

THE HIGH, THE LOW, THE MEAN, AND THE THREAD

DETERMINING RIPARIAN OWNERSHIPS

THE HIGH, THE LOW, THE MEAN AND THE THREAD

Definitions

ORS 274.005
 "Line of ordinary high water" means the line on the bank or shore to which the high water ordinarily rises annually in season.

"Line of ordinary low water" means the line on the bank or shore to which the low water ordinarily recedes annually in season.

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Definitions

ORS 274.005
 "Submerged lands," except as provided in ORS 274.705, means lands lying below the line of **ordinary low water** of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

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Definitions

ORS 274.005
 "Submersible lands," except as provided in ORS 274.705 means lands lying between the line of **ordinary high water** and the line of **ordinary low water** of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

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Definitions

Thread
 A figurative expression used to signify the central line of a stream or water course.

Thalweg
 The middle of the chief navigable channel of a waterway that forms the boundary line between states

A line following the lowest points of a valley

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Definitions

Thread and Thalweg are sometimes used interchangeably, however, while the Oregon Revised Statutes cite the "thread of a stream" (ORS 93.310), it is not defined.

General usage defines the "thread" as the center of the main or deepest channel of the stream at its **lowest flow**.

This allows the riparian owners on each side of the stream, access to the water at any stage.

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Rules for construing the description of real property

ORS 93.310

When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road, or the **thread** of the stream, are included in the conveyance, except where the road or bed of the stream is held under another title.

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Rules for construing description of real property

ORS 93.310

When tidewater is the boundary, the rights of the grantor to **low watermark** are included in the conveyance, and also the right of this state between high and low watermark.

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Jurisdiction over submersible and submerged lands generally

ORS 274.025

The title to the submersible and submerged lands of all navigable streams and lakes in this state now existing or which may have been in existence in 1859 when the state was admitted to the Union, or at any time since admission, and which has not become vested in any person, **is vested in the State of Oregon...**

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State ownership of meandered lakes

ORS 274.430

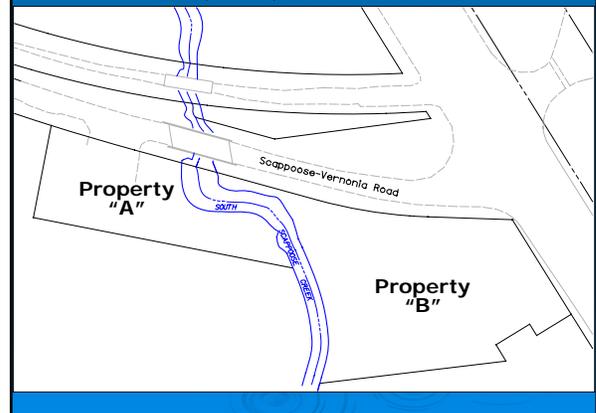
All meandered lakes are declared to be **navigable and public waters**. The waters thereof are declared to be of public character. The title to the submersible and submerged lands of such meandered lakes, which are not included in the valid terms of a grant or conveyance from the State of Oregon, **is vested in the State of Oregon.**

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Examples of calls in a deed which might indicate a riparian ownership:

- ...to the river
- ...to the bank of the river
- ...to the center of the river
- ...along the bank of said river
- ...along the margin of said river
- ...bounded by the river
- ...thence leaving said river

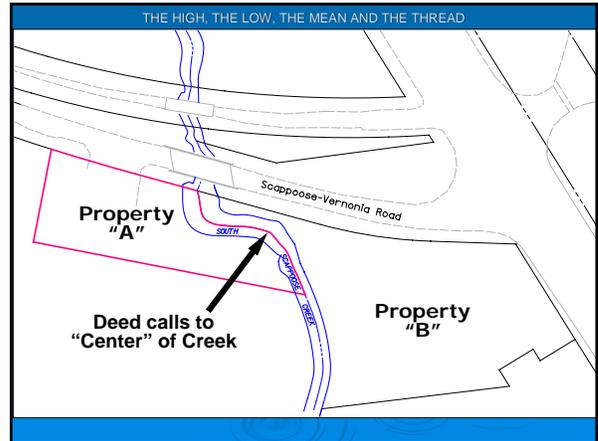
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Property "A"

