

Troubled waters

By Bill Hanna

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UNCERTAIN - If 75-year-old Betty Holder had her way, she would spend the rest of her days fishing on Caddo Lake, not fighting for it. For Holder, the mayor of the tiny town of Uncertain, the future of Texas' only naturally formed lake is about as stable as the town's name implies.

This East Texas community of 121 self-proclaimed rednecks, retirees and nature lovers has banded together -- helped by the deep pockets of Eagles rocker Don Henley -- to fight court battles, create nature preserves and find answers to problems facing the scenic lake.

Residents of Uncertain say two things threaten Caddo: A legal fight that pits locals against nearby Marshall, and a growing influx of invasive plants.

The lake also has high levels of mercury, prompting a ban on eating some fish. And in summer months, the lake can become dangerously low, robbing the water of oxygen and killing fish.

"We have got to stay on top of all of these issues, and I don't know how we would do it without some outside help," said Holder, who owns Caddo Grocery, the town's unofficial meeting place.

The outside help has mainly consisted of Henley, whose resources have kept the fight on the front burner.

To people such as guide Jimbo Ellis, who escorts fishermen and tourists through Caddo's maze-like waterways, Henley is a savior.

"If it wasn't for Don Henley, there wouldn't be no Caddo. They would have already sucked it dry," Ellis said.

Henley grew up in Linden, an hour's drive north of Caddo. Now living in Dallas, he has become a committed defender of the lake, which straddles the Texas-Louisiana border just north of Interstate 20. Attempts to reach him for this report were unsuccessful.

Henley has pumped millions of dollars into the effort to protect the lake, forming the Caddo Lake Institute and helping to buy portions of an old ammunition plant for the 7,100-acre Caddo Lake National Wildlife Refuge.

An eerie place

With marshes, swamps and sloughs filled with bald cypress trees covered in Spanish moss, Caddo Lake is an eerie, otherworldly place.

The lake is named after the Caddo Indians, who lived along the Red River in Louisiana, Texas, Arkansas and Oklahoma before European explorers arrived in the 1500s. It is home to more than 200 species of birds, 70 species of fish, 50 species of mammal and a dozen varieties of turtles. It is part of the flyway for thousands of migratory birds.

The lake was formed by a logjam on the Red River known as the Great Raft.

Residents serviced steamships that turned the East Texas outpost of Jefferson into a boomtown.

The jam was dynamited in the late 1870s, causing the lake's level to drop and cutting Jefferson's main commercial link to the outside world. A man-made dam restored the water in the early 1900s.

The lake has become a favorite outpost for hunting, fishing, canoeing and a growing ecotourist trade.

"I would certainly say it is one of the most beautiful and unique places in Texas," said James Van Kley, an associate professor of biology at Stephen F. Austin State University and an expert on Caddo's plant life. "You've got Enchanted Rock, Big Bend National Park -- this ranks right up there with them. And it's certainly more exciting than anything I've seen elsewhere in the Piney Woods of East Texas.

"You have the bald cypress wetlands, not only their presence but their scale. There are pocket-sized bald cypress swamps elsewhere, but to have something on this scale is unique. It's just vast. You can really get lost back in there."

'Water is the new oil'

The residents and the Caddo Lake Institute are embroiled in a legal battle with nearby Marshall over an "industrial use" permit that would allow the city to take as much as 16,000 acre-feet of water from Big Cypress Bayou, which flows into the lake.

Other entities, including several Louisiana towns, have water rights to the lake itself. But Caddo residents are particularly troubled that Marshall wants to reduce the amount of water that flows into the lake.

The Texas Supreme Court heard arguments in October about whether the public should be allowed input into the permitting process through what is known as a contested case hearing. The Texas Commission on Environmental Quality has ruled that a hearing was not required.

Residents appealed and are waiting on the court's ruling, which is expected next year.

