

**OREGON STATE LAND BOARD  
RESOLUTION**

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In the matter of the public's right  
to use the waterways of the state

**WHEREAS**, Oregon's waterways are valuable public resources of the citizens of the state; and

**WHEREAS**, the State Land Board has the legal authority to identify waterways owned by the State of Oregon through federal authority of title navigability; and

**WHEREAS**, the State Land Board supports the public's right to make certain uses of Oregon's waterways regardless of whether they have been determined to be navigable for title purposes, as those rights were articulated in the Oregon Attorney General's Numbered Opinion 8281 dated April 21, 2005; and

**WHEREAS**, the Opinion stated that a line of decisions from the Oregon Supreme Court established a state public use doctrine that recognizes the public right to use waterways whose beds are privately owned if the waterway has the capacity, in terms of length, width and depth, to enable boats to make successful progress through its waters; and

**WHEREAS**, the Opinion concludes that the uses within the public use doctrine are relatively broad, including that the public right extends to the use of the area below the line of ordinary high water, and in limited circumstances to the area above the line of ordinary high water; and

**WHEREAS**, citizens have found considerably greater certainty exists concerning the extent of the public's rights to use the submerged and submersible land underlying waterways which have been determined to be navigable for title purposes than there is for waterways for which no such determination has been made; and

**WHEREAS**, because title navigability of the vast majority of Oregon's waterways has not been determined, there is often confusion and uncertainty with regard to the extent of the public's right to use the submerged and submersible land as well as the adjacent banks above the line of ordinary high water of Oregon's waterways; and

**WHEREAS**, this lack of clarity in the extent of the public's rights continues to cause conflicts between recreationists and persons owning river and lake frontage that often require the intervention of law enforcement and Oregon's courts; and

**WHEREAS**, through the conduct of navigability studies and assertions of ownership by the State Land Board it is possible to bring greater clarity as to the rights

of the public to use the submerged and submersible land underlying the waterways under consideration; and

**WHEREAS**, the conduct of such studies on a river-by-river basis is a costly, time-consuming approach to clarifying the public's rights, often results in litigation, and is essentially a piecemeal approach to establishing the public's rights to use Oregon's waterways; and

**WHEREAS**, it is not in the public's best interest to use the title navigability study process as the exclusive means to establish the public's rights on Oregon's waterways, now, therefore,

**BE IT RESOLVED**, the State Land Board requests the 75th Oregon Legislative Assembly to enact legislation that clearly describes the public's rights to use waterways that satisfy the standard for the public use doctrine but which have not been identified as navigable for title purposes, by incorporating and codifying the rights that the Oregon Attorney General stated in his Numbered Opinion 8281 dated April 21, 2005, including the public rights to use the submerged and submersible lands within the waterway and to a limited extent the upland adjacent to those waterways.

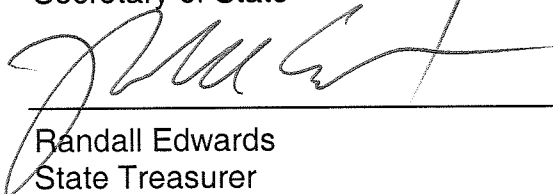
Adopted this 9<sup>th</sup> day of December 2008.



Theodore R. Kulongoski  
Governor



Bill Bradbury  
Secretary of State



Randall Edwards  
State Treasurer