

RIVERS WILD

Can adversaries become partners to preserve Texas' wild waterways?

By Larry D. Hodge

Do we need wild rivers and wild places? Our grandchildren and their grandchildren will have to live with the consequences of our answer to this question, so it merits careful consideration. If there is no room in the world for wildness, do we have the right to expect that there will be room for us?

The Neches

Those questions were at the heart of Richard Donovan's solo canoe trip down the Neches River in 1999 that resulted in the book *Paddling the Wild Neches*. Upon learning of plans to build dams on the Neches below Palestine that would drown 150,000 acres of bottomland hardwoods, some of the most valuable wildlife habitat left in East Texas, he embarked upon a 235-mile canoe trip to draw attention to the river.

"If we could give the people of our state a sense of the Neches River as I know it, I thought, they would insist it be preserved for future generations of humans and wildlife alike," he wrote in the book's introduction.



More than a decade later, the issue is still in doubt. A national wildlife refuge has been established along part of the river Donovan paddled, and the U.S. Supreme Court has ruled that the City of Dallas cannot build Fastrill Reservoir on the site. However, a reservoir could be built downstream of the refuge, and there has been talk of raising the dam that impounds B.A. Steinhagen Reservoir, which would flood the area known as “The Forks,” including Martin Dies Jr. State Park and the Angelina-Neches/Dam B Wildlife Management Area.

Others have taken up Donovan’s quest. Texas Conservation Alliance (TCA), a statewide grassroots conservation organization with a 40-year history of working to protect Texas’ natural resources, is seeking to have 311 miles of the Neches between Lake Palestine and Interstate 10 designated as a Wild and Scenic River (see sidebar “Keeping Rivers Wild,” below).

“The Wild and Scenic designation is the only sure way to protect the Neches as a free-flowing river,” says Janice Bezanson, TCA executive director.

That brings us back to the original question: Do we as a society want to keep some rivers wild and free-flowing?

“Some of the most significant natural resource decisions coming at us involve taking rural resources and moving them to urban areas,” Bezanson says. “Do we take water out of East Texas and pipe it to Dallas when there are alternatives to destroying these beautiful bottomland hardwood forests?”

Whatever we decide, we must deal with a growing population (expected to double statewide in the next 30 years), increasing pressure on natural resources, water laws that have their origins in the time when Spain ruled Texas (and the United States did not exist) and a strong tradition of private property rights. Protecting property owners’ rights to enjoy and use their own property will become even more important – and difficult – as population increases and per-capita water supplies dwindle.

Those issues were the focus of concerns voiced at public meetings in Lufkin and Nacogdoches introducing the idea of a Wild and Scenic River designation for the Neches. Several speakers expressed concern that the designation might result in government interference with the management of private property. However, the Wild and Scenic Rivers Act provides an avenue for landowners and others who live, work and recreate along the river to work together for its protection on the local level and gives no federal agency authority to manage private lands.

“The purpose of the Wild and Scenic Rivers study is to bring together the people who have an interest in the river to decide what is the best way to protect it,” Bezanson says. “It’s not an easy process, but it is worthwhile, because the ultimate result is protection of the river and protection of the landowners, because they would be protected from condemnation for a reservoir.”

The Devils

Another recurring dispute over rivers in Texas is the public’s right to enjoy the state’s waterways while protecting landowners from intrusion. The rules governing them, such as they are, are partly based on conditions that existed centuries ago when few people lived here.

Navigable streams are legally open to public access in Texas, even if a property owner owns the riverbed. However, access to public streams by crossing private land is not allowed without landowner permission.



This sets the stage for conflict, especially since no state agency is responsible for the management of freshwater streambeds. Disagreements concerning them wind up in the Texas Legislature or the courts.

And sometimes in one other place: on the bank of said stream, with a landowner confronting a canoeist or kayaker. Is the paddler trespassing or exercising a legal right to be there? The answer to that question is often as clear as the mud on the stream's bank. Laws governing navigation of Texas streams are complex, confusing and subject to multiple interpretations. For a primer, see www.tpwd.state.tx.us/publications/nonpwdpubs/water_issues/rivers/navigation/riddell/index.phtml.

That's the scenario played out many times on the Devils River in West Texas, arguably the purest, cleanest, most pristine flowing stream anywhere in the state. It is a national treasure, and landowners along the Devils are very protective of it. Unlike the Neches River, the Devils has very little public land bordering it, and there are relatively few landowners along it.

One of those was Claudia Ball, whose Hudspeth River Ranch encompasses the springs feeding the headwaters of the Devils River just upstream of Baker's Crossing, a popular put-in point for paddlers on the Devils. The ranch has been in her family since 1915, and some of her earliest memories were of gathering eggs and churning butter with her grandmother during summer vacations.

"I would cry when my parents came to pick me up, because I didn't want to leave," she said.

After living in San Antonio and helping start the Texas Folklife Festival, Ball moved to the ranch, which she managed using holistic techniques that benefited the land and protected water quality, such as rotational grazing, until her death this year.

"I feel very strongly about where the water comes from," she said. "We have a club that tries to protect the river, the Devils River Association. We are trying to keep the river pure. We've been here a long time and make sure we take care of the land."

The Devils River has a reputation in the paddling community for having landowners who do not welcome visitors to the river.

"I just thank the Lord our river does not have hordes of people," Ball said.

"If people don't respect the river and the property rights of landowners, I think you ought to file charges on them. This is private property all the way. You are not to get out of the boat."

