

New CLI head wants win-win solutions to issues

[By JULIA ROBB, Special Projects Editor]

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Newly-appointed Caddo Lake Institute Director Richard Lowerre, an Austin attorney, has had pretty good luck fighting for the environment.

Five times, Lowerre has represented Texas landowners fighting nuclear waste disposal sites scheduled to be located near their property.

Five times, Lowerre won.

But Lowerre says he would rather hammer out solutions that benefit all parties than go to court.

"We want a solution so we are all working together," he said, "for the good of the whole region. Marshall benefits from a healthy Caddo Lake and people at the lake have connections in Marshall.

"It's not the U.S. versus Russia. It's a community that needs to get back together and work together."

Lowerre, 57, is taking the reins from Dwight Shellman, who has long headed the Caddo Lake Institute.

Under Shellman's tenure, the institute and the city of Marshall have together spent about \$1 million fighting each other in court.

The city of Marshall has spent \$425,000, although Entergy has reimbursed the city for \$90,000, according to City Attorney Todd Fitts.

The short version of the litigation goes like this: In 2001, city officials asked the state for an industrial permit amendment that would allow them to sell untreated water to a proposed Entergy power plant.

Marshall has a permit to take water from Big Cypress Bayou, which flows from Lake O' The Pines – Big Cypress is also fed by several smaller bayous – into Caddo Lake.

Shellman, 200 shoreline landowners, the Texas Parks and Wildlife Department and the public interest counsel for the Texas Commission on Environmental Quality, and various lake advocacy groups such as the Greater Caddo Lake Association and the city of Uncertain, asked the Texas Commission on Environmental Quality to hold a trial-like hearing before the state granted Marshall's request.

"The purpose of the hearing was to ask the commission, as a condition of changing Marshall's water right, to set out protections for Caddo Lake," Shellman recalled Friday.

Selling water for industrial use could triple Marshall's water use, from 6,000 acre feet per year to 16,000 acre feet, the city's total allotment, lake leaders said.

"During drought time, you don't want any entity pulling out all their water because that's when the lake and everybody else needs it," Lowerre said, in a Friday interview, adding "We needed an agreement for drought time, that's the important time."

State officials denied the commission needed to hold a hearing and granted the amendment.

The decision was appealed to the State District Court in Austin, which ruled in the lake interest's favor.

Marshall and the TCEQ appealed to the Court of Appeals and lost.

Marshall and the TCEQ then appealed to the Texas Supreme Court, which heard oral arguments a little more than a year ago, in October, 2004.

Supreme Court justices have not ruled on the case. If they rule in the lake interest's favor, the TCEQ must hold the hearing.

If the court rules for the city, the lake interests still have a right to pursue an appeal at the district court level.

In the meantime, parties on both sides have accused the other of base ulterior motives and acting in bad faith.

Fitts remembers things a little differently than Shellman and Lowerre. He said the city had, at one point, a good water mitigation agreement with the Cypress Valley Navigation District and Entergy.

The agreement would have given the city the means to buy water from Lake O' The Pines, to use during drought times, Fitts said, explaining the purchased water would have made up for water the city would use for itself and for Entergy.

"Mr. Shellman wasn't satisfied with that contract," Fitts said, "and it didn't meet their needs and desires, and that contract was cancelled.

"Everybody else thought the contract was pretty good. We felt we were addressing the issue of low flow in drought times, but they thought it wasn't good enough."

Although many Marshall residents have criticized the Caddo Institute for leading the court fight against them, Lowerre points out both he and the institute are "not going out and spiking trees.

"This is us saying we believe the law means let's go to court and find out" who's right.

"I have clients I have to convince to work within the system because they would like to take things in their own hands."

Lowerre's work experience has certainly trained him to work within the system. He first got bachelor's and master's degrees in chemical/environmental engineering from Rice University, then earned a law degree from the University of Texas in 1975.

He worked in the National Academy of Sciences in Washington from 1975 to 1977, studying how agencies obtain and use scientific information in regulatory decision making.

Lowerre then worked two years for the Texas Attorney General's Office, defending Texas agencies in court, then served as the assistant commissioner for regulatory programs for the state Department of Agriculture.

In 1980, Lowerre began his environmental law practice, representing clients before state and federal agencies, among other things.

Lowerre has represented the Lower Colorado River Authority, the cities of Bastrop and Del Rio, Aransas, and the Kinney County Groundwater Conservation District, among others.

In the early 1980s, Lowerre said he fought for the city of Corpus Christi and the Nueces River Authority because they wanted to build a reservoir on the Nueces River.

The reservoir was built, but in exchange the river authority was required to release water to feed the river and keep water flowing into the bays lining the Gulf Coast.

Similar compromises can be reached regarding lake issues, he said, adding "it's my belief there's enough water to protect Marshall's interest, enough water for Caddo Lake and the interests there.

"It's a question of how do we in times of drought ensure that there's a fair solution for everybody?"

In Texas water fights, he said, "someone is saying that I need to be assured of a certain amount of water so I can make plans for the future, be it an industry or city.

"Those on the other side are saying we don't know enough to give you that assurance, we need to do the scientific work...."

All sides of the lake/hearing issue, he said, need to recognize that everybody involved is trying to work for the best, although "they might not agree how to get there.

"If the Caddo Institute is hated but everybody is back together, that's fine with me.

"I don't care about the image. I don't care if people think I'm the devil. What I want is for everybody to get the water (they) needs.

"It needs to be a win-win situation," he said.

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