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Caddo water sale to get hearing; Resource commission to examine director's approval of deal

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Caddo Lake advocates won an interim victory Wednesday when the Texas Natural Resource Conservation Commission set a June hearing to determine whether the agency's director erred in allowing the sale of some of the fragile lake's water supply to private industry.

The chief lawyer for the three-member commission announced the hearing late Wednesday afternoon, the final day before the decision would have become law.

Lake advocates and environmentalists have been fighting since June to block a proposal by the city of Marshall to sell water from the lake's watershed to private industry.

Marshall officials could not be reached Wednesday evening for comment.

Richard Lowerre, one of the attorneys representing lake advocates, called the development "a good sign."

"This means that the commission is at least going to hear some arguments," he said. "If they had already made up their minds to support what the executive director did, they would've denied the motions."

Natural resource commission Director Jeff Saitas cleared the way for the sale in March by granting a series of amendments to the city's water permits.

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

Marshall officials again sought permission for industrial water sales from the Caddo watershed last June, after signing a contract with Entergy Corp. to supply 5.5 million gallons of water a day from Cypress Creek to cool a gas-fired power plant being built south of the East Texas city.

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

Mr. Saitas' decision to approve the water rights amendments needed to allow the sale without a hearing or environmental assessment prompted lawyers for lake advocates to file appeals with the natural resource panel's three commissioners.

They argued that that Mr. Saitas had contradicted earlier agency rulings, violated state law and overstepped his authority. They contended that the 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.

They were joined by the Texas Parks and Wildlife Department, whose resource protection counsel filed a brief arguing that Mr. Saitas had failed to follow state law and that his decision hampered the parks department's ability to do its job.

Commissioners had until Wednesday to decide whether to review Mr. Saitas' decision. Fearful that the commission might decline, a lawyer for the **Caddo Lake** Institute and some property owners went to state district court in Austin last month and obtained a temporary restraining order that would block implementation of the water permit amendments until May 13.

A hearing is scheduled for Tuesday on whether the restraining order should be extended.

Mr. Lowerre, the Austin-based lawyer for the **Caddo Lake** Institute, said he expected all sides in the dispute to agree to extend the restraining order until after the commission's June meeting.

In late April, Entergy officials announced that they were canceling the company's contract to buy water from Marshall and would instead buy water from Longview.

That prompted opponents of the industrial water sale to declare that Marshall's plan must be rejected by the resource commission, citing the prior court ruling rejecting an similar, earlier proposal because the city lacked a viable industrial customer.

But city officials said Marshall still needed the amendments approved by Mr. Saitas to ensure future growth for the city and bring the city's current municipal water use into compliance with state law. They also maintained that the amount they were proposing to take would not harm the lake.

The chief lawyer for the resource commission's director said Wednesday's decision to bring the Caddo dispute before the full commission may have been prompted by the high degree of public interest.

"The commissioners have gotten a lot of briefs, and a lot of letters, and for them to want to take a closer look would not be unusual," said Margaret Hoffman, deputy director for legal services.

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