

September 5, 2006

**FROM:** Steve Purchase  
Assistant Director, Land Management

**TO:** Interested Persons

**SUBJECT: NOTICE OF RECEIPT OF NAVIGABILITY STUDY REQUEST  
FOR A TWO-MILE SEGMENT OF THREE RIVERS**

This is to advise you that the Department of State Lands (Department) has received a navigability study request from David S. Mann for River Mile 0.0 (the confluence of Three Rivers with the Nestucca River) to River Mile (RM) 2.0 (approximately 1,000 feet downstream of the confluence of Cedar Creek).

#### Purpose of a Navigability Study

The purpose of a navigability study is to determine if the ownership of a waterway was transferred to the state from the federal government at statehood in 1859. Through the conduct of a navigability study, the ownership of the submerged and submersible land below the line of ordinary high water of a waterway can be established with certainty – in this case, the two-mile segment of Three Rivers.

The test used to determine whether a waterway such as the two-mile segment of Three Rivers is navigable for title, that is, ownership purposes, was first established by the United States Supreme Court in 1871. The elements of the test are whether a waterway at the time of Oregon statehood in 1859:

- Was used or was susceptible to being used;
- In its natural and ordinary 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.

#### Department Determination

Oregon Revised Statutes (ORS) 274.400 to 274.412 and Oregon Administrative Rules (OAR) 141-121-0000 through 141-121-0040 (copies of which are attached) provide the process the Department will use to conduct a navigability study. OAR 141-121-0020 specifically addresses the criteria that a person requesting a

navigability study must meet in order for the Department to determine if the request is complete. Based on an evaluation of Mr. Mann's navigability study request given the requirements of OAR 141-121-0020(2) of the administrative rules governing the conduct of navigability studies, the Department has determined that the request is complete.

### What We Want to Know From You

In his navigability study request, Mr. Mann contends that numerous conflicts have occurred between the owners of adjacent upland and recreationists concerning who owns the submerged and submersible land below the line of ordinary high water along the two-mile segment of Three Rivers. He describes one recent experience he had with a landowner who claimed that he owns "the entire riverbed" adjacent to his property.

We would like to know from you:

- (1) If you believe there is either a broad and substantial public interest or sufficient economic justification (as defined in the rules) for the Department to conduct a navigability study of the requested two-mile segment.
- (2) If you know of any other ways to resolve the problems raised by Mr. Mann other than the conduct of a navigability study by the Department.
- (3) If you are a landowner, what problems have you experienced with recreational users along Three Rivers?
- (4) If you are a recreationist, what problems have you experienced when you have used the submerged and submersible land along the waterway?

Please send us your comments and other information you believe will be helpful to us no later than October 31, 2006. The Department will use your input to prepare its agenda item to the State Land Board requesting authorization to conduct the navigability study of the two-mile segment. You should submit your input to:

Navigability Study Request Group  
Oregon Department of State Lands  
775 Summer Street N.E., Suite 100  
Salem, Oregon 97301

or via e-mail to the following address:

Threerivers@dsl.state.or.us

It is important that you know that no navigability study will begin until such time that the State Land Board directs the Department to conduct it. If the Land Board does decide to direct the Department to conduct a study, you will be notified in writing.

If you would like to learn more about navigability studies and the navigability study process, please go to the Department's website at:

<http://www.oregonstatelands.us/DSL/NAV/index.shtml>

For your information, attached to this letter are:

- A copy of Mr. Mann's request for a navigability study;
- Copies of the statutes and administrative rules governing the conduct of a navigability study.

We appreciate your interest. If you have any questions, please contact me.