



Oregon

Tina Kotek, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

April 29, 2025

Tina Kotek

Governor

House Agriculture, Land Use, Natural Resources and Water

Co-Chair Owens, Co-Chair Helm, Vice Chair Finger McDonald and members of the committee

Tobias Read

Secretary of State

Vicki L. Walker, Director

Elizabeth Steiner

State Treasurer

Re: Testimony in Support of Senate Bill 74A

Co-Chair Owens, Co-Chair Helm, Vice-Chair Finger McDonald, and members of the committee. My name is Vicki Walker, and I am the Director of the Oregon Department of State Lands. I appreciate the opportunity to speak with you today about Senate Bill 74A

I'm proud to share that DSL is in support of SB 74A.

I would like to start off by stating on the record that we appreciate all of the organizations and individuals who came together and worked with DSL staff on the amended version of the bill while it was in the Senate, which captures both technical fixes and essential clarification.

Before I move into the specifics of what SB 74A does, I will provide a high-level presentation of how waterways are determined to be navigable, and therefore Oregon-owned.

I'm going to provide a brief overview of how Oregon's publicly owned rivers, lakes, and streams help our state thrive, then I will walk you through how waterways become Oregon owned, and the complexities of determining ownership. But first, I just have to say it has been an honor serving as the Director of the Department of State Lands, working with this team to protect Oregon's waterways and ensuring the public has access to these beautiful spaces that make Oregon a wonderful place to call home.

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

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 all types of uses that require approval from DSL and payment for that use.

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.

During our conversations in the Senate there was some confusion regarding navigability in relation to water rights and quality. As we made clear, other state agencies have responsibility for water quality—that that is DEQ, and water rights—that is the Water Resources Department. For clarity, SB 74A would not impact existing water rights.

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

The slide in my presentation on OLIS provides a snapshot of some publicly owned river segments – you’ll notice the Columbia, the Willamette, the John Day, and the Snake. A full list and map are available on our website at Oregon.gov/DSL.

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.

But for other waterways, action was needed to determine if 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.

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

Navigability declarations must answer two key questions. First, could the waterway have been used for trade and travel at 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 public comment as a draft report. Then a final navigability report is prepared for Land Board consideration which also provides ample opportunities for public engagement. The Land Board will ultimately consider the full record, the final report, and decide whether to issue a final written navigability declaration.

DSL has provided a written document on OLIS that outlines our robust public engagement requirements required when declaring a waterway navigable-for-title and we would be happy to follow up with any of you who have questions about the current public process, none of which has been changed by SB 74A.

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 slides on OLIS illustrates 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.

Because the property boundary depends on the type of change, there's 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.

And 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.

If the shift from red to blue shown on the slide happens gradually through accretion, 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.

Exchanging land to ensure public ownership of riverbeds and banks must by law occur AFTER 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.

Now I would like to talk to you all about the specifics of SB 74A.

Statutory changes proposed under SB 74A will help by providing a straightforward option for declaring Oregon ownership as the **current** riverbed and bank to the line of ordinary high water. In technical terms, we would be treating all movement on the river as **accretion**, so the legal boundary follows the physical, current boundary - but **only** if the property owner is in agreement. The existing requirement to map **all** changes since statehood will be retained as an option, to provide flexibility for adjacent landowner preference and to avoid unlawful taking of property.

What SB 74A will do is provide the Department with the flexibility needed to complete this work efficiently, and more in line with state and landowner expectations. SB 74A provides an additional option for completing this work, but does not replace the existing process in statute, should a landowner want to pursue the current navigability process.

SB 74A provides multiple benefits. These include improved efficiency in the Department's process, more certainty for all parties, a less costly and faster process for all parties, and overall fewer state resources needed for navigability declarations.

The amended version of the bill provides technical fixes and necessary clarifications that arose in the course of conversations in the Senate Chamber, including making it clear the state does not retain mineral rights on lands exchanged and the option does not apply to lakes, as the ownership for lakes is determined by a different statute.

During our conversations in the Senate, there was also a concern about ensuring fair outcomes for neighboring property owners. The bill specifically seeks to ensure the state CAN exchange more valuable land for less valuable land if doing so results in public ownership of the river. This means land exchanges would favor the landowner over the State in relation to monetary value. Such an exchange would be negotiated, and the neighboring property owner would have every opportunity to ensure a fair outcome when using the option provided in this bill. **OR**, adjacent property owners may elect to use the existing way of determining the legal boundary.

Navigability declarations and Oregon ownership protect the public's ability to use a river to swim, to boat, to fish, to paddle. This bill makes clear ownership of the current river is the goal, and that will be prioritized in any state negotiation with a neighboring landowner – even when the state is trading more valuable dry land for the neighbor's riverbed.

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