

April 23, 2008

DEPARTMENT OF STATE LANDS

ROGUE RIVER DRAFT NAVIGABILITY STUDY REPORT

Summary of Public Input Received During the Public Comment Period: February 19, 2008 – March 26, 2008

Background Information

On February 14, 2008, the Department of State Lands (DSL) sent a notice to property owners of record along the 89-mile Rogue River study segment as well as to other interested persons advising them of the availability of the second draft of the Rogue River navigability study (dated February 19, 2008). This notice also gave the date, time and location of a public meeting to be held by the Oregon State Land Board in Medford on March 19, 2008, and stated that the purpose of the meeting was to hear public testimony in response to the following two questions concerning the second draft of the Rogue River navigability study:

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

The public comment period for this draft began on February 19, 2008. All comments had to be received by DSL no later than 5 P.M. of March 26, 2008 to be included in the public record. During this time, DSL received 466 submissions from the approximately 450 members of the public.¹ These submissions consisted of:

- 294 e-mails (some of which contained attached letters and other documents);
- 65 letters sent to DSL via US Mail;
- 63 letters and other documents submitted to the Land Board during its March 19th Medford meeting; and
- 4 telephone calls or messages.

¹ The exact number of persons submitting input is difficult to determine. In a number of instances more than one person signed some of the submissions or, in other cases, a single person submitted more than one e-mail, letter or other form of document to DSL. Occasionally items submitted by a person for inclusion in the public record were identical to, or in a different format from those previously submitted by that same person thereby being duplicative. Additionally, 26 of the 41 persons who signed up to present testimony before the Land Board at its March 19th meeting also submitted e-mails or letters, or only read comments prepared by others.

In addition, approximately 350 people attended the March 19th Land Board meeting. Of these, 40 presented oral testimony to the Board.

Summary of Public Input

The content of the public input varied markedly. A review of the comments received indicated that the primary purpose of the many of the persons submitting input was to let the Land Board know if they were in favor of, or against the conduct of the navigability study and a possible assertion of state ownership to the submerged and submersible land underlying the Rogue River study segment. Of the 466 comments submitted:

- 168 were in favor of the study or an assertion by the Land Board of state ownership to the bed and banks of the Rogue River study segment;
- 257 were opposed to the study or an assertion of state ownership; and
- 42 did not indicate a clear preference either supporting or against the study or a declaration of state ownership.

More importantly, an analysis of the submissions received identified three major areas of concern. These are:

- The need for the navigability study;
- The applicability and accuracy of the evidence presented in the study; and
- The impacts an assertion of navigability will have on landowners.

In the following section, examples of representative comments regarding these and other areas of concern are given. In addition, other concerns raised by the public as well as examples of questions asked are also presented. It is important to note that not all of the comments received are presented.² The public record containing all input received during the public comment period may be viewed at the Department of State Land's office in Salem, or on the agency's internet website at: http://www.oregonstatelands.us/DSL/NAV/rogue2_comments.shtml

Public opinion concerning the need for this navigability study is sharply divided. Many of the persons providing comment are unconvinced that the study is needed, and that there is neither a broad and substantial public interest nor sufficient economic justification for conducting it. Comments were also received strongly endorsing the need for this study.

² Comments presented under each topic heading were taken directly from the public input received by the Department of State Lands (DSL), or from the transcript of the oral testimony presented to the Land Board. The name(s) following each comment is/are of the person(s) submitting it. Within each topic heading, comments are in chronological order with the earliest comments presented orally, or received by DSL presented first.

Reasons most often cited why study should not be conducted/is not needed and an assertion of state ownership is not required.

There are few conflicts between recreational users and landowners

"The actual conflicts between users and land owners are few and far between over a multiple decade time frame." (Cris Caldwell, 3/19/2008)

"The conflicts between users and land owners are few and far between. A navigability declaration is not needed to resolve perceived conflicts on the Rogue River. Instead, my concern is that a declaration of state ownership would embolden the public and make disputes more likely, and that we in Jackson County do not have the budget or the resources to deal with more conflicts." (William Price, 3/19/2008)

"Little or no attention was given to fairly establish significant and pervasive need for the study or to verify the data in the complaints that intended to validate need for the study. In other words, DSL did not perform an acceptable "due diligence" relative to the reasons for the study request." (O.C. Red Boyer, 3/19/2008)

"The study states that the actual conflicts between users and landowners are increasing in frequency and volatility. This is simply not true. I have been a guide on this section of the Rogue River for 44 years, and I must dispute the statement. The conflicts between users and landowners are few and far between." (Sue King, 3/19/2008)

"In the nearly 40 years spent enjoying this river, I have not encountered any problems in either access or progress down the river between landowners and river users with the exception of a few people who use too much alcohol or those who disrespect the river leaving trash along the bank." (Steve Straughan, 3/19/2008)

"I personally have floated and fished this river for some fifteen years or so and have never had a problem with one land owner. I have navigated down the Rogue River from the Lost Creek Dam through the Wild and Scenic and down to the Ocean. The only problems I ever had are with the users of the river, never the land owners." (Lee Greenstone, 3/20/2008)

"As land owners and residents on the upper Rogue River, we have had no problems with private versus public domain. Personally, I have only heard of one riparian owner who has had any real conflict with the public in the issue of trespassing on private property." (Cindy Meerten, 3/26/2008)

"The study is flawed by not addressing the fact that there are very few disputes between current property owners and river users under the "floatage easement." (Kathy Snell, 3/25/2008)

Law enforcement officers do not believe the study is needed

"In my jurisdiction, we (Jackson County Sheriff) receive few complaints concerning disputes between riparian owners and recreational users. In the five years that I have had direct responsibility, I have no record of myself or any of my deputies responding to such complaints." (Lt. Pat Rowland, 3/4/2008)

"The conflicts between users and land owners are few and far between. As the Sheriff of Josephine County, I have direct experience with law enforcement and conflict resolution on the Rogue River. In my jurisdiction, we receive few complaints concerning disputes between riparian owners and recreational users." (Sheriff Gil Gilbertson, 3/19/08)

"I worked as an Oregon State Police Fish and Game Trooper in the Central Point office from 2000 to 2006. I recall responding to very few complaints regarding trespass issues on the Rogue River. The complaints I do recall were generated from one landowner at a fishing hole called the "Highway Hole" in the Trail area of the Rogue River during the Spring Chinook salmon season only. I do not recall complaints outside of the salmon season relating to issues that surround the pending navigability and ownership of the Rogue River." (**Janelle Dunlevy, 3/19/2008**)

"As the Chief of Police for the City of Shady Cove, I have direct experience with law enforcement and conflict resolution on the Rogue River. In my jurisdiction, we receive few complaints concerning disputes between riparian owners and recreational users. I estimate we field fewer than ten such complaints each year, and most of those are in response to hunters who want to discharge firearms within the Shave Cove city limits." (**Chief Rick Mendenhall, 3/27/2008**)

The public already has a right to use the bed and banks of the waterway

"Let me state on my behalf, as well as my neighbors, we have always recognized the right of the public to fish, float and recreate on the river." (**Donald Blaser, 3/18/2008**)

"The landowners have almost without exception understood that the public has the right to use the river and its bank to the ordinary high water mark. We have been getting along just fine without the State's intervention, so the claim by the state is not necessary." (**Ray Downing, 3/19/2008**)

"As we explain...the public already has the right to recreational use of the river under Oregon law, specifically through the common-law "floatage easement" or "public use doctrine." "This common-law public use right exists independent of title to the bed and banks and, unlike ownership, is appurtenant to the waterway in its present location." (**Jennie Bricker, 3/19/2008**)

"In addition, a 1989 Jackson County District Court case State of Oregon v. Klein, No. 88-07996-C (Feb. 9, 1989) which found that the public has the rights to use the river to the ordinary high water mark has set the legal standard, as least for Jackson County by which fishermen as well as other recreational users can already access their favorite spots." (**Steve Straughan, 3/19/2008**)

"The landowners have almost, without exception, understood that the public has the right to use the river and its bank to the ordinary high water mark. We have been getting along just fine without the State's intervention." (**Sue King, 3/19/2008**)

"A few times I have had people picnicking on my lawn way above the high water mark into my private property. I understand that the public already has a right to use the strip of land through the common-law "floatage easement". (**Debra Swanson, 3/23/2008**)

"Hardy Meyers has already publicly stated that the bed and banks of all rivers and streams in Oregon are owned by the government." (**Rick Lewis, 3/24/2008**)

"We've had the floatage easement which has been around for years." (**Jeanne Rodgers, 3/25/2008**)

The ownership of segments of the Rogue River has already been decided in court

"In July 1997, Josephine County D.A. Thompson made his request by stating that the navigability of the Rogue River remains uncertain. He and his staff did not do their job or they would have found the 1919 final decree by the Circuit Court of the State of Oregon that states "The waters of the Rogue River and its tributaries above the mouth of the Illinois River are non-navigable. Or, the 1935 U.S. Supreme Court Case (295 US 142) that states the Rogue River is a non-navigable stream from River Mile 102 (Caveman Bridge) to River Mile 132 (Tou Velle State Park)." (**Nancy Bradley, 3/19/2008**)

"In California Oregon Power Co. v. Beaver Portland Cement Co., 295 US 142, 151 (1935) ("Copco"), the United States Supreme Court stated unequivocally that "Rogue river is a nonnavigable stream" and that "the thread of the stream" constituted the boundary between the parties to the case – riparians on opposite sides of the river near Gold Hill." At RM 119, Gold Hill is located near the middle of the study segment." (Jennie Bricker, 3/19/2008)

"In 1974, the Oregon Attorney General responded to an inquiry about the navigability and ownership of the Rogue River. See 37 Or. Op. Atty. Gen. 303 (No. 7131)(Dec. 27, 1974). Without deciding the question of ownership, the Attorney General summarized the Copco case: "[N]ear the city of Gold Hill, the United States Supreme Court has held that the Rogue is not navigable..." "We do not believe Copco can be so easily dismissed." "The Court's conclusion regarding navigability was not dicta but central to the main issue of the case—the interpretation of a section of the Desert Land Act having to do with the disposition of "sources of water supply upon public lands and not navigable." (Jennie Bricker, 3/19/2008)