Perhaps those wishing to access the river should look at the situation like this: How would you feel if someone in a hovercraft drove across your lawn and then camped in the street in front of your house? It might be legal, but wouldn't you feel violated? That's the way riverside landowners often feel.

"We think private land ownership is the best-case scenario for landowners and the public to be on the same page as far as protecting the river," says Scott McWilliams, who manages the Texas Nature Conservancy's Del Rio office.

"What I wish the public could get clear about is that the river they enjoy so much and find in such pristine condition would not be that way without the landowners protecting it. We advocate a reasonable balance between the need to protect and

preserve the watershed and the desire of the public to utilize the river for recreation while respecting the property rights of the watershed landowners.”

TPWD’s recent acquisition of the 17,638-acre Devils River Ranch some 13 miles downstream of the existing Devils River State Natural Area sparked a process that may lead to better relations between local landowners and the public.

“The agency’s goal is to balance landowner rights along the river with public recreational access and effective stewardship of this region’s incredible natural and cultural resources,” explains Scott Boruff, TPWD’s deputy executive director of operations.

During a two-year process, TPWD will bring together landowners, paddlers, businesses, nonprofit partners and other interested parties to develop a long-term plan for operation of the new two-unit Devils River State Natural Area in a way that will protect the river, property rights of adjacent landowners and the right of the public to access the river for recreation.

“We understand the concerns of landowners, paddlers and conservationists and want to make sure we take all that into consideration,” says Peter Holt, former chairman of the Texas Parks and Wildlife Commission. “We want to figure out how to make this work.”



Managing Texas Rivers

Perhaps it's time to take a fresh look at how Texas rivers are managed. In 2003 the Texas Legislature passed Senate Bill 155, which prohibits operating a motor vehicle in Texas rivers (except for the Canadian River and the Prairie Dog Town Fork of the Red River). Might it be possible to establish regulations for other recreational uses of streams? Options to consider include setting up a permit process, requiring completion of a course on river etiquette or even mandating use of a licensed river guide when floating certain stretches.

While these proposals might be controversial, they certainly start a discussion. Ideally that discussion would be carried out in the neighbor-to-neighbor spirit of "mutual accommodation" noted in the following passage from a Texas legal text regarding easements:

“Every easement carries with it the right to do such things as are reasonably necessary for the full enjoyment of the easement, and the extent to which incidental rights may be exercised depends on the object and purpose of the grant and whether such rights are limited by the terms of the grant. However, the exercise of the right must be such as will not injuriously increase the burden on the servient owner, and there may be no use that will interfere with the servient owner’s free enjoyment of that part of the property not affected by the easement. *The owner of an easement and the possessor of the servient estate are to exercise their respective rights and privileges in a spirit of mutual accommodation.*” [Italics added.]

In other words, we ought to get along with our neighbors, and both sides need to make the effort. Rivers like the Neches and the Devils become even more precious as the people making demands on them grow more numerous. We need to figure out how to live in peace with them and with each other.

Let’s talk.

KEEPING RIVERS WILD

The United States Congress passed the Wild and Scenic Rivers Act in 1968 to “preserve . . . selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.”

There are currently 203 rivers or sections of rivers in the system, including 196 miles of the Rio Grande downstream of Big Bend National Park. This is the only Texas river with Wild and Scenic River designation.

Adding a river to the Wild and Scenic Rivers system is a long, complicated process. The process begins at the local level when interested parties ask Congress to pass a law authorizing a study to determine whether the river meets the criteria for being included. Those criteria are that the river or section of river be free-flowing and have “outstandingly remarkable values” — historical, cultural, geological, scenic, fish and wildlife, archaeological or recreational.

This legislation would not add the river to the system. Instead, it would specify how the study would be conducted. Typically these laws set up a partnership team including the National Park

Service, the U.S. Forest Service, riverside landowners, representatives of local governments and organizations and stakeholders such as hunters, anglers and paddlers. It normally takes about three years for the study team to complete its work and determine the benefits and effects of designating the river as Wild and Scenic, using input from all interested parties.

The study would identify the outstanding values of the river and what would be needed to protect any values not already protected. The study would recommend that the river receive Wild and Scenic designation only if a management plan could be developed and agreed upon by the people who live, work and recreate along the river.

After receiving a recommendation that the river be designated, the local congressional delegation could be requested to introduce legislation to make the designation official. On average it takes about three years for the bill to be passed and signed.

Since the purpose of the Wild and Scenic Rivers Act is to preserve free-flowing streams, the major impact of designation is the prevention of major reservoir projects. Existing land uses along the river would continue as before as long as they comply with state laws and the federal Clean Water Act. All existing laws regarding trespass would remain in force.

Existing water rights are not affected.

Designation as a Wild and Scenic River does not prohibit development along a river. Preservation occurs through voluntary management on private land. Federal agencies have no authority to regulate or direct management on private lands and cannot bring suit against a private landowner under the Wild and Scenic Rivers Act. The width of the boundary would vary but would never be more than a quarter-mile of the river on either side. Actual land acquisition has occurred only rarely and has been from willing sellers only, and in any case the amount of land that can be acquired is very limited.

You can download a copy of the Wild and Scenic Rivers Act at www.rivers.gov/publications.html#wsract.

For information on what is involved in a Wild and Scenic Rivers feasibility study, contact Debbie Caffin, dcaffin@fs.fed.us, or Attila Bality, attila_bality@nps.gov.

For information on the effort to designate a portion of the Neches, contact Janice Bezanson, janice@tcatexas.org.

