

KROFT Jeff

From: Fishinsolitude@aol.com
Sent: Friday, September 14, 2007 11:09 PM
To: Rogue River Comments
Subject: Rogue River

To Whom it may concern,

Recently I heard the DSL had looked at the navigability of the Rogue River from Lost creek dam to Graves creek. While I'm still not sure for the reasons of such a study I'd just like to say a few things about this wonderful river.

I first saw the Rogue river in 1964 when I traveled through the area from Klamath Falls to Crescent City with my family. I immediately fell in love with the river and knew I'd be spending time on it when I got older.

After getting out of the service in 1976 I moved to Grants Pass and enjoyed fishing the river for years. I made a big deal out of the fact that in 1979 I spent over 100 days fishing and exploring the banks of this beautiful waterway. Later my work took me out of the area and for years I did no fishing, but I yearned to be back again standing in the cool waters with my fishing rod.

When I did return to the valley one of the first things I did was hit the river for fishing. I'd hike the banks while reading the water for that perfect place where the fish would be. Since returning in 1995 I've spent hundreds of days fishing and just gazing into the clear clean water.

Again I have no idea what the study was done for, but I do know this. I intend to fish this great river and walk along it's banks for the rest of my life. I love the Rogue river and hope my daughter learns to love it as much as I, and hope she continues to fish it all her life as well.

This river belongs to everyone, just as every waterway in the state. We must not take the rights of access away from anyone just because someone else has decided to build or live along it.

Thank you,
Robert Blanchard
Medford, Oregon
(541) 772-0420

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KROFT Jeff

From: Gary Baldwin [baldwin_kauai@msn.com]
Sent: Saturday, September 15, 2007 9:12 AM
To: KROFT Jeff
Subject: Rogue River Report

Jeff

A couple of questions:

1. Why is this decision not a "takings" under Federal law as it conflicts with the title information?
2. Is the State of Oregon going to assume all liability?
3. Who within the State of Oregon is responsible for the clean-up to the waste left behind by the trespassers?
4. How will the clean-up be funded given the current funds shortage?

More to follow

Thanks

Gary

Gary Baldwin
5382 Rogue River Highway
Grants Pass, OR 97527

Good morning, Mr. Baldwin,

Thank you for your e-mail in which you posed several questions.

(1) Should the Land Board determine that the historical evidence contained in the navigability study fully meets the requirements of the federal test for navigability and assert a claim of ownership to the land below the line of ordinary high water on the Rogue River study segment, this would not be a "taking" for the following reason:

As discussed in the report, if the Rogue River study segment is determined to be navigable for title purposes, then it is the state's position that the subject submerged and submersible land was intended to be given by the federal government to the State of Oregon as part of its grant to the state at statehood (1859). Any indication of ownership of the submerged and submersible land by an adjacent landowner following statehood would be incorrect -- and done by someone in the chain of title either not knowing that the state could own the property or in order to extend their upland ownership waterward to "fill the apparent ownership vacuum" for the submerged and submersible land. Or, to put it another way, just because the State of Oregon did not assert a formal claim of ownership in the past does not mean that the state gave up its claim to the river. You may also want to read your title insurance policy. For the past twenty or so years, all title insurance policies issued in the State of Oregon state that the title insurance does not cover land below the line of ordinary high water for the reason I have stated.

(2) You ask if the State of Oregon is going to assume all liability. The answer to that question is "yes" should the Land Board assert a claim of ownership. The state's liability would be the same as that it would have for any state-owned property.

(3) The issue of clean-up of trash and litter left on the bed and banks of Oregon's waterways by inconsiderate people is one that we, and for that matter, any landowner in the state must contend with. To the extent that funds and staff are available, the Department of State Lands has tried to clean up sites along some of the waterways for which it owns the submerged and submersible land. This is a problem that this agency will continue to try to address.

The Department has also tried to address the problem of trash and litter by convening groups of landowners, recreational users, law enforcement and other state and local government agencies to try to work out solutions to this misuse of publicly owned land. Needless to say, this is a problem that the Department cannot solve by itself.

(4) To date, the Department of State Lands has used its own funds to conduct clean up efforts (mostly to pay for the disposal of the trash and little collected). The actual pick-up has been done by inmates, volunteers or other groups.

Please let me know if you have any additional questions.

Again, thank you for contacting us.

