

# Who Owns the Potomac and Why?

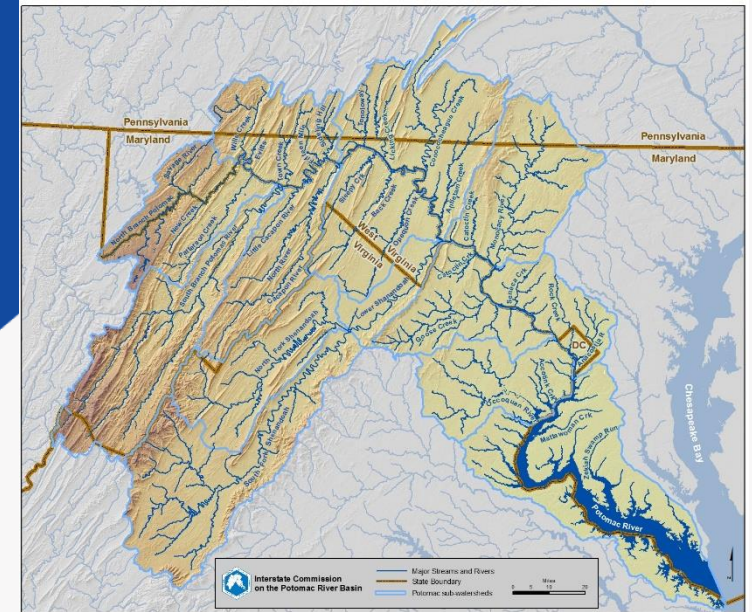
Michael Nardolilli, Executive Director

Interstate Commission on the

Potomac River Basin

Arlington Historical Society

April 10, 2025



# What Will I Try To Cover Tonight?

*Advertisement: Have you ever looked at maps and wondered why the boundary line on the Potomac River between Virginia, Maryland, DC and West Virginia is so odd? It is not in the middle of the river, like it is in most places, and it doesn't consistently follow the curves of one shoreline or the other. Michael Nardolilli, the Executive Director of the Interstate Commission on the Potomac River Basin, will explain the weird history behind jurisdictional boundaries along the Potomac River.*

*Disclaimer: This presentation is for educational purposes only, not constituting professional advice, and that the presenter's views are his own, and may not be attributable to the Interstate Commission on the Potomac River Basin, its Commissioners or jurisdictions. This discussion concerns jurisdictional boundaries only and not usage of the River (water, oysters, structures, etc.). HOLD QUESTIONS UNTIL END*



# ICPRB: Who Are We?

Approved by Congress in 1940 as an Interstate Compact for “the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes.” Compact amended in 1970 to expand ICPRB’s authority to include “utilization, conservation and development of the water and associated land resources.”

Signatory Jurisdictions: Maryland, Virginia, West Virginia, Pennsylvania, and the District of Columbia but not the United States. Agency of Each Signatory Jurisdiction

**No Regulatory Authority. Three Main Projects Underway.**







# 1. Making the Water Supply of the Nation's Capital More Resilient to Spills & Droughts



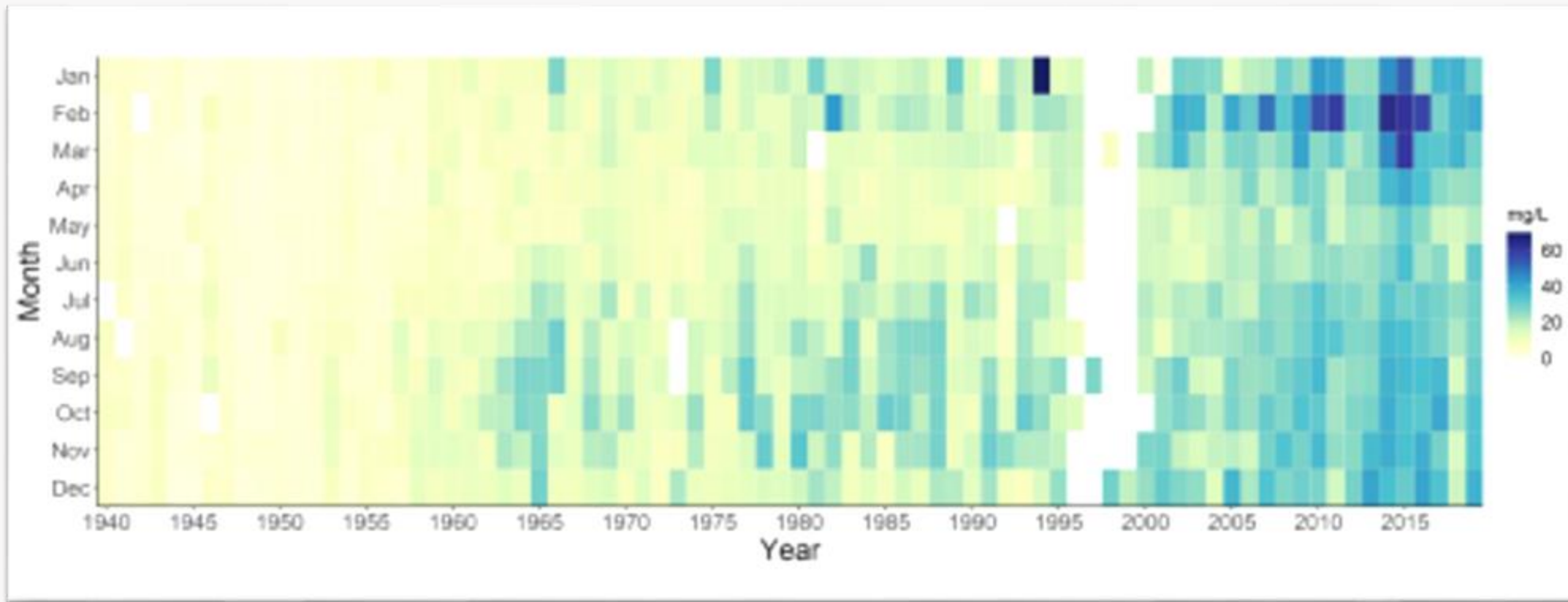
- **Arlington & Washington DC are the two most vulnerable cities in the U.S. to a cut-off of water supplies for drinking, fire suppression & hygiene.**
- In December 2022, Congress passed the Water Resources Development Act authorizing a regional water supply study, including the identifying a secondary water source and additional water storage capability in the National Capital Region.
- Congress has appropriated \$500,000 for the study (perhaps \$600,000 more). 90/10 Cost Share by Federal Government. This feasibility Study estimated to take 3 years and cost \$3 million.

