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Court rules in favor of Neches refuge

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A three-judge panel of the United States Fifth Circuit Court of Appeals in Shreveport, La., ruled in favor of the federal government and against the city of Dallas on Thursday, by affirming a lower-court decision defending the creation of the Neches River National Wildlife Refuge.

In January 2007, Dallas and the Texas Water Development Board filed a lawsuit against the U.S. Fish and Wildlife Service hoping to overturn the June 2006 formation of the refuge.

The lawsuit came about because the federal government approved the refuge in an area the state had hoped to flood for the purpose of creating a water supply reservoir — Lake Fastrill. The state claimed FWS violated the National Environmental Policy Act when it approved the refuge — a sentiment not shared by District Judge Jorge A. Solis when he ruled in the case last summer.

After Dallas appealed Solis' decision, the case made its way to the Fifth Circuit, where oral arguments began in January. In the 17-page opinion issued Thursday by judges Jerry E. Smith, Leslie H. Southwick and Kurt D. Engelhardt, the Fifth Circuit upheld the district judge's ruling.

Proponents of the Neches River National Wildlife Refuge, who have been waiting for months without any word on the status of the case, said they were thrilled by the news of the appeals court's decision.

"This is wonderful news! The Neches River Refuge is exceptional wildlife habitat — one of the most important wildlife areas left in Texas," said Janice Bezanson, executive director of the Texas Conservation Alliance. "Thousands of Texans wrote letters or signed petitions in support of its creation."

Dr. Michael Banks, co-chairman of the Friends of the Neches River called the judges' opinion "a sweet victory for East Texas." He said the court's decision will help protect the river for generations to come.

While the Fifth Circuit has issued its opinion regarding the case, it has yet to issue its mandate, which means the injunction placed on the refuge — blocking the donation of additional land to expand it — has yet to be lifted.

"The reason Judge Solis put that injunction in place was to make sure that land being added to the refuge didn't interfere with the appeal. Now that the appeal is done, there is no more reason for the injunction, and I anticipate the court will take action to lift it pretty soon," Banks said. "I know the Texas Conservation Fund has about 6,700 acres of land ready to be transferred to the Fish and Wildlife Service for use in the refuge, and they may have more that I don't know about. It's pretty exciting to have that much land available for the refuge right off the bat."

Chris Bowers, first assistant city attorney for Dallas, said the city is grateful to the court for reaching an opinion so quickly. Early in the appeal, both sides asked for and were granted an expedited process.

"We are disappointed by the outcome, but we do appreciate the promptness of the judges' decision; it certainly allows us to consider our other options sooner rather than later, and we do appreciate that," Bowers said.

First among those options is the choice to either abandon plans for Lake Fastrill or to appeal the case further. Bowers said the city has yet to make a decision regarding its next course of action.

"One option would be to ask for a rehiring en banc, which means a rehearing before the entire Fifth Circuit Court of Appeals, not just the three who heard it this time. Another option would be to petition the U.S. Supreme Court to take the case and a third option would be to not pursue any further legal action," he said. "Our city council is currently on spring break, so it will probably take a couple of weeks to make that decision. We will be working very closely with our partners, the Texas Water Development Board and the attorney general's office, while making this decision."

Although aware of its prerogative to do so, Banks said he doesn't believe Dallas will push any further in the courts for Lake Fastrill.

"As strong as this ruling is in our favor, and this ruling is backing up another strong ruling by Judge Solis, I just don't think they want to take this any further. I think they are starting to realize that they are running into a brick wall on this case, and they are looking for water in other directions," Banks said. "If they do choose to waste more of the taxpayers' money by dragging it out further we will have no choice but to respond to it."

According to Banks, the next project to protect the Neches, and to bring more tourism to East Texas, is an effort to have the river designated as a National Wild and Scenic River. But that fight, he said, will hold for another day.

"Right now, we just want to celebrate and enjoy this victory," he said.