Regards,

Jeff Kroft

David J. "Jeff" Kroft, Ph.D.
Senior Policy Specialist
Land Management Division
Oregon Department of State Lands
775 Summer Street N.E., Suite 100
Salem, Oregon 97305-1279

KROFT Jeff

From: KROFT Jeff
Sent: Monday, September 17, 2007 9:27 AM
To: 'Gary Baldwin'
Cc: PURCHASE Steve; SOLLIDAY Louise; CASTELLI Chris; LILLY John
Subject: RE: Rogue River Report

Good morning, Gary,

I can fully understand your frustration concerning people who trespass across your property to obtain access to the Rogue River.

Let me emphasize that any person who enters/crosses your property without your permission is in trespass and subject to arrest/citation. For years, I have heard persons tell me about the existence of a law that, according to them, allows anyone to cross private property to use a waterway. This is not true. No such law was ever enacted or currently exists. A person may only gain access to a waterway from publicly-owned property, from their own riverside property, or with the permission of the owner of a riverside parcel.

And, I know given the shortage of officers and the great number of calls each has to respond to at any given time that it is very difficult for anyone to obtain the help of law enforcement to cite a person for trespass.

Please don't hesitate to contact me with any additional questions or thoughts you might have.

Regards,

Jeff Kroft

From: Gary Baldwin [mailto:baldwin_kauai@msn.com]
Sent: Monday, September 17, 2007 9:03 AM
To: KROFT Jeff
Cc: PURCHASE Steve; SOLLIDAY Louise; LILLY John; CASTELLI Chris
Subject: Re: Rogue River Report

Thank you for your prompt reply and complete explanations - unfortunately the biggest problem I see with this issue is the continual trespassing on private property to get to the banks - it is almost a daily occurrence where we live and I see no one available to enforce it.

Good luck with your endeavors

Gary

----- Original Message -----

From: KROFT Jeff
To: Gary Baldwin
Cc: PURCHASE Steve ; SOLLIDAY Louise ; LILLY John ; CASTELLI Chris
Sent: Monday, September 17, 2007 8:52 AM
Subject: RE: Rogue River Report

10/26/2007

KROFT Jeff

From: Ken Norton [nortons@cmspan.net]
Sent: Sunday, September 16, 2007 4:26 AM
To: Rogue River Comments
Subject: Rogue navigable

I concur with the recent ruling that the Rogue is navigable all the way down from Lost Creek Dam. I think history and physical characteristics dictate such. Adjacent land owners may fence off above high water mark if they are concerned about security.

Waters should remain in the public domain as much as possible. That is a big part of what makes Oregon Oregon. I fish in most of the eleven western states and find it frustrating in some others that do not have this tradition. Too much recreation land is locked up already.

Thanks for the opportunity to comment.

Ken Norton
297 Spence Ave.
Sutherlin, Or. 97479
Oregon resident since 1951.

KROFT Jeff

From: David Owens [owens@ipacific.com]
Date: Sunday, September 16, 2007 3:57 AM
From: KROFT Jeff
Subject: Rogue River property owner question

Hello!

I am a recent purchaser of property along the river in Gold Hill affected by the navigable river study.

I have property across the road I pay taxes on and is in my legal plat map of land, it looks like to the low water mark, or to the edge of the river.

This land cost me a premium, about \$150,000 more on the purchase price than if I did not have the river frontage.

It has always been understood that the river water has public use, but the riverbanks to the high water mark, that is worrisome.

Can you tell me how the high water mark is determined?

If my property near the river has become private wherein I have to grant anyone passage and use, of course it is disconcerting. It is a very delicate area and any walking disturbs the soil and erodes the slope.

There has a private float dock there.

The value of the property to me is certainly devalued.

Seems I can be denied my float dock and minor improvements of trail to protect the delicate riverbank.

Or at best have to make the land and improvements available for public use.

Please advise me where the high water mark should be designated and what my rights will be in the future as opposed to what they were in the past.

Sincerely,

David Owens

11 Rogue River Hwy, Gold Hill

David Owens and Reutova Maria

<http://www.sennaya.com>

541-482-8041 Oregon

KROFT Jeff

From: KROFT Jeff
To: Monday, September 17, 2007 10:03 AM
Subject: 'David Owens'
Cc: SOLLIDAY Louise; PURCHASE Steve; LILLY John; CASTELLI Chris; CURTIS Julie
Subject: RE: Rogue River property owner question

Good morning, Mr. Owens,

Thank you for your e-mail to me.