"In 1946, the Oregon Attorney General advised the State that the Rogue River downstream of Grants Pass (approximately RM 95) is not navigable for title. 22 Or. Op. Atty. Gen. 409 (Mar. 5, 1946); see also 23 Pr/ Op. Atty. Gen. 249 (No 363) (June 10, 1947) ("[W]e held that a point on the Rogue river, which is navigable for fishermen and hunters in rowboats and does not afford a channel for useful commerce, is not navigable in the sense that the state would acquire title to the bed of the stream." (Jennie Bricker, 3/19/2008)

"In 1929, the Oregon Supreme Court decided Wyckoff v. Mayfield, 130 Or. 687 (1929) concerning a dispute between riparians over the location of a gravel pit near RM 128. Central to the case's disposition was ownership of the streambed, which the court held was private because there was "no pretense that Rogue river is navigable at the place in dispute." 130 OR. At 689." (Jennie Bricker, 3/19/2008)

"The Jackson County Commissioners voted in the early 1920s to declare a long stretch of the Rogue River navigable. I read the document while researching other matters in the Courthouse. Their decision is a matter of public record..." "I don't remember the exact dates of the first and second readings of the declaration, but it was in the early 1920sa: 1920, 1921 or 1922." "I believe the declaration also had to do with business interests at that time: the commercial fishing (gillnet) industry based in Grants Pass." (Mark Swisher, 3/19/2008)

"Currently, by reason of a 1989 Jackson County District Court case, State of Oregon v. Cline, the public has the right to use the river to the normal high water mark as it exists today." "In addition, a Jackson County District Court case State of Oregon v. Klein, No. 88-07996-C (Feb. 9, 1989) which found that the public has the rights to use the river to the ordinary high water mark has set the legal standard, at least for Jackson County by which fishermen as well as other recreational users can already access their favorite spots." (Steve Straughan, 3/19/2008)

"The federal law in the Ball decision of 1870 said that rivers that are navigable in fact are navigable in law." (Art Israelson, 3/19/2008)

Regarding the decision of the U.S. Supreme Court, U.S. v Holt State Bank, 270 US 49, 56 (1926) concerning "...if it be a fact that the stream in its natural and ordinary condition affords a channel useful for commerce." "I believe that the final mention of a channel "useful for commerce" has been left completely out of your draft study. I further believe that what was assumed as useful would also have to be profitable and hence continuous. That traffic of commerce upon the water highway would have had to been more than a trip down the river to deliver goods to a community once because it was easier and quicker than overland but that it was done as a matter of expedience and profit for the persons performing the commercial venture upon the river." (Adam Stallworth, 3/19/2008)

"I have found two legal cases brought forth to the State of Oregon through the circuit court of the State Oregon. The first is a final decree dated 4/26/1919 presided over by F.M. Calkins, Judge.

This decree is a finding in fact and made from conclusions in law and was ordered decreed. "That the Rogue River is a natural water course, and so far as said stream is involved herein, is a non-navigable water course, flowing through Jackson, Josephine and Curry Counties, Oregon; that this decree includes Rogue River and its tributaries named in the tabulated statement of rights hereinafter set forth and does not include or affect, adjudicate or determine, any rights or claims to the waters of the Illinois River...." "The other being a US Supreme Court case (295 US 142). Which finds from river mile 102 (noted as Caveman Bridge) to river mile 132 (Tou Velle State Park) is non-navigable." (Adam Stallworth, 3/19/2008)

"In addition to the courts decision a letter dated 10/16/1990 , from Stephen J. Purchase, Engineering Manager from the Division of State Lands to Ann E. Cacka with Jackson County, Department of Assessment, state that the state through DSL has no claim of navigability through that section of the river." "As recently as 1990 the DSL has made no claim and has stated such to sections of the river. (River milepoint 012 to 132. Caveman Bridge to Touvelle Park) Based on the Supreme Court's decision." (Adam Stallworth, 3/19/2008)

A letter written by Stephen J. Purchase of the Division of State Lands states: "...the section of the Rogue River from River Mile 102 (Caveman Bridge) to River Mile 132 (Tou Velle State Park) was declared non-navigable by the U.S. Supreme Court in California Oregon Power vs Portland Cement Co. (295 US 142). Therefore, the state does not claim navigability of that section of the river." (Craig Tompkins, 3/23/2008)

The state claim was submitted too late

"For more than a century the state has acknowledged the ownership by the persons who hold title to the river center thousands of times. This has been done by knowing of and not objecting to: private claims of the property, legal title being granted to the lands, transfers of ownership through sales and inheritance, property taxes being paid, inheritance taxes being collected by the state, capitol gains paid of sales on both state and federal income tax." (William and Patricia Richey, 3/15/2008)

"The state has waited too long." (John Curran, 3/25/2008)

Reasons most often cited why study **should be conducted/is needed** and an assertion of state ownership **is required**

There have been conflicts between recreational users and landowners

"We are presently having a serious problem with fishermen who think the Grants Pass Irrigation District right-of-way is a public thoroughfare. They walk on the GPID road until they see a promising fishing spot and then go over the bank (private property) to get to the water." "Just because no one confronts a fisherman and objects to his being on private property, he is still trespassing. We have had several confrontations with fishermen this year who believe they have the above rights." (Jill Hollomon, 3/19/2008)

"KS Wild believes that the determination of navigability on the Rogue will help to avoid conflicts between property owners and the public by clarifying title. Members of the fishing and boating communities have experienced aggressive confrontations with landowners while enjoying and experiencing the Rogue." (Klamath Siskiyou Wildlands Center, 3/25/2008)

"I have personally been confronted by landowners who have tried to throw me off the submersible lands. I do not want that to happen again." (Michael Cooley, 3/26/2008)

**Other comments made in support of a determination of navigability/
assertion of state ownership**

"I've floated every section of the Rogue all the way down to Gold Beach from Lost Creek Dam many times in kayaks and rafts and in drift boats. And I guess I'm one of those guys that should be dead if the Rogue River wasn't navigable." (Mike Cooley, 3/19/2008)

"Please eliminate the need for continued conflict between riparian land owners and river users exercising their rights consistent with both federal title-navigability law and the state Public Use Doctrine by formally recognizing the Rogue River as title-navigable." (Grant Kennon, 3/21/2008)

"The Rogue River's navigability has been established. DSL's ruling should be a simple finding of fact and enforcement of law. I understand that DSL suggested that comments made by local residents would be considered. I do not see how consideration of comments not directly related to the navigability of the Rogue can be relevant." (Von Miller, 3/21/2008)

"I read the report, I have ridden the jet boat excursions out of Grants Pass, and I have seen the many and diverse water craft that now use the Rogue River between Graves Creek and Lost Creek Dam for recreation and business. There is no question that the Rogue River is now navigable and has been navigable for a long time." (Lee Wedberg, 3/22/2008)

"There is tremendous boat traffic on the Rogue River in contemporary times, which reflects the inherent navigability of this waterway. There is plenty of draft to enable boat traffic by canoe and light boat, and throughout all of human history, people have used waterways for travel and commerce whenever even remotely feasible." (Steven Perakis, 3/22/2008)

"The land owners want the status quo to continue because there is some ambiguity in the rights of the ordinary citizen given the status quo. The land owners believe that this ambiguity creates less use of the banks of the Rogue by the public. All of the take about the determination was not needed, a waste of the government's time, would create litigation, would create title problems and on and on were simply diversions and not their real issue." (Clay Johnson, 3/22/2008)

"The preliminary findings clearly and amply support this decision (that the Rogue River is navigable). To decide otherwise would undermine the fundamental idea and definition of navigability, and set a dangerous precedent to exclude the public from their rightful access to recreation in this state." (Jason Klivington, 3/23/2008)

"Please, for the sake of the Rogue basin economy, the sake of the thousands that recreate on our river and the sake of the intent of our fore fathers, adopt the preliminary findings of your study and name the Rogue River as navigable, once and for all." (Dave Strahan, 3/23/2008)

"The Rogue River is a valuable asset to all the people of the state. This navigability study process affects the entire state, not just the region. Navigable rivers are the legacy of the people, and the state must protect the legal right of the people to use this river and the other navigable rivers of the state." (Michael Mehl, 3/24/2008)

"I am completely baffled that this is such a debatable issue. The portion of the Rogue River in question clearly meets the definition of "navigability" as already set forth; existing law is quite clear on the ownership of navigable waters. So why would the State Land Board declare otherwise?" (Gwen Ingram, 3/24/2008)

"Not ruling on it or ruling against it will only further the confusion between river users and property owners. A ruling for navigability sets a legal precedent that clears up any remaining confusion about the public's use of a navigable river." (Mike Cowdrey, 3/25/2008)

"This is not an issue about whether private landowners like or don't like people using the rivers of our state, it is a question of law. The navigable rivers of Oregon are owned by the citizens and should be kept open for their use in exactly the same way our ocean beaches are free for the public to use." (Ted Anderson, 3/25/2008)

"The Oregon public use doctrine already grants the same rights on "floatable" rivers anyways. The difference between a Federal ruling for navigability, and river usage under the Oregon public use doctrine however, is that the state doctrine can create a situation where a river user is guilty until proven innocent. Any landowner can have a river user cited for trespass below the high water mark, even if they know the law. The person receiving the ticket wither has to pony up the dollars for a legal defense or bite the bullet, pay the fine and let themselves get bullied off the water." (Mike Cowdrey, 3/25/2008)

"Based on the professional judgment of staff from our organization who have experience with well over 100 flow studies to determine navigability, we agree that the factual evidence presented clearly demonstrates that the river meets the federal test for navigability. The specific evidence that most of the recreational watercraft currently used on the Rogue River study segment are comparable to watercraft used at statehood and draw less than 8" is correct, and we agree that these craft can use the river at flows of 900 cubic feet per second. We believe staff have been conservative in this assessment and based on our personal inspection of the river, it's likely that watercraft can navigate this stretch at lower flows." (Thomas O'Keefe, 2/26/2008)

"The appropriateness of the navigable status for the Rogue is even more obvious than that for the John Day, and it is imperative that the state maintain consistency in these rulings to prevent chaos in future determinations." (Keith Stelzer, 3/26/2008)

