



Oregon

Theodore R. Kulongoski, Governor

Department of State Lands

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State Land Board

Theodore R. Kulongoski

Governor

TO: Interested Persons

Bill Bradbury

Secretary of State

FROM: Louise Solliday
Director

Randall Edwards

State Treasurer

SUBJECT: **Rogue River Navigability Report**

- **Availability of Draft Navigability Report, and**
- **Notice of Public Hearing**

Availability and Content of Draft Navigability Report

This notice is to advise you of the availability of the Draft Navigability Report for the 89-mile segment of the Rogue River from Grave Creek at River Mile (RM) 68.5 to Lost Creek Dam at RM 157.5. This report is the second to be prepared as a part of this navigability study pursuant to the requirements of Oregon Revised Statutes (ORS) 274.400 to 274.412 and Oregon Administrative Rules (OAR) 141-121-0000 through 141-121-0040. It summarizes the evidence that the Department of State Lands (DSL) has collected concerning the navigability of the study segment.

To prepare this report, DSL considered information submitted to the agency concerning the historical use and condition of the 89-mile segment during the public comment period that began on September 7, 2007 and ended on November 9, 2007.

As discussed in this report, the federal test for navigability is used to determine if a waterway is navigable for title purposes. The elements of this test are whether the evidence of the historical use and condition of a waterway, in this case, the 89-mile study segment of the Rogue River, support a finding that this stretch of the river was:

- Used, or susceptible to being used,
- In its ordinary and natural condition,
- As a highway of commerce over which trade and travel were, or could have been conducted,
- In the customary modes of trade and travel on water at the time of Oregon's statehood (1859).



Based on the evidence presented in this document, DSL has concluded that the 89-mile segment of the Rogue River from Grave Creek to Lost Creek Dam does meet the requirements of the federal test for navigability. However, the final decision concerning whether the requirements of the federal test for navigability are met rests with the State Land Board.

You can obtain a copy of this report in the following ways:

- It is available on DSL's internet web site: www.oregonstatelands.us
- You may request a paper copy of the study by sending an e-mail to: roguerivercomments@dsl.state.or.us or by calling Jeff Kroft at DSL (503.986.5280)

Land Board Meeting

The State Land Board will hold a meeting in Medford:

**Wednesday, March 19, 2008
10 A.M. to 12 noon
Ramada Medford & Convention Center, Pacific Ballroom
2250 Biddle Road
Medford, Oregon 97504**

The purpose of this meeting is to hear public testimony in response to the following two questions concerning the Rogue River navigability study:

- Does the factual evidence presented in the second draft of the Rogue River navigability study meet the federal test for title navigability?
- Should the Land Board, based on the factual evidence contained in the second draft of this study, make a declaration of public ownership of the 89-mile segment of the Rogue River from Grave Creek (RM 68.5) to Lost Creek Dam (RM 157.5)?

The Land Board will not make any decisions at this meeting concerning the navigability of the Rogue River and will only listen to testimony presented on these two questions. DSL staff expects the Land Board to make a final decision on this issue at a regularly scheduled board meeting later this year. All interested parties will be notified prior to the meeting.

How to Provide Comments

You may provide input to the Land Board at its Medford meeting either orally or in writing.

If you want to present your input orally, you must sign in when you arrive at the meeting before it begins. The Land Board will take oral public comment in the

order that persons wanting to give input have signed in. A maximum of 3 minutes will be given to each person. However, because of the 2 hour length of this meeting, it is possible that a shorter time will be given to each person wanting to speak in order to accommodate more speakers. Due to time limitations, not everyone who wants to speak may be able to do so. Therefore, you are encouraged to bring written copies of your input to give to the Land Board in the event you are not given the opportunity to speak.

If you want to present your comments in writing, you may either submit them in person at the meeting to the Land Board, or send them via:

- E-mail to: rogueivercomments@dsl.state.or.us *or*
- U.S. Mail to: Rogue River Comments
Oregon Department of State Lands
775 Summer Street N.E., Suite 100
Salem, Oregon 97301-1279

The public comment period will remain open through Wednesday, March 26, 2008. All input must be received by DSL no later than 5 P.M., March 26 in order to be considered.

Proposed Preliminary Findings and Conclusions

Preliminary Findings

The evidence presented in this report of the historical use and condition of the Rogue River from Grave Creek at River Mile (RM) 68.5 to Lost Creek Dam at RM 157.5 supports a determination that this 89-mile segment of the waterway meets the requirements of the federal test for navigability.

The Department of State Lands has come to this finding based on the following considerations:

- The Rogue River study segment has been used in a variety of ways since statehood. Documented evidence exists that Indians traveled on stretches of the study segment in canoes. In addition, the study segment was also used by ferries, for log driving, by commercial fishermen, for the transportation of passengers and cargo and by various recreational watercraft.
- With the exception of some areas, the general physical orientation of the Rogue River study segment has not changed appreciably since statehood. This conclusion is based on an examination of the maps prepared by early surveyors, and a review of post-statehood maps available to the Department.
- The flow of the Rogue River through the study segment was at the time of statehood greater than it is today. This is not only because of the dams that have been constructed throughout the Rogue River Basin, but also withdrawals that are taking water from the waterway for irrigation, municipal and domestic uses.

- Most of the recreational watercraft currently used on the Rogue River study segment draw less than 8 inches and can use the study segment with some difficulty at a minimum flow of 900 cubic feet per second (cfs). Based on a model developed by the Oregon Water Resources Department, an 80% likelihood exists that this rate of flow would have occurred throughout the year at the time of statehood (1859).
- Similarly, there is also an 80% likelihood that a flow of 1,000 cfs (which would provide a trip with fewer obstructions) would have occurred throughout the year in 1859.
- Indian dugout canoes of the type used on the Rogue River and in other parts of the Pacific Northwest typically draw 6 to 8 inches. Therefore, they are comparable to canoes, kayaks, drift boats and rafts in current use on the waterway.
- Given that Indian use of canoes has been documented to have occurred prior to, or at the time of statehood at several points along the study segment, and that several of the recreational watercraft currently in use have characteristics similar to Indian canoes, it is reasonable to conclude that a dugout-type canoe could have been used on the entire Rogue River study segment at the time of statehood.

Preliminary Conclusions

In light of the foregoing evidence presented in this study and the above listed conclusions, it is reasonable to conclude that the 89-mile segment of the Rogue River from Grave Creek to Lost Creek Dam, in its ordinary and natural condition, was used, was susceptible to use, or both, as a highway of commerce over which trade and travel were or could have been conducted in the customary modes of trade and travel on water at the time of statehood.

Enclosures

- Summary of public comments received during the September 7, 2007 – November 9, 2007 public comment period.
- Document containing answers to questions raised concerning this study.

For additional information concerning the topic of navigability in general, or more specifically, DSL's Rogue River navigability study, go to:
www.oregonstatelands.us