

**Comments Provided by Don's Fish Camp & Texas State Tubes
On Report of the San Marcos River Task Force
November 21, 2016**

We appreciate the opportunity to provide comments in response to the Report of the San Marcos River Task Force (SMRTF), and thank all involved at TPWC for the hard work done on this report, and throughout the Task Force process.

Don's Fish Camp and Texas State Tubes have committed to and are engaged in an ongoing cooperative effort to fund a sustained law enforcement presence along the river, and to fund and undertake an ongoing river cleanup program – adding professional deep dive river clean up protocols that go beyond those used by the WORD of Comal County.

Outfitters note that the Report indicates that exact approaches and targeted expense estimates from the Outfitter MOU were in some cases not executed as originally envisioned. When evaluating areas where the report notes modified approaches or commitments below those projected, we ask that consideration also be given to the fact that Outfitters have undertaken significant efforts to date, that they have continued to work to improve commitments and approaches, and that all estimates in the original Outfitter MOU were made without the benefit of any historic information or guidance, as no estimates or costs projections were available or provided by regional law enforcement.

There are also instances where the approach envisioned in the MOU simply proved to be administratively impractical and unnecessary, or unduly burdensome due to the competitive nature of the business relationship. Instead Outfitter efforts have focused on implementation of the programmatic efforts they have agreed to undertake collectively by each providing an equal share of the funding required for these efforts, rather than trying to track per customer amounts to be contributed to fund their collective efforts.

Regional weather clearly had a significant impact on recreational river activity, thus decreasing the need for some expenditures originally projected in the MOU. Projected expenditures are lower in part due to outfitters being closed for 40 days in 2015 due to the extensive rain and flooding in the area.

Despite this, we believe the collective activities and the overall effort and engagement lend support to the conclusion that Outfitters have continued to work in good faith to fulfill the goals and plans set out in the original Outfitter MOU. We are hopeful that all involved will recognize this and will fairly consider evidence such as reduced landowner complaints in law enforcement call logs when evaluating overall efforts.

We note also that Outfitter efforts to work productively in cooperation with local officials to assist in meeting the law enforcement needs of the area have been harshly criticized by some. We understand that many stakeholders involved in the SMRTF have strong negative feelings about outfitter efforts to provide funding to respond to the need for law enforcement in the area, and that this may be due in part to concerns that any successful effort to coordinate locally could undermine arguments for the need for legislation to create a new special district to oversee and regulate the three-mile area.

Regardless, comments made by certain stakeholders alleging some type of “inappropriate arrangement” between law enforcement and outfitters to not enforce the law must be addressed. These types of statements are not true, and it is a disservice to all involved to let such statements go unchallenged as accurate representations of the approach being undertaken in Caldwell County. Allegations or representations that law enforcement officers are not writing tickets in response to directives from Outfitters are not factual, and are untrue and inappropriate.

The manner or approach in which law enforcement officers have attempted to be deployed through the Outfitter MOU has evolved. We would note that other preferred approaches were proposed and sought by Outfitters, but have been rejected or not agreed to by local officials. The County MOU approach would also help address these types of concerns. Regardless, the approach currently being taken is based on extensive legal research undertaken by the Outfitters, and is clearly allowed in statute consistent with publically available guidance from the Texas Association of Counties.

We would encourage the Commissioners Court to also address this issue affecting public trust by requesting and making available a legal opinion confirming what informal discussions have indicated – that the approach is legal and that it is a legitimate approach by which off duty sheriff deputies act in their official capacity as law enforcement officers. The obligations and assurances associated with peace officer status in Texas do not come and go, and unfounded allegations about alleged collusion between Outfitters and law enforcement should not continue to be made unchallenged.

The record of transactions by the Commissioners Court, whereby the county has received appropriate financial reimbursement for sheriff department vehicles through invoiced record keeping is additional publically available support for the fact that off duty sheriff deputies are being deployed with full authority to enforce the law. There are no arrangements or “deals” with law enforcement or individual officers to not enforce laws or not write tickets, nor is there any involvement by Outfitters in making law enforcement policy, directing the approach of law enforcement officers, or in the management or training of law enforcement officers.

We acknowledge that these types of comments underscore the lack of public trust in law enforcement that has developed in the area. We are disappointed that we have been unable to reach an agreement with Caldwell County Commissioners Court to formalize and direct financial commitments to the county, but we remain hopeful that ongoing efforts to negotiate with the county will lead to an approach that generates more public trust and gives confidence to residents and landowners that law enforcement officers deployed in the area are being actively and appropriately managed by the Sheriff’s office, and overseen by the County Commissioner’s Court.