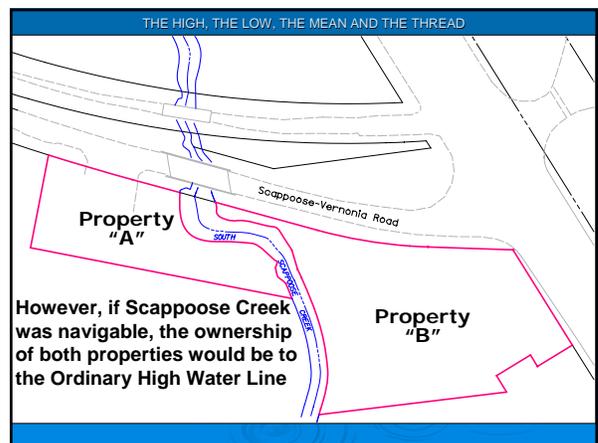
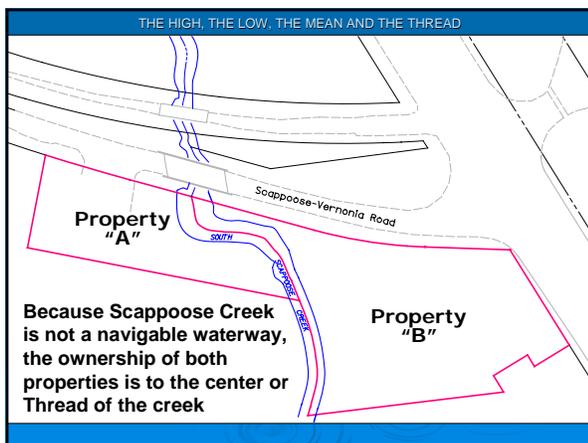
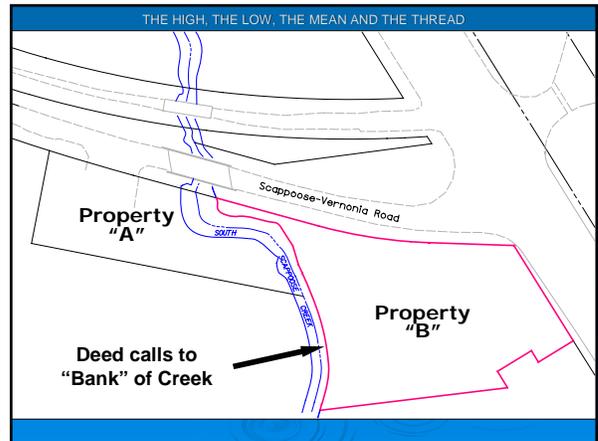
... said point being on the Southwesterly right of way line of the Scappoose-Vernonia Highway; thence South $36^{\circ} 39'$ West a distance of 120.00 feet; thence South $53^{\circ} 21'$ East a distance of 240 feet, more or less, to the **center line of Scappoose Creek**; thence Northerly down said center line a distance of 110 feet, more or less, to said right of way line; thence following said right of way Northwestery a distance of 200 feet, more or less, to the point of beginning.



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Property "B"

...thence Northerly along the Westerly line of said highway to the point of intersection with the North line of the said Benjamin M. Watt Donation Land Claim; thence Westerly along the said North line of the Watt Donation Land Claim to the Northwest corner thereof; thence Southerly **along the East bank of S. Scappoose Creek** to the North line of said tract of land described in Book 5, Page 191, Deed Records of Columbia County, Oregon; thence leaving the said East bank of South Scappoose Creek South $68^{\circ} 30'$ East to the place of beginning.



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"...from said point of beginning, South 170 feet; thence west 147.5 feet to the center of Smith Creek; thence North 62° 45' East 91.5 feet; thence North 28° 10' East 93.1 feet; thence East 101 feet to the point of beginning."

Is the West line a riparian boundary?

Deed call in center of Smith Creek

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"...from said point of beginning, South 170 feet; thence west 147.5 feet to the center of Smith Creek; thence North 62° 45' East 91.5 feet; thence North 28° 10' East 93.1 feet; thence East 101 feet to the point of beginning."

What if the deed calls of the West line fall across the creek?

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"...from said point of beginning, South 170 feet; thence west 147.5 feet to the center of Smith Creek; thence North 62° 45' East 91.5 feet; thence North 28° 10' East 93.1 feet; thence East 101 feet to the point of beginning."

What if the deed for the adjoining property calls "...bounded on the East by Smith Creek..."

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"...from said point of beginning, South 170 feet; thence west 147.5 feet to the center of Smith Creek; thence North 62° 45' East 91.5 feet; thence North 28° 10' East 93.1 feet; thence East 101 feet to the point of beginning."

A survey filed with the County at the time of the deed shows the creek along the West line. Would this change your interpretation?

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Examples of Riparian Ownerships

"...from said point of beginning, South 170 feet; thence west 147.5 feet to the center of Smith Creek; thence North 62° 45' East 91.5 feet; thence North 28° 10' East 93.1 feet; thence East 101 feet to the point of beginning."

What if the survey shows Smith Creek flowing across the property?

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Conclusions

- Along navigable waterways, private ownership generally goes to the Ordinary High Water Line
- Along non navigable waterways, private ownership generally falls to the thread of the stream
- A riparian ownership may not be apparent just by inspection of the deed