

September 17, 2007

DEPT OF STATE LANDS
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2007 SEP 18 P 1:22

Oregon Department of State Lands
Rogue River Navigability Study Comments
775 Summer Street N.E., Suite 100
Salem, Oregon 97301-1279

Dear Sirs:

This is a comment regarding the
Rogue River Draft Navigability Study Report.

I have read the preliminary findings
and the preliminary conclusions and
support the conclusion that the Rogue
River section in the study be designated
navigable.

Sincerely,

John H. Garren, Director
National Organization for Rivers (NORS)
5450 S.W. Erickson Avenue - A222
Beaverton, Oregon 97005
503-626-6741

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SEP 20 2007

DEPARTMENT OF STATE LANDS

Arthur Smith

7096 Rogue River Drive
Shady Cove, Oregon 97530
Phone: 541-878-7600
arthur7smith@yahoo.com

Louise Solliday, Director
Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301-1279

Dear Ms. Solliday,

I am replying to your letter of September 7, 2007, and the objective of establishing the limits of public and private ownership along the Rogue River so as to reduce conflicts between those who use the Rogue and the adjacent private property owners.

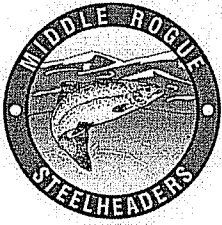
First of all, I do not see any point in continuing to search for the actual usage of the river in 1859. It has been decided that the river was navigable then, and no matter what additional facts come to light, this decision will stand. What needs to be done is to decide what is the fair and reasonable way to allocate the usage of the river now between public and private rights. First of all, it seems to me, is the allocation of access to the river. Anyone wanting to use the river for traveling on the water should have the right to do so, subject to the rules of boating. But does this mean that the public can use the ramps at Shady Cove Park and Takelma without charge? I would not think so. However, if the user wants to fish, or swim, or just be at the river's edge, I say she should be allowed to do so without charge. Right now there is no place in Shady Cove where you can do that, and that should be changed.

My wife Ann G. Ford and I own the land at 7096 Rogue River Drive, Shady Cove from the street to the river, including approximately 300 feet of frontage along the river. It seems to me to allow the public to get out of a boat and picnic at the river, even if it is still on public land (below the high water mark of the river) is wrong, if the adjacent land is private property. At many places along the river, the private property owner has put in chairs or benches, sometimes some shade, sometimes barbecues. But even if completely undeveloped, there should not be a public right to camp this close. Also, the public should not have the right to march along the river, crossing from one piece of private property to the next piece. Nor should the public have a right to cross over private property to go down to the river. This is trespassing, and the property owner needs to have available a cause of action with some teeth in it, to stop such trespassing.

Finally, the change in ownership of the riverbed and shore from private property to public property should not give the property owner the right to claim that this results in a taking of property for which the state should pay.

Merv truly yours,

Arthur Smith



Middle Rogue Steelhead Chapter
Trout Unlimited
P.O. Box 962, Grants Pass, OR 97528



011

Date: September 21, 2007

Oregon Department of State Lands (DSL)
Rogue River Navigability Study Comments
775 Summer St NE, Suite 100
Salem, Oregon 97301-1279
Send via Email to roguerivercomments@dsl.state.or.us

Att: Dr. Jeff Kroft
Senior Policy Specialist

Dear Dr. Kroft:

On behalf of the Middle Rogue Steelhead Chapter of Trout Unlimited, congratulations on the recent release of the Rogue River Draft Navigability Study Report for the section of the Rogue River between Grave Creek and Lost Creek Dam. Considering that it has been 10 years since a request was made that such a study be done, it is long overdue. We also applaud your finding that the Rogue River in the section of river studied is indeed navigable and that the public owns the submerged and submersible land up to the Ordinary High Water Line (OHWL) and has done so since the time of statehood in 1859.

The Middle Rogue Chapter is headquartered in Grants Pass, Oregon and has a membership of approximately 550 people. We draw membership from throughout SW Oregon and are the largest and most active Trout Unlimited Chapter in Oregon. The primary mission of our Chapter is the enhancement of cold water fisheries for which the Rogue River is of worldwide fame. Most of our members are dedicated fishermen as well as conservationists. We use the Rogue and its bed and banks below the OHWL extensively and public ownership of such lands is a right we cherish and will fight for.

