowage easement deed is the difference between a water view property and a shoreline property and it adds tens to hundreds of thousands of dollars in value. In 2005 George Vogel II, Esq. wrote the Federal Energy Regulatory Commission (FERC) stating:

"A lot without access to the lake, even though it may have a view, may bring \$40,000.00 to \$50,000.00, whereas a similar lot with lake access and the right to construct a boat dock may bring \$400,000.00 to \$500,000.00."

A real estate contract is an agreement between a seller and buyer, which completes when the buyer pays the seller the agreed price and the seller transfers the property deed. A warranty deed is the most common type of deed used in real estate purchase and sale transactions. It guarantees that the land title, which normally includes structures such as houses and certainly by historical practice, docks, is good and marketable. A common practice among local real estate attorneys is to not include a reference to the flowage easement in the warranty deed, and to not furnish a copy of the flowage easement to the buyer at closing. Consequently, buyers are unaware of the easement, do not understand its critical significance, and do not realize the substantial valuation it adds to the property.

The **Roanoke Valley Association of Realtors (RVAR)** is directing its Realtors to complete and attach a lake addendum to the sales contract for shoreline properties. This addendum makes the sale contingent upon APCO's inspection and certification that the property and dock conforms to APCO's shoreline regulations. No federal or state law grants APCO the right to perform inspections, to demand a buyer agree to its permits or requires a Realtor to use the lake addendum as a condition of the sale.

Buyers, unaware of the land rights they retain, often sign away those rights on the advice of their closing attorney. Local closing attorneys encourage shoreline buyers to sign a separate agreement with APCO that encumbers the property and grants APCO extensive rights beyond its limited flowage rights, including the right to regulate docks and all shoreline uses. The uninformed buyer essentially signs away ownership of the dock, and agrees that APCO can demand the dock be removed for numerous reasons listed in the permit. APCO is not a party to the sale and no federal or state law grants APCO the right to demand a buyer agree to its permits.

Landowners are unable to get a building permit in **Bedford and Pittsylvania County** to construct or modify a dock unless they produce a signed APCO dock permit. Counties have no authority under state code to determine or enforce private property rights, easements or deeds, as these are matters for state court. No county has legal authority to condition the issuance of a building permit with APCO's permission. By refusing to issue building permits, Bedford and Pittsylvania Counties have exceeded their authorities and opened themselves to civil suits and resulting damages.

APCO exclusively has the responsibility to meet its license obligations to FERC. It is not the responsibility of county government or the Roanoke Valley Association of Realtors to misguidedly assist APCO in its imposition of shoreline regulations upon private property. Bedford and Pittsylvania Counties are exceeding their authorities and the RVAR is acting upon faulty legal advice, to the detriment of citizens and customers. It needs to stop!

C.U.R.B. Does Not Provide Legal Advice

Conscience is our human failsafe, preventing corrupt ideas from becoming corrupt actions. People without conscience never consider the consequences of their corrupt acts upon others. However, corporations are not human, consequently they often commit corrupt acts, without remorse, and scapegoat employees for failure to follow vague ethics statements or laws, to avoid accountability. Think of wall street bankers or a power company that takes property from its customers without compensation.

This unfortunate and costly experiment in the regulation of private property by a for-profit corporation exposed how APCO and FERC manipulated the lower federal district court to their advantage – the taking of private property, without compensation, to ultimately benefit APCO's profit margins. Fortunately, C.U.R.B. supporters stood shoulder to shoulder with the Pressls in support of everyone's constitutionally guaranteed right to private property. Many thanks to these advocates of this quintessential American freedom – the right to own and enjoy one's property.

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 donating 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 ...***

IMPACT of the Pressl Decision – The United States Court of Appeals for the Fourth Circuit is one of twelve regional appellate courts within the federal judicial system. The court hears appeals from the nine federal district courts in Maryland, Virginia, West Virginia, North Carolina, and South Carolina and from federal administrative agencies. Consequently, this ruling has both national and local significance for APCO, FERC and other FERC regulated licensees:

- (1) APCO can no longer fabricate federal jurisdiction to drag private property owners to federal court for alleged violations of the Federal Power Act, Shoreline Management Plan or its Federal License within the 4th Circuit Court's jurisdiction;
- (2) APCO has no federal right to demand that property owners apply for permits;
- (3) A Virginia court will determine Pressls' retained rights and conversely APCO's limited rights under the flowage easement. To prevail APCO will be forced to prove how anyone's dock violates the flowage easement and prevents APCO from flooding and operating the dam and associated power station;
- (4) Permits that APCO has issued may be invalid, since those permits falsely claimed APCO held federal authority under their license to require property owners to sign its permits.

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 stay 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