"Based on my research and my understanding of the history of navigation on the Rogue, I agree that this segment clearly meets the federal test for navigability. There are many early accounts of navigation on the Rogue, including substantial use by miners and homesteaders, and even operations by the US military from 1851 to 1856 during conflicts with Native Americans." (Bill Criss, 3/26/2008)

"As you know, our association has carefully considered all of the navigability studies conducted by your state agency. We believe this to be the most comprehensive study done to date and commend DSL for a very thorough study of the Rogue River." (Phil Donovan, 3/26/2008)

Applicability and Accuracy of the Evidence

General comments made concerning the study and the evidence presented in it

"We note that the evidence uses terms like "likely, may, could, not necessarily, and not many people died," as evidences of current navigability or navigability of the relevant time period." "I think the strongest evidence that the river was not navigable in 1859 is the fact that nobody who was alive then seems to have thought it was navigable." (Craig Tompkins, 3/19/2008)

"You simply have inserted the word "could." Once you inserted the word "could" you've opened the door for anything to have happened, from the sublime to the ridiculous." (John Burgess, 3/19/2008) *"There is more evidence against the customary use for navigation or commerce or to its "susceptibility."* (Maurice and Pamela Hackett, 3/19/2008)

"Descriptions of the study segment at about the time of statehood characterized the river as not navigable, with a strong, rapid current." "The accounts of early boat travel in the study segment share a common theme: Each was exceptional and newsworthy." "According to the Draft Report, "regular use" of the study segment began in 1906, but "regular use" appears to mean, at most, a single trip per year-the reported journeys took place in 1906, 1910, 1913, 1914, 1915, 1916, and

1917. In addition, with the exception of the exploratory venture at RM 110.5 in either 1879 or 1897, no early boat transportation occurred on the Rogue River upstream of Grants Pass (RM 102). From RM 102 to the proposed head of navigability at RM 157.5, the Draft Report contains no evidence of historical use, except for ferries and other crossings.” **(Jennie Bricker, 3/19/2008)**

“I note that the report does not, at least as I can find, have any evidence of navigability at 1859 between Gold Ray and Tou Velle...” **(Craig Tompkins, 3/19/2008)**

“The area between the low and high water marks can be quite an expanse of dry land at times. If the public was given unlimited use of this space (which will happen) that would invite extended picnics and even camping in addition to simply landing their rafts or fishing boats for a short rest, lunch, or as a place to fish from the shore as they often do now without any interference from landowners. This area is an extension (that we own) of our back yards which we also like to use. Having the uninvited public as extended guests really invades our privacy.” **(Leslie Pfeifle, 3/20/2008)**

“SORA objects to the report’s characterization of federal law regarding the issue of navigable waterways. This is blatant misrepresentation. Federal analysis focuses upon a number of factors of which historic utilization is but one. Even with a myopic concentration upon that single factors, the issue in admiralty courts has never been one of what might have been.” **(Jack Swift, 3/20/2008)**

“There is overwhelming evidence as captured by the Rogue River Navigability Study that commerce and trade has gone on before, during and now after 1859 the date of Oregon’s admission into statehood. Well documented uses that include Indian canoe-raft use and trade, mining equipment supply transport, logging activities, cable and log ferry uses, transport of people and goods, commercial fishing, recreational use. I’ll venture that this info trail of commerce and trade of the Rogue River is greater than an of the other streams that have had a navigability study done on their waters.” **(Thomas Brauner, 3/22/2008)**

“The Rogue River navigability report is accurate. The Rogue is clearly navigable and has been since statehood. This issue is a matter of federal and state law, not public opinion.” **(R. Hill, 3/23/2008)**

“The study, by your own admission, contains only evidence that supports navigability. It does not contain evidence that would indicate that the use and condition of the Rogue does not meet navigability, even though such was gathered.” **(Gary Still, 3/23/2008)**

“...I must take exception to your report since, in many instances, what is presented as “factual” is indeed DSL’s speculation. The terms “might have” and “could have” are based solely on your opinions and not on fact.” **(Gary Still, 3/23/2008)**

“The study is flawed in that all evidence points to that stretch of the Rogue River not being used for commerce or travel by anyone. This is the reason the word “could” needed to be inserted in order to make the recommendation at all plausible.” **(John Burgess, 3/24/2008)**

“As you are aware, the Oregon Courts determined the John Day River to be navigable on a less thorough and convincing set of facts than those presented here. Since title navigability is ultimately a question of fact, I am sure that the clear facts present in this case will compel your conclusion that the Rogue is navigable over the considered stretch. Any unbiased observer would not hesitate to conclude the Rogue navigable by the simple observation at it is navigated every day. When Oregon entered the union, the Rogue was not dammed and was not appropriated for consumptive use. Since it is navigable now, it was certainly navigable in 1859!” **(Christopher Len, 3/25/2008)**

"First, the navigability study is flawed because its conclusions are based on mere opinions that cannot be substantiated and/or on reports and other information that is not even connected to the part of the Rogue River in question. The report makes assumptions reminiscent of a high school term paper that the student is quite certain that no one will ever read." (Leslie Pfeifle, 3/26/2008)

"The study is biased and does not provide comprehensive factual evidence with which to determine navigability along the entire study segment. Factual evidence is not antidotal evidence. Valid research studies are designed to be impartial and gather all pertinent data so that the persons interpreting the data (State Land Board) will have all of the available facts with which to base their decision." "For example, no mention is given to the widely known fact that Glen Wooldridge completed extensive blasting within the Rogue River basin to enable safe passage through sections of the Rogue River." (Jonathan Chesak-Kostelnik, 3/26/2008)

"It is clear that this study began with an already existing opinion by the Board staff that the river be declared navigable. Such a predisposition has tainted its findings and recommendations." (Robert Hamilton, 3/26/2008)

"In discussing flow rate, the use of canoes by Indians, and other use subjects, the study uses such terms as "there is a good likelihood", "it is reasonable to conclude", "could have been", "is believed to have", "is estimated to have been", etc. These types of terms would certainly not be accepted as evidence in any kind of definitive scientific or historic study or even as evidence in a court of law." (Mike and Audrey Dawson, 3/26/2008)

"We all know the deck has been stacked in the state's favor, and the fix is in. Most of the reasons being used were very destructive and would not be allowed now, and should not have been allowed then." (Jack Edler, 3/26/2008)

"I do not believe that you met the proof of navigability. The methods you used are unrealistic. How can you compare 1849 and 2008? There have been many changes including dams and the passage of time?" (Dorothy Edler, 3/28/2008)

Comments concerning the evidence presented relative to the historical use of the Rogue River by Indians using canoes

"I challenge your statement that Indian canoes draw a mere 6 to 8 inches. This is highly unlikely and not substantiated by facts as these would have been made out of an absorbent wood and have a rounded bottom. I would think their draft would have been 10 inches or greater." (Kern Grieve, 3/19/2008)

"I can honestly say that I truly doubt it was possible to have drifted the Upper Rogue River in a dugout canoe simply due to the lack of quick maneuverability that would have been required in run many of the rapids on that area of the Rogue River." (Kern Grieve, 3/19/2008)

"Indian canoes are not comparable to modern day watercraft in any favorable way to conclude that an Indian canoe could or would have been used in Upper Rogue River." (Kern Grieve, 3/19/2008)

"Adrift boat rises higher as the water gets more swift. It is tilted in both ends and is movable side to side to avoid obstacles. It can turn 360 degrees while maintaining control. Believe me gentlemen, if the dugout canoe was even remotely similar to a drift boat you would see some being used today---if we could cut a tree big enough." (Steve Straughan, 3/19/2008)

"DSL's authors' inclusion of the statement, "With the invention and successful testing of the outboard jet drive in 1962...the Rogue River became increasingly more accessible and a popular recreation destination", although true, is prejudicial. By the authors' own statements, the river, in

order to be considered navigable, had to have been navigable in 1859. I'm certain there were no boats, canoes, rafts etc. powered by outboard jet drives in that era." **(Malcolm Drake, 3/25/2008)**

"...the report states that a dugout canoe depending upon the load would have a draft of 6-8 inches, which is essentially the same as some drift boats using the river today. This is totally incorrect. It is my experience that I could put 3 men in a draft boat with a total load of approximately 500-600 pounds and my drift boat would only draft 3-4 inches." **(Jim Collier, 3/19/2008)**

"The many obstacles in our river consisting of rocks, drop off, rapids, falls and fast water make it very unlikely that Indians could have used dug out canoes on our river because it is not susceptible to use as a highway of commerce." **(Kern Grieve, 3/19/2008)**

"The idea that commerce could travel up the Rogue River in a dugout or log raft is absurd." **(William and Patricia Richey, 3/15/2008)**

"I own a museum in Trail, OR and have a vast collection of artifacts of the area dating to the early 1800s. Never in my study of the local history have I uncovered any indication that the Takelma Indians used canoes. To the best of my knowledge there have never been any artifacts found that dispute my opinion or confirm the existence of dugout canoes." "The DSL navigability report states the canoes that existed would have been constructed of cedar or Ponderosa pine. This is preposterous. The local incense cedar would severely crack with some cracks running to 15' once dried if you tried to build a 21' dugout canoe. Ponderosa pine would be far to absorbent to be used for a floating device. It is totally inaccurate to claim the Indians used dugout canoes of either of the above materials." **(Jim Collier, 3/19/2008)**

"From mid-summer to early fall the river would be impassable with a canoe or raft and would require more portage than float." **(Jim Collier, 3/19/2008)**

"There is no evidence in our local museums that such an Indian Canoe existed in the Upper Rogue." "Just below Gold Rey Dam are two rapids called Bitterman and Boardman and honestly there would have been no way to have run them in a dugout canoe. A canoe would have poured off out of there and filled with water. A drift boat is designed to handle that type of water and it would be next to impossible in my opinion to have a dugout canoe survive that pour off and still have any of its cargo or passengers onboard." "I would also state that it is most likely that the Indians used their dugout canoes to cross the river in certain areas of the lower river (not in the study segment) as these heavy pieces of wood could not have between paddled upstream and it would have been impossible to drag them on land back up the river. I am sure they would not make a new canoe every time they wanted to go down the river." **(Kern Grieve, 3/19/2008)**