Considering the early settlement and mining operations that took place in this part of Oregon by the mid 1850's, it is clear that Rogue River was used for travel and commerce or was "susceptible" to such use as defined by Federal court decisions relating to navigability at the time of statehood. Therefore it is hard to visualize any finding other than one supporting public ownership of lands below the OHWL.

We instruct our membership to use the land below the OHWL in a manner that will protect the riparian resources of the area and harmonize with the rights of adjacent private landowners. We are well aware that a finding of navigability does not grant rights to use the uplands except in the possible case of portage. We also know that navigability does not grant exception to laws that otherwise apply such as those that control litter, fires, behavior, etc. But the bottom line is that the State holds the land below the OHWL in trust for the public and citizens have the right to fully enjoy the resources there for navigation, commerce, recreation and fishing.

Thank you for this opportunity to comment. We look forward to the public meeting in Grants Pass on October 24, 2007.

/s/ MIKE COOLEY
Mike Cooley, President
Middle Rogue Steelheaders

OPERATION RIVERS

Northwest Oregon

PO Box 352, Tillamook, OR 97141 • (503) 842-6001 email: OperationRiversNW@oregoncoast.com

October 20, 2007

Louise Solliday, Director
Rogue River Navigability Study Comments
Department of State Lands
775 Summer St. NE
Salem, Oregon 97310

Subject: Navigability Study Upper Rogue River

The Board of Operation Rivers Northwest Oregon has reviewed the preliminary report for navigability on the upper Rogue River. After careful deliberation we request that you deny navigability for the following reasons:

1. A determination of navigability for the proposed study area cannot be justified economically. What revenue will be generated through leased or leasing of river banks and beds?
2. The request for a navigability study lacks broad public interest. A navigability study is not supported by affected owners, or the board and membership of Operation Rivers Northwest Oregon.

There are other ways to reduce and avert conflicts between recreationists and affected property owners. Educating landowners, law enforcement officers, and recreationists about their rights and responsibilities would be more effective and a less expensive solution. This can be accomplished with a Local Solutions Plan for the Rogue River.

More recently, the determination of navigability on the Sandy River has done little to reduce conflicts. On the contrary, it has increased conflicts and led to more law enforcement mediations. Without funding for proper enforcement and landowner involvement and support, we have to wonder how additional access along the Rogue would benefit the environmental conditions and salmon runs. How is this beneficial to the public's interest?

In summary, recreational interests will gain little from a navigability determination except continuing conflict and the potential loss of salmon habitat and endangerment of salmon returns.

For these reasons the navigability study should be rejected.

Sincerely,

Leslie Pittman
President
Operation Rivers Northwest Oregon

Board of Directors
Operation Rivers Northwest Oregon

Donna Lane, Vice President
Carol Blum, Treasurer
Lynda Dumas, Secretary
Ardath Stout, Director
Myrt Williams, Director
Ron Byers, Director
Don Stout, Director
Dick Blum, Director
Gus Meyer, Advisor

10-23-07

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OCT 29 2007

DEPARTMENT OF STATE LANDS

Dept. of State Lands
Rogue River Navigability Study Comments
775 Summer St., NE, Suite 100
Salem Or., 97301-1279

RE: Comments on Navigability Study

I strongly support the Board's study declaring the Rogue River to be navigable and therefore giving the Public the right to use its banks for fishing, navigation, recreation and commerce. Not only does historic use support such designation but it is important that citizens have use of this popular and important river. I know that in my own case I depend on access for recreation in the form of fishing and boating, and have used the river in this manner for 50 years. Thank you for consideration of my comments.

Sincerely,

Scott Hampson
PO Box 1791
Cave Junction, Or. 97523

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OCT 29 2007

DEPARTMENT OF STATE LANDS

October 25, 2007

Oregon Department of State Lands
Rogue River Navigability Study Comments
775 Summer Street N.E., Suite 100
Salem, Oregon 97301-1279

Oregon Department of State Lands,

In 1859 Oregon became a state, the government owned the land. The government is the people. The counties deeded the land under the rivers to those that bought river front property. This goes back 150 years. If the government always owned the land why did they let counties deed land to the new property owners?

Everyone knows from reading your navigability study that the river is navigable for a canoe or a log to float down river. It doesn't mater that in the early 1900's dynamite had to be used for passage in many parts of the Rogue & also portage around certain areas. It is still a navigable waterway.

This is just an exercise to take the land and have the D.S.L. manage it in the future. Why wasn't this done sooner?

