

Motorized Vehicles in Navigable Streambeds – Issues Summary*

*** As summarized from *Findings of the Use of Motorized Vehicles in Navigable Streambeds Taskforce*,
a report to the Texas Parks and Wildlife Commission**

Rivers, streams and coastal areas of Texas represent some of the most accessible public lands in Texas and one of the few areas where motorized vehicles (MV) can be operated (excepting dunes on coastal lands) with relatively minor restriction. In the face of a growing population and a relatively steady state of public land acreage, these activities will become more widespread and more intense in the coming years.

A review of demographic data and of sales of all-terrain vehicles (ATV's) suggests that this form of recreation will increase in popularity. With that, the eventual appearance of resource impacts moves from probability to likelihood and the frequency of user conflicts is destined to escalate. In 2000, 734,000 ATV's were sold nationwide and the industry predicts that by the year 2004, one million ATV's will be sold annually. The sale of ATV's has increased 120% since 1997. Further, as the population of Texas' urban areas increases, access to public lands outside the confines of cities will become a more sought-after.

During the Texas Parks and Wildlife Departments' Annual Public Meeting in August of 2001, the issue of vehicles driving in public riverbeds was brought to our Commission's attention. As a result, the Commission established a 25 member Motorized Vehicles in Navigable Streambeds Task Force. Conclusions based upon information received through staff research and input from the Task Force were presented to our Commission in May 2002. A brief summary of main issues follows:

No Texas State Agency Has Authority to Regulate MV Use in Streambeds

The Texas Constitution establishes the public right to use rivers for navigation (Article XVI, section 59). The Texas Supreme Court carefully guards the public's ownership of riverbeds: "[E]ven prior to the admission of Texas into the Union it was its policy to reserve unto the government its river beds to be held in trust for all the people. Since Texas became a state, it has rigidly adhered to that policy." State v. Bradford, 121 Tex. 515, 538, 50 S.W.2d 1065, 1073 (1932). Bradford held that the riverbeds, unlike most public land, had not been transferred to the permanent school fund (PSF), in part because transfer to the PSF could have resulted in these lands being sold and passing out of the public domain.

River Access Exists, But is Largely Inadequate

Any action to restrict MV use in streambeds might have unintended consequences that must be considered and addressed in order to not create or enhance other conflicts. The attraction of Texas streambeds to users is that these are public lands, open for use by all Texans. Public access points are generally in the form of road crossings and they are seldom adequate for safe access, much less public use for recreational purposes. On the Nueces River (for example) many of the problems reported by all the stakeholders in this process were related to inadequate infrastructure and services at those points.

Public/private land is generally not delineated where roads cross streambeds. The confusion surrounding the gradient boundary as the demarcation between public and private land can result in inadvertent use of private lands. Further, that same confusion, by ignorance or design, has been employed to discourage legal access of users.

Most of these access points lack adequate parking areas, trash receptacles, signage and restroom facilities. The results are predictable: traffic violations, litter, trespassing, safety issues and inappropriate public behavior. River access is inadequate to support the user demand for both places to enter and enjoy the stream and to maintain the quality of the user's experience.

Distinction between Local Users and Organized 4x4 Clubs

An important distinction to between organized 4x4 clubs and local users is that club members drive in riverbeds as an actual means of recreation, while local users travel within riverbeds as a way to reach a destination. In many instances, local users have historically used vehicles as an important strategy to access swimming and fishing holes for several generations. While banning motorized vehicle use in navigable riverbeds and finding other more appropriate places for club members to utilize may satisfy organized groups, it does nothing for local users, for whom legislation may unintentionally limit access.

To What Extent is Safety an Issue?

As used by MV traffic today, streambeds are unregulated in terms of safety concerns. There are no established "right of way" provisions for MV as for boat traffic on waterways, no speed limits and no demarcated lanes. Laws that apply to conduct in public places generally apply to streambeds. However, traffic safety laws whose application is limited to public roads do not apply.

MV Use in Streambeds Affects Fish, Wildlife and Associated Habitats

MV use in a streambed is not a benign activity; research conducted in other states has demonstrated the negative effects of MV use in streambeds on fish and wildlife resources. Preliminary results of investigations in Texas support those findings. It is an ecologically harmful activity.

Can We Ascertain Resource Impacts?

Although limited scientific data in Texas indicates that MV can cause damage to riparian habitats, we do not know how many MV it takes to cause damage or prevent recovery of the riparian system if it is damaged. The riparian ecosystem is subject to natural stresses such as rainfall events and drought, and resident species have adapted to survive and recover from these natural stresses. The unanswered question is whether MV use within these riparian ecosystems will be the final stress that prevents the ecosystems' ability to recover from historic natural stresses. Due to differences in streambeds, some are more readily subject to erosion and other impacts caused by vehicular activity. In that context, the number of MV necessary to cause significant, irreparable damage within a given streambed may vary between and within watersheds. With that concern, it may be impossible to gather "perfect information" regarding the effects of MV use in streambeds. In short, decisions may need to be made in the absence of conclusive scientific data in Texas.

MV Use in Streambeds and other Wetlands is Not a Recommended Use

Manufacturers of MV do not recommend operation of these vehicles in streambeds or wetlands, in fact, it is discouraged. The prevailing recommendations of manufacturers and national MV organizations specifically direct operators to avoid water resources. All of the major vehicle manufacturers publicly support “Tread Lightly” principles. “Tread Lightly” clearly states that operation of a MV in a streambed is not an appropriate use of that vehicle.

Venues For Off Road Vehicle Recreation Are Inadequate

If MV access to streambeds is eliminated, enthusiasts will look for other venues to enjoy their recreational activity. It seems reasonable that alternative areas for MV use could and should be developed through available trails programs or new programs that invited development of those trails. It is possible that given a different venue for MV use, most of the activity currently taking place in streambeds would move to non-riparian sites. A lack of venues certainly contributes to current and expanding use of public lands for this type of recreational activity. TPWD does have a program that makes federal funds available for MV trail development.

Any Change in Current Law Would Present Both Consequences and Opportunities

The complexity and magnitude of the issue suggests that resolution will require statutory changes. Texas has roughly one million acres of public land cradled within its streambeds, and these areas are among the last extensive fish and wildlife habitats in Texas. The lack of clear regulatory authority to manage MV use in Texas streambeds results in a management landscape that results in inadequate management.

Perhaps the most often voiced reason for use of MV in streambeds is to move upstream or downstream from an area immediately adjacent to an access point. There are clearly substantial consequences to an outright ban on MV use in streambeds. When access points become congested, using a MV becomes a means of escaping that congestion. It is important to note: Use of MV in streambeds like the Nueces River has been and continues to be an outdoor recreation mainstay for local users. Changes in law that might ban the practice of using a MV to move up and down a streambed would effectively exclude many who rely on MV use to access their (often) sole outdoor recreational opportunity.

While the Task Force focused on motorized vehicles, many landowners brought to the Task Force meetings and the Joint Interim Committee hearing other legitimate concerns and frustrations—not necessarily related to MV activities--about streambed use adjacent to their properties. For example, landowners questioned the safety of river use when hunting and target shooting with rifles is unrestricted in the riverbeds. Moreover, other states have used their river laws to reinforce landowner property rights and to limit liability. Legislation that addresses MV use could also deal with broader landowner concerns.

There is no easy solution to this very easily defined problem. The simple solution offered by some has unintended consequences. In these “tragedy of the commons” issues, unintended consequences nearly always result. Solutions must be comprehensive and thoughtful. Resource managers and policy makers most often have to weigh the relative benefits and the future cost of taking no action, then decide.