"The Indians camped at Fouts Creek in the valley of the Rogue park. And their winter grounds was in Sam's Valley. But – and the spring come, well, they walked over the – to the west to Evans Creek and went back to the Rogue River. And they had that circle they made but they walked. They didn't have canoes." **(Lyle Woodcock, 3/19/2008)**

"When the water is extremely high, it was far too treacherous for the Indians to risk their lives and worldly belongings in a dugout canoe. The canoes would clearly have been destroyed. During many of the summer months when the water is low, it is not susceptible to travel as they would have to drag their boats as much as floating." **(William Price, 2/19/2008)**

"I was appalled that any competent researcher would use "folk tales" instead of empirical evidence to aid in making such an important decision but sure enough at page 33 of the draft, folk tales are cites as evidence of Native American canoes in use at some time on the river." **(Steve Straughan, 3/19/2008)**

"The basis of the study that an Indian may have traversed parts of the Rogue in a canoe and that a ferry may have crossed the river at some point are childlike assertions to promote a theory for the purpose of stripping rights from property owners and local communities." (**Dennis Mack, 3/20/2008**)

"It is ludicrous that the DSL equates Indians in canoes in 1859 to the concept of the river having been navigable for commerce. And that is the crux of the situation." (**Marc Schmaus, 3/20/2008**)

"...DSL mistakenly overlooks the fact that the use of canoes by "Indians" here is not quite the same as the case decided by the Supreme Court under Montello, in which a stream was used for transporting furs." "The Montello, 87 US 430, 441042 (1874)." (**Malcolm Drake, 3/25/2008**)

"In 1971, in Utah v. United States..."The lake was used as a highway, and this is the gist of the federal test." "Indians' use of the Rogue has not been demonstrably "used as a highway". The DSL's study does document that Native Americans used dugout canoes on the Rogue River at various points. However, it does not address the issue of whether they actually used the river as a "highway". It seems very unlikely that a prudent person would use a dugout canoe to float down the river any appreciable distance, instead of walking along the bank, because dugout canoes would be very difficult to portage or line upstream back to his/her village." (**Malcolm Drake, 3/25/2008**)

"I have been in countries where dugout are still being used. Their construction hasn't changed. They are made out of hardwood and are very heavy! Douglas fir or pine found here wouldn't work because it wouldn't last. Canoes weren't used around here because they were made of bark (White Birch primarily because it is strong and flexible)." (**Leslie Pfeifle, 3/26/2008**)

"The only indication of navigation at the time of statehood may have been the use of canoes by Indians on certain select portions of the study segment, but not the entire length of the 89 mile study segment. All other examples of possible use provided by the study took place long after statehood and some requiring the removal of material such as boulders from the river." (**Mike Dawson, 3/26/2008**)

"What the DSL fails to mention is that documented evidence is only seen on the river below Savage Rapids Dam per Figure #2 of the second draft report and the DSL fails to cite the source(s) of this canoe evidence. I have looked at both of the reports' Takelma Indian references that are available on the internet, and they have absolutely nothing say about the Indians using the river. In addition, several speakers at the March 19,2008 SLB hearing testified that the Takelma Indians did not use the river for commerce. One of the speakers....spoke about his great grandfather who lived here before and during the time of statehood. According to Ted, his great-grandfather was a packer that would have used the river, but did not, because it was not navigable." (**Craig Berry, 3/26/2008**)

Comments concerning the evidence presented relative to the historical use of the Rogue River by watercraft

The section of the Rogue in question was never navigable as a viable route for substantial commerce. In short this upper section of the Rogue historically did not offer the opportunity for large draft vessels to float as would a more suitable large waterway like the Columbia River. Clearly early explorers of the Rogue, like fur trapper Peter S. Ogden and company, did not float the Rogue. They forded it. During the Rogue River Indian Wars, the Army tracked the warring tribes by foot along the river. There was no substantial movement of troops by boat or barge. And the Indians pretty much lived, moved and retreated along the banks of the river... not on it." (**Neil Selbicky, 3/20/2008**)

"...the DSL report does not give adequate attention to the contradictions between reports written by various sources through the years." (Malcolm Drake, 3/25/2008)

"There are several other examples of voyages down the river with unrealistic statistics." "I know not one guide who would endeavor to rake a "an ordinary Rogue River fishing boat, loaded with 2,000 pounds of tools, dry goods, rubber boots, camp supplies, and a blacksmith shop, not to mention the extra "200 feet of lumber", and towing a raft of 10000 feet of timer." To me this sounds like an extreme case of testosterone masquerading as objectivity." (Malcolm Drake, 3/25/2008)

"...I am at a loss as to why DSL's authors included an article from the Gold Beach Gazette about the two men who allegedly "came up" the Rogue River in a boat for supplies for their ranch some 80 miles to Grants Pass...in a space of 40 hours. Think about this; they would have had to average three feet per second against an adverse current, a situation I would find credible only if the names were not Moore and Aubrey, but rather Superman and Paul Bunyon. Tellingly, the DSL papers indicate that in 1894, another group, Gillman, Armstrong, and one unidentified passenger, made the trip from Grants Pass to Gold Beach downstream only, in 20 days, a much more believable time period." (Malcolm Drake, 3/25/2008)

"DSL claims the study segment was also used by various recreational watercraft, but again the sources are all below Grants Pass and 6 decades after statehood. And a rubber raft is far more forgiving to the nearly constant assault of river obstacles, than a wooden dugout canoe laden with goods." (Craig Berry, 3/26/2008)

"As a matter of law the state enjoyed revenue from permits for log driving on rivers not navigable, the status affected by its political subdivision, county, and the state be acceptance in making the relevant law, in its issuance of permits for the Rogue. 1) Not even the state as late as this date believed the Rogue was navigable. 2) The study evidences, in fact, Canadian professional log drivers completely abandoned an attempt on the Rogue and never returned. Log driving down that extensive stretch of river was not merely difficult professionals acknowledged it was impossible." (Maurice and Pamela Hackett, 3/19/2008)

Comments concerning the evidence presented relative to the historical use of the Rogue River by ferries

"Defining ferry operations designed to transport materials from one side of the river to the other as "navigation" does not constitute navigation as construed by reasonable persons. Navigation refers to movement downstream and/or upstream, not stream crossing. From what I have read, your evidence of historic ferries is heavily relied upon as the so-called factual basis of the so-called study. This "evidence" is simply bogus." (Richard Woodard, 3/15/2008)

"...the fact that you can ferry across the river does not indicate that you can move down the river. If every river you can cross is navigable, then there's virtually no non-navigable waterway in the United States." (Craig Tompkins, 3/19/2008)

"Additionally, I do not believe that cable ferries or any other floating devices which would go from side to side in the Rogue River are evidence that the river was used as a highway of commerce." (Kern Grieve, 3/19/2008)

"...the report states that several ferries existed along the Rogue in 1859 to move commodities across the river. The conclusion is drawn that this is evidence of the river being a conduit for commercial commerce. I believe quite the opposite conclusion should be drawn in that if the river were truly "navigable for commercial use" goods and resources would have been floated the length of the river. Instead, because of the low flow and the many rocky obstacles many of which still exist, roads were built and where it was not possible for a road to be built along one side, it was move to the opposite bank by use of these ferries." (Steve Straughan, 3/19/2008)

"All ferries operated with obstructive cables across the flow of the river. 1) No evidence any ferry operated in navigation along the river length." "Ferries do not evidence navigability as the study suggests. Being mere spots in the river, points chosen for ease of access for purposes of crossing and floatation; a) these indicate the river as obstruction not susceptible to navigation or transportation, or trade, or commerce: 1) Transportation was actually along the road system which needed to cross the river,..." (Maurice and Pamela Hackett, 3/19/2008)

"But ferries were not for navigating. Ferries were like bridges. We had no bridges then, so they were used as bridges. They were not for navigating." (Jack Edler, 3/19/2008)

"The reference in the study indicating that ferries in general are a watercraft does not seem accurate. This should not only be entirely construed as use of the waterway, because the waterway was in fact the obstacle, and they happened to be at the same grade. The mechanical apparatus to transport people and equipment to the other side is also a lateral extension of the trail (roadway) feature, prior to the installation of bridges." "I submit that the study exploits this interpretation to serve only it's own purposes." (Russell Logue, 3/25/2008)

"The lateral cross river use of ferries 21 years after statehood is by no means an indication that the entire 89 mile subject stretch was in fact navigable." (Mike and Audrey Dawson, 3/26/2008)

"...the relationship between ferries and a river is one of obstruction, i.e. the river is an obstruction to transportation and movement of commerce. The ferry is a way to get around that obstruction. By itself, the misuse made of ferries by the Board staff in finding the river navigable is not so critical except that it shows the extent of its bias and the extent to which it have been predisposed to finding the river navigable." (Robert Hamilton, 3/26/2008)

"DSL claims the study segment was also used by ferries. Ferries are used to get across the river, to the road on the other side. Because ferries were needed to go from side to side, one could view the river at the time of statehood as an impediment to commerce. This argument has been adjudicated against navigability in the case North Dakota ex rel. Board of University & School Lands v. United States Aff'd 972 F2nd 235 (8th Cir 1992)." (Craig Berry, 3/26/2008)

Comments concerning the evidence presented relative to the historical use of the Rogue River by commercial fishers

"The common right of piscary done by Indian and pioneer alike is misrepresented as evidence for purposes of navigability which the right is not." "Evidence shows there was so little available fish in the river that a military operation almost had to resort to eating their horses to feed themselves and could not resort to catching any, let alone commercially available, fish." (Maurice and Pamela Hackett, 3/19/2008)

"Based on assumptions, the only indications of commercial fishing were long after statehood and only on select portions of the study segment." (Mike and Audrey Dawson, 3/26/2008)

"DSL claims the study segment was used by commercial fishermen, but again on figure 2, this was only below Grants Pass per the second drafts' table 2." (Craig Berry, 3/26/2008)

Comments concerning the evidence presented relative to the historical use of the Rogue River by recreational watercraft