In 1997 D.A. Tim Thompson submitted a navigability study request to D.S.L. He stated, "Actual and potential conflict between users and landowners are increasing in frequency and volatility". There have been only two court cases for trespassing in the past 150 years on the Rogue. Additionally, ruling the river navigable will not stop conflict or property trespass on riverfront property. I wouldn't say this is a reason to take our land with no Right of Eminent Domain.

On Page 7 of your study you talk about the land board meeting in Oct.2004. You recommended at this meeting to undertake a navigability study from P.M.68.5 to P.M.157.5 based on substantial public interest reflected in the study request, probably in terms of resolving conflict between property owners and users of this waterway segment. Property owners sent the Governor and D.S.L. 150 letters opposing this study for various reasons.

It has nothing to do with violence, ect. on the river between landowners and river users. None of the state or county governments has ever educated the public in the proper rules of the river

I see the only recourse is to consider a class action lawsuit. Because the facts in this case make it clear that this is happening in order to take our land without paying for it, or refunding taxes we paid for many years.

Between now and the March meeting in Medford we will explore legal ideas on this issue.

Sincerely,

Roger King /
P. O. Box 1090
Eagle Point, Or.
97524

C.C.
Governor Ted Kulongoski
Senator Jason Atkinson
Representative Gordon Anderson
Representative Dennis Richardson

THE ROGUE RIVER LAND GRAB IS ALMOST COMPLETE!

To protect your property rights all riverfront landowners should attend the next meeting: October 24, 2007, 7:00 PM, Grants Pass School District Performing Arts Center, Grants Pass High School, 830 NE 9th Street, Grants Pass, OR You are encouraged to speak at the meeting and if you like you may use any of the following statements or questions.

Upper Rogue Concerned Citizens History

- In October 2004 a notice of the land grab was sent to all riverfront landowners. As a result of this mailing 135 concerned landowners sent letters to Governor Kulongoski. The letters did not stop the process and the land grab continues.

River Bottom Ownership

- It is said that the original owner of the river bottom was the Federal Government prior to Oregon Statehood. When Oregon became a state the ownership converted to the State of Oregon, according to the Oregon Department of State Lands (ODSL).
- If this is true then how did the individual counties issue property deeds for many years stating, in numerous cases, that the owner's property line "extends to the center line of the river"?
- *If this has continued uncontested for many, many years do the landowners not now own the property as their deed states?*

Property Rights Issues / Questions

- If it is ruled that the Rogue River is Navigable will the state compensate landowners for the land taken by the state?
- If it is ruled that the Rogue River is Navigable will your county lower your assessed property value based on the amount of land you have lost?
- If it is ruled that the Rogue River is Navigable will your county refund back to you the property taxes you have paid for the portion of your land that is taken?
- If it is proven as ODSL claims that the land has been owned by the State of Oregon since statehood, then will the counties be required to refund all taxes collected on the disputed property, for all landowners for all time?
- If it is ruled that the Rogue River is Navigable will the state provide police to patrol the Rogue River to keep users off of private property?
- If it is ruled that the Rogue River is Navigable will the State of Oregon provide educational information to landowners and river users as to the laws governing the use of the river?

Legal History

- The navigability study was started at the request of the Josephine County DA. Does this DA have jurisdiction over the "entire" river, all counties? If not was DA a valid authority?
- In 1919 Jackson County Circuit Court Judge F.M. Calkins declared the entire Rogue was NON-NAVIGABLE from Gold Beach through Jackson County.
- In 1986 Jackson County Circuit Court Judge Pro Tem J. Loyd O'Neal relied on the DSL report in part when he settled a court case over fishing access by declaring the upper Rogue "navigable in fact" from Touvelle to river mile 150 near Shady Cove.
- In 1989 Jackson County Court District Court Judge Mark Schiveley issued the last legal opinion on upper Rogue navigability, agreeing with O'Neals decision.
- The 1919 case declared the "entire Rogue" was Non-navigable. The 1980's cases only covered part of the Rogue.
- Based on this the navigability issue seems to be unsettled and may need to be settled in a court of law. rather than with our elected officials.

Legal Issues & Questions

- If landowners have no recourse for property retention, compensation for land taken, or a reduction in taxes and a tax refund, what can we do?
- We will be exploring class action options to determine if landowner's rights can be protected.

