

State justices order review of Caddo Lake water plan

Panel OK'd Marshall bid to sell part of its supply for industrial use

By TERRENCE STUTZ / The Dallas Morning News

6/06/06

AUSTIN – The Texas Supreme Court on Friday ordered the state's environmental quality commission to reconsider its approval of Marshall's plan to sell some of its water supply from Caddo Lake to private industry.

While the high court stopped short of ordering the Texas Commission on Environmental Quality to convene a hearing so that opponents can object to the plan, justices said the agency needs to determine whether the city's proposed water sale might affect other water-rights holders and interests on Caddo Lake and its tributaries in northeast Texas.

The city of Marshall and the Caddo Lake Area Chamber of Commerce and Tourism are among those fighting the proposed industrial use of Caddo water.

They say Marshall's plan would cause serious environmental problems and could eventually drain the lake and its sensitive wetlands. Further, they say, the commission erred by approving the plan as an amendment to Marshall's water-use permit without hearing from affected parties. The Texas Parks and Wildlife Department also is opposed.

Marshall has drawn water from Cypress Creek – a tributary for Caddo Lake – since 1947, primarily for municipal use, including for homeowners and businesses in the area.

But in 2001, the city applied to the environmental commission for a permit amendment authorizing it to sell untreated water for industrial purposes. City officials indicated they wanted to sell 5.5 million gallons of water a day to a utility company to cool a gas-fired power plant.

Although hundreds of individuals and organizations requested a hearing on the application, the commission ruled in 2002 that it wasn't necessary and approved the change.

The commission noted that Marshall wasn't initially seeking to increase the maximum amount of water it can divert from the lake and its tributaries – 16,000 acre-feet per year. Records indicate that the city has never used more than half its maximum allocation.

Opponents then sued the commission and Marshall, winning in state district court and at the 3rd Court of Appeals, which ruled that a hearing before the commission was required. The state then appealed to the Supreme Court.

Writing for the high court, Justice Harriet O'Neill said the commission must review the application again and assess whether it could affect the plaintiffs. If the commission finds that to be true, then it must hold a hearing to determine whether the proposal complies with state water-use requirements.

"It may be that persons affected by these criteria are entitled to notice and hearing to determine the proposed amendment's effect, or it may be that the commission could determine from the application that these criteria are not impacted and a hearing is not necessary," the ruling says.

A spokeswoman for the commission said the agency is reviewing the court's decision.

Richard Lowerre, attorney for the plaintiffs, said he anticipates the commission will hold a hearing on the proposal because of the concerns raised.