

March 26, 2008

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

RE: Comments on Department of State Lands Rogue River Navigability Study

Dear Governor Kulongoski, Secretary of State Bradbury, and State Treasurer Edwards:

Based on evidence presented by DSL staff we agree with the finding that the 89-mile segment of the Rogue River from Grave Creek to Lost Creek Dam does meet the requirements of the federal test for navigability.

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954. We have over 6,500 members and 100 local-based affiliate clubs, representing approximately 80,000 whitewater paddlers across the nation. American Whitewater's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely. Enjoying rivers requires sufficient flow and with many demands on water resources our rivers provide, an important part of our work is determining instream flow needs for recreation. For several years we have been recognized as leaders in the field of determining instream flows for recreation. Through our membership in the Hydropower Reform Coalition we co-published the "Flows and Recreation: A Guide to Studies for River Professionals" with the National Park Service.<sup>1</sup> We wish to commend the staff at the Department of State Lands for producing a high quality report that is well researched.

We understand that you have invited testimony on two questions:

1. Does the factual evidence presented in the second draft of the Rogue River navigability study meet the federal test for navigability?
2. Should the Land Board, based on the factual evidence contained in the second draft of this study, make a declaration of public ownership of the 89-mile segment of the Rogue River from Grave Creek (RM 68.5) to Lost Creek Dam (RM 157.5)?

Based on the professional judgment of staff from our organization who have experience with well over 100 flow studies to determine navigability, we agree that the factual evidence presented clearly demonstrates that the river meets the federal test for navigability. The specific evidence that most of the recreational watercraft currently used on the Rogue River study segment are comparable to watercraft used at statehood and draw less than 8" is correct, and we agree that these craft can use the river at flows of 900 cubic feet per second. We believe staff have been conservative in this assessment and based on our personal inspection of the river it's likely that watercraft can navigate this

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<sup>1</sup> This document can be downloaded from the National Park Service at  
<http://www.nps.gov/ncrc/programs/hydro/flowrec.htm>

stretch at lower flows. However the assumptions made in the report are appropriate for the analysis conducted. We agree with the conclusion that it is reasonable to conclude that this reach of the Rogue River “was used, was susceptible to use, or both, 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 at the time of statehood.”

Based on the evidence presented—which in our experience is one of the most comprehensive studies conducted on a river any where in the country—we agree that the river was clearly navigable in 1859. Therefore the river has and continues to be owned by the public. A declaration of public ownership will clarify confusion on this point and is essential to management of the river in a manner consistent with state law.

On behalf of our membership including residents of Oregon and visitors from neighboring states who come to enjoy the world-class recreational opportunities on this river we appreciate the resources Department of State Lands have invested in a careful review of the facts and history of this river. Based on these facts the Rogue River clearly meets the requirements of the federal test for navigability.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. O'Keefe', with a stylized flourish at the end.

Thomas O'Keefe, PhD  
Pacific Northwest Stewardship Director