

TOM AND PAULA GOYNES,  
INDIVIDUALLY AND D/B/A  
THE SAN MARCOS RIVER  
RETREAT  
Plaintiffs

IN THE DISTRICT COURT

v.

CALDWELL COUNTY, TEXAS

RKY, LTD D/B/A DON'S FISH  
CAMP, TEBO III  
MANAGEMNT, LLC, AND  
TEXAS STATE TUBES, LLC  
Defendants.

421ST JUDICIAL DISTRICT

**FINAL JUDGMENT and AGREED PERMANENT INJUNCTIVE RELIEF**

On this day, came before this Court Plaintiffs and Defendants in the above entitled and numbered cause. Plaintiffs, by and through their attorneys or record, and Defendants, by and through their attorneys of record, announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. The Parties presented to the Court this Agreed Final Judgment and Agreed Permanent Injunction and asked the Court to render and sign this Judgment based on the agreement of the parties.

It appearing to the Court that all parties agreed to the entry of this Judgment and that they have approved its entry by their duly authorized signatures and the signature of their respective attorneys below, the Court, upon the stipulations of the parties after being fully advised in this matter, finds as follows:

- a. That it has jurisdiction of the Parties and subject matter of this suit:
- b. That the settlement of this dispute is fair, reasonable, and just;
- c. That this Judgment is proper in all respects:

d. That it would be in the best interests of the parties if the Court approved this Agreed Permanent Injunction to effectuate the Agreed Settlement between the Parties and rendered Judgment accordingly.

e. That the underlying purpose of the injunction is to set forth and encourage a no stopping, no loud noises, no littering, no underage drinking policy for the thousands of tubing customers utilizing Defendants' facilities and services. Further, that the Defendants presentation of the policy will be, to a reasonable and prudent person, with knowledge of the totality of the situation, a convincing credible presentation.

Based on these findings, and having heard and considered the representations made by the Parties, the Court is of the opinion that a permanent injunction should be issued as granted in this Judgment and that Plaintiffs are entitled to recover of and from Defendants as set forth below.

**AGREED PERMANENT INJUNCTIVE RELIEF**

The parties, having participated in mediation and settling all claims between them, agree that this Permanent Injunctive Relief against Defendants be ORDERED. IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Defendants, their officers, agents, servants, and employees, will comply with the following:

1. Defendants will provide additional signage at their location(s) similar to the pictures of signage shown at the August 4, 2016 hearing.
2. Defendants will display a looping video (on a monitor not less than 31 inches) that will discuss the use and prohibited behavior along the San Marcos River.

Each customer, prior to entering the San Marcos River, shall review the video in an area where all customers can hear and view the video. The video, along with the additional signs and waivers (further defined below), will serve as an orientation to customers prior to entering into the San Marcos River. The looping video shall include the following language:

- a. “Your float of approximately 2 miles is completely through private property, including a Scout and Church Camp. Respect the rights of others. Absolutely no loud, offensive and/or profane language. Thank you.”
- b. “No beer bongs allowed and no participating in ‘bonging’ with anyone, including non-customers on the river.”
- c. “No leaving your tube or stopping along the way, except at put-in and take-out or for emergencies. Remember that entering private property is trespass and law enforcement personnel may fine and could eject you from the float.”. This is a float trip – please float.
- d. “Music players will not be audible beyond 50 feet. Please be considerate of our neighbors.”
- e. “If, in the opinion of our friendly off duty officers at the put-in, you are intoxicated, and/or behaving erratically, you will not be allowed to enter the river but will take a ‘time-out’ at the put in until such time as you are deemed ready to enter the water.”
- f. “We will have Monitors along the way on kayaks to assist and remind

you of the rules – they are authorized to check the contents of your ice chests and are in communication with law enforcement. They should be courteous, friendly, and respectful to you. Thank you for being the same to them. We want you to enjoy our beautiful river and its environment along with all the other families and children of all ages. Have a great trip.”

3. Defendants will provide a uniformed officer at the tube put-in (11:00 a.m. – 4:00 p.m.) and take-out (4:00 p.m. – 7:00 p.m.) on weekends and holidays, in addition to the approximately 8-12 other officers currently stationed along the river at various locations during weekends and holidays. The uniformed officer will be instructed to report any offenses or citations issued to Defendants daily. Each officer will specifically have the authority to prohibit Defendants’ customers from entering the river from the put-in if they appear to be a danger to themselves or others or exhibit behavior that warrants legal intervention, or if they are too intoxicated, and will have authority to intervene along the river in response to any dangerous, disorderly or unlawful conduct, or trespassing.. The uniformed officers at the put-in and take-out are in addition to Defendants continuing to furnish to Plaintiffs two police officers each weekend for specific protection of Plaintiffs’ property. Further, any off-duty law enforcement, security personnel, or independent contractor charged with enforcement of these provisions should specifically be instructed to enforce the “no stopping” provision along the San Marcos River.

