

Comments from Task Force Member Tom Goynes

Sent: Sunday, November 20, 2016 9:42 AM

Subject: Report to the Commission on the San Marcos River Task Force

Dear San Marcos River Task Force Members,

Here are my comments regarding the Report to the Commission

<http://tpwd.texas.gov/smtaskforce>

First of all, it is obvious that land that is held in trust by the state of Texas for all of its citizens to use, must be “G” rated. In other words, kids and families should be able to use that land.

The section of San Marcos River that this task force studied is not “G” rated - especially in the afternoons during the summer.

This task force has done a great job of identifying the problems on the river. And, leadership has suggested that any real solution will require legislation.

So here are some suggestions to make the river “G” rated again:

1) Make the river a linear state park. Obviously, the no public consumption or display state park rule will be the most important rule in making the river kid friendly – it certainly works at all our other state parks. But there are other rules that will help as well: no loud amplified music and no topless bathing (at least for women). Perhaps we could add some special rules, like no glass or styrofoam.

The other benefit of making the river into a state park is that it will encourage local governments to enhance the river: more launch and take out points; perhaps lunch and camp sites. I think the fact that the river will have the no public consumption rule will make it easier for landowners to consider opening up some of their property for the enjoyment of kids and families.

The bottom line is that all Texans agree that state parks are special places. And, we all agree that the San Marcos River is a special place. Let’s make it our first linear state park.

My answers to TPW arguments against the creation of a linear state park

In the Report to the Commission <http://tpwd.texas.gov/smtaskforce> under the "Possible solutions suggested by SMRTF Members", drop down to the bottom of the page and you will see TPW comments (in italics) followed by mine.

Designate the riverbed as a state park.

First all, we have not suggested that only the riverbed be declared a state park, but that both the river and the streambed be so declared.

Other states have done this. Some call the rivers that they have made into state parks, linear state parks. Some, if they have land adjacent to said rivers that might be used for launch or take out points, or for lunch spots or campsites, use the term “string of pearls parks”. With the river being the string and the access and other spots being called the pearls.

It was the hope of some members of the task force that persons from other states that have such parks might be invited to come and share the story of how their state made such parks happen and how they are working out. Unfortunately, the task force never agreed to seriously consider this solution.

This option is not listed under the “Suggested Options for TPWD to Implement” category below because it is not possible at this time for TPWD to implement. The San Marcos River is a navigable river, which means the lands under it are not dedicated to the management of any individual state agency, and instead remains the responsibility of the Texas legislature.

While we understand the department’s position on this subject we do disagree. This department currently establishes scientific study areas on rivers and bays - public water. So, it seems apparent that the department could create a state park on a state owned river as well. The TPW Code specifically states that the department may exercise control over public water within state parks:

Sec. 13.101. AUTHORIZATION. The commission may promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

So, it seems to us that, if the river and its bed is included in this new state park, that the public water would be within the new state park and therefore under the control of the department.

Concerns with this alternative include:

With 191,000 miles of riverbed in Texas, this model of management of recreational use is impractical.

No one is suggesting that the department declare 191,000 miles of river to be state park land. Only a segment of the San Marcos River (and the length could be anywhere from 4 miles to approximately 60 miles, depending on landowner and local government support).

It would require legislative action to transfer ownership of the San Marcos River to TPWD.

Perhaps this is true. So, let’s work together and do it!

State Parks normally establish a boundary at the property line where entry without a permit is prohibited and payment of fees is required. This allows the park to raise revenues to fund its operations and provides notice to park patrons and others as to where park rules apply. Limiting public access to a state-owned riverbed, however, potentially violates the right of river

navigation recognized in Article XVI, section 59 of the Texas Constitution.

Parks normally have designated entry points where users must check in and pay fees. This is impractical on a water-only park with many road crossings and would require employing state park staff to implement.

No one is suggesting that fees could or should be charged to navigate the San Marcos River. The rivers of Texas are designated by the constitution as free highways of trade and travel. so we agree that such a fee would be unconstitutional.

No state park currently in existence (to our knowledge) has a fence along the riverbank that prohibits the public from entering the state park from the river, or that prohibits the public from entering the river from the state park. We understand that the department may, on occasion prohibit swimming or boating due to public safety concerns, but fencing the banks of the river would be most inadvisable.