"The modern notion of "recreation" was not actually contemplated, therefore not susceptible at the time of statehood, in any regard was not accomplished as it is today for obvious technological reasons,...a) notwithstanding, that someone merely floating down the river without commercial nexus does not constitute transportation of passengers or cargo, neither as between the states;

b) the recreation known today was impractical or impossible regarding opportunity or time as statehood; Today's recreation industry demands require technology or advantage not available at the time of statehood..." (Maurice and Pamela Hackett, 3/19/2008)

"The DSL claims that recreational watercraft can be used on the entire study segment of river if flows are greater than 10000CFS. In fact, the report doesn't not cite nor address the minimum flow required for the entire study segment of the river, therefore this statement is wrong." (Craig Berry, 3/26/2008)

Comments concerning the evidence presented relative to the historical use of the Rogue River to transport passengers and cargo

"DSL claims the study segment was also used for the transportation of passengers and cargo, but they the only source they cite is refers to trips in the 20th century and, again, below Grants Pass per the second drafts' table 2." (Craig Berry, 3/26/2008)

Comments concerning the evidence presented relative to the historical use of the Rogue River for log drives

"...the study relies heavily on the theory that logs were rafted downriver for commercial purposes however reference in the report are made of pending plans to raft logs i.e. (p. 42 Southern Pacific Railroad ties) but fails to also conclude evidence in the report that this activity was abandoned for quote "It was unsuccessful because of the nature of the river. They washed aside. At Page 43 the report states "No information was found to determine if in fact, Tolo Townsite and Milling Company or any other group ever floated logs down this segment..." Yet your staff relies heavily on the possibility that maybe this might have happened. The only clear evidence of floating logs on the Rogue was successful was after the construction of Gold Rey Dam in 1904. Even that operation was abandoned according to your study (Page 44) after a man was killed by as log jam and the company gave up its permit because they were unable to hire workers in such a deadly venture." (Steve Straughan, 3/19/2008)

"Log driving on the Rogue River appears to have been equally sporadic and unsuccessful. The Draft Report cites specific evidence of drives only in 1910, 1911, and either 1915 or 1916." "In addition, these drives began above Gold Ray Dam after its construction in 1902...so even had log drives occurred regularly, they would not have indicated that the study segment was navigable in its natural and ordinary condition." (Jennie Bricker, 3/19/2008)

"Interestingly, in 1889 the Oregon State legislature enacted a law which is on page 43 of your study that you put out, that said that these rivers must not be navigable." "And according to this, for log jamming it can't be a navigable river." (Jack Edler, 3/19/2008)

"DSL claims the study segment was also used for log driving but the log drives were occasional, which doesn't meet the commerce test, (1) and the drives were treacherous, with newspaper reports of fatalities. In addition, despite the county regulating the log drives through a franchise fee program, no one ever obtained a permit from the county, because log drives weren't happening. In fact, in the 1979 DSL navigability study, Farnell states that the insurmountable challenges faced with upper Rogue log drives actually shows that this stretch of river was not navigable." (Craig Berry, 3/26/2008)

Comments concerning the evidence presented relative to the historical condition of the Rogue River

"Before the dams were built, the water went up and the water went down, and it never occurred to us that it could be considered to be navigable. For example, the Rattlesnake Rapids between our property and Dodge Bridge is oftentimes impassable, even with the dams in place. At times, the

river has been reduced to a mere trickle. My brother, who is not 70, can give personal testimony to time when the water was so low that there was barely enough water for the salmon to get through. It was not unusual for my mother and her friends to be able to walk across the river near Salmon Rock when the water was low during the late summer months.” (Janice Firth Tompkins, 3/19/2008)

“The draft states that the Rogue River channel changes consist primarily of meanders and that the waterway has remained relatively unchanged since statehood. These statements are a complete falsehood. There have been many floods along the Rogue River which have suddenly, violently and substantially changed the bed and banks of the Rogue River.” (Marvin E. and Christine L. Gribble, 3/19/2008)

“By its own admission the study does indicate that the Rogue River has meandered and changed course in a number of areas of the 89 mile study segment. Some of these changes in course appear to be as much as 400 to 500 yards since statehood.” (Mike and Audrey Dawson, 3/26/2008)

“The location of the Rogue River’s channel at the time of Oregon’s statehood, compared to today’s river channel, will show numerous changes in the river’s bed and the normal high water mark. Even the 100 year and 500 year flood planes/patterns are different than they were in 1859, because of dams and diversions that did not exist at that time.” (Cynthia Meerten, 3/26/2008)

Comments concerning the evidence presented relative to the flow of the Rogue River

“Due to climate change, water flow will decline in the Rogue.” (Wayne Vos, 3/17/2008)

“River flow models lack accurate data, no data prior to 1932 and the agency even states it[s] projected water flow models to be between 50% and 80% accurate.” (Steve Straughan, 3/19/2008)

“Does the “80% likelihood” of flow your study cites take into account the true natural conditions on a Rogue River without dams?” (Leslie Rickerd, 3/20/2008)

“There is only an 80% assumption from limited evidence that segments of the Rogue River were possibly floatable some of the time. Those are not clear statistics to make a judgment that affects so many people. There is insufficient evidence regarding the entire stretch of the waterway to make the determination for the entire distance under study.” (Edna Moore, 3/21/2008)

“A broad statistical understanding of the river flow data is not presented in the study. A valid research report using numerical data obtained by gauges must contain a section that provides for the accuracy and calibration determinations of all gauges used so that the person(s) interpreting the data completely understand the validity and potential for error of the data presented. No such data exists in the report today.” (Jonathan Chesak-Kostelnik, 3/26/2008)

“In the top paragraph on page 30 of the second draft report, the DSL claims the flow of the Rogue River through the study segment has not changes as a result of the dam. They state that there is relatively little difference in flow data between the two reporting periods for most months. The reason the DSL claim that is because they failed to use basic data collection methods and compared pre-dam data with after dam data that also contained decades of before dam data, extensionally confounding the after dam group of date.” “The DSL claims that recreational watercraft can be used on the entire study segment of river if flows are greater than 10000CFS. In fact, the report doesn’t not cite nor address the minimum flow required for the entire study segment of the river, therefore this statement is wrong.” (Craig Berry, 3/26/2008)

Regarding flow data at Raygold: *"This data shows that the river flow is dramatically different after the dam was built." "...Jones, Oakey and Stearns, Water Resources of the Rogue Basin, states "A study of run off records on the Rogue River at Raygold shows that a reservoir having a capacity of about 400,000 acre feet would be necessary to equalize the flow for the normal year. In that Lost Creek Lake has an effective storage capacity of 315,000 acre feet, the DSL should have known the flow has been greatly equalized after the dam began regulation in 1977. Coupled with the 133,000 acre feet storage capacity of the Applegate reservoir, this information that the DSL claims it reviewed should have prompted a reasonable person to question the statement that the dam didn't appreciably change the flow characteristics." (Craig Berry, 3/26/2008)*

"...the 80% exceedence value printed in table 6 of the report is wrong... Instead of 1190 CFS the figure may be corrected to 1910 CFS in the final draft." "DSL claims there is also an 80% likelihood that a flow of 1,000 cfs... would have occurred throughout the year in 1859. Based on the trend I have shown you in Figure 3 that contains average flows which again are typically 35% higher than 80% exceedence flow, considered along with the greater variability of pre-dam seasonal flows shown in figures 1 and 2... I think the DSL's conclusions are highly suspect and many of their actions are potentially negligent." (Craig Berry, 3/26/2008)

Comments concerning the existence and use of trails in the late 1800s

"...attached please find maps that represent direct evidence that there was a developed trail system paralleling the Rogue River waterway from RM 131 to RM 176, which was in fact the "highway of commerce" in the Upper Rogue Basin at the time of Oregon Statehood. An 1854 General Land Office map obtained from the Jackson County Surveyor's office shows a trail that is entitled "Trail To the Umpqua Valley", which was frequented by indigenous people and settlers occupying the area." (Russell Logue, 3/25/2008)

"Attached find another 4 page plat map dated 1872 (later copied in 1937) entitled Road from Bybee's Ferry to Fort Klamath, obtained from the Jackson County Road Department. This documents that "The Rogue River Wagon Trail", which follows the same route, was one of the first platted public roads in the Southern Oregon region. This was the route that linked Fort Lane with Fort Klamath used by the military and others as well. It lists names of the known settlers at that time. Accompanying that map is the document "Road Record Vol. 1 Page 181" which was the Order that approved the acceptance of the roadway into Jackson County's Road System." (Russell Logue, 3/25/2008)

Comments concerning the evidence presented relative to the impact of Lost Creek Dam

"...Lost Creek Dam is the only reason there is enough water in the river to float a raft for a good part of the year. Historic flow, pre-dam, were not adequate for navigation." (Monte Seus, 3/23/2008)

Comments concerning the evidence presented relative to Savage Rapids Dam

"The last sentence in the third full paragraph on page 22...says, "Complete removal of the Savage Rapids Dam is expected by 2010." This is incorrect. Only bays 1 through 9 of the dam (numbered from right to left) will be removed down to the top of the existing downstream apron. Bays 10 through 16 and the structures on the right and left abutments (including the fish ladders) will be left in place. This will restore natural fish passage past the site and accommodate both upstream and downstream water craft passage depending on flow conditions and the draft of the water craft involved. The predam thalweg of the river (located towards the right side of the dam) will not be restored. The work is currently scheduled to be completed on December 2009." (Robert Hamilton, 3/13/2008)

“As I remember, we were unable to find any useful predam topography concerning what the river channel in the vicinity of the dam looked like prior to dam construction. Our estimate of the sediment volume was based on a limited drilling program to find the bottom of the sediment and sonar surveys to identify the top (which moves around from year to year depending on high flow conditions. We anticipate that the river channel upstream of Savage Park is relatively similar to what it was predam since the reservoir is not present during the flood season to affect erosion and deposition. Meander to the south is generally controlled by the exposed bedrock. Meander to the north is generally constrained by the retaining walls, boat ramps, etc. constructed by the adjacent landowners.” (Robert Hamilton, 3/14/2008)

