

September 7, 2007

TO: Interested Persons

FROM: Louise Solliday  
Director

SUBJECT: **Rogue River Navigability Study**

- **Availability of Draft Navigability Study Report, and**
- **Notice of Public Hearing**

**Availability and Content of Draft Navigability Study Report**

This notice is being sent to advise you of the availability of the Draft Navigability Study Report for the 89-mile segment of the Rogue River from Grave Creek at River Mile (RM) 68.5 to Lost Creek Dam at RM 157.5. This report contains information collected by DSL staff concerning the historical use and condition of the 89-mile study segment. It was prepared by the Department of State Lands (DSL) at the request of the Josephine County District Attorney in order to:

- Establish the limits of public and private ownership along this segment of the waterway, and therefore,
- Reduce the number of conflicts between persons who use this segment of the Rogue River and adjacent landowners.

As discussed in the report, the federal test for navigability is used to determine if a waterway is navigable for title purposes. The elements of this test are whether the evidence of the historical use and condition a waterway, in this case, the 89-mile study segment of the Rogue River, support a finding that this stretch of the river was:

- Used, or susceptible to being used,
- In its ordinary and natural condition,
- As a highway of commerce over which trade and travel were, or could have been conducted,
- In the customary modes of trade and travel on water at the time of Oregon's statehood (1859).

As you will note in this draft report, DSL has concluded based on the evidence presented in this document, that the 89-mile segment of the Rogue River from Grave Creek to Lost Creek Dam does meet the requirements of the federal test for navigability. However, additional evidence concerning the use and condition of the Rogue River study segment prior to, and since statehood (1859) that you provide to us during the public comment period may result in our changing this preliminary conclusion.

### **We Need Your Input**

We would like you to read this report carefully, and give us your thoughts concerning the accuracy of the data presented in it. We particularly welcome any additional information you might have concerning the historical uses and condition of the waterway that we could use to support or refute the information we have presented in this report.

### **Ways To Give Us Your Input**

There are several ways to provide information:

#### **Attend our public hearing:**

**Wednesday, October 24, 2007 beginning at 7 PM**  
Grants Pass School District Performing Arts Center  
Grants Pass High School  
830 NE 9th Street  
Grants Pass, Oregon

#### **Send us a letter or e-mail:**

E-mail address:      [roguerivercomments@dsl.state.or.us](mailto:roguerivercomments@dsl.state.or.us)

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

The public comment period will remain open until 5 PM Friday, November 9, 2007.

You will have another opportunity to present your comments before the Land Board concerning the content of a revision to this draft report at its March 12, 2008 meeting in Medford. We will send a notice to you confirming the date, time and location of this meeting prior to making the Draft Navigability Report available for review and comment.

If you have any questions, please contact:

Jeff Kroft  
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For the most up to date information concerning DSL's navigability-related activities, check our website at: [www.oregonstatelands.us](http://www.oregonstatelands.us)

## **Proposed Preliminary Findings and Conclusions**

### **ROGUE RIVER DRAFT NAVIGABILITY STUDY REPORT**

#### **Preliminary Findings**

The evidence presented in this report of the historical use and condition of the Rogue River from Grave Creek at River Mile (RM) 68.5 to Lost Creek Dam at RM 157.5 supports a determination that this 89-mile segment of the waterway meets the requirements of the federal test for navigability.

The Department of State Lands has come to this finding based on the following considerations:

- The Rogue River study segment has been used in a variety of ways since statehood. Documented evidence exists that Indians traveled on stretches of the study segment in canoes. In addition, the study segment was also used by ferries, for log driving, by commercial fishermen, for the transportation of passengers and cargo and by various recreational watercraft.
- The general physical orientation of the Rogue River study segment has not changed appreciably since statehood. This conclusion is based on an examination of the maps prepared by early surveyors, and a review of post-statehood maps available to the Department.
- The flow of the Rogue River through the study segment was at the time of statehood greater than it is today. This is not only because of the dams that have been constructed throughout the Rogue River Basin, but also withdrawals that are taken from the waterway for irrigation and municipal and domestic use.
- Most of the recreational watercraft currently used on the Rogue River study segment draw less than 8 inches and can use the study segment with some difficulty at a minimum flow of 900 cubic feet per second (cfs). Based on a model developed by the Oregon Water Resources Department, an 80% likelihood exists that this rate of flow would have occurred throughout the year at the time of statehood (1859).

- Similarly, there is also an 80% likelihood that a flow of 1,000 cfs (which would provide a trip with fewer obstructions) would have occurred throughout the year in 1859.
- Indian dugout canoes of the type used on the Rogue River and in other parts of the Pacific Northwest typically draw 6 to 8 inches. Therefore, they are comparable to canoes, kayaks, drift boats and rafts in current use on the waterway.
- Given that Indian use of canoes has been documented to have occurred prior to, or at the time of statehood at several points along the study segment, and that several of the recreational watercraft currently in use have characteristics similar to Indian canoes, it is reasonable to conclude that a dugout-type canoe could have been used on the entire Rogue River study segment at the time of statehood.

### **Preliminary Conclusions**

In light of the foregoing evidence presented in this study and the above listed conclusions, it is reasonable to conclude that the 89-mile segment of the Rogue River from Grave Creek to Lost Creek Dam, in its ordinary and natural condition, was used, was susceptible to use, or both, as a highway of commerce over which trade and travel were or could have been conducted in the customary modes of trade and travel on water at the time of statehood.