## 2. Improving Aquatic Habitats

- Investigate Causes & Impacts of Harmful Algal Blooms
- Addressing Invasive Aquatic Species (Conference 10/17/24)
- Restoring Fresh Water Mussels to the Upper Potomac River
  - Mussels Filter Water
  - Using Eels to Transport Glochidia (Baby Mussels) Upstream
  - Building Eel Ladders on Dams 4 & 5



### 3. Limiting Salt Use. Potomac River Chloride Levels 1940-2020 (Washington Aqueduct )



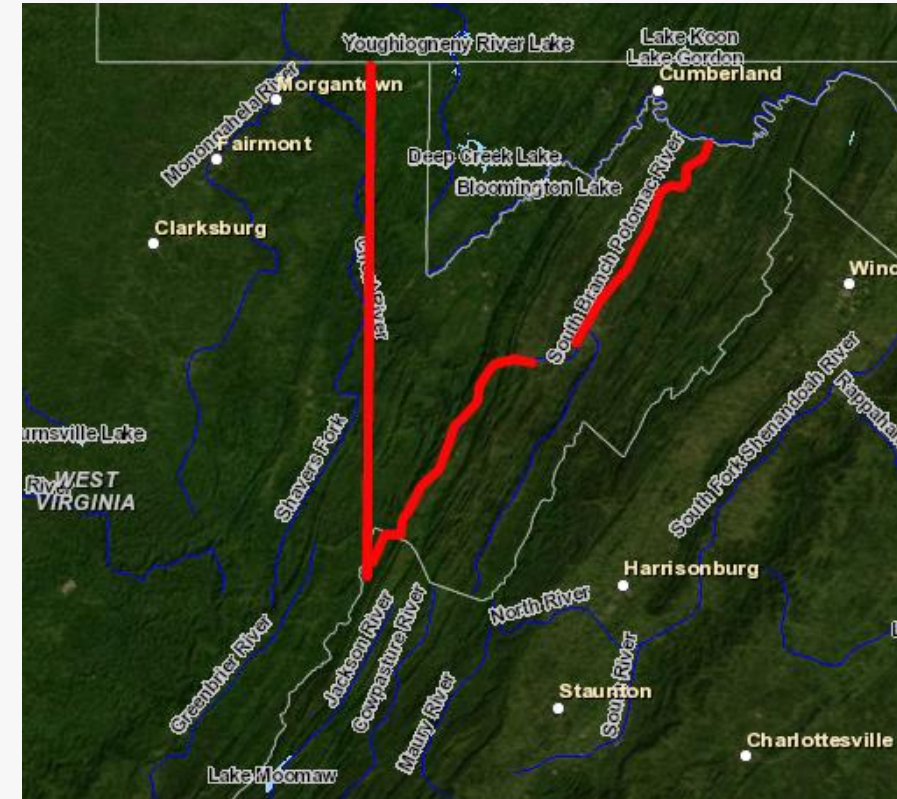
# Potomac River: Three Dueling Land Grants

- 1. Virginia Company. Received land grants from King James I over Virginia, Maryland, Pennsylvania (parts) and North Carolina (parts). Successor in Interest: Virginia Assembly.
- 2. Lord Baltimore. June 20, 1632, King Charles I land grant to Lord Baltimore from the “**first fountain**” of the Potomac River and along its “further bank,” or south shore, to the Bay, **thus granting Maryland ownership of the Potomac**.
- 3. Lord Fairfax. Through 1688 Grant by James II to Culpeper, ownership of the Northern Neck lying between the Rappahannock and Potomac Rivers from the Bay to the so-called “Fairfax Line” connecting the “**Head Springs**” (sources) of both rivers.



