

US appeals court sides with refuge in water fight

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DALLAS - The city of Dallas and state water planners have lost a federal appeal in a case that pits future water needs against conservation.

A ruling by the New Orleans-based 5th U.S. Circuit Court of Appeals filed late Thursday affirms a lower court's finding in support of a proposed East Texas wildlife refuge along the Neches River.

"It's an exciting day for wildlife conservation and for residents throughout the state of Texas," Jose Viramontes, a spokesman for the U.S. Fish and Wildlife Service, said Friday.

The city and the Texas Water Development Board claimed in a 2007 lawsuit that the U.S. Fish and Wildlife Service established the 25,000-acre refuge in 2006 without first considering environmental and economic impacts.

They argued that the wildlife service violated federal law by not addressing the refuge's effects on Dallas' water supply, economy and future water planning. The reservoir was not scheduled to be built until 2050.

The three-judge appellate panel saw it differently.

"They've affirmed we've done everything right," Viramontes said, explaining that his agency completed the necessary environmental analysis and conducted public outreach to determine the best place to establish a refuge.

If the city and water board don't appeal the ruling, Chris Bowers, first assistant city attorney in Dallas, said the decision would prevent Dallas from going forward with plans to build Lake Fastrill. Planned since the early 1960s, the regional water source would supply up to 100 million gallons per day, he said.

"It was on the city's water plan and now, assuming that the ruling stands, the city will have to make other plans for obtaining and providing that water to the 1.8 million customers of Dallas and the 27 customer cities," Bowers said.

But the appellate court wrote that the city and water board "never committed to constructing the reservoir and may never have done so, or may have constructed a reservoir at another site.

"Further, the effects of establishing the refuge, and thus precluding the reservoir, are highly speculative and cannot be shown to be the proximate cause of future water shortages in Dallas."

The city and water board were still assessing the court's ruling but will work along with the attorney general's office to determine what their next steps will be, Bowers said.

"That's a very important matter to the Texas water board and we take it very seriously," said Leslie Anderson, a water board spokeswoman.

The refuge is located along the upper reaches of the Neches in Anderson and Cherokee counties.

Acquiring land for the refuge had been on hold because of the lawsuit, but Viramontes said discussions with landowners can now begin. He said they know of at least one very large donation that may be a possibility.

"We're delighted," Janice Bezanson, executive director of the Texas Conservation Alliance, said of the court's ruling. "This area is very exceptional wildlife habitat. There are a number of alternative water supply sources that Dallas has identified that it can tap.

"We feel it's important that they go to other existing sources instead of building a new reservoir because it has so much impact on this site."