Comments concerning ownership of the waterway

“Our position here today is, have a chart; I should have brought you one. But it’s here, it’s an original document. And it shows the meandering of the Rogue River; the Rogue River from its confluence all the way from Crater Lake, all the way to the coast at Gold Beach. It’s controlled and owned yet today legally by the Native Americans.” (John Grey Eagle Newkirk, 3/19/2008)

“It is certain that the Rogue River flows through the treaty land. The Rogue River is still under agreements binding the United State, the State of Oregon, and the Indians of the ownership of the northern half of the entire river and certain other parts.” (John Grey Eagle Newkirk, Richard Red Hawk Davis, Harry Two Feathers Mallon, 3/23/2008)

“It is our position that the accuracy and completeness of the information contained in the “Rogue River Draft Navigability Report” dated February 19, 2008 is inaccurate and incomplete; and the evidence presented in the report concerning the historical use and condition of the Rogue River study segment does not meet the requirements of the federal test for navigability. It is our position that the Rogue River is not suitable for navigation. It is our position that the State of Oregon should not declare public ownership. And it is our position that under the agreements as briefly described therein, the Latgawa Native American Indian Tribe has full rights of ownership to certain areas of the Rogue River.” (John Grey Eagle Newkirk, Richard Red Hawk Davis, Harry Two Feathers Mallon, 3/26/2008)

Comments concerning the federal test for navigability/determining navigability

“The study uses the concept of “susceptibility” as it were some time machine. There is no technology today which can magically be teleported back from the future to compensate for commerce activity that did not exist by modes not available at statehood. Not even if the stars lined up just right would what occurs today be remotely customarily susceptible of happening 150 years ago, not even as yearly as the 1900s. By this fantastic treatment, the study does not prove susceptibility to commerce more than one’s susceptibility to being gullible to the next political snake-oil salesman.” (Maurice and Pamela Hackett, 3/19/2008)

“These fuchsia highlighted issues refer to characteristics of rivers (in US 33CFR329), according to the US Army Corps of Engineers, which help the Corps determining navigability; note that the Corps is the penultimate decision maker in this regard, with only Federal Courts having higher jurisdiction.” (Malcolm Drake, 3/25/2008)

Other subjects that should be addressed in the navigability study

Mineral rights

“The study does not address mineral rights affected or contributing, directly and affirmatively. In point of fact, the authors deftly avoid a very important aspect of mineral estate exploitation exposing further contempt for meaningful procedures which may by their inclusion require an

alternative treatment than the one prejudicially promoted.” (Maurice and Pamela Hackett, 3/19/2008)

Opinion of local and regional government officials concerning study

“No disclosures have been made in public comment summaries that a majority of local and regional governmental officials are opposed to the navigability study and that there is a possibility that the broad and substantial public interest is not being served by a navigability determination of the Rogue River” (Jonathan Chesak-Kostelnik, 3/26/2008)

Flooding and avulsive changes

Regarding a map prepared by the Jackson County Surveyor’s Office: *“It verified the substantial change in the river channel location. These maps cover river mile 125 to about 165.” “The latest draft report states that the Rogue River channel changed consistent of meander and that the waterway had remained relatively unchanged since statehood. These stated facts are complete falsehood. There have been 17 major floods which have violently and substantially changed the riverbed and banks. It is part of our river history.” “The river moved out of this channel as a result of the 1890 flood. This is substantiated in the book “Yonder Hills,” and also in the diary of Mary Louise Black, the former owner of this property.” (Roger King, 3/19/2008)*

“Where a river bed moves suddenly because of an event such as a flood, then title to the river bed and bank will not follow the new course of the river. The state will not wind up owning a continuous river bed and banks in fee title as it will be interrupted with private land holdings. This problem will be made more serious as the Rogue River continues to change course by floods over the years.” (William Price, 3/19/2008)

“...much testimony was given regarding property that might be lost if the river changes course for one reason or another, which it is certain to do. Nobody mentioned property that might be gained from ac change in course should it move the other way.” (Lee Wedberg, 3/22/2008)

“The report does not mention significant avulsive changes in the Rogue River’s waterway course since statehood.” (Jonathan Chesak-Kostelnik, 3/26/2008)

“From our perspective, the worst solution would be for the Land Board to adopt a final report and proceed with a declaration of navigability without first resolving the issues that affect title and the marketability of property on the Rogue River.” (Alan Brickley, 3/26/2008)

Impacts of dam removal

“Important in this issue of the study; it was questioned, there is no elevational portion of this study that was done. When you take a dam out, the water level’s going to change. When we have floods, the water level’s going to change.” “You take the dams out and you take those dams out; you are changing the course of the river guaranteed.” (Allen Her, 3/19/2008)

Behind Savage Rapids Dam: *“If the State takes ownership and does not vacate the new upland portion between the old ordinary high water and the new ordinary high water, there will be expansive; and I’m talking like a football field deep public land in front of everybody’s private house. And it’s going to make a big problem. There will be vacant boat ramps and dock features abandoned in plane. These are all in close proximity to the residents.” (Russell Logue, 3/19/2008)*

Cost/benefit analysis/analysis of alternative approaches

“No cost/benefit analysis has been shown.” (John Curran, 3/25/2008)

“...the State Land Board, prior to making any determination of this matter, should direct its staff to prepare a list of alternatives and an analysis of the comparable benefits and detriments of each such alternative, taking into account, among other things, (i) the comparative economic impact on state and local government (costs, revenue losses, etc) of such alternative, (ii) the comparative economic impact on the affected communities of each such alternative, (iii) the comparative environmental impact of each such alternative, and (iv) the comparative level of benefit to those who would use the river for recreational purposes of each such alternative.” (Craig Tompkins, 3/23/2008)

“The Land Board should consider more than just the “facts of navigability.” They should also consider the feasibility of enforcement (which would be impossible with today’s resources) and the actual benefit to the “public” (which they seem to have already, considering the number of rafters and fishermen that currently enjoy our beautiful river). It has never been clearly explained what the current private owners will retain, be compensated, be taxed on, or the rights that will be retained/created.” (Cynthia Meertan, 3/26/2008)

Length and size of study segment

“Was the use of words “89 mile segment” a deliberate attempt to mislead the public on the extent of land involved in the study? The land is on both sides of the river. Therefore, there would be 178 miles of land affected by the decision. The study does not say river miles.” (Nancy Bradley, 3/19/2008)

Environmental impact analysis

“I believe if this type of study goes forward, that there needs to be an environmental impact study which addresses the impacts upon the soil, which is land; the water, the animals, which are the fisheries; and the other animals that use the Rogue River; the air, what affects upon the air, not only now but in the future; and the human resources. And that is a social and the economical impact that such a decision would have upon this decision that will be made.” (Brian Lanning, 3/19/2008)

“No environmental impact study has been attempted.” (John Curran, 3/25/2008)

Definition of “customary mode of trade and travel

“Nowhere in this report does it mention the definition of “customary mode of trade and travel”. A prudent person would, in my opinion, define this term as being available for not only hauling materials downstream, but available as well for the practical return of their craft.” (Malcolm Drake, 3/25/2008)

Land Patent Information

“The study provides no U.S. land patent evidence to determine what the United States of America did in areas that were not meandered to find or by corollary if any upland existed in these instances.” (Maurice and Pamela Hackett, 3/19/2008)

Comments concerning the impacts an assertion of navigability will have on landowners

Result in more, not fewer conflicts

"The combination of an uninformed public learning that the "riverbanks are public property," and the vagueness of where the demarcation actually lies, is a sure recipe for conflict, with a likelihood that eventually someone is going to get seriously hurt." (Peter Gleysteen, 3/15/2008)

"The speakers who supported taking our land for the public's use do not understand that many of us live on remote areas of the river and are potentially vulnerable to the actions of some very malicious people." "If approved the navigability study will result in more confusion and problems for the landowners and for the state. The state simply doesn't have the funds to police the river. We know that from first hand experience." (Dave Pfeifle, 3/19/2008)

"Declaring the Rogue River navigable for title will have serious consequences for landowners, will embolden and expand the public's use, and it will not achieve its stated goal of reducing conflicts and providing certainty of title to the existing channel and bank of the Rogue River." (Gayle Anglin, 3/19/2008)

Result in litigation

"I think you will be in litigation with every landowner along the river and I think you will not be able to deal with it in a class basis. It will have to be person by person, site by site, lawyer by lawyer litigation." (Craig Tompkins, 3/19/2008)

"You also state that we, the property owners, will not have liability if something happens to any trespassers. Who do you think you are kidding! You know what today's society is like – is it litigious. We will be sued, and where will you be then? (David Johnston, 2/22/2008)

"A declaration of navigability will not establish the property line between current private property owners and the state. This will require a case by case determination, and will likely result in major and ongoing litigation." "We would not be surprised if the litigation price tag to the state were ultimately in excess of \$100,000,000, given the multiplicity of cases that would need to be resolved." (Craig Tompkins, 3/23/2008)

Result in a less pleasant experience for river users

"The general public has ample access and increasing that access would detract from the river experience." (Steve Straughan, 3/19/2008)

Result in more trash along the waterway

"With more usage will come more noise, trash and debris which will be very harmful to the habitat and to our quality of life." (Ray Downing, 3/19/2008)

"There will be a serious problem of trash (litter) and pollution of the banks and the river. Public parks and landings usually have trash receptacles, restrooms, and at least periodic patrol or inspection, the miles of private land do not." (Jill Hollomon, 3/19/2008)

"My concern is that once the public feels they have even greater access to the river, they will not just access the river, but even start to camp for the day or night. They might even want to stay a week." (Steven Swanson, 2/22/2008)

"...completion of this report opens the door for people to use our property for ingress and egress to river access; camping and picnicking in front of and adjacent to our residences; trash and noise all of which the "sanctuary" of our home is to protect us from; and the potential of being charged by the state for any docks, ramps and pumps for river water use in spite of the fact we already have authorization to use river water." (Dana Munde, 3/25/2008)

Result in need for increased law enforcement

"Property owners will not get any help from law enforcement, at least in Josephine County, as there are hardly any patrols and the sheriff responds only to life-threatening situations. This will necessitate landowners handling situations themselves; situations they should not be in protecting their land from trespassers getting to the riverbank that still rightfully belongs to the land owner. There could be very serious consequences when landowners are forced to confront trespassers in the absence of any law enforcement support." (Jill Hollomon, 3/19/2008)

