

Refuge water rights another issue

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Attendees at a Thursday meeting sponsored by the Marshall/Harrison County League of Women Voters asked Caddo Lake National Wildlife Refuge Manager Mark Williams all kinds of questions.

Some of those questions concerned water rights.

Two factions are fighting over a portion of Longhorn Army Ammunition Plant acreage. One faction wants to include the land in the already created refuge and the opposing faction wants the state of Texas to take a portion, for industrial development.

But land is not the only asset in question.

The U.S. Army is still holding some water rights and the fate of those rights has not been determined.

In the meantime, Williams, a U.S. Fish and Wildlife employee, believes the Army should transfer all the land and all the water rights to his agency.

About 5,915 of the original 8,415 Longhorn acres and 75 percent of the water rights have already been transferred to the wildlife refuge – over which the U.S. Department of the Interior and its subagency, the U.S. Fish and Wildlife Department, has jurisdiction.

That leaves about 10,000 acre feet under Army control. A full 100 percent of the water would total 40,000 acre feet, Williams explained in the meeting.

As a comparison, 10,000 acre feet of water is almost as much as the state allows the city of Marshall to take from Big Cypress Bayou. Big Cypress flows into Caddo Lake.

Marshall has the right to take 16,000 acre feet from the bayou annually, and is currently using about 6,000 acre feet, city officials have said.

In the 2004 memorandum of agreement between the Army and the Interior Department that accompanied the land transfer to the refuge, and specified the terms, the two parties agreed that 25 percent of the water rights would remain with the Army.

The memorandum states that the Army might transfer a portion of the land unsuitable for the refuge to a third party (not the Fish and Wildlife Service), to ensure that those properties are used for conservation, or something that is compatible with the refuge.

The acres in question are those that are most contaminated, due to their use by the ammunition plant.

Williams said in a recent interview, however, that the third party was meant to be a non-government, non-profit agency that would clean up the land.

Moreover, Fish and Wildlife created the third party idea because the Army did not initially tell his agency a permit could be issued that would allow the agency to place the land in the refuge, before remaining contaminants were erased.

When the transfer of land is resolved, the memorandum states "the parties agree to discuss a potential reallocation of water rights."

According to Williams, Army officials kept the 25,000 acre feet because they believed any third party that attempted to clean up the existing contamination might need the water to do so.

Army officials planned to allocate the remaining water to Fish and Wildlife when the remaining land was transferred to the refuge, Williams said, adding that the memorandum did not spell out that plan in black and white.

But Williams said Army officials now say they may retain the remaining 10,000 acre feet of water regardless of the land disposition.

Army officials and Army civilian employees have a different understanding.

According to Tom Lederle, an Army civilian employee responsible for implementing the Longhorn land transfer process, Army officials initially "retained the water rights so the land would be more marketable in case Fish and Wildlife didn't take it and the Army had to sell the property to a private interest."

Lederle's idea about the Army's purpose in keeping the water rights is not included in the memorandum of agreement.

But the only way Army officials would not transfer the land and remaining water rights to the U.S. Fish and Wildlife Service, he said, is if federal legislation prevents the transfer, or if the Interior Department renounced its prior claim.

The Interior Department has not done so, he said.

"No Army higher ups are requesting that the Army retain the water rights, or transfer them to the state of Texas for industrial development," Lederle said, adding that Fish and Wildlife would have always taken 100 percent of the water rights but the agency was not sure about taking all the property, due to the contamination.

"I don't think there is anybody conspiring," he said, but added "It is possible that the interest in the land is linked to the water, just because of its value as a resource."

Lederle noted, however, that water rights do not necessarily convey with the land and the government could sell them separately, if officials chose to do so.

Williams said he believes that selling the water separately was not included in the memorandum of understanding.

The remaining 25 percent of the water rights were to be discussed in the permit that would have conveyed the remaining 2,500 acres to the refuge, he said.

But the Army has suspended those permit negotiations due to Congressional requests that it do so.

Spokesmen for U.S. Rep. Louie Gohmert (R-1st) and Texas Senator Kay Bailey Hutchison have said the legislators were instrumental in suspending the land conveyance to the refuge until the community can decide the issue for itself.

Williams is critical of the terms the Army is using to suspend the conveyance of the land, and says that "Fish and Wildlife does not see any way that the industrial site would be compatible with the refuge."

"The things they told us when we were discussing writing the memo of agreement is not what they are telling us now," he said.

Williams said Fish and Wildlife Service officials always intended to become the third party through the permit that would have transferred the land to its jurisdiction.

"We want all the land inside the Longhorn Ammunition Plant boundaries," he said, adding that if the Army keeps 25 percent of the water rights it will adversely affect the refuge.