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Portsmouth, former mayor respond to suit


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Feb. 18 -- ASHLAND -- The city of Portsmouth and its former mayor have issued a blanket denial of the allegations leveled against them in a federal lawsuit filed by the state of Kentucky about the removal of a historic boulder from the Ohio River.

In their response to the suit, filed Tuesday in U.S. District Court in Ashland, the defendants also maintain they acted "reasonably, in good faith, without malice and based upon the advice and counsel and orders of" the U.S. Army Corps of Engineers.

The city and ex-Mayor Greg Bauer also refute Kentucky's claim Bauer directed Ironton historian Steven R. Shaffer and others to take the rock.

Bauer, who was recalled in 2004, has denied involvement in the matter and said he has no idea why he was named in the lawsuit, which was filed earlier this month by Kentucky Attorney General Jack Conway.

In addition to Portsmouth, Bauer and Shaffer, the suit names David G. Vetter of Portsmouth, a member of the dive team that raised the boulder, known as Indian Head Rock, from the depths of the river near South Shore in the summer of 2007. The suit seeks the return of the rock to Kentucky, along with monetary damages of more than $75,000.

Shaffer and Vetter, who are both facing felony charges in Greenup Circuit Court in connection with the rock's removal, had not responded to the lawsuit as of Tuesday.

The response of Portsmouth and Bauer, filed by Cincinnati attorney Lawrence Barbierie, cites numerous legal defenses, including Kentucky's case fails to state a claim upon which relief can be granted; any damages Kentucky might have suffered were caused by a third party over which the defendants had no control; and the city and Bauer are entitled to "absolute or qualified immunity" from the claims set forth by Conway.

Conway had proposed a settlement that would have avoided the federal lawsuit. It called for the rock's return to Kentucky so it could be put on display. Conway also wanted a public apology and the city of Portsmouth to pay attorneys' fees and build a display on the Kentucky side of the river.

Indian Head Rock was once a navigation marker and an attraction for local residents, who would walk out into the river and carve their initials on it when the water was low. However, the boulder had remained mostly submerged since the 1920s.
The rock, which was registered as a historical object in 1987, bears the initials of some of Portsmouth's earliest settlers, along with a crude carving that resembles a face.

After it was floated to the water's surface by a team of rescue divers and removed with a crane, the rock was taken to the Portsmouth City Garage, where it remains today.

Shaffer, 51, and Vetter, 54, are both charged with illegally removing an object of antiquity, a Class D felony, and could be sentenced to up to five years in prison if they are convicted. Shaffer's trial is scheduled for Aug. 3.