

MEMORANDUM

Providing for Public Access to Rivers and Streams at New Bridges

Brian Easley- UGA Environmental Law Practicum

Date: 11/21/14

Unfortunately, few states seem to have taken measures to encourage the creation of public access points to rivers and streams at bridge crossings. After researching the topic, I could only find examples in two states. California and Tennessee have both implemented policies, but they have adopted markedly different means through which to achieve their goals.

Tennessee law does not require that boat launch access be provided with the construction of any new bridge over a river. Instead the Tennessee Department of Transportation (TDOT) and the Tennessee Wildlife Resources Agency (TWRA) have entered into a cooperative agreement to provide for access at certain existing bridges and bridges to be built in the future.¹ Thus, instead of relying on instruction by way of legislation, TDOT and TWRA formed a partnership to achieve their goals. This program is called “park and float.”² The program only applies to bridges on state highways. TDOT and TWRA have created a list of eligible streams and rivers on which new access points will be created under the program.³

In contrast, California has gone a different route by using legislation. California law has incorporated a requirement for the consideration of public access at new bridge constructions. California Streets and Highway Code § 84.5 states: “During the design hearing process relating to state highway projects that include the construction by the department of a new bridge across a navigable river, there shall be included full consideration of, and a report on, the feasibility of providing a means of public access to the navigable river for public recreational purposes.”⁴ California Street and Highway Code § 991 places a similar requirement on county highways: “Before any bridge on a county highway is constructed over any navigable river, the board of supervisors, after a study and public hearing on the question, shall determine and shall prepare a report on the feasibility of providing public access to the river for recreational purposes and a determination as to whether such public access shall be provided.”⁵ California Street and Highway Code § 1809 extends the requirement to city streets: “Before any bridge on a city street is constructed over any navigable river, the legislative body of the city, after a study and public hearing on the question, shall determine and shall prepare a report on the

¹ TDOT and TWRA Partner to Launch Park and Float Program, tn.gov, October 22, 2010, <https://news.tn.gov/node/6225>.

² *Id.*

³ *Id.*

⁴ West's Ann.Cal.Str. & H.Code § 84.5.

⁵ West's Ann.Cal.Str. & H.Code § 991.

feasibility of providing public access to the river for recreational purposes and a determination as to whether such public access shall be provided.”⁶

Although the California statutes have been on the books for over 40 years, it was only in recent years that groups such as American Whitewater and American Rivers called attention to these laws and petitioned for their enforcement.⁷ Prior to the actions of these groups only one feasibility study on public access at a new bridge had been conducted in the preceding 40 years.⁸ Notably, all of the relevant code sections provide for a hearing process. This is likely a positive component for paddlers and other benefactors because it allows them to demonstrate the level of public demand for access at bridges.

Georgia does not have a similar program or law. Currently in Georgia, access to navigable rivers via bridges is limited to the narrow right of way around the bridge. But this is often problematic because parking may be limited and adjacent landowners may believe that they have the right to exclude prospective recreational users. The examples in Tennessee and California demonstrate two different ways to pursue the goal of greater public access to streams and rivers. Neither seems to have a particular advantage over the other if implemented properly. Choosing between the two for implementation in Georgia may depend on the expectations one can place on each state governmental entity to faithfully adhere to the law or cooperative agreement. Additionally, California and Tennessee provide only two examples in what is likely a wide spectrum of possible policies to achieve a similar goal. There is certainly room for the creation of a policy distinct from the examples in other states, which may better suit the needs on Georgia.

⁶ West's Ann.Cal.Str. & H.Code § 1809.

⁷ AW Calls for Public Hearing – River Access and Bridges in CA, American Whitewater, July 9, 2012, <http://www.americanwhitewater.org/content/Article/view/id/31321/>; Finding New Ways to Access Your River, American Rivers, March 26, 2013, <http://www.americanrivers.org/blog/finding-new-ways-to-access-your-river/>

⁸ *Id.*