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## Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by TCWriter - 2007/10/05 13:16

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The Siskiyou County Board of Supervisors are working on a Draft Natural Resources Plan that absolutely pegs the meter on stupidity, but of chief concern to fly fishermen is this provision:

All rivers in Siskiyou County with the exception of the Klamath River, are recognized as non-navigable streams, with bed and banks owned as private property by adjacent landowners.

If you're not aware, designating a river as "non-navigable" means you're not allowed to wade between the high water marks, a move which effectively denies anglers the right of access to huge swaths of the McCloud, Upper Sacramento, Scott and Shasta Rivers.

I just posted a more detailed article on my blog (it includes contact information for the individual Board of Supervisors):

Stream Access Issues Looming on Upper Sac & McCloud Rivers

I won't get into my frustrations surrounding politics in Siskiyou County, but I will say this is one of the bigger bonehead moves ever pulled by a Board of Supervisors that's known for them.

I know everyone hears this a dozen times a day, but take a few minutes to contact the Board of Supervisors (politely) and tell them their Natural Resources plan is an absolute hummer in that it will destroy the tourist-based economy of the region by driving away fishermen.

Thanks,  
The Trout Underground

Contact Information for Siskiyou County Board of Supervisors (the first two names are on the committee considering the draft plan -- contact them first):

Michael Kobseff  
mkobseff@co.siskiyou.ca.us  
(530) 918-9128

Marcia Armstrong  
marmstrong@co.siskiyou.ca.us  
(530) 468-2824

LaVada Erickson (she's on our side, but isolated politically)  
erickson5031@sbcglobal.net  
(530) 926-1285

Jim Cook (McCloud representative — let him know how many of your dollars the town stands to lose)  
jimcook@snowcrest.net  
(530) 459-0459

Bill Overman  
bandm@nctv.com  
(530) 842-5389

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Bjorn - 2007/10/05 14:02

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Thanks for the heads-up on this... I've just sent my flurry of emails out... time to raise the alarm.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Jeff L - 2007/10/05 14:30

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Who or what interests would stand to gain the most by having their adjacent properties recognized as private lands in the

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region?

Just wondering out loud who would be the inerests behind such a move.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by bt45 - 2007/10/05 14:37

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large, greedy, landowners with money (to contribute to campaigns)

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by TCWriter - 2007/10/05 14:43

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Jeff;

The whole document is a "Wise Use" manifesto, which focuses on protecting mining, grazing, timber and other extractive industries at the expense of any environmental concerns. This is more a power grab by extractive industries in the Northern end of Siskiyou County than it is a money grab, and it grows out of the Klamath fight and the fight over water and habitat along the Scott and Shasta rivers.

Other passages include:

...Siskiyou County opposes any additional designations of Wild and Scenic Rivers in the County;

...Siskiyou County concurs with studies that the impact of suction dredge mining on fisheries and aquatic life is temporary, localized and di minimis;

...Current grazing allotments shall be continued and principally managed to produce forage to support maximum carrying capacity by domestic livestock;

...Traditional use of grazing allotments for livestock grazing will take precedence over other competing uses;

What's most irritating about this is the timing; significant progress is being made in partnerships between enviro groups and ranchers/ag/timber, and to throw this "wise use" idiocy into the mix is irresponsible.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by fishineer - 2007/10/05 14:48

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TCWriter wrote:

The Siskiyou County Board of Supervisors are working on a Draft Natural Resources Plan that absolutely pegs the meter on stupidity, but of chief concern to fly fishermen is this provision:

All rivers in Siskiyou County with the exception of the Klamath River, are recognized as non-navigable streams, with bed and banks owned as private property by adjacent landowners.

I'm curious. Is the Army Core of Engineers aware of this?

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Bjorn - 2007/10/05 15:07

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I emailed with Ron Stork, who is a real policy guru for the state in regards to water issues. He indicated that Siskiyou County doesn't have the authority to make those sorts of declarations, as it is a State issue, not a county issue, to determine what is and is not navigable.

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Tom is up there dealing with the day-to-day and I think he's 100% on the mark with his comments. There is a real far-far-far right element up there that doesn't take kindly to anyone telling them to or not to do just about anything. The Scott and Shasta get dewatered in parts, if memory serves, due to irrigation, despite there being plenty on the books that should protect the salmon and steelhead that run up those rivers. It's tricky politics.