With regard to your questions:

(1) The ordinary high water mark has been defined in federal law as the line that the water impresses on the soil by covering it for a sufficient period of time to deprive it of vegetation. In Oregon, the line of ordinary high water has also been defined by statute (ORS 274.005). Summarized in general terms, these definitions say that the ordinary high water mark is a line on the bank or shore to which the high water ordinarily rises each year and is the waterward limit of upland vegetation and soil. This line is not established based on the level to which the water rises during major floods. It is generally recognizable by a visible change in the soil and vegetation. In a 1912 Oregon Supreme Court case (Sun Dial ranch vs. May Land Company) involving the Columbia and Sandy Rivers, the court said "...'high water mark' is the point below which the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the banks with respect to vegetation as well as with respect to the soil itself." Others define the ordinary 'high water mark' as a "water mark" defining the waterward limit of the submerged and submersible land "...which the water occupies sufficiently long and continuously to wrest it from vegetation and destroy its value for agricultural purposes."

ing said this, as you are well aware, the flow of the Rogue River is controlled by numerous dams. Therefore, should the Land Board assert a claim of ownership to the submerged and submersible land underlying the study segment, it will be necessary to determine where the line of ordinary high water was located prior to the construction of these dams.

(2) Regardless of what the Land Board may ultimately determine concerning the navigability of the 89-mile Rogue River study segment, let me emphasize that any person who enters/crosses your property without your permission is in trespass and subject to arrest/citation. For years, I have heard persons tell me about the existence of a law that, according to them, allows anyone to cross private property to use a waterway. This is not true. No such law was ever enacted or currently exists. A person may only gain access to a waterway from publicly-owned property, from their own riverside property, or with the permission of the owner of a riverside parcel.

(3) And, along the same line as the answer to the second question, with regard to your float dock, no person may, regardless of the outcome of this study, use your dock without your permission. That is your personal property.

Please let me know if you have any additional questions.

Regards,

Jeff Kroft

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KROFT Jeff

From: john isola [jrisola@gmail.com]
Sent: Monday, September 17, 2007 1:14 PM
To: Rogue River Comments
Subject: navigability study

When the river changes course over time, for instance the ponds above gold ray dam a couple of years ago, what is the status on the old highwater marks and the new high water marks. If the river changes course do the current owners lose more property and would the previous owners gain since the river has moved? Who will determine high water mark exactly on everyones property along the river, and does this affect our liability insurance? slip and fall, dog bites, fires, sprinkler systems.... thanks.

KROFT Jeff

From: KROFT Jeff
Sent: Monday, September 17, 2007 4:01 PM
To: 'john isola'
Subject: Your E-Mail Regarding the Rogue River Navigability Study

Good afternoon, Mr. Isola,

Thank you for your e-mail in which you ask a number of good questions. I will answer each one in the order you raised them.

(1) Let me begin by answering your question concerning how the line of ordinary high is established, then address your other concerns. The ordinary high water mark has been defined in federal law as the line that the water impresses on the soil by covering it for a sufficient period of time to deprive it of vegetation. In Oregon, the line of ordinary high water has also been defined by statute (ORS 274.005). Summarized in general terms, these definitions say that the ordinary high water mark is a line on the bank or shore to which the high water ordinarily rises each year and is the waterward limit of upland vegetation and soil. This line is not established based on the level to which the water rises during major floods. It is generally recognizable by a visible change in the soil and vegetation. In a 1912 Oregon Supreme Court case (Sun Dial ranch vs. May Land Company) involving the Columbia and Sandy Rivers, the court said "...'high water mark' is the point below which the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the banks with respect to vegetation as well as with respect to the soil itself." Others define the ordinary 'high water mark' as a "water mark" defining the waterward limit of the submerged and submersible land "...which the water occupies sufficiently long and continuously to wrest it from vegetation and destroy its value for agricultural purposes."

Having said this, as you are well aware, the flow of the Rogue River is controlled by numerous dams. Therefore, should the Land Board assert a claim of ownership to the submerged and submersible land underlying the study segment, it will be necessary to account for the impact of the dams on the current flow of the river and the line of ordinary high water.

