



Oregon

Theodore R. Kulongoski, Governor

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May 15, 2008

TO: Interested Persons

FROM: Louise Solliday
Director

SUBJECT: **Rogue River Navigability Report**
• **Notice of Land Board Meeting, and**
• **Availability of Navigability Report**

State Land Board

Theodore R. Kulongoski
Governor

Bill Bradbury
Secretary of State

Randall Edwards
State Treasurer

Land Board Meeting Notice

This notice is to advise the public that the State Land Board will meet on Tuesday, June 10th, 2008 at 10 AM in the Land Board Room, Department of State Lands (DSL) Building, 775 Summer Street N.E., Salem, Oregon 97301-1279 to consider the evidence in the public record and the DSL's findings and conclusions as contained in the Final Navigability Report, and to make a decision concerning the nature and extent of the state's claim to the land underlying the 89-mile study segment extending from Grave Creek (RM 68.5) to Lost Creek Dam (RM 157.5). Based on the information provided, the Land Board may adopt the findings and conclusions contained in the Final Navigability Report if substantial evidence in the public record supports the report's findings and conclusions. The Land Board will not take testimony at this meeting.

This meeting will be held in a facility that is accessible for persons with disabilities. If you need assistance to participate in this meeting due to a disability, please notify Lorna Stafford at 503-986-5224 or lorna.stafford@state.or.us at least two working days prior to the meeting.

Findings

The following findings are based upon the agency record:

- (1) The Rogue River study segment has been used in a variety of ways both before and since statehood. Among these uses include: Indian canoe and raft use; cable ferries; the transport of people and goods on boats; commercial fishing from boats; as a mode of transport for logs; and various recreational watercraft
- (2) The use of canoes by Indians was reported by early explorers during the 1840s and 1850s at or in the vicinity of RM 79.5, 95 (Applegate River), 102 (Grants Pass), and 110.5 (Evans Creek). An oral history taken of one of the last members of the Takelma Tribe also reports that canoes were portaged at Rainie Falls (RM 66) and "upriver of Galice Creek." In

addition, there is reference to the use of log rafts by Indians living upriver from Table Rock (RM 131).

- (3) Ferries were operated from the 1850s to early 1900s at approximately RM 81, 90, 95, 102, 107.5, 110.5, 131.5, 140 and 146.
- (4) Wooden boats were used from the late 1890s to the early 1900s to transport goods and people primarily from Grants Pass (RM 102) to various points downriver (Gold Beach at RM 0.0, Mule Creek at RM 47.5, Missouri Bar at RM 51, Winkle Bar at RM 53, and Russian Charlie Bar at RM 63). Evans Creek (RM 110.5) was also identified as the starting point for one trip downstream.
- (5) Commercial fishing for salmon from boats was conducted during the 1890s through the mid-1930s from Dead Man's Island (RM 101.5) near Grants Pass to Hog Creek Landing (RM 83).
- (6) Log drives were reported to have been conducted on an occasional basis and often with difficulty, from the 1880s to 1916 between various points on the upper study segment to Tolo/Gold Ray Dam (RM 125.5).
- (7) Boating recreationists use a wide variety of watercraft along the entire 89-mile study segment.
- (8) Although the general orientation of the Rogue River remains the same as it was at statehood, it has changed its course along various lengths of the study segment due to avulsion and accretion, a process that continues.
- (9) The flow of the Rogue River through the study segment was, at the time of statehood, likely equal to or greater than it is today.
- (10) Most of the recreational watercraft currently used on the Rogue River draw less than 8 inches when loaded with people and gear, and many 6 inches or less, and can use the study segment at a minimum flow of 800 to 900 cubic feet per second (cfs) with occasional scraping of the bottom of the watercraft or the need to portage around some obstacles.
- (11) Flows of 1,000 cfs enable watercraft to use the water more easily, with a flow on the order of 1,400 cfs providing an even more pleasant experience.
- (12) The United States Geological Survey (USGS) has determined that the minimum average monthly flow (after withdrawals for irrigation, municipal and domestic purposes) prior to the completion of Lost Creek Dam in 1977, at various points along the study segment over various recording periods, was 1,160 cfs in August at Grants Pass (RM 102).
- (13) The Oregon Water Resources Department reports: (a) an 80% likelihood exists that a flow of 1,000 cfs or more would have occurred at the time of statehood at all points along the study segment throughout the year, except in September, at the confluence of Elk Creek (RM 152); and (b) a 50% likelihood exists that the lowest flow at any point along the study segment would be 1,150 cfs in October at the confluence of Elk Creek (RM 152).
- (14) Indian dugout canoes and some other watercraft used in the Oregon Territory at the time of Oregon statehood had a draft of 6 to 8 inches of

- water. Current recreational watercraft now used throughout the study segment have the same floatability characteristics (3 to 8 inches of draft).
- (15) There is no evidence that the federal government reserved any portion of the study segment for any purpose prior to statehood that would prevent the transfer of ownership of the study segment to the state.

Conclusions

DSL concludes that in 1859 the 89-mile study segment of the Rogue River was used or susceptible to being used in its ordinary and natural condition as a highway of commerce over which trade and travel could have been conducted in the customary modes of trade and travel at that time; and that the federal government did not reserve any portion of the study segment for any purpose prior to statehood that would prevent the transfer of ownership of the study segment to the state; and that the state has owned the land underlying the study segment of the Rogue River since statehood.

Furthermore, the state's ownership extends to all lands located below the line of ordinary high water along the 89-mile study segment, unless lawfully conveyed or granted to another entity by the state since statehood and as affected by the principles of accretion, erosion and avulsion. The nature of the ownership includes two components: fee simple title (the *jus privatum*) and dominion as the public's trustee over the natural resource for public trust uses such as navigation, commerce, fisheries and recreation (the *jus publicum*).

How to Obtain a Copy of the Navigability Report

You can obtain a copy of the report from DSL's website:
www.oregonstatelands.us or by sending an e-mail request to
roguerivercomments@dsl.state.or.us or by calling 503-986-5200.