B-

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Andrew Weiner - 2007/10/05 15:39

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One would hope that the communities of Dunsmuir, Mt. Shasta City, etc. would realize that privatizing these rivers would devastate the economies of their cities, which they've struggled to re-build after the Cantara spill. If they don't squawk and get this shot down they're screwed.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Andrew Weiner - 2007/10/05 15:40

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One would hope that the communities of Dunsmuir, Mt. Shasta City, etc. would realize that privatizing these rivers would devastate the economies of their cities, which they've struggled to re-build after the Cantara spill. If they don't squawk and get this shot down they're screwed.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Andrew Weiner - 2007/10/05 15:55

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You're right, Bjorn. The dewatering of the Scott and Shasta continues because the powers that be refuse to do the right thing. Or anything.

FYI, here's the e-mail I just sent to the five contacts in the original post:

I just read about Siskiyou County's plan to declare the Upper Sacramento, the McCloud and other rivers non-navigable, thereby removing anglers' access to fish these blue ribbon fisheries. Faced with the history of the economic devastation caused by the Cantara Loop spill it seems inconceivable to me that such a short-sighted decision could be made. I'm confident you will receive e-mails from people who are concerned about this, but be assured there are many more who visit Siskiyou primarily to pursue the fantastic recreational opportunities afforded by the area's fisheries, and removing access will remove all of the dollars those visitors bring to your area. Extractive industries are finite. Resources like the Upper Sac and the McCloud can and should be infinite. There may be short term benefits for property holders in the area, but if the hotels, motels, restaurants, gas stations, retail outlets and others lose the dollars that tourists bring, Dunsmuir, Mt. Shasta City, and other local towns will be decimated.

Please think carefully about the consequences of your actions.

Sincerely,

Andrew Weiner

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by fishineer - 2007/10/05 16:10

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Bjorn wrote:

I emailed with Ron Stork, who is a real policy guru for the state in regards to water issues. He indicated that Siskiyou County doesn't have the authority to make those sorts of declarations, as it is a State issue, not a county issue, to determine what is and is not navigable.

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Its my understanding that the Army Corp of Engineers has the final authority not the state.

below is where you'll find the language for state's rights

[http://www.leginfo.ca.gov/.const/.article\\_10](http://www.leginfo.ca.gov/.const/.article_10)

however, the commerce clause in the constitution (article 1 section 8) gives the federal government final authority. Any time you want to touch a navigable waterway or a wetland, the ACoE issues the permit not the state. Google section 10 and section 404 for more info. having worked on a few projects which required section 404 permits I can tell you with 100% certainty the state goes to the ACoE.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by TCWriter - 2007/10/05 16:16

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Andrew: Thanks for taking the time to write to the Board of Supervisors. I believe one of the two pushing this would be open to changing his mind if people make enough noise.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by TCWriter - 2007/10/05 16:17

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Speaking of the river, the October Caddis are happening upriver, and BWOs and PEDs (18s and 20s) are coming off most afternoons downriver.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Andrew Weiner - 2007/10/05 16:23

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Just received the following reply from Marcia Armstrong:  
Thank you, we will take your comments under advisement. Please note that the Klamath River is the only navigable river in Siskiyou County under current law.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by fishineer - 2007/10/05 16:42

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well now it makes sense. the county isn't trying to declare them unnavigable. they already are. so what's the real problem with the plan?

here is good info on navigable water

<http://www.usace.army.mil/cw/cecwo/reg/33cfr329.htm>

read the section on (paraphrasing) just becasue the water lies within one state doesn't mean its not capable of interstate commerce. still lies under federal juristiction though

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Chattaroy Charlie - 2007/10/05 17:31

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Rich P researched this a long time ago.....proves to be interesting reading. From all appearances the County Supervisors have NO right to legislate what is and isn't navigatable. Perhaps a huge lawsuit in the making??? This is

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where the money we have been donating to Cal Trout and TU should be gainfully used.

