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# **GASTON BREAKTHROUGH POSSIBLE TRUCE IN 15-YEAR VA.- N.C. BATTLE IS AT HAND THE DEAL, FAR FROM FINAL, COULD END TANGLE OF LITIGATION**

A 15-year fistfight that has stymied growth on both sides of the Virginia-North Carolina border may be turning into a handshake.

A federal mediator released a proposed compromise Thursday that would provide water to southeastern Virginia in exchange for environmental protection and improvements to roads in northeastern North Carolina.

It's not quite the end of the multimillion-dollar legal war between the states, but it's the first solid evidence that a truce may be near.

Local, state and federal political leaders from both states said they were encouraged by the proposed settlement of the Lake Gaston controversy, but stressed that the deal is not yet complete.

The agreement, based on negotiations between Virginia Beach and officials from North Carolina, must be approved by several federal agencies and ratified by both state legislatures and governors. Both houses of Congress and possibly the president would need to approve an interstate compact that is one provision of the compromise.

John G. Bickerman, the mediator who has been trying to resolve the dispute since December, said he presented the latest draft to both sides in secret on Monday. By Thursday, as top-level politicians were apprised of the proposal, word of the agreement began to leak out.

According to the draft, both sides get something they want:

Virginia Beach and other South Hampton Roads communities get to run a pipeline to Lake Gaston to collect the 60 million gallons of water a day they have long said they

need. This figure includes 10 million gallons a day for Chesapeake and 1 million gallons a day each for Franklin and Isle of Wight County.

Hampton Roads also gets a promise that North Carolina communities won't be allowed - without Virginia's permission - to siphon off more than 35 million gallons per day from the lake, which straddles the border.

``The main thing for us is it stops all the litigation," said Virginia Beach City Councilman John A. Baum, one of the negotiators. ``We keep winning, but it never stops."

North Carolina would get a guarantee that South Hampton Roads won't keep coming back for more water. It gets a promise that the environment around Lake Gaston will be protected and that water withdrawals will be limited from March to June, during the striped-bass spawning season.

And in times of severe drought, the accord would require Virginia Beach to share the pain, reimposing water restrictions.

``The bottom line of the mediator's proposal is that there will be no additional withdrawals for Virginia forever," said North Carolina Deputy Attorney General Alan S. Hirsch, who has led the fight to block Virginia Beach's access to the lake. ``No more legal battles. No more political maneuvers."

Both sides should benefit from a provision to widen roads that link Hampton Roads to the North Carolina beaches to relieve tourist traffic jams and shorten northward commutes.

The proposal also calls for the establishment of a Water Advisory Commission, that would involve both states, to ensure the protection of Lake Gaston and the Roanoke River Basin.

``I would be surprised if this were the final draft," said Bickerman, a mediator with the law firm of Kaye, Scholer, Fierman, Hays and Handler. ``I think that the parties are close, but it's still under review and there may be more changes to the document."

Bickerman would not say how many previous draft agreements had been considered, but indicated that both sides have incentives to settle soon.

The Federal Energy Regulatory Commission, the last federal agency that must approve the \$240 million pipeline, seems poised to give Virginia Beach its OK this summer. North Carolina's bargaining power is enhanced as long as the decision is in doubt.

Virginia Beach also has a strong motive. By April 28, the city must tell Norfolk, which would handle any Lake Gaston pipeline water, whether to expand its treatment system. If Norfolk does not begin the expansion then, it would have to wait several years, until an upgrade of the system is completed, before it could gear up for the Gaston flow.

The mediator got involved as a result of a federal lawsuit brought by North Carolina after the U.S. Secretary of Commerce approved the proposed 76-mile pipeline. Both sides agreed to allow the court-appointed mediator to help them settle the Lake Gaston dispute, and to abide by any deal negotiated.

North Carolina State Sen. Marc Basnight, D-Dare, said the proposal shows that many people now recognize the ``regional" benefits of a settlement.

Nearly two years ago, Basnight, president pro tem of the state senate, suggested in an off-the-cuff remark in Elizabeth City that ``the time has come for North Carolina and Virginia to settle this whole thing as good neighbors."

