

in the bill. In addition, approximately 300 feet in front of Hunting Towers, the existing building, was filled without authorization and later bulkheaded.

Enclosure (3) is maps of the area involved, prior to the illegal filling that has been going on in Hunting Creek for the past several years.

INFRINGEMENT OF RIGHTS CONTRARY TO PUBLIC INTEREST

By the ruling of the Army Engineers in placing obstructions in, and filling in of Hunting Creek, a violation of Federal law was committed and if so, does Congress have the right to enjoin such illegal action? We believe so.

Did the action of Virginia officials in transferring title to the bed of Hunting Creek, especially since it was for private commercial purposes, deprive citizens of their federally protected rights or privilege of use and enjoyment of Hunting Creek, and deny them equal protection of law guaranteed them by the U.S. Constitution and the Virginia constitution? (Appropriate statutes on this point are cited in enclosure (4).)

At a previous congressional hearing, the U.S. Corps of Army Engineers was directed to remove fill in the upper estuary of Hunting Creek to eliminate further silting in the mouth of Hunting Creek. *Shepherd v. Boggs*, 198, Va. 299 9/4, SE. 2d 300 (1956), holds that a riparian owner who has deliberately and intentionally blocked a watercourse by filling it, may be required by a court of equity to remove such fill as necessary to reopen it and to pay the cost of such removal. Further, we noted that subject permit authorizes Howard P. Hoffman Associates, Inc., to construct a bulkhead and fill, whereas Virginia H. 591 cites Francis T. Murtha, and Hunting Towers Operating Co., Inc., as the owners in fee. We note that no witness at the U.S. Army Engineers hearing on February 21, 1968, advocated approval of the application in Alexandria, except the paid representatives of the owner. It is obvious from the points of law cited in enclosure (4) that the Commonwealth of Virginia does not have the right to transfer title to such property as the State acts only as a trustee for all of the citizens, nor can it dispose in any way such lands held in public domain.

The pertinent facts on this point are that Hunting Creek has been a navigable stream of water since the days of Capt. John Smith, coursing eastwardly between Alexandria and Fairfax County, Va., and emptying into the Potomac River south of Alexandria. Hunting Creek was judiciously determined to be navigable by decisions of the Fairfax city court, Judge Walther McCarthy presiding, on December 8, 1930. In 1931, the U.S. Army Corps of Engineers administratively determined Hunting Creek, east of Route 1, as navigable.

Hunting Creek is presently subject to the ebb and flow of semidiurnal tides up to its source and beyond Cameron Run to its confluence. The total Hunting Creek watershed consists of approximately 500 acres. During normal times it was formerly 40 feet across and more than 8 feet deep west of the Jefferson Davis Highway. At high tide, it was 200 feet wide over depths of 15 to 18 feet. That section east of Jefferson Davis Highway was approximately 150 feet wide over normal depth of 8 to 10 feet; and 1,760 feet wide and 12 to 15 feet deep at high tide.

The Hunting Creek stream has been progressively filled since June 1962 by unknown persons with unknown, if in fact any, authority. Hunting Creek, we contend, is subject to the ebb and flow of tides and a part of the Potomac River and a navigable stream of the United States. It is, therefore, subject to 33 U.S.C. 403, which vests jurisdiction of any restriction or obstruction to navigable waters to the Congress of the United States and can be granted only by the U.S. Congress. Further references on this question are enclosure (5) Commonwealth of Virginia letter dated March 11, 1964; enclosure (6) letter from Valley View Citizens Association to Congressman John D. Dingell; and enclosure (7) letter from this association to President Lyndon B. Johnson, dated February 17, 1965.

Fairfax County Executive Carlton C. Massey stated in a letter dated November 12, 1962, that the filling of Hunting Creek constituted a misdemeanor and was, therefore, illegal. (Presumably this statement has the support of the Commonwealth attorney of Fairfax County.) Mr. Walter Hickman, the commissioner of fisheries of the Commonwealth of Virginia, accompanied by his staff, personally examined the land-fill operation in Hunting Creek and stated that his office had sole jurisdiction of Hunting Creek pursuant to the Virginia statutes. Following this inspection, I inquired if Mr. Hickman's office had issued a valid permit for this land-fill operation. Mr. Hickman, emphatically said, "My office has given no such permit."