



# Oregon

Tina Kotek, Governor

## Department of State Lands

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### State Land Board

March 13, 2025

Tina Kotek  
Governor

To: Senate Committee on Natural Resources and Wildfire  
Chair Golden, Vice Chair Nash, Members of the Committee

Tobias Read  
Secretary of State

From: Bill Ryan, Deputy Director, Aquatic Resource Management

Elizabeth Steiner  
State Treasurer

Re: Testimony on Senate Bill 74 as Amended

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Chair Golden, Vice-Chair Nash, and Members of the Committee. My name is Bill Ryan, and I am the Deputy Director of Aquatic Resource Management at the Oregon Department of State Lands. I appreciate the opportunity to speak with you today about Senate Bill 74. DSL has provided the -1 amendment for discussion purposes only today, which illustrates the general direction of this concept. An updated amendment is forthcoming.

The Department of State Lands supports SB 74 with the forthcoming amendment, and we would be happy to work with interested stakeholders on final language as this work continues.

I appreciate the opportunity to speak with the committee regarding SB 74 as amended focusing on how waterways are determined to be navigable, and therefore Oregon-owned. I am going to provide a brief overview of how Oregon's publicly owned rivers, lakes, and streams help our state thrive, then walk through how waterways become Oregon owned, and the complexities of determining ownership.

Many Oregon rivers and lakes are publicly owned and open for all to use and enjoy. The Department of State Lands oversees these Oregon-owned waterways on behalf of the State Land Board.

The Public Trust Doctrine protects the public's right to use the "beds and banks" of these waterways for navigation, fishing, commerce, and recreation. The people of Oregon are compensated for the use of Oregon-owned waterways. Marinas, docks, floating homes, bridges, and pipelines are types of uses that require approval from DSL and payment.

The DSL team also works collaboratively with communities and organizations to provide stewardship of Oregon-owned waterways, including through a new program to remove and prevent hazardous vessels, and investments in community-led enhancement projects which you heard about earlier this session in relation to SB 795.

Many river segments, streams, and lakes are Oregon-owned, as is the territorial sea – the Pacific Ocean from shoreline to three geographical miles offshore.

At statehood, all navigable and tidally influenced waterways became Oregon-owned. Those waterways explicitly included the territorial sea, coastal bays and estuaries, and coastal rivers to head of tide.

For other waterways, action was needed to determine whether the waterway was navigable and Oregon-owned. Since 1859, more waterways – including many major rivers and lakes – have been determined to be navigable through court decisions, legislative actions, or navigability declarations by the State Land Board.

Our focus today is that final highlighted pathway to determine ownership – a state navigability declaration.

Navigability determinations must answer two key questions. First, could the waterway have been used for trade and travel at the time of statehood?

A waterway meets the federal test of navigability and can be declared “navigable-for-title” and Oregon-owned if, at the time of statehood, it was used or was susceptible to use, in its ordinary condition, as a highway of commerce over which trade and travel was or could have been conducted in the customary modes of trade and travel on water.

The second key question is, what exactly is Oregon-owned? The location of the land being claimed by the state must be clearly described using common descriptions or maps. Administrative rule lays out the steps the Land Board and the Department must take to answer those questions and declare a waterway navigable-for-title, and therefore Oregon-owned.

The State Land Board must first direct the Department to conduct a navigability study. The study process includes multiple points of notice to property owners, the public, and interested parties. The process also includes opportunities for review and comment as a draft, then a final navigability report is prepared for Land Board consideration. The Land Board will ultimately consider the full record, and the final report, and decide whether to issue a final written navigability declaration.

Declaring state ownership of rivers is currently a particularly complex and costly challenge. State ownership is typically the riverbed and riverbank to the line of ordinary high water. This boundary line is generally where you see shrubs, trees, and other plants growing along the shoreline. But rivers change over time.

The graphics in our presentation illustrate change over time. The red is the approximate river channel at statehood. The blue is the approximate location of the river channel today.

Under the principles of common law, when change happens gradually through accretion, the property boundary shifts with the river channel. But when change happens suddenly, due to flooding, people adding or removing materials, or another avulsive event, the property boundary stays where it was immediately before the sudden change.

That brings us to the problem.

To declare a waterway navigable-for-title and Oregon-owned, existing law requires the state to exactly map *all* gradual *and* sudden changes that have happened since statehood. The mapping process is costly and lengthy. We must identify and analyze every change that's occurred over the past 165 years, and whether that change was gradual or sudden, for what can be hundreds of river miles.

The property boundary depends on the type of change, so there is uncertainty regarding the state's potential ownership claim for much of a very long process. This ongoing lack of clarity is difficult for both river-adjacent property owners and communities.

For sudden changes, the state may end up owning dry land far from the river. And private parties may own some segments of riverbed and riverbank. When looking at our slides you can clearly see the issue.

If the shift from red to blue happens gradually through accretion (shown on our slides), the current property boundary is approximately with the blue. If the change happened suddenly with a flood, someone adding materials, or some other *avulsive* event, the state must analyze where the river channel was immediately before the change – red, blue, somewhere in between – to determine where ownership is.

[sideboard: definition - In law, avulsion refers to the sudden loss of land due to water, such as a flood or a change in the course of a body of water. Avulsion is different from accretion or alluvion, which is the gradual change to land that occurs when it's next to water.]

Exchanging land to ensure public ownership of riverbeds and banks must by law occur AFTER the exact mapping is complete and the Land Board declares a river navigable and Oregon-owned. Legal challenges and appeals can follow a navigability declaration, extending what is already a lengthy process. This creates extended uncertainty for adjacent private landowners and potentially impacts property sales or improvements.

SB 74 will help the Department and landowners understand navigable waterways in Oregon by providing a straightforward option for declaring Oregon ownership as the current riverbed and bank to the line of ordinary high water. This streamlines the process of determining a river navigable while still allowing flexibility for existing requirements to map all changes since statehood as an option for adjacent landowner preference and to avoid unlawful taking of property. This is currently a cumbersome process. By making the changes in SB 74, we can avoid costly litigation and extensive mapping requirements.

The bill also allows the Department to exchange deeds with property owners affected by any future navigability declarations, and rather than seeking an equal exchange of property value, the Department will prioritize ownership of the river where it is today to better preserve public access. The Department may also file the declaration of ownership with the county Clerks for recording to ensure landowners' cloud on titles are cleared.

With the passage of SB 74 as amended, the statutory changes will improve the navigability process, which includes more certainty for private landowners and Oregonians, a less costly and faster process

for all parties, and overall fewer state resources needed for completing navigability studies and the resulting declarations.

Thank you for the opportunity to provide this testimony. I am happy to answer any questions.