# Where Is the Source of the Potomac?

- 1632 Grant also set the Western Boundary of Maryland at a Vertical Line (the “Deakins Line”) from 40 Degrees North (Pennsylvania boundary) southward to the “first Fountain” of the Potomac.
- Virginia sent a survey party upstream in 1736 to find the source of the Potomac River. Near Old Town, MD, the surveyors chose to continue along what we now call the North Branch instead of left along the South Branch setting the “Fairfax Stone” on “Fairfax Spring” as the source further east.





# Potomac River Boundary Disputes



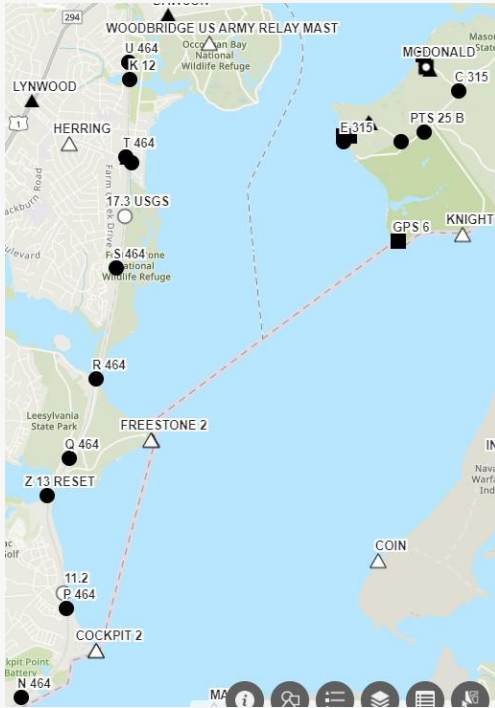
## **Virginia Relinquishes Claims**

June 29, 1776, Virginia's Constitution ceded the Potomac to Maryland reserving rights to free navigation & use of the Potomac.

## **Mount Vernon Compact 1785**

- MD & VA Commissioners Agree to Free Navigation & Use of Potomac River by both States. Call for More States to Join.
- Led to Annapolis Convention & Constitutional Convention.
- Boundary Not Settled.

# Potomac River Boundary Disputes



## Black-Jenkins Award of 1877

- VA & MD Submit to Arbitration
- Rejected MD Claim to High-Water Mark In Favor of VA's Longstanding Land Use to Low-Water Mark on VA Shore
- Line Would Run from One Headland to the Next, Not Along "Indentations"

## Hog Island Dispute (1889)

- Island "On" Not "In" the Potomac.

# Potomac River Boundary Disputes



## **Maryland v. West Virginia (1910)**

- SCOTUS Determined that Low-Water Mark on South Bank Would Give MD “Uniform Boundary” to VA/WV
- Held that Fairfax Stone Was Source of Potomac Given Longstanding Acceptance in Area & Land Records.

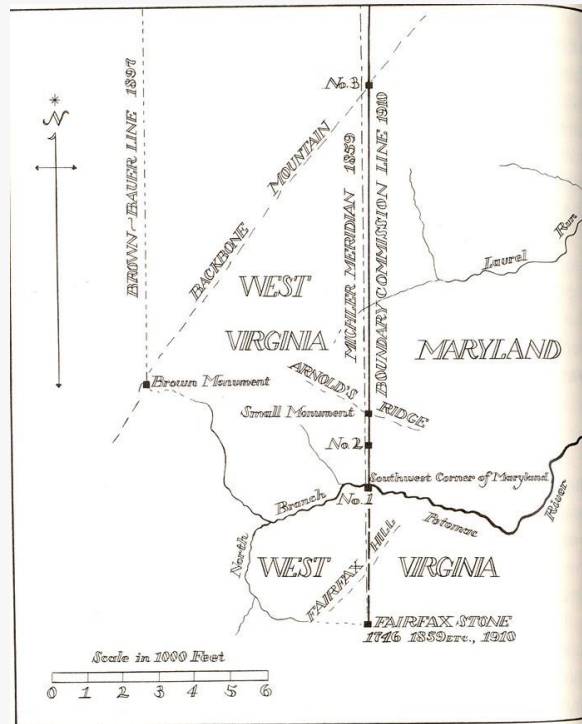
## **Mathews-Nelson Survey (1928)**

## **Virginia-Maryland Commission (1929)**

- 58 Markers South of Jones Point.