Outfitters would also like to address criticism that efforts to engage in negotiations with the county could have been more aggressive or were negligent. We have included additional background information on the development and history of the proposed County MOU as clarification, but respectfully dispute representations that local officials were never contacted or that attempts were never made to discuss the proposed MOU.

We recognize a significant amount of animosity exists due to political conflicts over

efforts to pass legislation creating a WORD district, and that the public discourse has become increasingly emotional and combative. We remain unconvinced that creating a new governmental entity is sustainable or that it will generate the results desired by advocates. What is clear, however, is the pressing need for training and increased management oversight for law enforcement personnel to be addressed at the county level.

We are hopeful, whether legislation creating a WORD district is enacted by the Legislature or not, that the tone and approach of local efforts can become more substantive and less combative. Outfitters will continue to work cooperatively to meet expressed goals and commitments and will continue to respectfully engage with stakeholders to that end.

We continue to believe that the economics of the area are not sufficient to sustain the funding requirements of creating a new governmental entity, and that any successful approach to resolving the issues summarized in the SMRTF Report will require a more active and cooperative regional approach.

Under any scenario envisioned or legislatively enacted, we believe there is a clear and obvious need for more active management and training of law enforcement personnel to ensure an effective ongoing law enforcement presence in the area.

We believe more direct discussions such as those that have occurred in the SMRTF will result in activities and efforts that generate realistic and sustainable solutions. Outfitters will continue to work to implement and refine activities originally undertaken through the Outfitter MOU, and will seek to work cooperatively with members of the Legislature, TPWC, local elected officials, law enforcement, landowners, residents, river protection advocates and other stakeholders.

Thank you again for allowing Outfitters to be a part of the Task Force and for the consideration of information and perspectives we have provided. Outfitters will be providing an updated report to the Legislature, the Task Force and related stakeholders. We respectfully offer additional information or note areas of factual dispute in the following comments on specific sections of the report.

Additional Outfitter Comments on Report on the San Marcos River Task Force

I. The San Marcos River

Don's Fish Camp, as operated by Craig Coleman started operating in 2006, and Texas State Tubes launched its outfitter operation in 2012. We note that Don Nelle had a tubing business prior to entering into the contract allowing current management to operate on his property under the same name "Don's Fish Camp. Cool River Ranch no longer has a tubing outfitter operating out of that venue.

II. Origin of the San Marcos River Task Force

Outfitters note that these counts were done on the highest volume days so would not reflect normal levels of activity for the 5 other days of the week. It would be unrealistic

and inaccurate to use this count to as a measure to calculate an estimate of daily recreational activity.

III. Legislative Actions

There has been a significant level of misunderstanding about the nature and intent of the proposed County MOU, and we offer this additional information regarding public discussions and representations of this document.

Of particular concern are representations and related confusion about whether the Caldwell County Commissioners Court and/or the Outfitters had failed to respond to a directive from the Legislature by not contractually executing the proposed draft of the County MOU. This is not the case.

The draft County MOU document was created and provided in public hearing in response to concerns expressed about the approach of the Outfitter MOU. The draft was offered as a suggested alternative model for discussion to convey:

- Availability of an alternative legal approach where Outfitters contracted directly with the Commissioners Court in an effort to address concerns that Outfitter MOU commitments were only between the outfitters; and the
- Willingness of Outfitters to formalize and enhance commitments by contracting directly with the county.

Assertions or concerns expressed that the Commissioners Court or the Outfitters did not respond to a directive from the Legislature are misleading and do not accurately reflect the development history of the County MOU approach created and proposed by Outfitters. Again, we also note respectfully that this document was part of the public record and offered in public testimony; representations that no attempts were made to discuss the proposed County MOU with local officials is factually disputed.

Subsequent and ongoing efforts to reach an agreement with Caldwell County have not been successful to date, but we are hopeful that consideration and weight will be given to the pressing need to begin some type of operational and training effort for law enforcement. Waiting indefinitely on the creation of some new governmental entity does not seem appropriately responsive to the address the need for more training and increased oversight and accountability of local law enforcement.

IV. The First and Second Task Force Meetings

This section of the report notes that local law enforcement has reported that there has been an increase in alcohol related DWI's on surrounding roadways resulting from intoxicated tubers. (Tab 24, Recent DWI Crash)

Outfitters respectfully request that additional public information from law area enforcement be provided in support of this statement.