Marshall originally planned to sell the water to Entergy Corp., which wanted to buy 5.5 million gallons a day. The company eventually backed out of the deal, but Marshall is continuing the fight.

The Caddo Lake Institute had sought a permit to protect the so-called environmental flow into the lake but didn't succeed because water protection rights have not gained a foothold in Texas as they have in other states. Last year, the state rejected a similar attempt by groups on the San Marcos and Guadalupe rivers, and the Legislature issued a moratorium on river protection rights.

Dwight Shellman, president of the Caddo Lake Institute, said the state is giving lip service to protecting valuable water resources. "There is no question that water is the new oil," he said. "There is sort of a feeding frenzy."

Both sides agree that Marshall's seemingly minor battle over amending a permit could be a preview of future fights as private companies step up efforts to acquire

water rights.

Marshall Mayor Ed Smith contends that the issues have been distorted by Shellman and other environmental groups.

"The Supreme Court will decide this issue," Smith said. "But there will still be litigation on environmental flows that they've initiated. If they are successful, they will be accountable to nobody, only Dwight Shellman and Don Henley."

Smith contends that the effect of Marshall's water use is negligible and that the city is willing to replace whatever is lost by buying water upstream from Lake O' The Pines and releasing it into Caddo.

The Legislature is expected to wrestle with a wide range of water issues in the 2005 session, including water marketing and environmental flows, which essentially means the amount of water needed to maintain a healthy environment. Also on the table is the rule of capture, which gives landowners the rights to all water on and under their land.

Meanwhile, people such as retired Dallas real estate agent Tony Novak and steamboat operator Lexie McMillen say Marshall's leaders have underestimated lake residents' resolve.

"Those folks in Marshall think it's just a bunch of poor rednecks over here, but they're wrong," Novak said. "We raised a half a million dollars to fight them. A lot of that is Don Henley, but a lot of people around this lake kicked in, too. You've got retired executives and educated people who know how to fight for what they believe in."

A threat of nature

Another threat to Caddo Lake is one from nature.

Experts say 27 nonnative plants are in the area. And the most serious problem plant, water hyacinth, threatens to overwhelm parts of the lake.

"If you don't keep those under control, you're not going to have much of a lake to fight over," said Robert Speight Jr., president of the Greater Caddo Lake Association.

The hyacinth helps by lowering nitrogen levels, which prevents an algal bloom from covering the lake, Shellman said. Speight and Shellman are working on a spraying program that would control the hyacinth without eliminating it. The program would supplement less-frequent applications by the state.

Speight watched his father battle to preserve the lake and said the current fight is nothing new. "It's different people, different times, but it's the same issues over and over," he said. "It seems like every decade there is a new threat to the lake. ... Someone is threatening to build a canal, like they wanted to do a few years ago, or suck more water out of the basin, like they're talking about now.

"If you live around here long enough, it seems like the lake is always in some kind of peril."

Legal troubles

Residents want to stop the city of Marshall from taking water from Big Cypress Bayou, which flows into the lake.

Natural peril

Water hyacinth threatens to overwhelm the lake, home to more than 200 species of birds and 70 species of fish.

IN THE KNOW

Texas waters

Texas' water laws are complicated, but these are the general principles:

- Water in creeks, rivers and bays is owned by the state and is considered public property. In almost all cases, individuals and organizations must receive permission from the state to pump, divert or impound surface water.
- Water rights are generally based on prior, or historical, use. Claimants are required to prove that they have used a certain amount of water from a specific stretch of river, stream or reservoir.
- Domestic uses, such as municipal water supplies, or uses for livestock always trump any conferred water right.
- The use of groundwater is determined by the rule of capture, adopted from the English in 1904. The law allows landowners to pump as much groundwater as they wish, with few restrictions, regardless of the effect on neighboring wells or more distant water users.

SOURCES: Texas Water Foundation, Texas Commission on Environmental Quality, The Handbook of Texas Online