

Judge sets deadlines in lawsuit seeking to reverse establishment of federal wildlife refuge

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A year ago, local participants succeeding in the establishment of the newly created Neches River National Wildlife Refuge were eagerly planning for a major land acquisition dedication.

For those who had helped garner more than 12,000 signatures of support, the post-Christmas holiday announcement and accompanying party never happened, however, as the state and city of Dallas both filed lawsuits seeking to undo the refuge.

U.S. District Judge Jorge A. Solis on Thursday ordered all parties to file their remaining papers in support of a final decision by Dec. 17. The state plans this week to amend its complaint, which was partially dismissed by the judge late last month, according to an e-mail update by Ingrid K. Hansen, acting general counsel with the state water board.

Final briefs are due March 28, 2008.

"So it will be next spring before we have a ruling on the primary issues in the suit," said Janice Bezanson, executive director of Texas Conservation Alliance, a nonprofit group that aided in the establishment of the refuge.

The crux of the conflict is a footprint of river bottomland in Cherokee and Anderson Counties 75 miles north of Lufkin — which would only be accepted into the refuge by voluntary donors or sellers — and an overlapping site which the city of Dallas would claim through enforced condemnation.

The U.S. Fish and Wildlife Service agreed, in response to the lawsuit, to postpone the receipt of any new lands in the refuge. The agency had already, quietly, accepted the donation of the first acre in late July 2006 — a month after its establishment.

In the respective lawsuits, the state and city of Dallas accused the federal government of trumping local decisions targeting the same tracts of land as a potential reservoir site.

The Texas Water Development Board points out in its lawsuit that it had already approved, a month prior to the establishment of the refuge, the city of Dallas and regional water plans to designate the reservoir site for future water planning purposes. Major

industries based in Dallas, including a brewery, testified to the water board on the need for the reservoir to meet industrial water demands 50 years from now.

USFWS director Dale Hall's June 2006 decision authorizing the refuge, however, was delayed out of courtesy to the state and city water planners who had asked that actions on the refuge be postponed while the state developed a list of alternative refuge sites. The federal refuge site blocking condemnation of land for the reservoir was identified in the 1980s by the U.S. Fish and Wildlife Service as one of the top remaining hardwood wetlands remaining in the region and had completed all the necessary red tape by 2005 when Dallas proposed Fastrill Reservoir.

The Neches River backwaters are home to rare wildlife such as the paddle fish — a primitive species that predates the age of dinosaurs — bald eagles, wood storks, the endangered timber rattlesnakes and the Earth Fruit, a miniscule plant on the federal threatened species list, according to USFWS wildlife biologist Jim Neal of Nacogdoches. And when the prospering Louisiana black bear returns to live in East Texas, they will show up in the refuge which has everything a black bear needs, Neal said.

Prior talk of a compromise by way of juxtaposing the refuge on the northern shore of the reservoir was discarded as ecologically impossible, as proven, Neal had said, by hundreds of existing reservoirs.

Judge Solis, on Thursday, met with all parties regarding the case, Bezanson said.

Both the wildlife service and water development board personnel have referred all comment on the contested site to their lawyers since lawsuits were filed.

On Oct. 24, Judge Solis dismissed some of the claims made by the city of Dallas and the Texas Water Development Board are dismissed, according to Hansen.

Both the city and state are planning to file amended complaints, she said.

"The gist of the remaining claims by the Water Development Board are," Hansen said, "the Fish & Wildlife Service did not prepare an environmental impact statement for designating the Neches Refuge." Such an assessment would take into account socio-economic impact of the refuge as well as proposed plans for the reservoir.

According to Hansen, the state is claiming the federal wildlife agency used information from a 1985 study rather than a current study such as a 2006 study completed by Texas Parks and Wildlife Department.

"The judge also granted a motion to dismiss Dallas' complaint against the couple who donated the conservation easement that formally established the refuge," Bezanson said.