

RECEIVED

JUL 17 2006

DIVISION OF STATE LANDS

David S. Mann, P.E.
12790 NW Creekview Drive
Portland, Oregon 97229

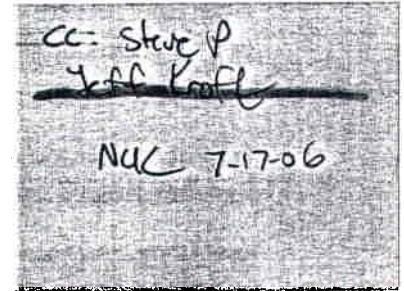
RECEIVED

JUL 17 2006

DIVISION OF STATE LANDS

July 11, 2006

Louise Solliday, Director
Department of State Lands
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279



CERTIFIED MAIL

Re: Request for Navigability Determination by State Land Board on Three Rivers, a Tributary of the Nestucca River near Hebo in Tillamook County

Dear Louise Solliday,

I request that Three Rivers, River Mile 0.0 to 2.0, be studied for a determination of navigability, according to the established procedures under state law. I am sure that this lower reach of Three Rivers, below the Cedar Creek Hatchery and through the town of Hebo, will be found navigable. This request is submitted in accordance with OAR 141-121-000.

Substantial Public Interest in this Study, per OAR 141-121-020(2)(b):

Conflicts between river users and riparian landowners have continued for years on this lower two miles of the river. Last June, I was again assaulted by a landowner immediately below the bridge at Cedar Creek, for the second time. This man, who claims to own the entire riverbed, would not wait for the police to arrive, instead he would physically drag me to shore from my casting spot in mid-river. He was extremely vociferous and aggressive.

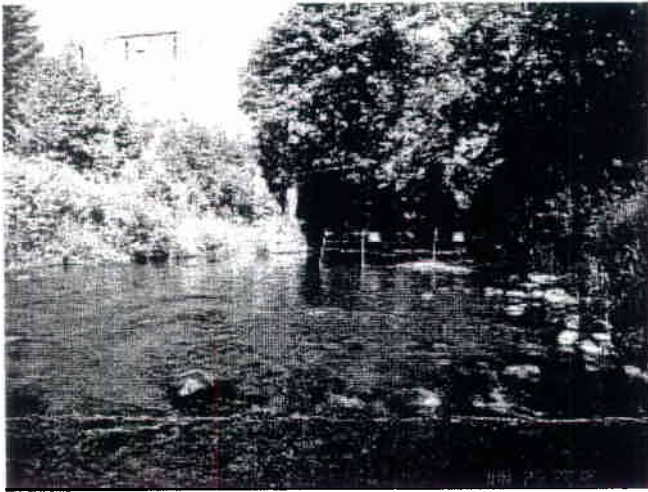
The only witness to this assault was his wife, watching from the bridge above. Lacking any impartial witness, it seemed unwise to risk defending myself, as any defense might likely cause him an injury. As I backed away, staying just out of his reach as he waded into the river to beat me up, I felt that I was backing away from a lawsuit that I could only lose. I left the river on the opposite bank and eluded him.

I escaped safely, but an enraged bully of a man had just deprived me of my right to wade on the bed of an obviously navigable river. Many of my fellow anglers on Three Rivers have told me about being assaulted by this man. He operates an exclusive private fishing club here, charging hundreds of dollars per day to fish for the abundant salmon returning to the state hatchery at Cedar Creek. Everybody who fishes Three Rivers seems to have an unpleasant story about meeting this person, who spares no abuse to exclude strangers from his "private river." The Tillamook County Sheriff's Office keeps a large, confidential complaint file for this location which they might or might not allow DSL to review.

On July 1st, I was immediately downstream from (northwest of) his fishing club when a kayaker floated by:



The kayaker told me that the private club's stretch of the river contained several large boulders but these had not impeded his passage. He saw four pools full of huge salmon, but saw no people, as nobody was fishing there. The only hazard he noticed was a section of barbed wire fencing at the downstream end of this club, which he carefully paddled around. I had photographed this fencing a few days before:



On July 2nd I was again on Three Rivers near my conversation with the kayaker. I was fishing from undeveloped land owned by the Stimson Timber Co. Three men were standing in shallow water across from me on undeveloped Stimson Timber Co. land, similar land but posted "Private." This place is called the "Heart-Attack Hole." Nobody lives there and I seldom see anybody over there. It is an ideal location for an additional private fishing club on Three Rivers. In fact it may already be one, as Stimson employees seem to be excluding the public with the help of the OSP (Oregon State Patrol).

