

Notice of Initiation of John Day River Navigability Study

November 14, 2003

TO: Landowners Adjacent to the John Day River and Interested Persons
FROM: The Division of State Lands
SUBJECT: Notice of Initiation of Navigability Study for the John Day River

This notice is to advise you that the Division of State Lands (DSL) has initiated a study to determine the title navigability of the John Day River from Tumwater Falls (approximately River Mile 10) to Kimberly (approximately River Mile 184).

Background

The process used to determine the ownership of the bed and banks of Oregon's waterways is governed by ORS 274.400 to 274.412 (enacted by the Oregon State Legislature in 1995) and the administrative rules implementing these statutes (OAR 141-121-0000 through 141-121-0040).

In July 1997, pursuant to these statutes and administrative rules, the John Day River Chapter of the Association of Northwest Steelheaders submitted a request to DSL to conduct a navigability study of a segment of the John Day River extending from Tumwater Falls (approximately River Mile 10) to Kimberly (approximately River Mile 184). Since that time, various government agencies, legislators, river users, and landowners have attempted to find a solution to the problems attendant with the public's use of the bed and banks of the John Day River to avoid the necessity of conducting a navigability study. However, these activities have not been successful. One recent action clarifying the public's rights to use the bed and banks of the John Day River was a Marion County Circuit Court decision in March 2002 that established the waterway is navigable near McDonald Ferry (RM 18-20) and Burnt Ranch (RM 135). That decision is under appeal to the Oregon Court of Appeals and a final judgment is not expected until mid-year 2004 at the earliest. That decision also directed the Land Board to take action on the navigability study request submitted by the John Day River Chapter of the Association of Northwest Steelheaders.

Land Board Action

At its October 8th 2002 meeting, the Land Board decided that there was a "broad and substantial public interest" in having a navigability study conducted of the John Day River from RM 10 to 184. The Land Board at the same time directed DSL to delay conducting the study until the Oregon Legislative Assembly had the opportunity during its 2003 session to consider the issues of ownership and use of the bed and banks of the state's waterways that have not been determined to be navigable, and alternative solutions to the navigability question.

With the close of the 2003 legislative session, DSL is now commencing this study pursuant to the Land Board's direction.

The Next Steps

Over the next year DSL will undertake a study of the title navigability of the 174 mile segment. This effort will involve collecting and reviewing historical evidence obtained by DSL to see if it meets the requirements for navigability established by the federal courts.

These are:

- (1) The waterway must be capable of, or susceptible to use as a highway for the transportation of people or goods;
- (2) Transportation must be conducted in customary modes of trade and travel on water;
- (3) The waterway must be navigable in its natural and ordinary condition; and
- (4) Navigability is determined as of the date of Oregon's statehood (February 14, 1859).

Upon completion of this effort, DSL will give public notice of the availability of the draft study report for public review, and then conduct a public hearing in the vicinity of the John Day River area to obtain further input and comments. As the navigability study proceeds, you will be kept informed of opportunities to participate in, and comment on the draft navigability study reports, findings and conclusions, and other documents. A section of DSL's website at: <http://www.oregonstatelands.us/> will be dedicated to reporting the progress of this study and opportunities for public involvement.

It is important that you know that the authorization by the Land Board to proceed with the navigability study effort does not necessarily mean that the John Day River will be found to be a navigable waterway. This authorization only gives DSL the "go ahead" to collect whatever evidence is available concerning the types and extent of past use of the 174 mile segment of the John Day River, and to see if this information meets the federal requirements for navigability mentioned above. Other than the courts, only the Land Board, based on the evidence presented to it by DSL and via public input, can develop an official state position concerning the title navigability of the John Day River.

Questions?

If you have questions concerning this notice, please contact:

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