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OCT 31 2007

October 26, 2007

To: Louise Solliday, Director of the Department of State Lands

DEPARTMENT OF STATE LANDS


From: Leslie D. Rickerd, Trustee
P.O. Box 1034 (79 Kee Ln)
Shady Cove, OR 97539-1034

Subject: Response to request for input concerning the draft report of the Rogue River Navigability Study Report

The "Preliminary Conclusions" section states that because 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 was able to be used as a "highway of commerce". This conclusion depends on the assumption that the flow out of Lost Creek Dam is similar to the "ordinary and natural condition" of the river "at the time of statehood". This would require minimum flows of 900-1000 cfs throughout the year in order to meet the requirements of the federal test for navigability. Does the "80% likelihood" of the flow your study cites take into account the true natural conditions on a Rogue River without dams? Floods, droughts and a far lower late summer flow are also well documented. These natural conditions would have and did preclude the use of the Rogue as a "highway of commerce".

The accuracy of your data is questionable because of the existence of Lost Creek Dam. The study states that the "general physical orientation of the Rogue River study segment has not changed appreciably since statehood". What is considered to be an appreciable change? A few feet in one direction or another may be an appreciable difference to a landowner living on the river. These sorts of changes used to occur when the Rogue was in its natural condition. These appreciable changes still occur above the dam, as evidenced by the changes in the Natural Bridge area. Because of the dam, it is impossible now to determine the appreciable differences that would exist were the Rogue in its natural state. The existence of Lost Creek Dam invalidates the finding that the study segment of the Rogue River was navigable and able to be used as a "highway of commerce".

Sincerely,



October 30, 2007

Oregon Department of State Lands
Rogue River Navigability Study Comments
775 Summer Street NE Ste 100
Salem, OR 97301-1279

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2007 NOV -5 P 11: 34

I am submitting this letter as my "Public Comment". I was unable to attend the meeting held in Grants Pass, but have read your 60 page draft report. I appreciate the history lesson, and know that law enforcement has had their work cut out for them assisting river front property owners. People enjoy fishing and boating and so do I. However, I understand private property rights are fiercely defended by many who hold deeds stating "they own to the middle of the navigable river". I am one of those property owners. My property taxes reflect the fact that I hold property on the river, but I love my home, the ducks, the jet boats, bank fisherman and the floaters. That's why I am here, and my parents before me who arrived from Alaska in the 1970s. They bought from a family, who bought from another family who went through the 1964 flood. But the sturdy old house is still here, and our deed still states "the acre it sits on goes to the middle of the navigable river" -- the original structure was built in the 1940s. I don't know the history or how the deeds came to be conveyed this way, but landowners' history should carry equal weight. At least during the past 70 years, that was our legal standing.

If the underlying goal is simply to make things more black and white for law enforcement (Sheriff's Dept), this seems a huge waste of public dollars, time and energy to change the existing "ownership" structure of all these miles and miles of riverfront. We have many riverfront parks, boat ramps and put-ins. I don't understand what the real underlying motivation is to now, after at least 70 years decide these rules don't correlate with your reinterpretation of history.

You will have to prove to me exactly what the cost (to taxpayers and the community) and the benefit (again to the taxpayers and the community) is going to be, and from everything I have read that element is not addressed. I do know that there are enough property owners who collectively would be willing to put up one hell of a court battle, should it come to that. But that would just be more money wasted that we (the State of Oregon, Jo Cty, City of Grants Pass, and property owners) could use to employ more Sheriffs, hire more teachers, feed and house more low-income people, provide medical care for the uninsured . . .

It seems pretty clear to me that the limits of private ownership are described in the form of a recorded property description and deed. I am not willing to sit back and have ownership of our riverfront property negated, nullified, altered after being legally owned (and grand-fathered in) for 70 years or more.

Sincerely,

Karla K Nelson
3020 Lower River Road, Grant Pass 97526



Oregon
HOUSE OF REPRESENTATIVES
DENNIS RICHARDSON
State Representative, Fourth District
Jackson and Josephine Counties

INTERIM COMMITTEES
Fujian Sister State
Legislative Administration
Legislative Counsel,
Health Care—Vice-Chair
Gov. Accountability & I.T.

October 31, 2007

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DEPARTMENT OF STATE LANDS

Louise Solliday, Director
Oregon Department of State Lands
Rogue River Navigability Study Comments
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279

Dear Ms. Solliday:

I have received your memo, concerning the Rogue River Navigability Study, Draft Report. I appreciate the opportunity to comment on the prospect of "navigability" being declared for the 89-mile segment of the Rogue, from Grave Creek at River Mile 68.5 to Lost Creek Dam at RM 157.5.

