

MEMORANDUM

October 28, 2004

TO: Interested Persons

FROM: Ann Hanus, Director

SUBJECT **Notice of Public Hearing and
Availability of Second Draft of the John Day River Navigability Study**

I want to invite you to attend a meeting of the State Land Board at which the Land Board will hear public testimony in response to the following questions concerning the John Day River Navigability Study:

Does the factual evidence presented in the second draft of the John Day River Navigability Study meet the federal test for title navigability? (Note: Federal courts have developed the following test to determine whether a waterway is "navigable" for "title," that is, public ownership purposes: (1) The waterway must be capable of, or susceptible to, use as a highway for the transportation of people or goods; (2) Transportation must be conducted in customary modes of trade and travel on water; (3) Waters must be navigable in their natural and ordinary condition; and (4) Navigability is determined as of the date of Oregon's statehood (February 14, 1859).)

Should the Land Board, based on the factual evidence contained in the second draft of the John Day River Navigability Study, make a declaration of public ownership of the 174-mile segment of the John Day River from Kimberly at River Mile (RM) 184 to Tumwater Falls at RM 10?

The Land Board will not make any decision at this meeting concerning the navigability of the John Day River. During the portion of the meeting dedicated to this issue, the Land Board will only listen to testimony presented on these two questions. DSL staff expects the Land Board to make a final decision on this issue at a regularly scheduled board meeting in early 2005. All interested parties will be notified prior to that meeting.

This hearing will be held:

Tuesday, December 14, 2004

9 AM to 12 noon

Hotel Condon dining room

202 South Main Street

Condon, Oregon

The Land Board will invite testimony from the Association of Northwest Steelheaders (the organization that requested the study), local government officials, and representatives of affected tribal governments. Other persons wanting to testify before the Land Board will be accommodated within the time limits of the hearing. Every effort

will be made to give anyone who wants to testify an opportunity to do so. In order to allow for all persons to testify, a specific amount of time may be allocated to each.

On or about November 12, 2004, the Department will have the second draft of the John Day River Navigability Study available for public distribution. This document will be mailed to all persons on the Department's John Day River mailing list, and to any other persons requesting a copy. The second draft will also be available for viewing and printing on the Department's website: www.oregonstatelands.us
Please direct your comments and/or questions to either:

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You may also provide comments via email at johndayrivercomments@dsl.state.or.us