4. Defendants shall provide collectively at least four (4) monitors on kayaks or other floating devices in the San Marcos River (“Monitors”) during summer weekends and holidays beginning Memorial Day weekend through Labor Day weekend, and at least 2 or 3 Monitors at all other times to monitor conduct outlined in the customer waivers and make requests concerning any prohibited conduct. All Monitors shall refer those customers that refuse to follow Monitors instructions to law enforcement by way of radio or telephone device in a timely manner. The number of Monitors may vary based on weather and other conditions but in no event will go below the number outlined above. The Monitors will also prepare summary reports on the days they work, which will include reports of any referrals to the officers and such reports shall be made available to Plaintiffs and other interested parties. Defendants will provide written instructions to the Monitors regarding this agreement, including identical language as is outlined above for the orientation video. Defendants understand and agree that the purpose to these items is expressly to limit the amount of stopping along the San Marcos River and to further protect the river and that the goal is to reduce stopping along the float trip route.

5. Notwithstanding anything herein to the contrary, the uniformed officers and Monitors shall use reasonable efforts to request that customers do not stop for prolonged periods but under no circumstances shall they be required to use physical force, or take other action beyond the written and oral instructions/

requests described herein.

6. Defendants will “card” all customers along the San Marcos River, meaning that prior to entering the San Marcos River, Defendants will ask for a state-issued identification, or other form of identification (I.D.), showing the customer’s age in order to provide a wrist band, or some other form of identification, to each customer that is over the age of 21 and thus legally permitted to drink alcohol. The contractors or employees of Defendants who are tasked with carding customers are not required to be certified by the Texas Alcoholic Beverage Commission (TABC) nor are they responsible for attempting to determine the validity or authenticity of any I.D. At the time of carding, a wrist band, or some other form of identification, will be provided to those over 21 years of age. The agreement to card customers who intend to drink alcohol is being performed as an accommodation to the other persons that use the San Marcos River or live on the river and to provide security personnel, including off-duty police officers, a means to better identify under-age drinking but shall not create a duty of Defendants to any third parties nor create any liability for Defendants or be the basis of a negligence or negligent undertaking cause of action.

7. Defendants’ waivers (not less than 12 point font and in no event will the instructions be smaller than twice the size of the surrounding print) will be amended to allow Defendants’ employees, agents and contractors to check the contents of customers’ coolers and provide that such checks may occur at the

time that a customer is carded or before entering the San Marcos River. Should prohibited items be found in customers' coolers, including alcohol if the customer is under 21, Defendants' employees, agents, and contractors will enforce the "rules" as appropriate and request that the customers remove the items from their coolers.

8. Defendants will provide a reusable trash bag to all individual tubers who will take one and instruct each and every customer that "empties" shall be placed in the bag.

9. Defendants shall require the entity Pristine Texas Rivers, Inc., or any other clean-up association, group, or company engaged under the Memorandum of Understanding (MOU) entered into between RKY, Ltd. d/b/a Don's Fish Camp and Texas State Tubes, LLC in February 2015 to provide a video (post-clean-up) recording of their weekly river clean-ups that are performed during the tubing season or at any time. These video recordings will be made available weekly to Plaintiffs and other agreed parties.

10. Defendants will amend their waivers to inform their customers that there are no glass containers allowed on the San Marcos River. This requirement will be reiterated during the checking of the customers' coolers and customers who have glass containers will not be permitted to enter the San Marcos River until they forfeit the glass container.

11. Defendants' waiver that is signed by all customers and signage visible to all customers and loop video watched by all customers before entering the San

Marcos River will be amended to inform customers that no beer bongs are allowed.

12. Defendants' waivers will include an agreement that customers' music must not be audible past 50 feet.

13. This Final Judgment and the mandatory nature of these provisions shall apply, and is binding upon, any and all successors, assigns, and/or separate corporate entities initiated or created by these same principals or respective representatives or business partners of the Parties. This Order expires on the earlier of: five (5) years, by agreement of the parties, by a subsequent order of the court, or by the creation and implementation of a WORD District, State Park, or similar governmental designation or oversight provided the WORD District, State Park, or similar Governmental designation, or oversight contains the provisions of this order and is funded and staffed

14. This Final Judgment and the mandatory nature of these provisions shall apply, and is binding upon, any and all successors, assigns, and/or separate corporate entities initiated or created by these same principals or respective representatives or business partners of the Parties.

Having Ordered the Agreed Permanent Injunction and in light of the parties announcing that all further matters are settled between them, this Court denies all other relief requested in Plaintiffs' Petition.

This Judgment is final and disposes of all claims and all parties. The Court retains

jurisdiction to enforce this Judgment.

All relief not expressly granted herein is denied.

Signed this day \_\_\_\_\_ of November, 2016

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Judge

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Agreed as to Form and Substance; both attorneys

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Agreed as to Form and Substance; both attorneys

(Judge Blomerth signed this on November 22, 2016)