

1982 WL 189368 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 16, 1982

**\*1 Re: Opinion Request**

Mr. Cary D. Chamblee  
Deputy Director  
Land Resources Conservation Commission  
2221 Devine Street  
Suite 222  
Columbia, South Carolina 29205

Dear Cary:

This is in regard to your recent opinion request concerning the following questions:

1. Can a landowner allow public access to a watershed lake if all the littoral landowners do not agree to this public access?
2. Assuming that the answer to the first question is yes, is the public restricted to the use of only those portions of the lake owned by the consenting owners?

If the watershed lake in question involves the impoundment of a navigable stream, littoral landowners may not restrict the use of any portion of the lake by other littoral owners or their licensees 65 C.J.S. 'Navigable Waters' § 64. In the context of your questions this simply means that one landowner may allow public access over his property at his discretion regardless of the objections of the other landowners if the impoundment of navigable waters is involved. Once the public has gained access to the impoundment they are free to use its entire surface provided that such use does not interfere with the reasonable use by the other landowners.

The answers to your questions are different if the watershed project impounds water from a non-navigable stream. When a body of land is bounded by a non-navigable stream the boundary line is generally considered to be the middle of the stream. [State v. Hardee, 193 S.E.2d 497, 259 S.C. 535 \(1972\)](#). In such cases the submerged land out to the center of the stream bed is considered as being part of the fee owned by the landowner. [Southern Power Company v. Cassel, 79 S.C. 453, 95 S.C. 465 \(1913\)](#). The damming of such a stream will not change the ownership rights to the bed of the lake unless the circumstances show a manifest intent to the contrary. 93 C.J.S. 'Waters' § 146. In the context of your questions this means that the owners of property adjoining a non-navigable stream hold title to the submerged property out to the middle of the stream. The basic property lines and incidents of ownership will not be changed by the damming of the stream. Therefore, each property owner will be entitled to the exclusive use and enjoyment of only that portion of the lake bed which he owned before the impoundment.

In conclusion, it must be said that decisions on watershed projects must be made on a case-by-case basis. Because you have informed me by telephone that the particular project in question involves a non-navigable stream the answers to your questions are as follows:

1. In your example a landowner may allow public access to that portion of the watershed project which covers his property.
2. Absent some easement or other agreement to the contrary, the public would have no right to use that portion of the watershed project which covers the lands of others.

If you have any questions, please feel free to call.

Sincerely,

\*2 Clifford O. Koon, Jr.

Assistant Attorney General

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#### **ATTACHMENT**

#### **EASEMENT**

THIS INDENTURE, made this 22 day of Sept, 1958 by S. B. Huff, hereinafter referred to as the Landowner, and Greenville Soil Conservation District hereinafter referred to as the Local Organization,

#### **WITNESSETH THAT:**

WHEREAS, the Secretary of Agriculture, United States Department of Agriculture, is authorized by the Watershed Protection and Flood Prevention Act to carry out a program of assistance to local organizations in planning and installing works of improvement for flood prevention or the conservation, development, utilization and disposal of water, and

WHEREAS, the Local Organization is cooperating in said program for the purpose of installing a project in the Huff Creek watershed, State of South Carolina, in connection with which it desires to secure certain rights in, over and upon the hereinafter described land of the Landowners,

THEREFORE, for and in consideration of One Dollar (\$1.00) and the benefits accruing to the Landowner from the installation of said project, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the Landowner does hereby grant, bargain, sell, convey and release unto the Local Organization an easement in, over and upon the following described land situated in the County of Greenville, State of South Carolina, to-wit:

The 45.1 acres, more or less, covered by this easement, are located on the headwaters of Cureton Creek and is a portion of the tract of land conveyed by Julis D. Charles, Trustee, to S. B. Huff by Deed and recorded in Book of Deeds, Vol. 37, Page 563, and Vol. 66, Page 173, located in R. M. C. Office in Greenville County, South Carolina. A more detailed description of the acreage involved is shown in a sketch map designated as Floodwater Retarding Structure No. 1-B, Huff Creek Watershed, filed in Plat Book M M, Page 73, in the office of R. M. C. in Greenville County, South Carolina.

The Local Organization shall have the right, privilege and authority to overflow, flood, and store water impounded by the above proposed flood retarding structure. The Local Organization shall also have the privilege and authority to construct Floodwater Retarding Structure No. 1-B, storm spillway, and to use borrow areas in securing of soil for building the dam. The right to permit overflow of spillway over area below Structure No. 1B to stream-run is granted.

The sketch map referred to above indicates the approximate area to be in the normal pool and the flood pool areas.

1. The Local Organization shall be responsible for operating, maintaining, and keeping in good repair the works of improvement herein described.

2. The Landowner reserves the right to use said land or any part thereof at any time and for any purpose, provided such use does not interfere with the full enjoyment by the Local Organization of the easement herein conveyed.

. This easement shall include the right of ingress and egress at any time over and upon said land and any adjoining land owned by the Landowner for construction, inspection and maintenance.

\*3 4. The easement herein conveyed shall be subject to any easements, rights-of-way, or mineral reservations or rights now outstanding in third persons.

5. The Landowner hereby releases the Local Organization from any and all claims from damages to the herein described lands or adjoining lands of the Landowner resulting from the installation of works of improvement herein described

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