That day I saw an OSP wildlife officer sneak up behind the three men and crouch down. He watched them fish for about 15 minutes, then came out from hiding and checked their licenses. Finally he declared that they were trespassing on private property, and ordered them across to the other Stimson Timber property, on the side of the river where I stood.

Shagging people from one private property to another on Three Rivers shows the confusion among OSP officers about the public's rights on a navigable river. The Tillamook County District Attorney routinely prosecutes for trespassing here, according to a Tillamook County Sheriff's Deputy, in response to my questions.

In fact the entire riverbed of Three Rivers between its mouth and River Mile 2.0 is privately owned. Thus any person is subject to being fined for trespassing, whether wading in, hiking along, or fishing anywhere on Three Rivers from the Cedar Creek Bridge down to the mouth.

Until the Land Board makes a determination of navigability here, Three Rivers is effectively closed to legal public use and public fishing. This amounts to a private 2-mile salmon and steelhead paradise with its own state hatchery. Two questions arise:

- Why is the state operating a hatchery here that primarily benefits a private fishing club? During the river's 5-week summer season, when the salmon are running, they rest in those 4 "private" pools below the bridge. There is no better holding water for salmon on Three Rivers, and no water that is legally open for fishing by

the public. Nearly all the salmon that are successfully landed on Three Rivers are taken from those 4 "private" pools.

- Why are the rest of Oregonians deprived of a legal right to use and enjoy this beautiful little river?

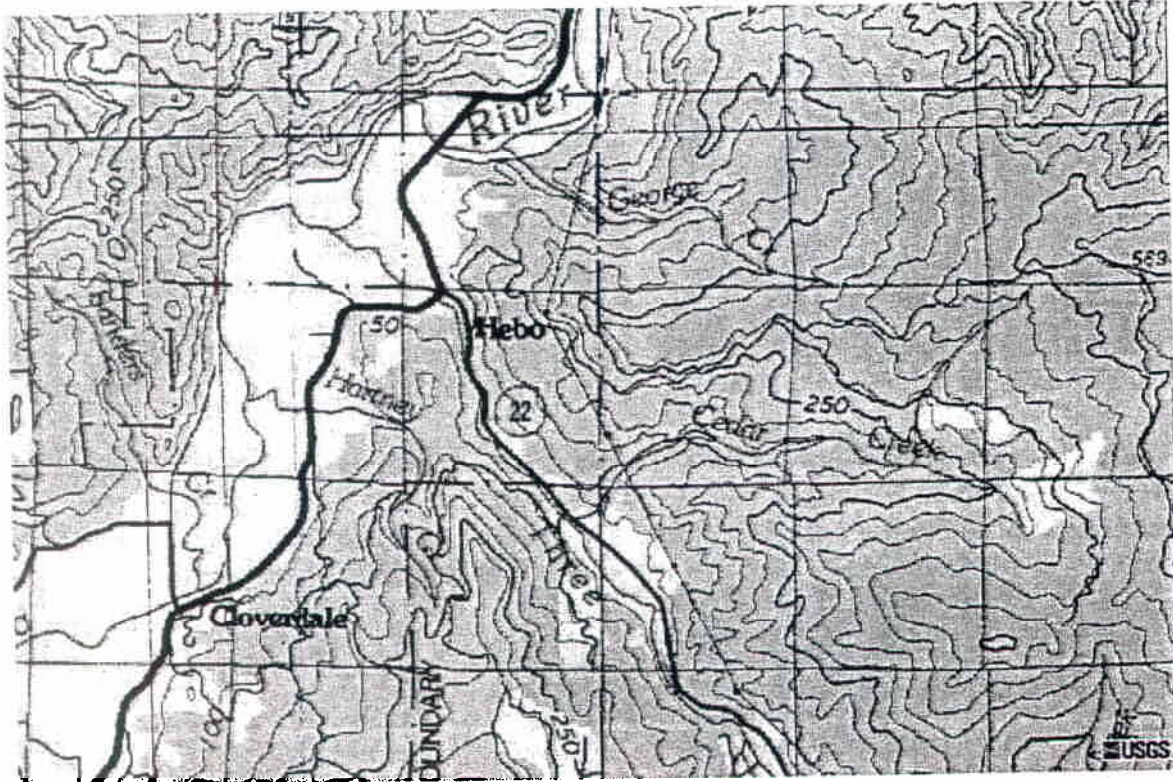
Is there a public interest in these questions? Despite the river's long history of navigation and log transport, all of the riparian landowners hotly dispute whether the river is navigable. With their aggressive and confrontational tactics, and with the assistance of OSP and the county sheriff, various landowners have succeeded in excluding the public entirely from the bed and banks of Three Rivers.