It is possible for the TPWD to charge a fee for people to access a public river through its property, just as it is legal for landowners to charge a similar fee. And, that would be appropriate. But it should be understood that no one may be charged a fee for navigating the river.

It should also be pointed out that not every state park charges an admission fee. Old Tunnel State Park (between Sisterdale and Fredericksburg - where the bats emerge) is a free state park. There are restrooms that are only opened during the evening bat flights. And people can walk the trails and/or use the picnic tables for free.

One of the concerns expressed by the SMRTF is the current lack of restroom facilities on the river, and park users would expect such facilities. Providing restrooms would also require land and construction of facilities and the staffing to clean and maintain them.

It is true that it would be great to have more public restrooms as well as access points, lunch spots and campsites along the river. But those things are currently in short supply and people are using the river in huge numbers. We would urge to establish the park first, and then work toward improving the recreational opportunities along the river.

It is our belief that, with state park rules in place, landowners will be much more willing to consider opening a portion of their property to the public for such amenities.

Some general park rules would be impractical to enforce on a navigable river, such as the prohibition on use outside designated areas during night-time hours. Providing law enforcement on the river during peak use times would require a large number of park police at considerable labor, equipment and training costs.

Obviously, it will be necessary to strongly enforce the state park rules initially. And, it is true that extra manpower may be involved during that initial period. But, once the public realizes that

the rules have changed, and that public consumption of alcohol is no longer allowed, the need for continued law enforcement will be greatly reduced. Just consider, how many police officers are required to keep the peace in state parks? Not nearly as many as it takes to currently “keep the peace” on this section of river. And the reason, quite simply, is alcohol abuse.

And, one must remember that any lawman may enforce TPW rules. The City of San Marcos, as well as Hays, Caldwell and Guadalupe County will be essential to providing law enforcement.

2) If the state park solution just can't work, then let's create a Water Orientation Recreation District that really solves our biggest problems. We don't want a WORD that merely hires more police and pays for more clean ups. We want a WORD that makes landowners happy and allows kids to enjoy the river.

Judge Blomerth, 421st District Court, has ordered the following conditions (which were agreed to by the two tubing outfitters) in a temporary injunction he signed on August 29. It would make perfect sense to include these conditions as part of the rules that are written into the enabling legislation of a San Marcos WORD:

Tubing outfitters are to have an orientation talk that all their customers are to attend before they get on the river, which includes the following rules of the river:

No glass or styrofoam and no underage drinking (coolers will be checked).

No stopping. Neither on the banks nor in the river. Stopping on the banks disturbs local landowners (all the land along the river is privately owned). And, standing in the river not only disturbs the adjacent landowners, it also disturbs the flora and fauna (including fish spawning beds) on the river bottom. It's a float trip. So, float.

There are landowners along the river who can hear you, so, watch your language and keep your music down (no boom boxes audible beyond 50 feet).

Tubing outfitters also agreed to hire “monitors” in kayaks who will travel the river in kayaks and make sure their clients are obeying the rules. Funds will also be provided for law enforcement personnel. These funds could either be paid directly to law enforcement personnel by the outfitters, or these funds could be paid directly to the local governments through a “drinking wristband” program.

In the same way, clean ups can either be paid for directly by the outfitters or through the wristband program.

Tubing outfitters have agreed to provide wristbands to persons over the age of 21 who intend to drink alcohol while floating the river. These “drinking wristbands” will help law enforcement determine more easily if an underage person is drinking.

We recommend that these wristbands be sold to the tubing outfitters by the city or county in which they operate. We further recommend that the price of these wristbands be set at \$5 each. Since it is the people who drink that cause the lion's share of the problems on the river (litter, bad behavior, emergency service calls) it should be the drinkers who pay for these government services.

The tubing operators would merely pay for rolls of wristbands in advance to their city or county and then they would sell these wristbands to their customers.

These cities and/or counties would then have the funds necessary to provide law enforcement, emergency services and clean ups.

Respectfully submitted,

Tom Goynes, member SMRTF
owner, San Marcos River Retreat
president, Texas Rivers Protection Association