# Why Is the Fairfax Stone Entirely in West Virginia?

## Southwest Corner of Maryland at Monument #1



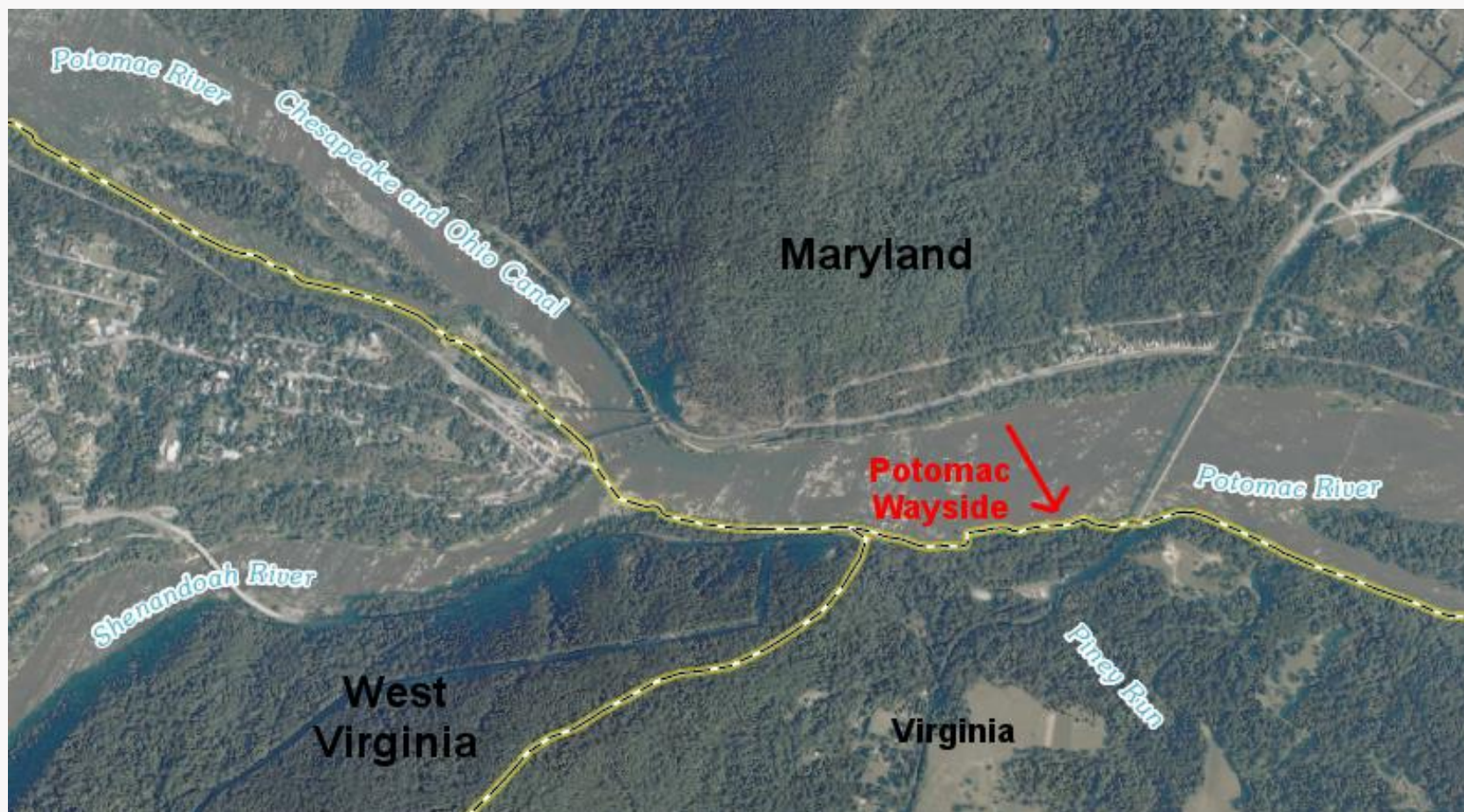
SOURCES OF THE POTOMAC'S NORTH BRANCH

Showing the course of the Potomac from its source at the Fairfax Stone to Boundary Monument No. 1 at the southwest corner of Maryland; also the Michler meridian, 1859, the Brown-Bauer line, 1897, and the Deakins line as restored by the Boundary Commission, 1910.—Map drawn by Olivia Sue Lambert



# “Shifting” v. “Fixed” Boundary Theories

- State Boundaries in Center of a River Usually Shift With Gradual Changes, Such as Accretion (gradual accumulation of land) or Erosion (wearing away of land), But Not By a Sudden Flood (an Avulsion).
- State Boundaries Following Contours of River Shoreline Could Be Either a “Fixed” or a “Shifting” Boundary Depending On Historical Reasons for the Boundary.
- Federal Common Law of Accretion Controls State Boundary Questions.
- Court Distinguished “cases concerned with private ownership, not the location of interstate boundaries.”
- Fixed Theory Decisions: Ohio River Cases Held That State Boundaries Were Fixed in 1792 When Virginia Ceded Its Western Lands But Retained Jurisdiction Over the Ohio River To Northerly Shore.
- Dispute Arose Over “Potomac Shores” Near Harper’s Ferry. Fixed or Shifting Boundary?