(2) With regard to the impacts of the lateral movement of the river - termed avulsion and accretion:

You are indeed correct that the Rogue River has meandered quite a lot since the time of statehood -- particularly that segment from Shady Cove to Gold Hill. Should the Land Board assert a claim of ownership to the Rogue River study segment, the Department of State Lands would very likely establish state ownership to be limited to the channel where the river currently flows. However, it is important that prior to making a claim of ownership, the Department address how the course of the river evolved to its current location. Was the change in the river's course slow and gradual -- that is, developed through accretion or the result of sudden changes -- that is, developed through an avulsive act -- or a combination of both events? And, as I have mentioned, what impacts has the construction of dams had on the river's course. All of these factors need to be considered.

(3) Assuming that the Land Board does assert a claim of ownership:

Once the limit of the state's ownership is established, any future changes in the course of the river from that point on will be subject to the principles of avulsion and accretion on ownership. For example, as the river slowly changes its course over time, the property lines tied to the location of the waterway also change accordingly. Conversely, should a dramatic and sudden change occur in the course of the river, the limits of ownership become "frozen" at their pre-avulsive act location.

(4) With regard to your question about liability:

You are protected by state law (ORS 105.682) from lawsuits for injuries resulting from the use of your property for recreational purposes. The following hotlink will take you to this statute: <http://www.leg.state.or.us/ors/105.html>

10/26/2007

Please let me know if you have any other questions.

Regards,

Jeff Kroft

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KROFT Jeff

From: bmmcgregor@charter.net
To: Wednesday, September 19, 2007 5:28 AM
Subject: Rogue River Comments
Study Comments

I support the conclusions of the navigability study of the Rogue River. It is obvious from a study of history of the Rogue that it has long been used for transportation of people and goods. The decision won't come as a surprise to most folks, and with cooperation among the users shouldn't cause any problems.

Bruce McGregor
2645 E Congress
Medford OR 97504

KROFT Jeff

From: Robert F. Schack [rschack@americanbusinessbank.com]
nt: Friday, September 21, 2007 12:03 PM
Subject: Rogue River Comments Report

Please email me the Rogue River Navigability Study. What are the ramifications if the study is adopted? Thank you, Bob Schack.

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KROFT Jeff

From: Rogue River Comments
To: Friday, September 21, 2007 2:33 PM
Subject: 'Robert F. Schack'
Cc: SOLLIDAY Louise; PURCHASE Steve; LILLY John; CURTIS Julie; CASTELLI Chris
Subject: RE: Report

Good afternoon, Mr. Schack,

Thank you for your e-mail request. The first hotlink listed below is to the Department of State Lands' webpage that discusses the Rogue River navigability study. The second hotlink is to the draft navigability study report.

http://oregonstatelands.us/DSL/NAV/rogue_intro.shtml

http://oregonstatelands.us/DSL/NAV/docs/rogue_draft_2007sm.pdf

You ask what are the ramifications of this study. As you will note when reading the draft report, the purpose of this study is to establish with certainty who owns the submerged and submersible land below the line of ordinary high water along the 89-mile study segment.

If you are a landowner whose deed indicates that your ownership ends at the line of ordinary high water, then the study and an assertion of ownership by the Land Board will have little, if any impact on you. However, if you are a landowner whose deed states that your ownership extends to the middle of the stream, then you may have questions concerning how it could be that your deed reads the way it does when the state contends that it has owned the subject land since the time of statehood.

If you are a recreationist, an assertion of ownership by the Land Board will give you certainty as to where you can be on, and how you can use the submerged and submersible land to the line of ordinary high water underlying the study segment.

For more information, I suggest that you read the draft report. You may also want to look at the various documents on the Department website relating to title navigability.

Please let me know if you have any additional questions.

Regards,

Jeff Kroft

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Senior Policy Specialist
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-----Original Message-----

From: Robert F. Schack [mailto:rschack@americanbusinessbank.com]
Sent: Friday, September 21, 2007 12:03 PM
Subject: Rogue River Comments
Subject: Report

Please email me the Rogue River Navigability Study. What are the ramifications if the study is adopted? Thank you, Bob Schack.

KROFT Jeff

From: R Hardin [kdhard@clab.net]
Sent: Monday, September 24, 2007 2:45 PM
To: Rogue River Comments
Subject: Navagability Study

I encourage you to adopt the findings as written. They are in line with other court ordered findings which have gone before the US Supreme Court.

Richard B. Hardin kdhard@clab.net
105 NW Sinclair Drive, Grants Pass, OR 97526