



COMMONWEALTH of VIRGINIA

Marine Resources Commission

2600 Washington Avenue
Third Floor
Newport News, Virginia 23607

Molly Joseph Ward
Secretary of Natural Resources

John M.R. Bull
Commissioner

March 17, 2015

The Honorable David W. Marsden
Virginia State Senate
Post Office Box 10889
Burke, Virginia 22009

Dear Senator Marsden:

In response to your request, my staff has evaluated the drainage area for the fourteen stream segments you provided.

Based on our evaluation, all of the stream segments are in areas with watersheds greater than five square miles. As such, based on our Subaqueous Guidelines (attached), the Marine Resources Commission considers the subaqueous beds of the stream segments to be State-owned pursuant to Code Section 28.2-1200, unless it can be shown that the stream beds have been conveyed by a special grant or compact according to law, or the beds are within streams considered to be non-navigable for grants of riparian land prior to 1792 in the part of the State that drains to the Atlantic Ocean or 1802 in the part of the State that drains to the Gulf of Mexico. As described in our Guidelines, the question of navigability is a question of fact as to whether a stream is being, or has been historically used as a highway for trade or travel or whether it is capable of such use in its ordinary and natural condition (i.e. disregarding artificial obstructions such as dams which could be abated). The Guidelines further note; the Commission assumes that all perennial streams with a drainage area greater than five square miles, or a mean annual flow of 5 cubic feet per second, are navigable-in-fact until evidence is presented proving non-navigability. The five square mile, or five cubic foot per second, administrative boundary has been selected by the Commission to establish the extent of the Agency's permit authority provided by Code Section 28.2-1204.

An Agency of the Natural Resources Secretariat

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The administrative boundary was set by the Commission based on an opinion from the Attorney General that was provided in 1982 (attached). The opinion addressed the geographic extent of the Commission's jurisdiction. The Commission does not assume permit jurisdiction in non-tidal waterways with characteristics below these threshold attributes. In the absence of stream flow data, we rely on the drainage area to determine the extent of our permit jurisdiction.

The list of stream segments you provided is attached that includes a statement indicating the identified segments are in areas with watersheds greater than five square miles, and the Subaqueous beds are considered State-owned bottomlands that fall under the permit jurisdiction of the Virginia Marine Resources Commission pursuant to Chapter 12 of Title 28.2 of the Code of Virginia based on the Commission's Subaqueous Guidelines establishing criteria to determine the extent of jurisdiction in non-tidal waterways.

We hope you and your constituents find this information helpful. Should you have any questions, please call.

Sincerely,



John M. R. Bull

JMRB:blh
CO

The stream segments listed below are in areas with watersheds greater than five square miles and the water bottoms are considered to be State property based on the permit jurisdiction of the Virginia Marine Resources Commission pursuant to Chapter 12 of Title 28.2 of the Code of Virginia in conformance with the Commission's Subaqueous Guidelines establishing criteria to determine the extent of jurisdiction in non-tidal waterways.

1. Johns Creek – Craig County

- Put-in location is the Route 311 bridge crossing over Johns Creek.
- Approximate put-in coordinates 37° 30' 26.0" -80° 11' 0.4"
- Take-out location is a parcel of land owned by American Whitewater on Route 311 approximately ½ mile west of downtown Newcastle between construction yard and single-wide trailer homes fronting on the creek. Parcel is currently overgrown.
- Approximate take-out coordinates 37° 30' 11.0" -80° 7' 10.9"

2. Barbours Creek – Craig County

- Put-in location is the Route 611 bridge crossing over Barbours Creek near confluence with Cold Spring Branch.
- Approximate put-in coordinates 37° 32' 50.9" -80° 7' 19.7"
- Take-out location is the Route 617 bridge crossing over Barbours Creek near the intersection with Route 611.
- Approximate take-out coordinates 37° 32' 57.3" -80° 6' 22.3"

3. Bullpasture River – Highland/Bath County

- Put-in location is public access parking area off of Route 678.
- Approximate put-in coordinates 38° 12' 51.8" -79° 35' 28.7"
- Take-out location is immediately upstream of the Route 614 bridge over the Bullpasture River at Williamsville
- Approximate take-out coordinates 38° 11' 43.1" -79° 34' 14.5"

4. Piney River – Amherst/Nelson County

- Put-in location is on National Forest property on Route 827 Alhambra Rd.
- Approximate put-in coordinates 37° 47' 3.6" -79° 6' 37.5"
- Note that an alternate put-in may be possible after the confluence of Shoe Creek with the Piney on National Forest property approximately 1 mile downstream on Alhambra Rd. This location is not desirable due to steep terrain and lack of parking, but if the above coordinates will not result in a favorable navigability determination this location could potentially be substituted. Alternate put-in coordinates 37° 47' 8.7" -79° 5' 44.3"