This exclusion is unfair because Three Rivers is so obviously navigable. It adds to the injustice that ODFW is inadvertently operating a state hatchery here which over the years has come to serve exclusive private fishing clubs, much more than it serves the angling public.

When people are threatened and cursed, most people leave the area even though they feel they have the right to be there. We can only avoid future conflicts with landowners on Three Rivers through action by DSL. Because of the ongoing conflicts here, DSL should conduct an expedited navigability study on the lower 2 miles of river where conflicts are taking place, and immediately ask the Land Board to clarify the navigability of this limited area for local law enforcement.

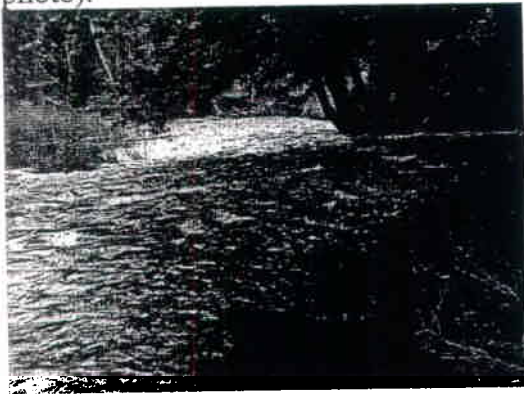
Evidence of Navigability, per OAR 141-121-020-(2)(d):

An objective study of the river's history would show that Three Rivers was navigable at the time of statehood. Despite a short portage around the ODFW hatchery barrier at Cedar Creek, it remains navigable today. Downstream from Cedar Creek, Three Rivers is freely floatable to its mouth on the Nestucca River, northwest of Hebo (see map). This is a distance of about two miles.



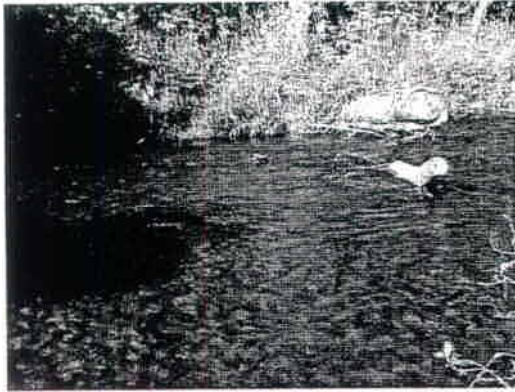
Three Rivers flows NW to the Nestucca River

Several large rocks have been placed in the river to improve fish habitat and create holding pools on the private fishing club below Cedar Creek, but these rocks do not block navigation. Obviously at low summer flows, caution is warranted at all rapids (see photo).

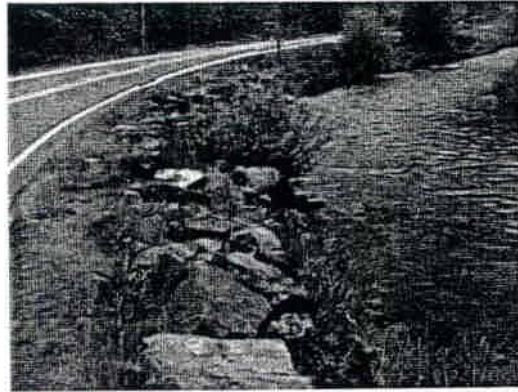


Bad rapids – stay left!

Fallen trees occasionally present hazards that must be portaged around, or sawed through. Numerous cut deadfalls can be found all along Three Rivers downstream from Cedar Creek, where fishing guides and recreational rafters and drift-boaters have used chain saws to keep the river open for floating.



Deadfalls cut off by boaters - RM 1.3



Typical flow at S-curve east of Hebo - RM 1.0

During the 1996 flood, the riverbanks were scoured and the river was clogged with fallen trees. The alders shown below were nearly lost, but their roots held and they are still standing west of the Highway 101 Bridge. The evidence will show that the river is now fully navigable from Cedar Creek at River Mile 2 to its mouth.



In conclusion, this request documents a broad public interest for a determination of navigability from River Mile 0 to 2.0. After a positive navigability report from DSL to the State Land Board, the Land Board should urgently clarify the public's right to hike, wade, and fish along the banks of Hebo's pleasant little river under the protection of law. In time, the unseemly threats and abuse from landowners would cease.

Sincerely,

David S. Mann, P.E.

cc: State Land Board members Kulongoski, Bradbury, and Edwards