Basnight's position contradicted that of Hunt, his close political friend, as well as North Carolina Attorney General Michael Easley, who has used legal maneuvers to block all recent Virginia attempts to build the pipeline.

``It took a long time, but we now have a complete change in North Carolina's direction on this," Basnight said.

North Carolina Gov. James B. Hunt Jr. said in a prepared statement that he is considering but not ready to sign off on the compromise.

``Senator (Jesse) Helms and I have reviewed this court-ordered proposal by the federal mediator. . . ," Hunt said. ``We agree that this proposal has advantages for North Carolina."

Though they stressed that nothing is final, U.S. Sens. John W. Warner and Charles S. Robb voiced hope that the draft agreement might end the long-running water war. They promised help with efforts to secure federal aid for U.S. Route 17 and Virginia Route 168 highway projects.

``Our view of the draft agreement is that it is a very responsible effort to resolve this longstanding dilemma," Robb said.

``There's no signatures," Warner cautioned. ``(But) this document represents the best efforts of a conscientious group of mediators. . . to work with their counterparts in the state of North Carolina."

Virginia Beach Mayor Meyera E. Oberndorf, City Councilman Louis R. Jones and Clarence O. Warnstaff, the city's director of public utilities, went to Warner's Washington office Thursday afternoon to brief the senators and 2nd District Rep. Owen B. Pickett on the deal.

At Warner's invitation, the Virginia Beach contingent also met briefly with Carol Browner, administrator of the Environmental Protection Agency. Browner is optimistic

about the prospects for a settlement, based on what she's heard about it so far, Warner said.

And Oberndorf met separately later with 4th District Rep. Norman Sisisky, who represents most of the counties through which the pipeline would pass. Sisisky is encouraged by what he's heard of the agreement, a spokeswoman said.

The private session in Warner's office lasted more than an hour; those involved declined afterward to discuss the particulars of the draft.

Oberndorf, smiling but choosing her words carefully, declined to ``acknowledge there's any agreement that has occurred yet . . . There are many parties who are being briefed."

The mayor said she won't allow herself to celebrate until a deal is final, but by the end of Thursday's meeting she was feeling good enough about the prospects to joke with Warner about his longstanding promise ``that when the water comes through the pipeline. . . you would dump a bucket on me."

``And I said that I would gladly accept it," she recalled.

For his part, Warner said: ``My jubilation will await my first drink out of the end of the pipeline." MEMO: Staff writer Warren Fiske contributed to this report.

## AGREEMENT

- Interstate compact: North Carolina and Virginia would be prohibited by an interstate compact from withdrawing too much water from the Roanoke River Basin and Lake Gaston. Virginia would be limited to 60 million gallons a day. North Carolina could not take more than 35 million gallons a day.
- Striped-bass spawning protection: Virginia Beach would use its Kerr Reservoir water storage to assure that river flows are not reduced during the striped-bass spawning season.
- Bistate water advisory commission: regional water authority: A bi-state commission would be created to study, monitor and make recommendations on use, conservation and coordination of water resources and to protect the Roanoke River Basin. The commission would have an equal number of members from North Carolina and Virginia, to be appointed by their respective governors. Virginia Beach would pay between \$100,000 and \$200,000 annually to control hydrilla infestation in Lake Gaston and for other environmental projects to benefit North Carolina communities in the Roanoke basin.
- No water sales outside southeastern Virginia: Norfolk and communities

receiving Lake Gaston pipeline water would agree not to resell Gaston water or any other water outside southeastern Virginia.

- Northeastern North Carolina connection to pipeline: Northeastern North Carolina communities could connect to the pipeline at any time for their long-term water needs, after obtaining standard federal and state permits.
- Commitment to water conservation programs: Virginia communities taking water from the pipeline would be required to implement long-term water conservation programs.
- Reduction during drought: All communities attached to the pipeline would be required during a drought to first use all local water supplies, including emergency wells, and to adopt mandatory water-use restrictions.
- Highway improvements: U.S. Route 17 and Battlefield Boulevard, Virginia Route 168, would be improved expeditiously in Virginia to the same standard as in North Carolina to facilitate both tourist and other transportation to North Carolina.

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John Bickerman  
mediator