Responsibility for Riverbed Management

This section of the report notes that local law enforcement lacks kayaks and other equipment necessary for policing the river, as well as water safety training. Outfitters note that estimates of financial resources needed for equipment and training have been provided in discussions regarding the proposed County MOU, and that Outfitters have agreed to provide financial support to the county for needed equipment and training for law enforcement.

Lack of Enforcement Resources

Outfitters have in no way attempted to deter an officer from doing their job, and have never told or asked an officer to not write tickets for any reason. Outfitters have never told or indicated to an officer that if they did write tickets they would be penalized in any way or for any reason (for example, by cutting hours or losing this source of employment income). In fact, Outfitters have encouraged law enforcement to write tickets when illegal behavior occurs.

In discussing concerns associated with the approach by which off duty sheriff deputies from Caldwell, Guadalupe and Hayes counties have been engaged to provide needed law enforcement in the area, the report refers to “security” being offered in this manner. We respectfully dispute this representation and note that significant effort has been made to fund an approach that ensures law enforcement officers deployed on the river are legally able to act with full authority as an officer of the law. Outfitters have worked hard to identify, create and implement an approach that ensures this is the case, and are hopeful that this approach is adequately acknowledged in discussions in this report.

See report statement:

*Although the tubing companies have contracted for **security** by off-duty law enforcement officers, the opinion was expressed in the SMRTF that these officers might choose not to enforce all applicable laws except in the most extreme situations due to the off-duty officers' concern about losing the source of employment income.*

Whether legislation creating a new special district is passed into law or not, we agree that any effective response to local concerns must ensure that law enforcement officers are more actively managed, trained, and overseen by their employers in order to restore public trust.

See report statement:

Additionally, a task force member submitted a report entitled, “San Marcos River Private Policing Efforts Ineffective”, which is included in Tab 29.

The private security firm employing the individual in the video was fired by Don’s Fish Camp immediately because of the incident noted below, which is from sometime in 2010-2011 – well before the Outfitter MOU was executed. Outfitters also believe the video represents an example of inappropriate actions on the part of a contract security person.

Importantly, Outfitters again stress the distinction between “security personnel” and “law enforcement officers” --- and note that the individual in the video is not an off duty sheriff

deputy. This incident, while an example of unfortunate and inappropriate behavior, does not represent anything about current practices or the approach undertaken through the Outfitter MOU. It was deemed inappropriate by the outfitter as well, and the company who employed the individual was terminated and has never worked for the outfitter again.

See report statement:

As an example of the relationship between tubers and off-duty law enforcement, one SMRTF member supplied a video of a tuber volunteering to be “tased” (Tab 28, [Recreationist Volunteering to be Tased Video](#)).

Accessibility of the River to Law Enforcement

Outfitters have informal agreements with many landowners that ensure access for law enforcement and emergency services personnel. Note also, as previously mentioned, outfitters have had discussions regarding equipment needs for local law enforcement, and have agreed through discussions about the proposed County MOU to provide funding for kayaks and related equipment necessary to utilize water vessels to provide an enforcement presence on the river.

See report statement:

In addition to the lack of officers, equipment, and budgets, concern was expressed about accessibility to locations where law enforcement officers can stage themselves along this study segment. There are only a few locations in this river segment that are conducive to officers being able to stand to interact with recreationists, as the river banks are often quite steep. Portions of this segment may lack a law enforcement presence unless the officers patrol by kayaks or another type of vessel.

Increased Vehicle Traffic on Nearby Roads

Don’s Fish Camp and Texas State Tubes both donated \$4,500 to the City of Martindale in November of 2016 to address road repair for NW River Road. The money is to be used to square off potholes and add about an inch of asphalt to the top of the road to help form a small crown. The road was built without proper drainage, so repairs such as these provide a temporary fix until the drainage problem with the road can be addressed.

V. The Third Task Force Meeting

The professional deep dive cleanups being done monthly by Pristine Rivers are in addition to top water and riverbank cleanups being conducted by Outfitter employees. Outfitter costs associated with ongoing top water cleanups are not reflected in expense amounts reported by Outfitters for river cleanup. Labor costs associated with outfitter for top water clean ups consist of four employees undertaking four hours of cleanup, five days a week. Outfitters will provide an updated report that includes additional expenditures for 2016.

Also, as noted, projected expenditures for both law enforcement and cleanup efforts would naturally be lower because Outfitters were closed for 40 days during peak season due to flooding.