



# Oregon

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**Department of State Lands**

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December 2, 1997

State Land Board

To: Interested Persons

From: Division of State Lands

Subject: Rogue River Navigability Study Request

The Division of State Lands has received a navigability study request from Timothy R. Thompson, District Attorney for Josephine County (pursuant to Oregon Revised Statutes (ORS) 274.400 - 417). The study request covers the Rogue River from Grave Creek (River Mile 68.4) in Josephine County to near the Lost Creek Dam (River Mile 158.0) in Jackson County.

According to the study request, the following problems and issues could be resolved through a navigability study:

- (1) Clarify river bed and bank ownership interests for property owners, river recreationists, law enforcement and local property tax officials, real estate agents and title company reports; and
- (2) Reduce or avert conflicts between recreationists and riverfront property owners.

As provided by law, a navigability study is the process of collecting and evaluating information, and preparing a report relating to the historical use and physical characteristics of a waterway to determine whether it is "navigable." "Navigability" is defined by the criteria established by federal courts, and determines the extent of state ownership of the waterway's bed and banks.



The 1995 Oregon Legislature enacted a statute that requires a careful public study before the State Land Board (on behalf of the state) may assert ownership to a waterway's bed and banks<sup>1</sup>. The study request has initiated a process that may result in such a study for this segment of the Rogue River.

The first step of the process requires that the Division of State Lands (the administrative arm of the State Land Board) determines whether the study request includes all of the information required by the administrative rules (OAR) 141-121-000 through 040 (see attachment) governing navigability studies. Pursuant to those rules, the Division has determined that the study request is complete.

The second step requires the Division to give public notice that a complete study request has been received. This mailing is part of that public notice. To prepare for the third step in the process, the Division is also now soliciting input from members of the public and affected landowners. As part of the third step, the State Land Board will decide whether to formally begin a navigability study for the Rogue River. That decision will be made in public at a regularly scheduled State Land Board meeting after the request has been reviewed by the Joint Legislative Interim Committee on Navigability. As required by law, the Board's decision must be based on whether there is "sufficient economic justification" and/or "broad and substantial public interest" for a navigability study. Those standards are defined at OAR 141-121-020. Based on public input, the Division will recommend to the Land Board whether or not to begin a navigability study.

To emphasize: **no navigability study will begin until the request is reviewed by the Joint Legislative Interim Committee, and the State Land Board makes that threshold decision.** If the State Land Board decides to begin a navigability study, the law requires:

- Additional public notice to affected property owners and other interested persons;
- Preparation and public notice of a draft study report;
- Public hearings on that draft report in the local community; and
- State Land Board action on the draft report.

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<sup>1</sup> By law, "bed and banks" means up to the ordinary high water mark along a waterway.

The Land Board has said that it would begin a navigability study only as a last resort, and would prefer to resolve problems and issues such as those identified in the District Attorney's study request in a less formalized and more collaborative way. Accordingly, the Land Board solicits your comments on the following questions:

- (1) Is there "substantial economic justification" (as defined by rule) for the proposed study?
- (2) Is there a "broad and substantial public interest" (as defined by rule) for the proposed study?
- (3) Are there other ways, other than a formal navigability study, to address the problems and issues identified by the Josephine County District Attorney's request?

Such comments are due **January 16, 1998**. The Division will then report to the Land Board on its review of the study request, along with an evaluation of alternative approaches for resolving Rogue River problems and issues. Please send your comments to:

Shannon Relaford  
Rogue River Navigability Study Project  
Division of State Lands  
775 Summer St NE  
Salem, OR 97310  
(503) 378-3805 extension 271

Any person who wishes to be kept informed on this matter may also send such a request to the above address. Thank you for your interest and assistance.