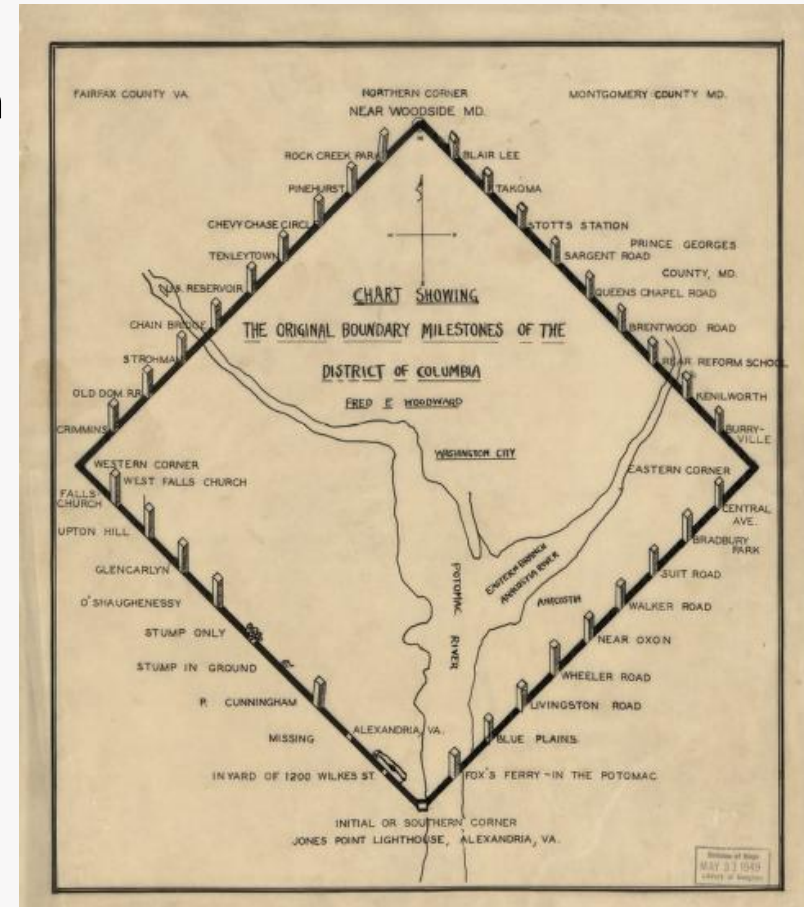
# “Shifting” v. “Fixed” Boundary Theories

- Participants With Outdoor Adventure Outfitter Crossed Accreted Land to Access Potomac River.
- Landowner Potomac Shores Claims They Were Trespassing Over Their 150-Foot Strip of Land.
- Landowner Sues In Maryland Arguing that State Boundary Was “Fixed” In Past.
- Outfitter Argues MD Court Has No Jurisdiction Because Land Accreted to the Shoreline Was in VA.
- Maryland Court of Special Appeals Issues Opinion in Potomac Shores v. River Riders (2014).
- **Virginia’s Prescriptive Rights Extend to Low-Water Mark on VA Shore.**
- Court Examined the Black-Jenkins Award, Determined That the Potomac River State Boundaries Are “Shifting,” and Distinguished the “Fixed” Ohio River Cases.
- So, Boundary Between MD and VA Is the Low-Water Mark on VA Shore **As It Changes Over Time.**
- Court Held That The Accreted Land at Issue Was in Virginia.
- Because the Accreted Land Was in Virginia, Maryland Courts Had No Jurisdiction.



# DC/VA Boundary: High-Water Mark

- Creation of DC from Both MD & VA: DC Ownership on Both Sides of River, including Riverbed
- 1847: Act of Retrocession: VA Portion of DC Returned to Virginia. Where Was New Boundary?
- Court Decisions: Virginia's Prescriptive Rights Against Maryland (To Low-Water Mark) Do Not Apply to DC.
- Boundary Between DC and Virginia North of Jones Point and South of Little Falls Would be the High-Water Mark Along the Virginia Shoreline.
- But Silt Coming Down River Altered the Shoreline.
- Dredging Operations Created New Islands.



# DC/VA Boundary: Roosevelt Island



## **Analostan/Mason's Island**

- Owned by Maryland
- Transferred to DC in 1791
- Causeway to Island Cuts Off "Little River" Between VA and Island
- Silt Forms Land Connection to VA
- Ferry, Union Occupation Kept Island As Part of DC.
- Causeway Removed & "Little River" Flows Again.

# DC/VA Boundary: Alexander's Island

- An area that is today the Pentagon's Connector Parking Lot was once DC's "Alexander's Island."
- Narrow Channel Silted Up by Natural Processes.
- Became "Jackson City," a lawless haven for gamblers
- VA Officials Cracked Down on gambling there
- DC Did Not Contest VA Jurisdiction
- High Tide Made it a DC Island and Low Tide Made it Part of Virginia?
- Rendered Moot by the Building of the Pentagon & Filling in Water Between the Island and Virginia.



