

## **Texas Supreme Court rules in Marshall water dispute**

By MIKE ELSWICK, Managing Editor

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The Texas Supreme Court on Friday issued a ruling against the city of Marshall and the Texas Commission on Environmental Quality in a long-pending case concerning the city of Marshall's request for an amended water permit to supply industrial customers with water.

TCEQ officials and those with the city of Marshall earlier had said the ruling could have far-ranging impact on municipalities across the state.

At stake was whether Marshall could change the way it uses water without seeking a change in its TCEQ water use permit.

City officials reached late Friday morning had not heard of the ruling. Marshall City Manager Frank Johnson said city representatives would issue a statement later in the day. Officials with TCEQ said they had not had a chance to review the ruling and would have a comment later.

Rick Lowerre, attorney for and executive director for the Caddo Lake Institute, said "the main message is that this is a clarification of law. With this it should be possible for Marshall and the plaintiffs to sit down with each other and resume talks and negotiations."

Lowerre said he was optimistic both sides can reach a compromise on the city's use of Caddo Lake water. "The city of Marshall took a good first step when they recently agreed to buy water from Lake O' the Pines," Lowerre said. "Hopefully we can get back together and work together."

The Supreme Court affirmed in part a 2003 decision of the Court of Appeals for the Third District of Texas. The Texas Commission on Environmental Quality and the city of Marshall joined to appeal the earlier decision in a case in which the city of Uncertain, Caddo Lake Area Chamber of Commerce and Tourism, the Greater Caddo Lake Association, the Caddo Lake Institute, John T. Echols and Barry L. Bennick were listed as respondents.

Texas Supreme Court Justice Harriet O'Neill's opinion said the high court "affirm(s) the court of appeals' judgment in part, although for different reasons, and remand to the Commission (TCEQ) for further proceedings."

Justice O'Neill said the Supreme Court concludes a section of TCEQ rules on whether public hearings are held "does not mandate issuance of Marshall's water rights amendment without the assessment of other substantive criteria imposed by the Water Code and the Commission's rules."

The Texas Supreme Court heard oral arguments on a case in 2004.

The city of Marshall and TCEQ appealed to the Supreme Court in December 2003 asking that it reverse the lower court ruling.

TCEQ General Council Duncan Norton said at the time the case has wide-reaching ramifications because "We are asking the Supreme Court to look at the codes themselves and give us provisions on how to interpret the water rights codes for the state."

The case began in 2001 when city officials applied to the TCEQ for an industrial permit amendment which would allow them to sell untreated water to a proposed power plant, to be located south of Marshall. City officials also asked the state to allow them to sell water in the Sabine Basin, for the plant.

Marshall straddles both the Sabine and Cypress Basin watersheds. The city gets its water from Big Cypress Bayou, which flows into Caddo Lake, and discharges it into the Sabine watershed that supplies water to the Sabine River.

The Caddo Coalition and 200 landowners then asked the TCEQ to hold a contested case hearing, somewhat like a trial, before it granted Marshall's requested amendments.

The TCEQ denied it needed to hold such a hearing and granted both amendments.

The coalition and two landowners then appealed that decision to the State District Court in Austin, which ruled in the coalition's favor. The district court ruled that the TCEQ must hold hearings on both amendment requests.

The appeals court ruled the state must hold an amendment hearing concerning the sale of industrial water, but approved the amendment allowing the city to sell water to its Sabine customers.

Marshall City Attorney, who could not be reached Friday morning, earlier had said the decision would be important because it would determine whether "municipalities can amend their water rights on issues where the municipality is not requesting the ability to divert more water than is already legally permitted, but want to use in a different manner; in this case, sell raw water.

"We just want to pass raw water on to the customer without going to the expense of treating it, assuming we had a customer that wanted that."

Marshall lost its original power plant customer, Entergy, due to delays connected with the on-going litigation.

The company later reached an agreement with the city of Longview to have waste water provided through pipelines to Entergy's Harrison County power plant.