

December 9, 2002, Monday

## **Caddo Lake** issue goes to court

**BYLINE:** LEE HANCOCK

**SECTION:** TEXAS & SOUTHWEST; Pg. 19A; AROUND EAST TEXAS

lhancock@dallasnews.com

**LENGTH:** 886 words

The war over **Caddo Lake** heats up again this week, as all sides fighting over the fragile lake enter an Austin courtroom Tuesday to argue over a potentially pivotal ruling in the case.

State District Judge Susan Covington indicated in late October that she agreed with arguments that the state's top environmental agency erred in not granting lake advocates a full hearing before allowing the city of Marshall to sell some of Caddo's water supply to private industry.

But efforts by all parties to agree on acceptable wording for an order to resolve the case have stalled, so the judge called the hearing for Tuesday.

Lawyers for lake advocates say they hope that the judge will issue a broad order stating that the Texas Commission on Environmental Quality (formerly the Texas Natural Resource Conservation Commission) should have ordered a formal hearing before deciding last spring to grant the water permit amendments needed for the water sale.

Martin Rochelle, an Austin lawyer representing Marshall, said he and state lawyers were arguing for a much narrower order. But he added that the city would probably appeal regardless because the judge's decision could set the stage for a lengthy and expensive regulatory hearing.

"Marshall, of course, is very concerned that their water rights that are 55 to 60 years old are basically being reduced in value, to quite an extent," he said.

The city has been allowed for more than four decades to tap Cypress Creek, upstream of Caddo, for its municipal water supply. It tried in the 1980s to get permission to sell some of that water to industry, but a state court denied the request because it lacked viable industrial customers.

Marshall officials again sought permission for industrial water sales from the watershed in June 2001, after signing a contract with Entergy Corp. to supply 5.5 million gallons of water a day to cool a gas-fired power plant.

Watershed under stress

Lake advocates and a number of scientific experts, including officials with the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department, protested, saying that tapping Caddo's watershed would threaten an internationally recognized environmental treasure that was already under stress.

City officials countered that the amount of water they were proposing to sell would not harm the lake, though they conceded that they lacked scientific data to support that contention. In March, the director of the state environmental agency decided to grant the water rights amendments that the city needed to allow the sale without a hearing or environmental assessment.

#### Legal maneuvering

Lawyers for lake advocates appealed to the agency's three-member commission and also filed the pending state district court lawsuit, arguing that Jeff Saitas, then the executive director of the Texas Natural Resource Conservation Commission, had contradicted earlier agency rulings, violated state law and overstepped his authority.

They were joined by a lawyer for the Texas Parks and Wildlife Department, who argued that the environmental agency should have granted requests by hundreds of landowners and other lake advocates for the formal hearing and full environmental review before approving a plan that could irreparably harm the state's only naturally formed lake.

In late April, the continuing fight prompted Entergy to announce cancellation of its contract to buy water from Marshall. But city officials said Marshall still needed the ability to sell water to industry to ensure growth and bring the city's municipal water use into compliance with state law.

In June, the full environment commission upheld the agency director's decision, shifting the fight into state court.

Both sides agree that the judge's actions are being closely watched by other cities, environmental groups and business interests involved in marketing water rights around the state. They also say that her ruling could force the agency to conduct far more contested hearings in its oversight of the state's water resources.

Mr. Rochelle said other cities such as Marshall fear that could hamper their ability to amend their water rights without the threat of hearings similar to court cases, where they and opponents would present experts and evidence.

"There are literally millions of acre-feet of water rights that the state water plan has identified as being in need of some form of change, minor amendment," he said. "If all of them have to go to contested case hearings, or at the least are subject to that, our state faces a huge hurdle."

#### Management at issue

But Richard Lowerre, an Austin lawyer representing lake advocates, said a broad ruling could force more environmentally responsible management of the state's water resources.

"We have this giant battle right now between people who want to market water, not just the private hustlers, but cities who want to find more money, and the people who are concerned about the environment and wildlife, people who live on these rivers and don't want to see them dried up," he said. "It's become a big urban-rural battle.

"This decision says, 'No, you've got to consider the environment when you make these kinds of changes,'" he said.

**Lee Hancock** covers East Texas for The **Dallas** Morning News.

Copyright 2002 The **Dallas** Morning News