"Such a declaration will subject the state to substantial additional policing and maintenance costs." (Craig Tompkins, 3/23/2008)

"In Josephine County our Sheriff patrols have been almost totally cancelled. There is no one to help the homeowners in situations that will arise when you take all power from them to protect their property." "Conflicts will increase dramatically". "There will be no law enforcement to intervene, guns will be drawn and it will be just like the good old days." (Rick Lewis 3/24/2008)

Result in declining property values

"We have put our home on the market and now find that the property value has dropped considerably because of the housing crisis. In addition to that this navigability study and the possible negative effect that it will have has scared away some potential buyers. This has caused us to lower our asking price even more." "The only good that could ultimately come of this if the study is accepted is that if the river property values drop low enough so that the property taxes fall below comparable properties that are not on the river." (James Miner, 3/19/2008)

"The numerous other restrictions, limitations and changes to the conditions of property usage and ownership may also significantly impact the value of my property negatively." (Dana Munde, 3/25/2008)

"This action by the Land Board: i) Could very likely cause property values to decline even more than they already have." (Mike and Audrey Dawson, 3/26/2008)

Result in additional authorizations being required and more fees

"What really upsets and disturbs us is that you as a Board would have the nerve to require property owners like ourselves to pay a fee to put our irrigation pipe into the river, this is unjust and unfair!!! Should I charge you for all the years we have cleared the river frontage of tall grasses and debris?" (Lori and Gilbert Hettman, 3/17/2008)

"It might be useful to grant easements to riverfront properties for the purpose of placing irrigation foot valves there." (Lee Wedberg, 3/22/2008)

"I have a water right and I'm particularly incensed that the state is going to want me to pay to cross eight feet of "their" shoreline with a temporary (summer only) 2.5" plastic hose to draw water up from my foot-valve." The pump is well above ordinary high water line. That hose does not interfere in any way with the public's enjoyment of the river." (H. A. Norton, 3/25/2008)

"This action by the Land Board: ii) Could complicate irrigation rights, like ours which date back to 1919. We could no longer have access to the Rogue River for irrigation without state approval and/or additional costs." **(Mike and Audrey Dawson, 3/26/2008)**

Result in title/ownership problems

"In our area, the state will end up owning the old dry channel instead of the river we see today." **(Marvin E. and Christine L. Gribble, 3/19/2008)**

"This was the 21st time written title had been transferred since 1887. We learned that our home and almost our entire lot lies squarely in the old Rogue River meander line, as shown on a map that you have before you, as it existed at statehood, February 14th of 1859. There was no warning that the property being purchased was or could be owned by the State, as the old channel was completely dry, as it had been for 104 years." "As the river moved by an avulsive act, this means that DSL will claim almost all of our property and our home." **(Will Hardy, 3/19/2008)**

"It (the report) misstates the facts concerning river course changes caused by flooding. Our floods are numerous and they will determine who actually owns title to the Rogue River and its banks." **(Patricia Taylor, 3/23/2008)**

"The legal complexities inherent in accretion/avulsion issues and minimum lot size zoning issue accompanying a navigability change, are likely to cause numerous and expensive lawsuits costing property owners and the state untold additional dollars." **(Peter Gleysteen, 3/25/2008)**

"The specific concern of the industry is with the certainty of land title along and in the vicinity of the Rogue River in Jackson and Josephine Counties. Property bounded by water is frequently subject to title challenged occasioned by fluctuations in the shoreline, by claims of the state, and by use rights of the public. We understand these challenges but we believe, as a matter of public policy, that the state should not exacerbate them without good reason." **(Alan Brickley, 3/26/2008)**

"Our property was title searched and there were no liens or other owners to the property found. The property that we purchased has been resold 3 times in the past 5 years and no disclosures have been put on the property stating that the state owns the land up to the high water mark. If as you claim you the DSL owns the land up to the high water mark as of statehood in 1859 then you the State of Oregon has not disclosed this to the buying or purchasing public and have committed some type of fraud in not disclosing this." **(Ronald and Judith Wangerin, 3/29/2008)**

"...the study will not achieve its stated purpose of reducing conflicts between river users and landowners by establishing certainty of title along the Rogue River channel and bank where the river is currently located. This is because of the many avulsive changes which have violently and suddenly moved the river channel in the Upper Rogue River above Gold Ray Dam. Approximately 20 percent of all river channel embanks will belong to private property owners. The State will not wind up owning a continuous riverbed and banks, and fee title as it will be interrupted with private land holdings." **(Kathryn Hardy, 3/19/2008)**

Result in property tax issues

"Such a declaration will raise significant property tax issues. Naturally, every one whose property is "taken" will be seeking property tax adjustments both going forward and refunds retroactively. Presumably, as the state claims will date back to statehood, there will be no statute of limitations on such refund claims." **(Craig Tompkins, 3/23/2008)**

"As you are aware, the majority of properties along the Rogue River are deeded to the center of the river. Not only that, many of our [Jackson County Department of Assessment maps do not

actually depict precisely where the river is currently. To properly map these properties would require a full-blown re-map of the properties along the river, in addition to mapping the high water mark for each individual property." "Once the map work is complete, we must value the residual property remaining in private ownership." "As you can see this is going to be a very time consuming project and may not get completed in a timely fashion." "Another issue affecting the county is the amount of tax dollars lost, as a result of this proposed change of ownership. It is impossible to determine, given the variables and unknowns." "Your proposed decision, at best, is a can of worms for our office. Given Jackson County's budgetary condition, it makes it that much more disquieting. We would request that the Division of State Lands identify each property and provide the Jackson County Department of Assessment the acreage of the land residual left to the taxpayer and the amount of land taken away." (Daniel Ross, 3/25/2008)

Result in adverse economic impacts on Jackson and Josephine Counties

"Such a declaration will have a county-wide adverse economic impact by adding substantial; economic uncertainty to Jackson County in a time which is already filled with economic uncertainty." "This uncertainty will impact more than just the marketability of the lands along the river owned by existing land owners." "We believe that the State Land Board should get an independent economic assessment as to the impact of such a decision on the economies of southwest Oregon and the State of Oregon as a whole." (Craig Tompkins, 3/23/2008)

Result in landowners and recreationists having to determine the line of ordinary high water and problems doing this

"How can the natural high and low water marks be determined when the ordinary high water mark in question can be manipulated by the Corps of Engineers at Lost Creek Dam? The state could keep the river unusually high to create a greater public area if the river is declared navigable." (Nancy Bradley, 3/19/2008)

"I do not agree with your determination of where the average high water point is. How many years do you go back to determine this point or does it change every year? As a fisherman I drift this river and cannot tell where this point is because as the river drops the vegetation grows in and is not at this level long enough to make a mark on the land except for the white marking it makes for a short time." (Richard Fiske, 3/19/2008)

"I am still trying to understand the definition of the ordinary high water mark. I feel it is very unclear and hard to define." "Please consider the language used in the federal scenic easement [The United States has the right to permit the public to walk on, and fish from a strip of land ten (10) feet in width along the waters' edge of the Rogue River.] as a guide to providing a potential solution to the controversial issue of public access." (Joan Kostelnik, 3/24/2008)

"The state cannot describe the actual location of the ordinary low/high water marks of the river that is understandable to the layman." (John Curran, 3/25/2008)

"Due to extreme variability in the flow of the Rogue River, the OHWM determination requires as clear "boundary" for waterway property owners and users and forming the basis for appropriate waterway management is marginal, arbitrary, and capricious at best." (Jonathan Chesak-Kostelnik, 3/26/2008)

"The key discussion here centers on whether private land ownership ends at the normal high water mark of the river, or extends to the center of the riverbed. There is no other logical marker available to determine "allocated" space that the river occupies, other than the high water mark." (Steven Vincent, 3/26/2008)

"One of the questions asked at the March 19th hearing was how is "this magic line" going to be established? The "magic line" being referred to is the line between state ownership and private

ownership. Other than citing two Federal decisions that are already available for use, the study provides no help in determining where this line will be or how it is to be established.” (Robert Hamilton, 3/26/2008)

Result in adverse economic impacts on the environment

“There is a setback to the river’s edge required by county ordinance, replant the willow, the alder, the cottonwood trees you remove to plant your grass, which now invites public use. Let the riparian zone become dense again and you will have your buffer zone to privacy, which you gave up when you destroyed the riparian vegetation.” (Otis Swisher, 3/19/2008)

“Our property is in the area that has been deemed “Wild and Scenic” by the State of Oregon. No where in your study does it address that situation. The State has restricted us from doing things on our property as a result of the Wild and Scenic rules and yet you would allow the public to come in and destroy what you the State is trying to preserve.” (Ronald and Judith Wangerin, 3/19/2008)

“Such a declaration would have potentially adverse environmental impacts. At the present time, the adjoining land owners are the stewards of the river. They have a personal and economic interest in preserving the river within its current banks and protecting the properties adjacent to the river.” “We believe that the while an environmental assessment may not be required as a matter of law in this case, it would be inconsistent with the position taken by Governor Kulongoski not to take advice on and then to carefully consider and weigh the environmental benefits and detriments from such a decision.” (Craig Tompkins, 3/23/2008)

“When you turn mankind loose on the environment, the environment always suffers. And so the problems will only escalate if this law goes into effect (which we both know it will no matter what I or anyone else says. It’s a done deal.)” (Rick Lewis, 3/24/2008)

General comments concerning the study/study process

Dictionary definitions related to navigability

“For a river to be navigable at the time of statehood for commerce would require that boats could go both directions on the river. They did not have motorboats except large steamboats which could go up river.” “To only consider going down river would have goods going down and no way to get the exchanged goods or boat back.” (William and Patricia Richey, 3/15/2008)

“We define everything we do by the words we speak and write. We define the words we speak and write by the dictionary: American Heritage Dictionary. Navigable: Sufficiently deep or wide to provide passage for vessels. Capable of being steered, used by vessels or aircraft. Navigation: The theory and practice of navigating, especially the charting of a course of a ship or aircraft, travel or traffic by vessels, especially commercial shipping. Now, definition of a vessel: A craft, especially one larger than a rowboat designed to navigate on the water.” (Marc Schmaus, 3/19/2008)

