



Our Rights To Use Oregon's Rivers

The public has the right to use Oregon's waterways for navigation, commerce, recreation or fisheries. That right exists either because the State owns the river, including its bed and banks, or because of the "Public Use" doctrine.

State Ownership: Federal Law

When Oregon became a state in 1859, it acquired ownership of all waterways or portions of waterways that meet one of the following tests:

- **TIDALLY INFLUENCED:** If a river rises and falls with the tide (or any portion of a river is tidal), the State owns the beds and banks of the tidal portions of the river and the public has the right to use that portion of the river and its shoreline up to the normal high water mark.
- **NAVIGABLE:** All non-tidal waterways that at the time of statehood in 1859 were used or could have been used in their ordinary condition for commerce of trade and travel are state owned. For these waterways, the State of Oregon owns the entire riverbed and both river banks up to the line of ordinary high water and the public has a right to use the river and its bed and banks up to that line.

The Public Use Doctrine: "Common Law" From Oregon's Courts

Even if the bed of a waterway is privately owned, the waterway may be used for public recreation and other purposes if it meets the state test of "floatability." A waterway is "floatable" if its length, width and depth allow boats—even small boats or canoes—to make successful progress through its waters.

If a privately owned waterway meets this test, the public may use the water for recreational uses, including boating, fishing and swimming. On these rivers, the public may not interfere with the landowners' use of their property. Similarly, the landowners may not interfere with the public's right to use the river, even though the landowners own the river bed. For example, landowners may not build a fence across a river or string barbed wire across a river that meets the floatability test.

RESPECT THE RIGHTS OF PRIVATE PROPERTY

The public's right to use a river does NOT entitle the public to trespass on upland private property to gain access to a river from the upland. The public's rights are to "use" the rivers, not rights to "access" the rivers. "Necessity" or emergency may be an exception, but do not assume so.