Your memo refers to the use of canoes in the river as proof of commerce before statehood. It is my understanding that Navigability requires evidence of commerce, not merely floating a canoe. In sum, evidence of transportation does not prove commerce was undertaken.

As you know, "Navigability" is based on and defined by the Federal Commerce Clause. The test for 'navigability' is whether the river was "susceptible" of use for "commerce" in the "usual and ordinary mode" at the time the state entered the union. I have seen no substantial evidence indicating the Rogue River meets the federal criteria.

Your memo also mentions log driving. Southern Oregon logging families, who have lived along the Rogue River in the disputed area for generations, confirm the severity of Rogue River's rapids preclude commercially transporting logs, especially before statehood. Without evidence of river log driving before 1859, such speculation is too remote to be used to establish commercial navigability.

Oregon Revised Statutes 274.404 (a), states the State Land Board "may direct the department to make a determination of navigability if there is sufficient economic justification or if there is a broad and substantial public interest." The hearing held in Grants Pass on October 24, 2007, according to sign-in documents provided to me by David Kroft, shows 152

sign-ins, many of which were couples. It is my understanding that only one person spoke in favor of the "pro-navigability" Report, and approximately 65 citizens spoke in opposition to it.

Based on all of the above, it does not appear the pro-navigability recommendation meets the test of public support or economic justification at the hearing.

Although you may be receiving emails in favor of designating the Rogue River as "navigable," unless they clearly indicate they are authored by residents of southern Oregon, they should be disregarded. The requirement test of "broad and substantial public interest" contained in ORS 274.404 (a), cannot be reasonably met unless those members of the public expressing an opinion have some relationship to the river under consideration. In many instances emails you might be receiving may have originated outside Oregon. I believe the evidence demonstrates there is not "broad and substantial" public support among southern Oregon's public for proceeding with the pro-navigability proposal.

In conclusion, I do not believe the State has met its burden with reliable evidence to justify designating the Rogue River as navigable. Therefore, I oppose designating the Rogue River as "navigable." Please consider this letter as part of the Public Comment on the Draft Report.

Sincerely,

Dennis Richardson

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NOV 08 2007

To the state LAND BOARD

DEPARTMENT OF STATE LANDS

SORRY the p.c. TOOK A DUMP, but the following statements is the way I FEEL

① HAVE there been many problems Along the River in Gold Hill? NO!

② Do I think this LAND GRAB will create more Problems than it will solve? YES!

③ AS I stated in Above, Do I think this is basically A LAND GRAB by the state? YES!

④ Do I think the Democratic party is Largely responsible For this Problem? YES!

Do I believe the Democrats Have become A socialist party? YES!

AFTER Forty years of Voting For Democrats will I continue to Do so? NO!

2

Will I contribute ANY more money to A party that DOESN'T support OUR PROPERTY RIGHTS? NO!

Do I think The river WAS ACTUALLY NAVIGABLE IN 1859? NO!

Shouldn't you be ABLE TO travel UP stream AS well AS DOWN stream FOR A RIVER TO BE CALLED NAVIGABLE? YES!

AFTER ALMOST 25 YEARS, HAVE I EVER SEEN A CANOE BEING PADDLED UP-STREAM PAST OUR HOUSE? NO!

SINCE I HAVE OWNED KAYAKS AND CANOES FOR MANY YEARS, HAVE I EVER BEEN ABLE TO PADDLE PAST MY PROPERTY, UP-STREAM ON THE Rogue? NO!

SINCE THE RIVER NEVER RISES TO THE SAME HEIGHT IN ANY TWO YEARS IN A ROW, DOESN'T THE MEAN-HIGH WATER MARK SEEM LIKE A BAD WAY OF FIGURING WHERE OUR PROPERTY LINE WILL BE? YES

3

Do I think this is a Lawyers Dream
And will cause many more problems than it
will solve? Yes

Do I know that Ferrys in 1859 were for crossing
the River and not for navigating the River? Yes

Has the state made any offers to compensate
us for our lost property? No!

Do I think that attempts to move logs down
the Rogue River has got to be the height of
stupidity and dangerous to everyone near the
River? Yes!

Have they told us what to do with our
property deeds that are now incorrect and
mean nothing? No!

After almost 150 years since statehood and
a navigability thing was supposed to have
been taken care of, it now seems a little
late to disrupt our lives now, doesn't it? Yes!

Q
No I think working people unless they
start standing up for their rights will
end up with no rights at all? yes!

Citizen of Oregon
PLANNING COMMISSIONER Gold Hill
U.S.A. Citizen

JACK ELDER