An assertion of state ownership is a “taking”

“This attempt to take land away really is a method of circumventing eminent domain which would at least compensate the landowner for land that is taken.” (James Miner, 3/19/2008)

“So make no mistake about it, the government is attempting to steal land that we paid for, pay taxes on, and try to protect, with no offer to repay the landowners for the property they’re trying to take, plus repayment of all taxes paid on these deeds since they were originated.” (Rick Lewis, 3/24/2008)

"The land is owned by private people and has been for many years. It is not fair to take away ownership of property because of what was done 100 years ago. These owners have owned and controlled these lands and now to take that away is not right." (**Gary Rhinehart, 3/21/2008**)

"Unfortunately through years of misinformation and inaccurate real estate deals, these people thought they got a great deal on buying a river. But it was never available to sell, because it has belonged to all the people from high water mark to high water mark." "So, is it stealing if it were never theirs to begin with? I am of the opinion that if the Rogue is declared navigable today, that it has been navigable since the time Oregon gained statehood. Therefore, it is the property owners who have stolen from the people. In some cases, for many generations." (**James Jones, 3/25/2008**)

"Please note that declaring all properties on the Rogue River to mean high tide as state-owned constitutes "...a taking of property..." and the owners of the properties whose grant deeds show exact dimensions (not "to the middle of the river") must be compensated based on Oregon State Laws, U.S. Federal Laws and the U.S. Constitution." (**Kathy Snell, 3/25/2008**)

Other General Comments

Education of the public concerning landowner and recreationist rights is necessary

"...I think the real problem we have and my organization that I belong to is very involved in is education. Not only for the safety of the people on the river, but in respect to the regards of the rights of those who live along the rivers. It's a two-way street." (**Brian Whitham, 3/19/2008**)

"The Department of State Lands may have to distribute more educational information to land owners and ranchers who still do not understand the rights of all Oregonians when it comes to the issue of navigable river rights." (**Mary Fleischmann, 3/19/2008**)

"We also recommend that there be some strong element of education of the public about land – landowner's rights and the public's rights to use rivers in the state of Oregon." (**Ray Hanson, 3/19/2008**)

"Our waterways are too important to make the mistake of sacrificing the pleasure of use by the public for the use of a few. Programs for education and enforcement should be put into place to ensure there is a good balance of the rights of the public and the rights of the land owners." (**Bob VanderLinden, 3/23/2008**)

"It is extremely perplexing that the state's position is that a broad education programs of the rights of both waterway property owners and waterway users can only occur after the state exercises title claim to the bed and banks of a waterway." (**Jonathan Chesak-Kostelnik, 3/26/2008**)

A Montana-type solution is the best way to address uncertainty concerning the rights of landowners and recreationists

"...the current study process is not working! We need a Montana like law now to satisfy the state's recreationists. In some cases the state may need to claim ownership, such as when high value minerals are removed." (**Bill Butler, 3/12/2008**)

"The NWRA (Northwest Rafters Association) River Issue Committee would urge that in the future that the executive and legislative branches of the Oregon state government proceed with a process of establishing a legal framework by which the public is granted access to all navigable rivers that course through this great state. We would further recommend that when navigable

studies are done and completed, that the state legislature would move more expeditiously than it has done on the Rogue River.” (Mary Fleischmann, 3/19/2008)

“...we recommend that the legislative branch and the administrative branch of the State of Oregon establish some type of legal framework that will go about establishing the rights of people on rivers so you don’t have to go through this process. There are – there are two models. The Montana Legislature in 1997 went through this process, and so did the State of Idaho, not in the same year.” (Ray Hanson, 3/19/2008)

“My suggestion is the DSL, and specifically the governor, require the legislature to come up with a bill similar to Montana’s which will address the issues in question. Call them into special session and put a time limit on their deliberations.” (Richard Butler, 3/20/2008)

“The Oregon State Constitution and the Supreme Court decision regarding navigability state that all navigable rivers belong to the people and, as such,, should be managed with public funds. Hopefully, these legal decisions will influence legislators and those who propose future expensive and unnecessary studies or fees for non-power boaters.” (John Garren, 3/25/2008)

“The Oregon legislature needs to develop a workable compromise solution similar to the Montana Stream Access Law of 1985. This solution provides clear and efficient guidelines that meet the intent of protecting the public’s use of waterways, while recognizing the rights and concerns of private property owners along those waterways.” (Jonathan Chesak-Kostelnik, 3/26/2008)

“The state should consider the example set by Montana and Idaho. As land owners we do not have any objections to fishermen and rafters using our river frontage.” (Mike and Audrey Dawson, 3/26/2008)

Other possible solutions to address uncertainty concerning the rights of landowners and recreationists/alternative approaches

Two solutions exist: (1) *“The simple answer appears to be a navigational servitude delineating the water and some short though reasonable distance for haul-out upon the land from the edge of the water wherever it may ordinarily course for purposes of trade or travel under the jurisdiction of the state to accomplish the political ends of the state’s interest any time.”* (2) *“...the state must forgo claiming absolute navigable title and declare the understanding in the inequity created by its merely colorable claim agreeing within the bed and bank to tolerate free right of access measures to some certain distance from the water’s edge at any particular time for purposes of access or jurisdiction. We believe the Wisconsin people have a similar forward-thinking determination, that the “bed and banks” is owned by the riparian owners subject to a public trust doctrine.” (Maurice and Pamela Hackett, 3/19/2008)*

“You have to comply with the statute, of course. But the statute does not require you to plunge forward when there are good reasons or there may be good reasons to stop or change direction...” “In other words, I think that you, as the Land Board...can be nimble. And I think that because the statute and rules give you the option of adopting the report or not adopting it, and specifically here I’m talked about ORS 274.404(2)(e). And that allows you to refer the report back to DSL for further action, “as determined by the Board.” “So Save Our Legacy would like to request and recommend that you refer the draft report back to DSL with instructions to terminate this study.” (Jennie Bricker, 3/19/2008)

“Give the landowners an incentive to promote goodwill toward those seeking to use the river for recreation. Instead of overtaxing those with river frontage give them a tax break. These property owners do the maintenance of the river for free and have been doing so for decades. They have been paying much higher taxes on their property than owners of similar properties that are not located along the river.” (Leslie Pfeifle, 3/20/200)

Inevitability of decision concerning navigability of Rogue River study segment

“So even if the State chooses not to decide on this or decides against it, it could go to federal court and that is where it could be made navigable. This is sort of what happened on the John Day River in a very similar situation. So while everyone is wanting to redirect this or hold off, the reality is, is you are just holding off the possible or the inevitable.” (Heather McNeill, 3/19/2008)

Miscellaneous other concerns

“It should be stressed, especially in the media, that it is not about access. Many property owners mistakenly believe people will be allow to access the river from their backyard, driveway, etc. This is not the case. It is about the right to float the river and use the banks below the high water mark. (Bill Marshall, 3/24/2008)

“Further privatation must be stopped if the intent of the Public Trust Doctrine is to be preserved as originally intended. Over the years I have witnessed the whole sale destruction of riparian zones despite the fact that the river contains endangered salmon with the county and federal governments did nothing to stop it even though the incident was reported and a formal written complaint files! “I see numerous river front land owners piling their yard wastes below the ordinary high water line only to be swept away during the winter rainy season.” (William Butler, 3/12/2008)

“Just because the sidewalk is your legal responsibility to maintain and pay taxes as if it is your property...you do not have the right to establish a toll booth nor do you have the right to regulate who may pass in front of your home. It is the same with a navigable river...you may own to a center point mid stream and high water mark but you may not restrict passage.” (Peter Rapport, 3/25/2008)

Examples of Questions Raised in Public Comments

- Why should a handful of private individuals be handed the right, against existing state law, to restrict access to and passage on the Rogue River?
- How is the public going to know if they are on private or public property in any section of the river?
- How is this going to reduce the perceived conflicts?
- Is the state going to condemn land after every flood to maintain its continuous ownership of the river's bed and banks?
- Should not the DSL have studied the floods issue and how it will affect title along the course of the Rogue River before the Land Board votes?
- What liability do title insurance companies have that have insured title where the historic channel no longer flows, and have not included exceptions to riparian rights?
- Wouldn't it make more sense to presume that unless an area is marked "Public Access" it is private?
- The public already has ample access to float the river and fish as much as they would if you were to take away our land. Who will gain from this?
- How can I sell my property with this heavy-handed process threatening the clarity of my ownership?
- Wouldn't it be better for all of us that you allocate the presently wasted funds for this proposal to the Common School Fund?
- Who will police these activities? Is staying overnight within their new rights? Who will provide sanitary facilities for these new river users? Who will control other potential illegal activities as more people begin to use my property as a public park?
- Who can or should be allowed to "own" a natural resource?"
- With the issue of liability, where will the money come from you pay for potential lawsuits?

- Will the state be maintaining their newly acquired property as most property owners now do?
- Is the state creating a solution (and potential problem) for an issue that did not substantially exist?
- Is it true that the title that the State has to the river bed and bank will not follow the new course of the river as it changes in the future?
- Is it true that the state will not own continuous river bed and banks in fee title as it will be interrupted with private land holdings as the Rogue continues to change course by floods over the years.
- Who will clean up the trash from the river banks of the state property?
- Who will pay for the title and grant deed changes?
- Who do we call when there's problems with the public? Do we call you?
- What about the 186 Federal Scenic Easements (SE) acquired by BLM (early-mid-70s) from the mouth of the Applegate River to Grave Creek, which is the Hellgate Recreation Section managed by the BLM Grants Pass Resource Area of the Medford District Office?
- Will you guarantee the land owners on the river that we will never be charged, or taxed, or imposed any new fees for our docks that will soon be considered to be on government land, or the water that we have been able to use for our lawns?
- Have potential effects of climate change been taken into account in this study and dam removal plans?
- Who will place signage along these rivers to inform the public that they are now on private property?
- Will the State be condemning property every year after a flood to maintain a continuous title of bed and bank along the Rogue River?