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HEADLINE: Md. Loses Bid to Stop Fairfax Water Pipe

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BODY:

Maryland officials cannot pull the permit that allows the Fairfax County Water Authority to build a long-disputed water intake pipe in the Potomac River, a Baltimore judge ruled yesterday.

In a harshly worded opinion that accused Free State officials of "not playing fair," Circuit Judge Evelyn Omega Cannon said it was "absurd" for the Maryland Department of the Environment to challenge a decision made by one of the department's own reviewers.

Cannon also ruled that building a pipe 725 feet out into the river is the best way for Fairfax officials to deal with the increasingly muddy water that is clogging its pipe closer to the shoreline. Cleaning the mud out of the water for its 1.2 million customers costs Fairfax \$ 1 million a year. Cannon rejected Maryland's argument that better erosion controls would obviate the need for a new pipe, writing that sediment from construction sites accounts for less than half the problem.

The ruling is one of several recent decisions favoring Fairfax in a simmering dispute that already has gone to the U.S. Supreme Court, and Cannon's 21-page decision strongly reinforces the water authority's position. Work started last month on the \$ 10 million project, and the pipe could be completed by the end of the year.

"We didn't view [starting construction] as risky. We've been winning at every turn," said Jim Warfield, the Fairfax Water Authority's chief executive officer. "Once you start construction, it makes it that much harder to stop."

Maryland officials have 30 days to appeal Cannon's ruling. "We're disappointed by the decision, and we'll be reviewing our options over the next few weeks," said Assistant Attorney General Adam Snyder.

The five-year battle over the water pipe has become a touchstone in the interstate debate about growth and development. While Maryland has emphasized environmental protection and laws that channel building into "smart growth," Virginia emphasizes its pro-business attitudes and relies on the free market to shape development.

The water authority first sought to replace its intake pipe at the Loudoun County border in 1996 because the water from the tube close to the shore was increasingly muddy. But Maryland turned down the agency's request for a permit. An administrative law judge and then an environmental official ruled in favor of Fairfax, but Maryland officials appealed. In February 2000, fed up with the process, Virginia sued Maryland in the U.S. Supreme Court, asking the justices to rule that the permit wasn't required.

No matter what happens with this particular permit, a court fight will continue on the much larger issue of control over the Potomac. Maryland owns the river under a 1632 charter from Britain's Charles I, but Virginia officials

contend that centuries-old custom and more recent interstate agreements allow Virginians to build piers and other structures from their shoreline.

Virginia and Fairfax lawyers have asked the U.S. Supreme Court to rule that Maryland cannot require permits for water pipes and similar projects, and the high court last year turned the case over to a special master, Maine lawyer Ralph Lancaster.

"We want the Supreme Court to prevent this type of problem from occurring again," said attorney Stuart Raphael, who will argue Fairfax's case before Lancaster on Monday.

But Maryland Sen. Christopher Van Hollen Jr. (D-Montgomery) said his state needs some control over the river. The state might be able to live with the water pipe, he said, if "Maryland still has the right to put restrictions on" the volume of water Virginia can take.

Warfield said he doesn't think a cap on the volume of water would be a problem. "This is not an additional [intake]. It's a replacement. It's smaller than the one it replaces," he said.

And David Botkins, spokesman for Virginia Attorney General Mark L. Earley (R), expressed hope that some of the tensions can be resolved. "It's time for Virginia and Maryland to start working together on these sorts of issues instead of being so adversarial," he said. "The citizens deserve better."

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