

Fastrill-Neches case heads to federal court

Ruling on whether U.S. Fish & Wildlife followed procedures is anticipated this summer

BY LELAND ACKER, Cherokeean Herald, 07/18/2007

A federal judge is expected to rule on a number of motions this summer in the lawsuit between the City of Dallas, the Texas Water Development Board and the U.S. Fish and Wildlife Service (USFWS), which will likely determine the future of the Neches River valley. Dallas and the Texas Water Development Board want to flood the Neches River to build the Fastrill Reservoir, but USFWS has designated the area as a wildlife refuge.

Janice Bezanson, executive director of the Texas Conservation Alliance, said the judge will rule on those motions before setting a hearing date.

"The attorneys thought it would have happened by now," Ms. Bezanson said. "A number of motions are on the floor, like a motion to dismiss, a motion to dismiss part of it and the City of Dallas wants to do discovery."

Ms. Bezanson said discovery is a process of examining evidence. Ms. Bezanson said the USFWS has submitted an eight-volume administrative record on their work to establish the Neches River Wildlife Refuge.

Dallas contends the USFWS did not properly follow the procedures required by the National Environmental Protection Act. Ms. Bezanson said the USFWS was very meticulous in following the procedures.

Elizabeth Slown of the USFWS said challenges to wildlife refuges are rare. The service is regularly challenged when they designate a species as endangered.

Ms. Bezanson said the precedents she is aware of favor the USFWS.

"Of (the cases) I am familiar with, the rulings have been in favor of USFWS," she said.

During a meeting of the Friends of the Texas State Railroad, Ava Harmon said the USFWS has not lost a case.

Ms. Slown said she had not heard that fact, but added, "It sounds nice."

Ms. Bezanson said if Dallas and the Texas Water Development Board were to win the lawsuit, it would not eliminate the refuge. She said the USFWS would simply have to go back and complete a step.

Ms. Bezanson stated that Dallas does not need the water from the Fastrill Reservoir. She said they are not planning on using it until 2045. Even then, Ms. Bezanson said Dallas would not need the water if they enacted simple water conservation measures now.

The judge is expected to rule on the preliminary motions sometime during the summer.