- Take-out location varies depending on flow. During high flow events, the takeout is immediately upstream of the Route 827 bridge over the Piney River at the intersection of Woodson Rd, Jacks Hill Rd and Perkins Mill Rd. At normal runnable flows the takeout is approximately ¼ mile farther downstream on river left. The run can be extended further downstream to a take-out location on Woodson Rd, Route 666, approximately ½ mile north of Lowesville and upstream of a low-head dam.
- Approximate take-out coordinates
 - High water (occasionally used) 37° 46' 3.9" -79° 4' 7.7"
 - Normal runnable (most used) 37° 45' 46.5" -79° 4' 18.6"
 - Further downstream (less used) 37° 43' 29.7" -79° 3' 51.0"

5. Irish Creek – Rockbridge County

- Put-in location is across from cemetery on Irish Creek Rd. near intersection with Woodthrush Lane.
- Approximate put-in coordinates 37° 49' 33.6" -79° 13' 59"
- Take-out location is immediately upstream of the Route 608 bridge over Irish Creek at the intersection with Irish Creek Rd.
- Approximate take-out coordinates 37° 48' 42.9" -79° 18' 54.7"

6. Passage Creek – Shenandoah/Warren County

- Put-in location is at Elizabeth Furnace Recreational Area
- Approximate put-in coordinates 38° 55' 44.8" -78° 19' 46.2"
- Take-out location is at Route 55 bridge over Passage Creek
- Approximate take-out coordinates 38° 57' 32.5" -78° 15' 59.2"

7. Cedar Creek – Shenandoah County

- Put-in location is at US Route 48 bridge over Cedar Creek
- Approximate put-in coordinates 39° 4' 54.1" -78° 25' 30.0"
- Take-out location is at Route 11 bridge over Cedar Creek
- Approximate take-out coordinates 39° 0' 23.8" -78° 18' 59.8"

8. Gooney Run – Warren County

- Put-in location is at intersection of Route 622 and Route 649
- Approximate put-in coordinates 38°50'6.98" -78°13'55"
- Take-out location is at Route 340 bridge over Gooney Run
- Approximate take-out coordinates 38° 52' 8.4" -78° 15' 1.2"

9. Colliers/Bufalo Creek – Rockbridge County

- Uppermost Put-in location is on Colliers Creek at Collierstown Presbyterian Church on Route 770 near intersection with Route 657.
- Approximate uppermost put-in coordinates 37° 47' 6.2" -79° 35' 16.1"
- Lowermost Take-out location is at end of Millers Landing Ln (Route 700)
- Approximate lowermost take-out coordinates 37° 40' 47.6" -79° 25' 38.1"

- Note that the section most often run in canoe/kayak is from the Effinger Volunteer Fire Department (near the bottom of Colliers Creek) on Route 251 to the bridge over Buffalo Creek at Murat on Route 251. There have been some recent conflicts with a landowner just downstream of the Murat bridge when the run is extended who believes they own the creek and can prohibit travel.

10. Potts Creek – Craig/Alleghany County

- Put-in location is on Route 18 ~2 miles east of Paint Bank
- Approximate put-in coordinates 37° 35' 15.8" -80° 14' 6.4"
- Lowermost Take-out location is at the Jackson River or Route 18 over Potts Creek just prior to the Jackson.
- Approximate take-out coordinates 37° 45' 12.4" -79° 59' 51.9"

11. Jennings Creek – Botetourt County

- Put-in location is at Route 614 bridge over Jennings Creek near intersection with Route 618.
- Approximate put-in coordinates 37° 30' 45.2" -79° 37' 6.5"
- Take-out location is at public boat ramp access on the James River at Route 614 bridge over the James River.
- Approximate take-out coordinates 37° 33' 17.0" -79° 38' 13.9"

12. North Creek – Botetourt County

- Uppermost Put-in location is at Natl. Forest parking area for Apple Orchard Falls/Cornelius Creek hiking trails.
- Approximate uppermost put-in coordinates 37° 31' 50" -79° 33' 12.0"
- Take-out location is at public boat ramp access on the James River at Route 614 bridge over the James River. North Creek enters Jennings Creek prior to the James River.
- Approximate take-out coordinates 37° 33' 17.0" -79° 38' 13.9"

13. Wolf Creek – Tazewell/Bland County

- Uppermost Put-in location is at Route 666 bridge over Wolf Creek at intersection with Route 623 Burkes Garden Rd, below a small dam.
- Approximate uppermost put-in coordinates 37° 7' 30.3" -81° 21' 23.4"
- Take-out location is at Route 614 bridge over Wolf Creek west of Grapefield.
- Approximate take-out coordinates 37° 8' 48.4" -81° 15' 48.0"

14. Blackwater River (North Fork) – Franklin County

- Put-in location is on Route 643 Dillons Mill Rd. just south of the intersection with Route 741 Flanders Rd where river is adjacent to road.
- Approximate put-in coordinates 37° 6' 20.6" -80° 3' 39.6"
- Take-out location is at Route 739 bridge over North Fork Blackwater, 0.6 miles west of intersection with Route 808.
- Approximate take-out coordinates 37° 3' 41.2" -80° 2' 9.0"