

## **Commissioners approve 'appropriate action' regarding an application filed with TCEQ by Caddo Lake Institute**

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The city of Marshall may find itself in another legal wrangling with the Caddo Lake Institute after city commissioners Thursday night authorized the staff "to take appropriate action" regarding legal issues surrounding an application the Caddo Lake Institute filed with the Texas Commission on Environmental Quality.

On July 1, 2002, Caddo Lake Institute Inc. filed an application for a permit to appropriate up to 2,154,025 acre-feet per year of unappropriated water in the Caddo Lake watershed. This is water not already appropriated to anyone else using water from the lake, according to documents.

In December TCEQ officials signed an order denying the institute's water rights application.

The institute filed a petition request for declaratory judgement with a district court in Travis County a few week ago in response to TCEQ's denying their application, officials said.

Dwight Shellman, Caddo Lake Coalition president, said there is "absolutely no reason for the city of Marshall to get involved in this request for declaratory judgement from the courts.

"As far as I'm concerned it is the residents who will be getting their pockets picked," Shellman said.

Shellman said the request for judgement is to determine whether TCEQ has jurisdiction to process an application for the water right application.

"It is in no way connected to the lawsuit pending before the Texas Supreme Court," Shellman said.

Frank Johnson, city manager, said his understanding is "even though we are not named in the suit they are asking for the courts to act on matter that will affect the city.

"Our concern is that the way the lawsuit is structured two of the issues pertain to our water permit and what we have under appeal right now," Johnson said.

"Commissioners have authorized me and Todd Fitts, city attorney, to discuss the issue with Martin Rochelle (city's Austin attorney) and evaluate and take appropriate action," Johnson said.

Johnson said that could mean the city will spend more money in the ongoing dispute between the two parties.

"Whenever you consult with an attorney the clock is running and you can expect to be billed." Johnson said.

Shellman said it is his opinion that the city "does not need to intervene" at this point.

"If courts deny our petition then the point is mute anyway," Shellman said. "If they say yes to the petition, the city can act at that time.

"It's outrageous for them to get into this now," he said. "That's why I say the taxpayers are the ones having their pockets picked."

The institute is asking a district court in Travis County to reverse the order of TCEQ that denies the application for water rights and to reinstate the application, according to the petition.

According to the petition there was not an opportunity for a contested case hearing on the application.

The commissioners also authorized the city manager to investigate alternative water sources for the city when the water levels are low at Caddo Lake.

Johnson said the situation at Caddo Lake has caused the city to "examine where we get out water."

"We are very sympathetic to what our drawing water does to the basins in the hot months of the year," Johnson said. "That causes us to look at the need for other options."

He said the city will be looking at alternative water sources for the short-term and the long-term.

"If we can do both I think that would be in the best interest of the city," Johnson said.

"There are a lot of options to look at and that's what the commissioners want us to do," Johnson said. "We will look at the options and the cost and bring back recommendations."