From Rich P:

« Stream Access Rights -- here it is. 3/18/00 3:22 p.m.  
:: I know we have talked about this A LONG time ago on  
:: here, but what is the deal with private property and  
:: rivers. Many anglers have told me that on the  
:: Calaveras they get chased off the river by property  
:: owners. If you are in the river at all times and don't  
:: got out onto the banks, you are OK, right? or is that  
:: wrong? What is the law here? Rich, get out your law  
:: books! Anybody? I don't want to trespass (except on  
:: the Heast property).

:: B-

Bjorn,

Basically, in California you can just about fish anywhere as long as you don't trespass on private property to get to the water. "Navigable" streams are public property to the high water mark, so you can wade in the stream and up to the high water mark on shore. Court decisions say that, if you can float on it for recreation, it is "navigable" -- and I think that if the river is suitable for just about any recreational use, it is "navigable" and therefore you can fish it if you can access it legally.

Below is a post I put on this board about a year ago. It's long as hell, but I think it pretty well covers the whole area of stream rights in California.

"In California there is no one statute that lays out the law of public access rights versus private property rights. You must look at the State Constitution, numerous court decisions, and a mish mash of state and local ordinances which are scattered all over the place. To make matters worse, public access rights usually are determined by the courts on a case by case basis for each fishery involved -- and there is no way of telling whether the Court will agree with you if get arrested for trespassing. You also might need to examine the public title records to determine what rights a particular private landowner actually has. It's a mess.

Below are points I gathered from my research:

1. Under the Public Trust Doctrine, as stated in the California Constitution and interpreted by the courts, the State owns the land underneath "navigable" water and holds it in trust for public recreational use and other appropriate use.
2. Court decisions hold that water is "Navigable", as applied to non-tidal water like lakes and mountain streams, if the water can be navigated by small recreational or pleasure boats (kayaks, row boats, electric prams, rafts).
3. If you can legally gain access to "navigable" water without trespassing over private property, you have a constitutional right to wade and fish the river or lake, in addition to floating it.
4. You can wade and walk the banks of legally accessed "navigable" water up to the high water mark. The State has a public easement to the high water mark for non-tidal waters and owns the land under tidal water up to the high water mark. (Sometimes "high water mark" is a technical legal question. Usually, "high water mark" refers to the normal high water mark, not some unusual flood situation. For rivers, high water mark usually means "the line at which permanent vegetation begins". For lakes, it is the normal high water mark, not the high water mark from unusual flooding.)
5. Tidal waters or waters affected by tidal influence are automatically subject to the public trust doctrine, whether they are navigable in fact or not. Streams which impact any navigable waters also are subject to the public trust doctrine whether these streams are navigable in fact or not. In addition, the legislature lists several rivers and waters which are declared to be "navigable" as a matter of law (e.g., Lower Sacramento River). Other rivers and lakes are held to be navigable by court decision (e.g., Fall River, American River, parts of the Russian River).
6. If a private owner obstructs the lawful recreational use of navigable water, he/she is legally liable for having created a nuisance. It is also a crime.
7. By court decision, you may access navigable rivers from state bridge crossings, on the basis that such use of the State's highway easement is not unreasonable. However, it is possible in any specific situation that State or County regulations, or the Easement grant, might prohibit such use. Generally, unless the State says otherwise, you do not

automatically have a right of access to a river from the State's highway easement from a road which runs along side of a river on private property; it is only when the highway crosses the river (i.e., a bridge) that there is a right of access from the state's highway easement for repairs.

8. You also can access navigable rivers through public easements provided for that purpose, or by permission of the owner of private land abutting the water. Municipalities must provide unobstructed access to navigable waters in or adjacent to its boundaries, and neither the city nor private landowners can interfere with public access.

9. There are Fish and Game Code provisions which require the owner of a dam to accord to the public for the purpose of fishing, the right of access to the waters impounded by the dam during the fishing season of the stream or river feeding the dam. This right is subject to regulations of the Fish and Game Commission.

10. As to non-navigable water on private land, the public generally does not have a right to access these waters. The Public Trust Doctrine does not apply to non-navigable water (i.e., water too small or shallow for a boat), except where a) the non-navigable water affects tide water, such as tributary streams which pour into a river which is affected by tides, or b) where the non-navigable water impacts navigable water. (You still cannot trespass on private land to access such water.)

11. The private landowner owns to the midpoint of a non-navigable stream, or he/she can own the land under an entire non-navigable lake or river that is situated entirely on his/her property.

