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A New Frontier in Water Wars Emerges in East

By DOUGLAS JEHL

REAT FALLS, Md., Feb. 28 — In 1632, King Charles I granted Maryland the right to the Potomac River "from shore to shore." For the most basic of reasons, that is something Virginia, on the Potomac's south bank, is now fighting to overturn.

"The bottom line is that if Maryland can restrict Virginia's ability to withdraw water from the river, Maryland is in control of Virginia's destiny," said Stuart Raphael, a special counsel to Virginia, rehearsing a complaint that is now before the United States Supreme Court.

It is a fight over royal charters, interstate compacts and years of precedent, but mostly it is a fight over water, reflecting growing worries in the region that a commodity is not as bountiful as it once seemed. And up and down the East Coast, its echoes can now be heard.

Such tensions have long been common in the arid West. But their emergence in the East is relatively recent, a product in large part of scares in 1999 and again last summer, when many rivers fell near critical lows, the victims of drought and development. Along rivers like the Savannah, the Pee Dee, the Roanoke, the Chattahoochee and the Potomac, Eastern states are wrangling over a question that suddenly seems to matter very much: Whose water is it?

"This past year, we came within feet of shutting down nuclear power plants because there wasn't sufficient water to cool them," said Freddy Vang, the deputy director of natural resources in South Carolina, which is enmeshed in disputes with North Carolina, over the Pee Dee, and with Georgia, over the Savannah. "At the same time, we came within feet of shutting down major municipal water supplies because they couldn't pump water anymore.

"So the question is, how do we take a shared resource and manage it to both entities' benefit?" Mr. Vang said. "And right now, there are zero rules."

Compared with the West, where rivers like the Colorado were long ago apportioned drop by drop, most of the East is an empty page when it comes to deciding how much water a state can draw from a river. Until recently, that did not seem much of a bother, because most rivers seemed abundant. But then came the summer lows.

"You're finally starting to see the pinch," said Brian Richter, director of a freshwater campaign for the Nature Conservancy, a conservation group. "Where rivers would have been in a naturally low condition, you're imposing human utilization to the point where rivers are entering conditions where they've never been seen before, and in some cases drying up for the first time in history."

Leon F. Szeptycki, eastern conservation director for Trout Unlimited, said, "Communities are running out of water; that's what happened in last summer's drought." He added: "They've got to find a way to get more water, whether through better planning, better laws, or by finding water somewhere else. That's what they're up against."

Along the Potomac, now swollen with runoff from melting snow, there is little sign of a water shortage. In Maryland, Virginia and most of the East Coast, the drought is officially over, with a cold, wet winter overtaking the parched spring and summer that caused such problems for the region and most of the United States.

But one season's rain and snowfall has done nothing to alter the basic trends that have left Virginia and Maryland concerned as they look to the future. Along a stretch that begins here, just outside Washington, three utilities on the Virginia and Maryland sides of the river are sucking more and more water from the Potomac each year, and at least a dozen times since 1999, those withdrawals have amounted to more than the river can safely sustain.

The withdrawals to supply 3.7 million people in Virginia, Maryland and Washington now average 400 million gallons a day, up 19 percent from 10 years ago. But those by the Fairfax County Water Authority, which serves Northern Virginia, the fastest-growing part of the Washington suburbs, have leapt by 62 percent, and are expected in the years ahead to increase far faster than those of their Maryland neighbors.

On a peak day last summer, the three utilities sucked 583 million gallons from the Potomac, about 85 percent of its volume at the time, and reduced the flow to near its legal minimum of 100 million gallons a day at Little Falls, just upstream from the Washington border with Maryland. To augment the river's natural flow, the utilities began in 1999 to release water from two upstream reservoirs. They have taken that step more than a dozen times since, but the region's demands are projected to gradually exceed the available supply over the next 30 years.