# DC/VA Boundary: Columbia Island



## Columbia Island

- Once Mudflats Owned by DC
- Dredging, Fill Dirt, Rock from Shipping Channels Dumped There.
- Island Created as Part of Arlington Memorial Bridge Project
- Digging of “Boundary Channel” to Protect the Bridge Piers From Floods
- Was New Island Part of DC or VA?

# DC/VA Boundary: National Airport

- Airport Construction Near “Gravelly Point” On Mudflats Once Part of DC
- Dredged Materials Dumped There Converting a Portion of the Potomac River Channel Into Dry Land
- Locations Below the Low-Water Mark Now Became Land Above the High-Water Mark.
- Airport Opened June 16, 1941, and Now Known as Reagan Washington National Airport.
- Was the New Airport in VA or DC?



# DC/VA Boundary: Alexandria



## Alexandria “Pierhead Line”

- Landowners Extended Their Property and Piers Far Out Into the Potomac
- The U.S. Army Corps of Engineers Surveyed the Edge of Waterfront Improvements Along the Potomac
- In 1939, USACE Defined a “Pierhead” Line on the Alexandria Stretch of Riverfront. Is That the Boundary?

# DC/VA Boundary: Congress Decides

- In 1934, Congress Creates 3-Person “DC-Virginia Boundary Commission” Consisting of a Presidential Appointee, an Appointee from the VA Governor, and Appointee Chosen By the Other Two.
- Commission Recommends Boundary at Present Day Low-Water Mark. Pushback from NCPC.
- Congress Sets Winding Boundary at Present Day High-Water Mark Empowers U.S. Coast & Geodetic Survey to Place 15 “Witness Marks” on DC/VA Boundary
- <https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=190385f9aadb4cf1b0dd8759893032db>



# DC/Arlington Boundary: Witness Mark #6 (HV 1695) Located on Route 50 Bridge Over GW Parkway



BDY WITNESS MK 6 DC VA, HV1695, 1, 20120402



BDY WITNESS MK 6 DC VA, HV1695, 3SE, 20120402

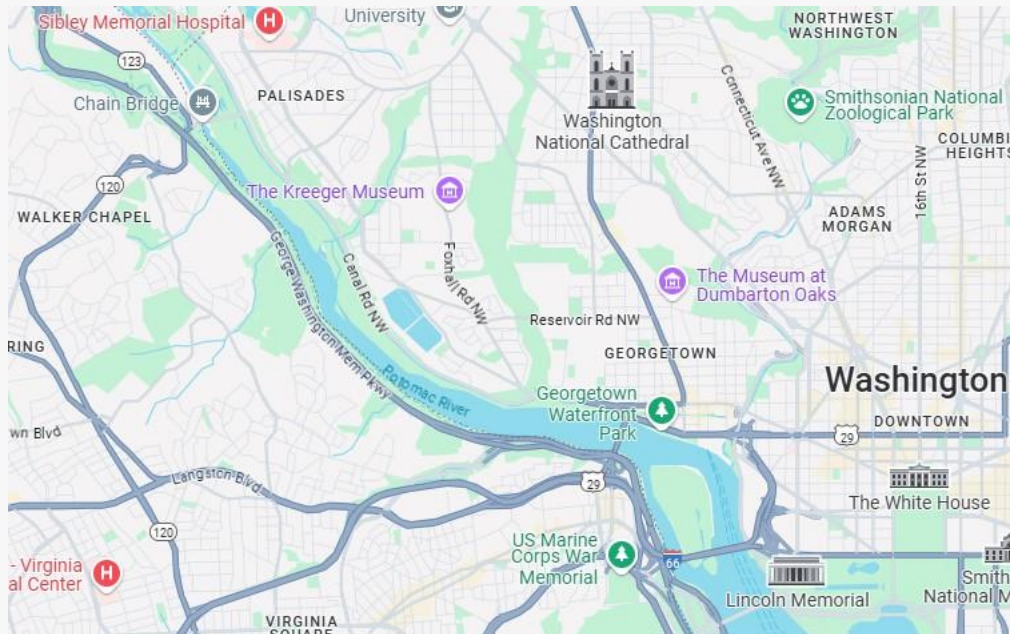
# DC Boundary with Arlington/Alexandria

Congress passes Public Law 208, 59 Stat.552 (1945) which provides:

“Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of the Potomac River to Little River, along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.”

