

Environmental groups win water suit

San Marcos, other groups wanting rights to keep water in waterways move one step closer to gaining permits.

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SAN MARCOS — An Austin judge has ruled in favor of several environmental groups that hope to preserve Texas waterways by applying for water rights but not actually pumping any water — an effort led by a group that wants rights for the San Marcos and Guadalupe rivers.

The San Marcos River Foundation and others sued the Texas Commission on Environmental Quality in 2003 after the agency denied their applications for so-called instream water use rights without a hearing. At the time, the commission said it did not have the authority to grant such water rights.

On Tuesday, state District Judge Suzanne Covington said the commission does have that authority and sent the applications back to the commission, saying the environmental groups have a right to a hearing.

Terry Clawson, a spokesman for the agency, said the commission has not decided what action to take.

"We have been granted nothing other than a chance to make our case," said Jim Blackburn, an attorney for the Matagorda Bay Foundation, which wants water rights to protect the bay. "We've still got an uphill battle."

Most water rights for major Texas waterways are held by cities, water districts and river authorities, which pump water to sell to the public or to farmers. The groups that sued the state agency want to protect fish, plants and animals that live in the state's waterways.

In 2000, the San Marcos River Foundation applied for water rights to 1.3 million acre-feet of water in the San Marcos and Guadalupe rivers, hoping to lessen the impact of a drought that year by leaving the water in the rivers. An acre-foot of water is equal to 325,000 gallons.

"We realized there was a law that said you could apply for water, and there wasn't any reason why we couldn't apply for that water," said Dianne Wassenich, the foundation's executive director.

Three other environmental groups followed its example in 2002. The Matagorda Bay Foundation asked for rights to 663,774 acre-feet of water in the Lavaca River Basin. The Caddo Lake Institute Inc. asked for 2.15 million acre-feet of water in the Cypress Basin. And the Galveston Bay Conservation and Preservation Association and Galveston Bay Foundation sought 3.8 million acre-feet of water to protect the Trinity River Basin.

"Starting with (the San Marcos River Foundation), people decided it's time we have to get out there and protect those rivers and lakes or soon there won't be any water left," said Rick Lowerre, an attorney for the Caddo Lake Institute.

The permits do not guarantee access to water, which is distributed to permit holders based on when they obtained their rights. That means permit holders have to wait in line until those ahead of them get their water — and they may get nothing during a drought.

"What it does mean is that the application that comes the next year is behind (groups that want to protect) the bays and estuaries," Blackburn said. "So, at least in some point in time, we might have succeeded in setting aside some amount of water."