For now, Virginia's withdrawals from the river are still subject to limits set by Maryland, under the authority that it traces back to King Charles's decree. But what worries many in Maryland is what might happen if the Supreme Court upholds a December recommendation by Ralph I. Lancaster, Jr., a lawyer the court appointed as "special master" to review the case.

The recommendation said "Virginia and its citizens have the right, free of regulation by Maryland" to withdraw water from the Potomac and to build pipes, docks and piers into the river without Maryland's permission. It is being vigorously challenged by Maryland, whose rejection in 1996 of a request by Virginia to build an additional water withdrawal pipe prompted the lawsuit that set off the current fight.

"Maryland has the right to regulate the Potomac because it is the owner of the river and has not relinquished this fundamental sovereign power," Maryland said in brief submitted to the Supreme Court on Thursday that outlined its objections to the special master's report.

At the Interstate Commission on the Potomac River Basin, which works to coordinate use of the river by the three Washington-area utilities, experts said they believed close cooperation would continue whether Maryland retained its controls. Agreements now in place, independent of Maryland's rules, have "created a stable water supply system for the Washington metropolitan area," said Erik R. Hagen, the commission's deputy director.

The court, which under the Constitution has the sole jurisdiction to decide such disputes between states, is expected to decide this year whether to accept the master's report or schedule its own hearing on the matter. A hearing would probably not occur before next fall.

But the Virginia v. Maryland water dispute will almost certainly not be the last to reach the court, because most other states that have been wrangling over apportionment of their rivers have made little progress toward a lasting deal.

What is widely viewed as the most successful model of a cooperative effort to divide an Eastern river — the arrangements brokered by the Delaware River Basin Commission, for New York, Pennsylvania, Delaware and New Jersey — was itself the product of a dispute between New York and New Jersey that reached the Supreme Court in 1931.

And now, throughout much of the East, said David L. Feldman, a senior researcher at the University of Tennessee's Energy, Environment and Resources Center, a combative new view appears to be emerging "that if states don't take action or communities don't take action to protect that resource, that someone is going to go out and grab it."

In one fight, between Virginia and North Carolina, a federal court ruled in favor of Virginia's diversion to Virginia Beach of water stored in a reservoir on the Roanoke River, on the border between the two states. Other battles are simmering over the Roanoke, as Raleigh, N.C., and other communities seek to augment their dwindling water supplies.

Of the fights now under way, perhaps the most rancorous pits Georgia, Florida and Alabama against one another over the division of the Chattahoochee River, whose downstream flows have been threatened by the Atlanta area's rapid growth.

That fight has spilled into Tennessee and South Carolina, because Atlanta has made known its interest in drawing water claimed by those states, from the Tennessee and Savannah Rivers, and transferring it to the Chattahoochee basin for its own use. Tennessee and South Carolina recently erected legal barriers to such transfers, but South Carolina in particular still feels vulnerable, because Georgia also borders the Savannah, and it faces no current restrictions on withdrawals.

For South Carolina, the more urgent threat lies in reduced flows in the Pee Dee, which runs south into the state from North Carolina and is a major source of water for at least a half-million people, including the population of Myrtle Beach. Last summer municipal water supplies ran low in South Carolina, partly because of power plants and other industrial users in North Carolina, whose federal licenses require them to release far less water from their dams than South Carolina says it needs to sustain its fast-growing population and industrial base.

At the height of last summer's drought, Mr. Vang, the South Carolina official, went to North Carolina and successfully appealed to his counterparts there for more water to be released. South Carolina is also trying to persuade the Federal Energy Regulatory Commission, which regulates the power plants, to guarantee more water for the state.

But the two states have yet to agree on a formula, despite what experts say is an increasingly pressing need to do so across the region.

"We've gone from a period of saying there's plenty of water going around, so, hey, don't worry about it, to, hey, we're running out of water," said Tom J. Temples, director of the center for water research and policy at the University of South Carolina. "It's kind of reached a critical mass."