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**Judith Zaffirini**  
State Senator, District 21  
President Pro Tempore, 1997

**Committees**  
Health and Human Services  
Natural Resources  
and Economic Development  
State Affairs

December 7, 2016

Bill Jones, Commissioner  
Texas Parks and Wildlife Commission  
100 Congress Avenue, Suite 2000  
Austin, TX 78701

Dear Commissioner Jones:

Thank you and your responsive staff for organizing the San Marcos River Task Force (SMRTF) and for developing an informative and thorough report of the task force's findings. I appreciate your leadership and dedication to addressing the very complex challenges that Caldwell, Guadalupe, and Hays counties face as a result of the heavy recreational use of the San Marcos River. What's more, I hope that you and your staff will testify as resource witnesses when the Texas Legislature considers legislation related to the task force's efforts.

The SMRTF report effectively summarizes the primary concerns that landowners, recreational users, law enforcement officers, and citizens have expressed following the recent surge in tubing on the river. After raising these issues for more than six years with public officials and seeing from little to no improvement (despite the voluntary efforts of tubing outfitters to address the considerable problems), many of my constituents simply are fed-up with empty promises—and for good reason. As the SMRTF report makes clear, the outfitters have failed to live up to their commitments, which is why I am convinced that a Memorandum of Understanding (MOU) is insufficient and a legislative approach is necessary.

The 2015 MOU between Texas State Tubes LLC and RKY Ltd. was presented to the Legislature, purportedly as a means of increasing outfitter accountability relating to environmental quality, public safety, and communication with property owners; and it provided the outfitters an opportunity to address these important issues without regulatory or legal intervention. The promises of these private, voluntary efforts were intended to dissuade the Legislature from enacting my Senate Bill 234, which would have authorized the affected counties to create a Water-Oriented Recreation District (WORD) with the approval of the voters. One supplementary MOU providing for "security" was even signed the day before the Senate hearing on the bill. Despite its superficial appeal, the MOU suffers grave problems.

When the terms of the current MOU are not satisfied, as has been the case, neither a citizen nor the government can seek to enforce it because they are not parties to the contract. What's more, the MOU fails to mandate any public reporting of the efforts undertaken or of the funds spent by outfitters. Because the tubing companies are private entities, citizens cannot obtain such information through a public information request, as they could of a governmental entity such as a WORD. If other tubing outfitters began operating on the river, the MOU would not apply to their operations either.

In addition to these significant procedural hurdles, the efforts undertaken by the outfitters pursuant to the MOU repeatedly have missed the mark. The SMRTF report demonstrates that funding provided by the outfitters for private security in 2015 and 2016 was nowhere near the levels promised under the MOU. Although the outfitters promised a landowner hotline, it is unclear whether one was established, and neither landowners nor I ever were provided a telephone number for it.

Even more serious, while outfitters planned to enhance policing efforts on the river, Caldwell County law enforcement statistics demonstrate that the number of tubing-related tickets issued along the river has, in fact, declined during the MOU period, raising serious concerns about the enforcement of existing laws. Specifically, the total number of tubing-related tickets issued in Caldwell County from April 1, 2014, to July 20, 2016, decreased 60 percent, despite the substantial increase in the number of tubers using the river, including as many as 10,192 tubers on one weekend day in 2016.

In contrast to these private policing efforts, when Caldwell County found funding in the budget for additional law enforcement this summer, the constables patrolling the river on the weekend of July 23-24, 2016, issued 65 tickets for tubing-related offenses. This is 67 percent more tickets than were issued for the same offenses in the entire 2015 tubing season and more than double the number of tickets issued for the entire 2016 tubing season until that weekend!

Furthermore, the outfitters repeatedly insist that the nature of law enforcement is the same, regardless of whether an officer is on-duty; nevertheless, the duties an off-duty officer is capable of fulfilling depend on state and local laws and on the policies of the law enforcement entity that maintains the officer's commission. Even so, there always are exceptions and jurisdictional gray areas. According to the Texas Department of Public Safety (DPS), for example, when DPS troopers provide authorized off-duty law enforcement services, they may enforce only state law violations that occur within their immediate presence or when a life-threatening situation develops. DPS' policy manual also provides that commissioned law enforcement personnel performing off-duty enforcement-type jobs as secondary employment may not use department-issued portable radios in non-emergency scenarios; thus, without authorization to use DPS tools, troopers may be prohibited from issuing citations while in such scenarios.

Though the outfitters discount the perceived conflict of interest of law enforcement officers working off-duty for the outfitters, an off-duty Caldwell County deputy working on a landowner's private property told my staff member and other landowners that deputies had been instructed not to go into the river unless they witnessed a serious offense such as an assault. Whether this is due to misinformation or collusion or some other reason effectively is irrelevant; the very lack of enforcement of the laws speaks for itself.

After auditing the outfitters' efforts for two tubing seasons under the MOU and listening to my constituents' unrelenting complaints of persistent reckless and illegal behaviors and substantial littering observed on the river, I strongly believe a legislative solution is needed. A WORD would afford a responsible, effective means of managing local law enforcement, trash abatement, and public safety on the river, as well as help provide the resources and training needed for local

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law enforcement to enforce existing laws. A WORD also would serve as an avenue for those affected negatively by recreational activity to collaborate with the outfitters and local citizens to assess strategies and determine appropriate local solutions for improvement without the necessity of going to court. Further, the WORD would be capable of enforcement actions when outfitters fail to abide by the laws and regulations in place.

In conclusion, I urge SMRTF members to work together to ensure that the Legislature acts to protect public health and safety and to preserve our precious natural resource, the San Marcos River. I am grateful to the task force members for dedicating time and energy to developing workable solutions for these very serious concerns and invite you and your fellow members to continue to work with my staff on our legislative efforts.

Please feel free to contact me regarding this issue or whenever I may be of assistance.

May God bless you.

Very truly yours,

A handwritten signature in cursive script that reads "Judith Zaffirini".

Judith Zaffirini

JZ/kk

XC: Members, Texas Parks and Wildlife Commission  
Members, San Marcos River Task Force