However, such legal action would have to be founded upon substantial evidence that irreparable harm would occur, in fact, to our property by siltation which is directly associated with the filling and construction.

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Enclosure.

LEGAL PRINCIPLES APPLICABLE TO EFFECT ON NATIONAL PARK SERVICE LAND RESULTING FROM PROPOSED FILL AND CONSTRUCTION AT HUNTING CREEK

I. Although there are no Virginia cases exactly in point, the rights of the United States are derived from a principle of law common to all the jurisdictions in the United States:

"* * * [T]he owner of land through which a natural watercourse passes is entitled to the flow of the water of the stream as it is wont to flow by nature without diminution or alteration, that he may insist that the stream shall flow to his land in the usual quantity in its natural place, and at its natural height. * * *

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"The right of the owner of land through which a natural watercourse passes to have the water of the stream pass his land in its natural flow is a property right and exists as part of the land. . . . *McCausland* v. *Jarrel*, 136 W. Va. 569, 68 S.E. 2d 729, 737 (1951); *Accord*, 93 C.J.S. Waters, sec. 15; *Van Etten* v. *City of New York*, 226 N.E. 483, 124 N.E. 201 (1919)."

II. A corollary of this principle protects against the infringement of this right by other riparian owners. The universal rule is:

". . . [O]ne riparian owner has no right, in the improvement or protection of his own premises, no matter how careful he may be, to interfere with or obstruct the flow of water in such manner as to occasion injury to the land of another riparian proprietor. *McGehee* v. *Tidewater Ry. Co.* 108 Va. 508, 62 S.E. 356, 357 (1908)."

Any unreasonable obstruction or diversion is an infringement of a property right, which imports damage. *McCausland* v. *Jarrel*, 136 W. Va. 569, 68 S.E. 2d at 729, 737.

An unreasonable use would be one which destroyed or rendered useless, or materially diminished the application of the water by another riparian proprietor. *Roberts* v. *Martin*, 72 W. Va. 92, 77 S.E. 535, (1913).

An injured riparian owner has a "right of action, whether the result is to destroy or impair his own beneficial use and enjoyment of the stream, or to injure his premises by causing an unnatural enlargement of the stream or the backing up of the waters. . . . 93 CJS Waters sec. 15 at 618."

Thus the New York Court of Appeals held that the construction of a dam upstream by New York City which cut off the flow of water past plaintiff's land was an invasion of plaintiff's right as a riparian owner to the normal flow of water. *Van Etten* v. *City of New York*, 226 N.Y. 483, 124 N.E. 201 (1919).

In addition, it is a violation of riparian rights even if the erection of the obstruction itself does not interfere with the flow of water, but rather promotes the deposit of materials which causes the channel to fill up. 2 Farnham, Waters and Water Rights sec. 479a, at 1620 (1904).

Thus a court held defendant liable where his erection of a boom across a river caused sand and soil to deposit on the bed of the stream and materially diminish the flow of water to a mill. *Pickens* v. *Coal River Boom & Timber Co.*, 51 W. Va. 445, 41 S.E. 400 (1902).

If the obstruction damages the property of another, it is immaterial that it may have been constructed without negligence and with the sanction of the State legislature. *McDaniel* v. *Greenville Carolina Power Co.*, 95 S. Car. 268, 78 S.E. 980 (1913). Therefore, when a riparian owner's land was injured not by the negligent construction of the dam but by the overflow due to the dam's collecting sand and mud in the channel, the court held that the plaintiff had a cause of action. *Ibid.*

III. In deciding upon a remedy, it should be pointed out that there are no cases involving these specific facts, but it appears that the usual principle would apply; namely, that an unreasonable obstruction of a stream which interferes with the property of another is a nuisance which, if the interference is severe enough, may entitle the aggrieved party to an injunction. *Allen* v. *Stowell*, 145 Cal. 666, 79 Pac. 371 (1905); *Noe* v. *Bengey*, 276 Ky. 807, 125 S.W. 2d 721 (1939); *Hogue* v.