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FOR IMMEDIATE RELEASE  
December 12, 2002

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## **JUDGE SIDES WITH CADDO LAKE ADVOCATES, OVERTURNS STATE ENVIRONMENTAL AGENCY'S DECISION TO ALLOW MARSHALL TO SELL CADDO LAKE WATER**

AUSTIN – Travis County District Judge Suzanne Covington today agreed with Caddo Lake supporters and ruled that the state's environmental agency and its former executive director did not act properly when they enabled the City of Marshall to sell Caddo Lake water to industrial users without conducting a public hearing.

The ruling requires the Texas Commission on Environmental Quality (TCEQ) – formerly the Texas Natural Resource Conservation Commission – to provide notice and the opportunity for a formal, contested case hearing. The Caddo Lake Coalition, more than 200 shoreline owners and residents, and Dallas businessman Albert D. Huddleston, who intervened in the case on behalf of Caddo Lake, had requested such a hearing and now will get one if Marshall continues to request the amendments. The Judge is expected to sign the final order in the coming days.

“We are glad the Court agrees with the position taken all along by the Caddo Lake Coalition that the law requires TCEQ to hold formal hearings on Marshall's unprecedented water rights permit amendment,” said Dwight Shellman, president of the Caddo Lake Institute and a leader of the Caddo Lake Coalition. “We believe a decision of this magnitude should never have been rubber-stamped without giving anyone the opportunity to present information about its impact.”

“At long last, Caddo Lake property owners and residents will have the opportunity to present scientific data about how Marshall's proposed water sales would harm Caddo Lake,” agreed Huddleston, who has been a strong backer of efforts to protect Caddo Lake. “In addition, this decision sends a strong message to the TCEQ that it cannot make important, far-reaching decisions without the benefit of a legitimate public hearing.”

More than 18 months ago, the City of Marshall applied for amendments to its water permit 1) to enable it to sell wholesale raw water to industrial clients and 2) to transfer water from the Cypress Basin to the Sabine Basin for use by industries.

The TCEQ received hundreds of written requests for a contested case hearing on the matter, not only from the Caddo Lake Coalition (comprised of the City of Uncertain, Caddo Lake Area Chamber of Commerce and Tourism, Greater Caddo Lake Association and Caddo Lake Institute), local shoreline owners and Mr. Huddleston, but also from the Texas Parks and Wildlife Department and even the TCEQ's own Office of Public Interest Counsel. However, the agency's then-executive director made the decision to approve Marshall's permit amendments without a public hearing and the TCEQ later upheld his decision. Caddo Lake backers then filed a lawsuit to overturn that decision.

The Caddo Lake Coalition expressed regret that the dispute has dragged on so long. “Marshall city leaders could have reached a reasonable compromise with the Caddo Lake Coalition long ago that would have allowed them to pursue their economic development goals while still protecting Caddo Lake,” said Shellman. “Instead, they've squandered away thousands of dollars in taxpayer money and their opportunity with Entergy fighting to rush this deal through and keep the full set of facts under wrap. We continue to hope they will come to the table to reach an agreement that protects one of Marshall's most important economic development assets.”

Under Texas law, the Coalition and other groups now will have a full opportunity to present in a public hearing the facts and expert testimony supporting their position that Marshall's request would harm Caddo Lake and the local economy. During today's hearing, the City of Marshall and TCEQ indicated to the judge they want to sever Mr. Huddleston's action from the rest of the lawsuit, but that separate action will not affect today's decision.

## BACKGROUND INFORMATION AND TIMETABLE

### Chronology:

- 1947 Water right issued. Authorized the City of Marshall to take and use up to 10,000 acre-feet of water per year for municipal use from the Cypress River, upstream from Caddo Lake.
- 1957 Water right amended. Increased authorization to 35,000 acre-feet of water per year for municipal use.
- 1970 Water right amended. Authorized the City to take and use for industrial purposes 3,000 of the 35,000 acre-feet of water per year that had been authorized.
- 1986 State cancels the authorization for 3,000 acre feet for industrial use for lack of need and reduces municipal rights from 32,000 to 16,000 acre-feet. State explicitly requires any excess water (including sewage discharges) to be returned to the Cypress River, upstream from Caddo Lake.
- Aug. 2001 City applied for amendment to its water right, Adjudication, seeking authorization for municipal and/or industrial use for entire 16,000 acre-feet.
- Fall 2001 Over 200 individuals and organizations, including the Texas Parks and Wildlife Department, submitted comments and requested a public hearing on the City's application.
- Nov. 2001 Texas Water Development Board issues State Water Plan, projecting that the City of Marshall would need no more than 6,372 acre-feet per year of water for its municipal use by the year 2050.
- Mar. 2002 Executive Director (ED) of TNRCC (now TCEQ) grants application of the City for the industrial use.
- Apr. 2002 Plaintiffs file motion asking the three commissioners of TNRCC to overturn ED's decision and grant a hearing on the City's application.
- Apr. 2002 Texas Parks and Wildlife Department and TNRCC's Office of Public Interest Counsel file motions/briefs in support of the Plaintiffs' motion to overturn the ED's decision
- June 2002 TNRCC Commissioners deny Plaintiffs' motion to overturn the ED's decision and affirm the ED's decision to deny the hearing and grant the City's amended water right.
- June 2002 Plaintiffs file suit in District Court of Travis County to appeal the decision, challenging the denial of the hearing and the decision to approve the amendment.
- June 2002 Plaintiffs file Motion for Summary Judgment on the procedural issue of denial of the hearing.
- Sept. 2002 TCEQ and City file responses.
- Oct. 2, 2002 Oral argument on Motion for Summary Judgment.
- Oct. 23, 2002 Plaintiffs instructed to draft order to be signed by Judge granting Plaintiffs' motion and remanding the matter to TCEQ for the hearing process.
- Dec. 12, 2002 Plaintiffs and Defendants argue for their respective versions of Final Judgment and court accepts Plaintiffs' version

### District Court:

Cause No. GN 201217. Judge Suzanne Covington

Plaintiffs: City of Uncertain, Caddo Lake Area Chamber of Commerce and Tourism, Greater Caddo Lake Association, Caddo Lake Institute, John T. Echols & Barry L.

Bennick

Intervenor: Albert D. Huddleston

Defendants: Texas Natural Resource Conservation Commission (now TCEQ) & City of  
Marshall

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