

Agencies mired in Caddo Lake water fight

Commission could approve Marshall's sales proposal today 03/11/2002

By LEE HANCOCK / The Dallas Morning News

The Texas Parks and Wildlife Department has warned that Caddo Lake, one of Texas' ecological jewels, is threatened because another state agency is ignoring state law and serious environmental concerns in its handling of a proposal to sell the lake's water to industry. In a letter to the Texas Natural Resource Conservation Commission obtained by *The Dallas Morning News*, the parks department said it was promised a role in assessing the city of Marshall's proposal but was shut out after the conservation commission's director "summarily dismiss[ed] the opportunity for an environmental analysis."

Caddo Lake is Texas' only naturally formed lake. It has a surface area of 26,810 acres extending 21 miles from State Highway 43 in Texas to a dirt weir dam in Mooringsport, La. Approximately one-third of the lake is swamp. Among 261 species of birds believed to use the lake are rare wood storks, wintering bald eagles, common loons, six types of herons and three types of egrets.

Parks officials say they have since had no access to information on the proposal, which the commission could approve as soon as Monday. That contrasts with past cooperation between the agencies, said Cindy Loeffler, chief of parks and wildlife's water resources branch. Ms. Loeffler said that could be the result of a recent commission announcement that information would only be shared with sister agencies if they file an open records request, a new requirement that eliminates access to drafts and internal documents once exchanged freely. "We have responsibility for making recommendations to TNRCC," she said. "It kind of comes back to the whole issue: Are we to be treated as a member of the public or as a fellow sister agency, really looking out for the interest of the state?" Commission officials say they are handling the Caddo watershed proposal properly. They say they limited other agencies' access to their internal files to ensure compliance with open records laws. Commission director Jeff Saitas said his agency can't require an environmental assessment of Marshall's plan because the city has a permit to use the water and is only seeking an amendment to sell some of it to a new power plant. He said regulators can't consider alternative supplies or that Marshall has never used the millions of gallons of water it seeks to divert daily from one of the country's most significant wetlands. Because there was no environmental assessment before Marshall got the original water rights in 1947, Mr. Saitas said, none can be required now. "It didn't make any sense to do an additional environmental review for no practical purpose," he said. "Quite frankly, they've raised their concerns from their perspective with respect to wildlife and habitat. ... We've got to consider human beings and cities and business, which they do not have to take into account." The dispute began last summer when Marshall sought state approval to sell water from Big Cypress Creek, above Caddo Lake. A similar request was denied in 1986 because the city had no buyer. But it now has a contract to sell 5.5 million gallons of water daily to an Entergy Corp. power plant. Months of controversy prompted Entergy to negotiate a separate agreement in January to buy water from Longview, but the company has refused to say which city will supply the plant. Marshall officials say they need to change their water permit regardless to ensure growth. Lake advocates, including a foundation created by rock star Don Henley, contend that Marshall's plan threatens Texas' only naturally formed lake. Dallas oilman Albert Huddleston assembled a team of well-connected lawyers and political advisers - including the media firm behind Laura Miller's Dallas mayoral campaign and a top fund-raiser for President Bush - to seek a compromise. Those efforts foundered, and Mr. Henley held a benefit concert Thursday in Shreveport to bankroll an expected legal fight. Marshall officials say their plan won't harm Caddo. They promise to create a fund to buy water upstream to replace what Entergy takes during dry

spells. But they concede that the fund probably won't materialize if Entergy goes elsewhere. A hydrology expert hired by Mr. Henley's Caddo Lake Institute found that the proposed fund would be inadequate and Marshall's plan could badly tax the lake. A U.S. Fish and Wildlife Service hydrologist who reviewed Entergy's opposing hydrology study said the company's findings appear scientifically flawed. Fish and Wildlife Service officials warn that the proposal could harm the lake, one of 15 in the United States declared wetlands of international significance under the 1971 Ramsar Treaty. Last fall, acting Lt. Gov. Bill Ratliff asked the conservation commission to have a public hearing to allow Marshall and its opponents to present and cross-examine witnesses and offer scientific data and other evidence. But Mr. Saitas, the commission director, wrote in a November letter to Mr. Ratliff that state law did not allow for a hearing or environmental assessment. That surprised parks officials, who thought that the law required both, Ms. Loeffler said. "If the lieutenant governor asks for something, usually, you try to deliver." After the commission held an informal public meeting in Marshall in December, Ms. Loeffler sent the agency a four-page letter warning of adverse ecological impacts and requesting a formal hearing and an environmental assessment. The lake, home to a large state wildlife management area and a federal wildlife refuge, has had four recent fish kills because of low oxygen levels. Those could increase as a result of the plan, as could already significant water quality problems, the letter stated. Under Texas law, the letter stated, Marshall's request should be granted only if it poses no adverse environmental impact "of greater magnitude" than the city's previous use of its water rights. The letter added that the commission director's "mere recitation" of Texas water code did not "fulfill TNRCC's obligation to review the city's application for environmental impacts." "Since no environmental assessment is being required now, it is impossible to say that any adverse impact ... will not be of greater magnitude. To issue the permit without any environmental analysis would leave the [TNRCC] monitoring and enforcing a permit for which it has no understanding of the permitted activity's impact upon the natural resources of the state." Lake advocates say they were surprised at the department's letter, to which parks officials say the commission has not responded. "I've never seen one agency so irate as to put such a strongly worded letter together," said Andy Bennett, an Austin lawyer who served for two years as Gov. Bush's Natural Resource Policy director and who is now helping Caddo Lake Institute challenge Marshall's proposal. Said Jim Francis, a Dallas political consultant and Bush fund-raiser also brought in by Mr. Huddleston: "It goes to show that reasonable people, who are not environmental wackos, are legitimately concerned about the safety and the protection of Caddo Lake." Ms. Loeffler said the case poses a troubling issue that will intensify as water demands increase and water marketing becomes big business in Texas. If no new conditions can be imposed when holders of water rights seek amendments such as that sought by Marshall, she said, "then we're really in trouble. Ninety-seven percent of these water rights were granted before requirements for protection of the environment." But Mr. Saitas said subjecting water rights amendments to such scrutiny "would be a very significant policy change of this state that would require direction of the elected leadership if they wanted this state to go back and revisit permits that might be a century old." "This particular application has drawn a lot of attention," he said. "Nevertheless, no matter how high profile, we still have an obligation to follow the law. We have an obligation to follow the science." But he also said that his agency's legal view of Marshall's proposal ended its obligation to science, including environmental concerns, in 1947, when the city got the right to take water from the watershed. "That's right," he said.