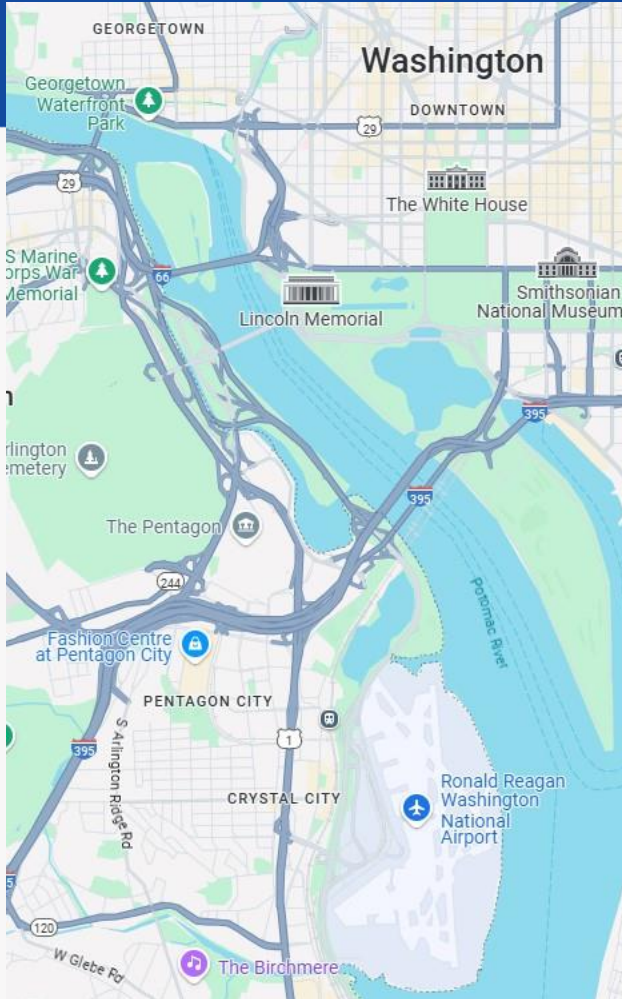


# 1. Potomac River: Boundary Maps (2025)



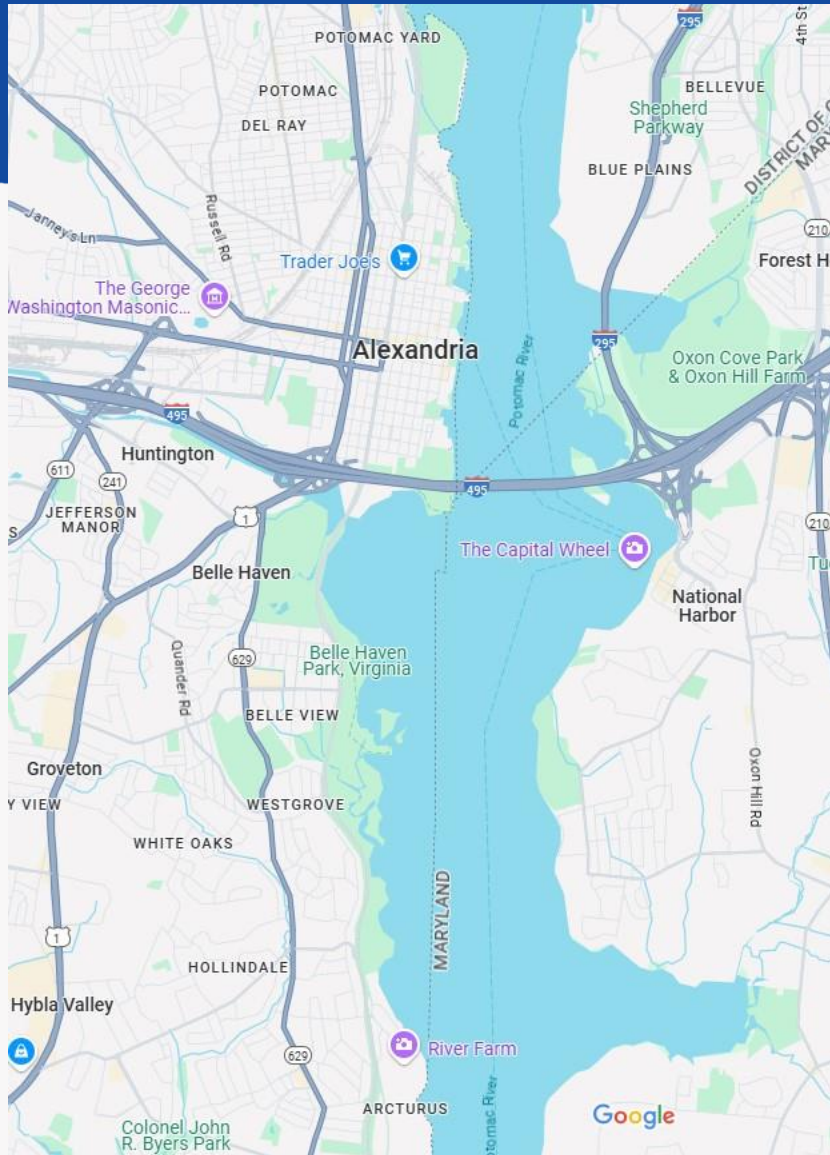
“Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of the Potomac River to Little River ...

## 2. Potomac River: Boundary Maps (2025)



... along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river ...

### 3. Potomac River: Boundary Maps (2025)



... to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line ...

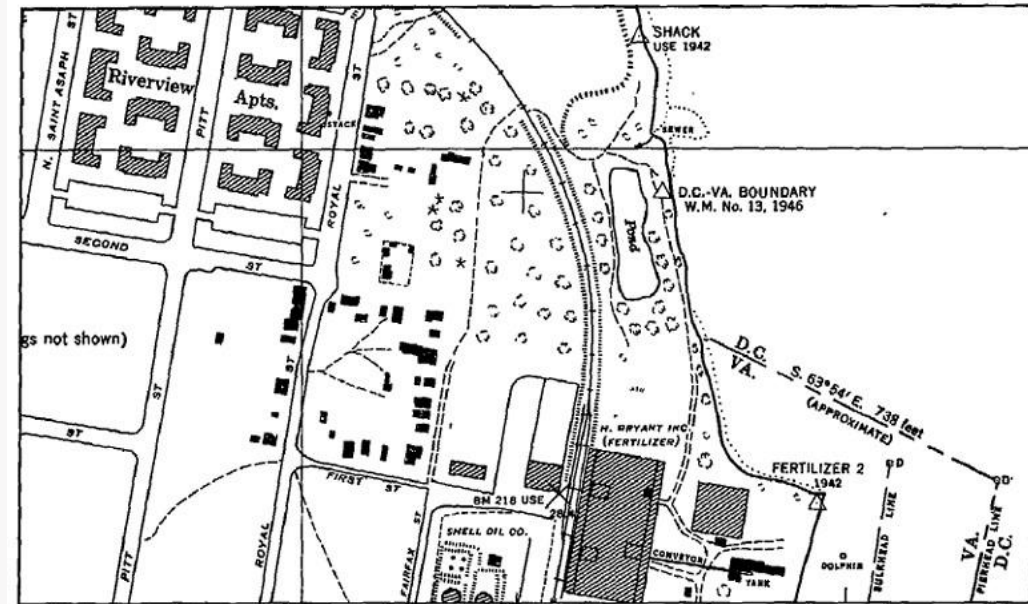
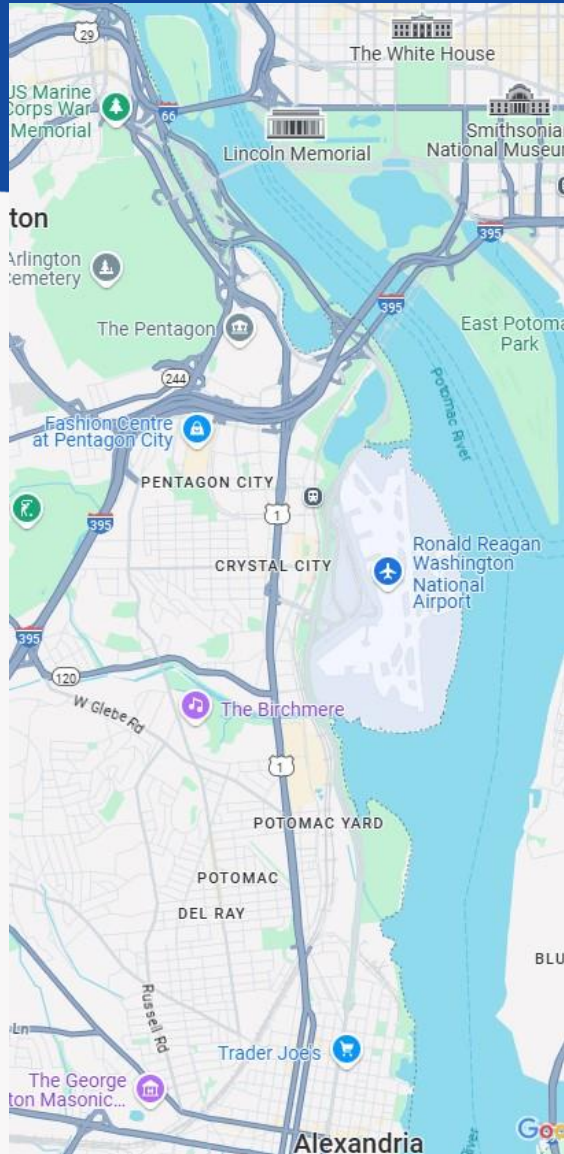


FIGURE 105.—Detail of District of Columbia-Virginia boundary in vicinity of Second St., Alexandria, Va. (see 4223 B(a)).

# 4. Potomac River: Boundary Maps (2025)



“ ... that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.”

South of Jones Point: Low-Water Mark VA Shoreline  
Middle: High-Water Mark on VA Shoreline (1945 Statute)  
North of Little Falls: Low-Water Mark on VA/WV Shore

# Honor the Roman God of Boundary Stones: Celebrate “Terminalia” at Jones Point Park 2/23/26



BOUNDARY MON 58 DC MD VA, HV1667, 3SW, 20141230



BOUNDARY MARK 14 DC VA, HV1668, 3E, 20190714

# Questions?

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