12. By logical conclusion, if the landowner on the East side of a non-navigable river objects to you fishing it, but the West side land owner says it is O.K. to fish, then you can fish and wade the river from the West side up to the mid-point of river.

13. It is possible that the public may have a right to fish non-navigable waters on private land, if the landowner's deed reserves a public access, or if the public has obtained prescriptive fishing rights due to long time custom and usage. You would need to do some homework, here, like examining the public title records to see if there are any reserved public fishing rights.

It would seem, then, that the public has the right to fish most waters in this state, as a general proposition. The problem with all of this is that you cannot be absolutely sure of the private landowner's rights, even where the water is navigable or appears to be navigable. The question of what is "navigable" is decided by the courts on a case by case basis, depending on the needs of the particular water resource involved. So unless there is a court case or legislative enactment declaring the water "navigable", you can never know whether the court will agree with your determination of "navigable" in the event that you are arrested for trespassing. The water may appear to the eye to be navigable, but a court might say no, for example, because fishing access may harm the habitat or may be unsafe. Finally, there may be valid State, County, or local regulations which restrict or prevent fishing, and so you would need to know these laws as well.

The legislature needs to enact a comprehensive statute defining public recreation rights versus private property rights. I believe it is always best to respect the private landowner's rights unless you are absolutely sure of your ground -- or water.

Hope somebody finds this of some use."

-- Rich P.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by TCWriter - 2007/10/05 19:20

She's dissembling; the Upper Sac and McCloud absolutely meet the definition of navigable body of water. They simply haven't been designated as such yet.

Curtis Knight of CalTrout suggests case law makes it clear a body of water is navigable until proven otherwise; Ms. Armstrong would have you believe otherwise.

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by TCWriter - 2007/10/05 19:32

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The definition makes it clear the Upper Sac and McCloud do meet the standards of navigable water. And many of the other provisions are so backward, it boggles the mind.

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## Too much Selenium in those supes\' drinking water

Posted by Huck - 2007/10/05 19:33

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Lots of county money down the drain defending that one in court, only to lose...  
Can any of those guys tie there own shoes????????

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by Buzz - 2007/10/05 20:14

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Chattaroy Charlie wrote:  
Rich P wrote:

The State has a public easement to the high water mark for non-tidal waters and owns the land under tidal water up to the high water mark.

Well, if Rich found that written into statute law, then the county guys can't change that law locally.  
I would like to know where in the state laws he found it, though.

Buzz

\*\*\*UPDATE: Never mind, I just saw Fishineer's post below\*\*\*

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## Re:Ready to Lose Your Right to Wade the Upper Sac & McCloud?

Posted by fishineer - 2007/10/05 20:51

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point 5 is very significant. (if you're on flat view read charlie's post.) the army corp definition concludeds that any stretch of a waterway that is deemed navigable also includes the entire water boundry. so any creeks/sloughs/side channels/braids-anything connected is also considered navigable

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## Re:Too much Selenium in those supes\' drinking water

Posted by fishineer - 2007/10/05 20:55

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Huck wrote:  
Lots of county money down the drain defending that one in court, only to lose...  
Can any of those guys tie there own shoes????????

their job is "experience" in order to work in san francisco. half our supes aren't even from california. they just "think" for us. got a chance to see the blue angles the last couple days. you coming down for fleet week? i have a feeling that new air bus is going to fly under the gg bridge :goofy

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## Re:Response to Upper Sac Wading Issue from Supervisor

Posted by TCWriter - 2007/10/06 09:36

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The Siskiyou County Supervisor leading the charge for the damaging Natural Resources plan I referenced above has replied with what amounts to smoke and mirrors:

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Thank you, we will take your comments under advisement. Please note that the Klamath River is the only navigable river in Siskiyou County under current law.

She then cites from the California Harbors and Navigability Code, which doesn't define navigability, but simply lists the rivers and streams currently defined as navigable.

That's a huge disconnect; the fact that the Upper Sac and McCloud haven't yet been defined as navigable hardly means they're non-navigable, and by any reading of the definitions set forth by the Army Corp of Engineers, most of the rivers in Siskiyou County are navigable.

This is the level of thought we're dealing with up here; lies and dissembling -- and this on only one of the issues surrounding the plan.

Make no mistake; this group wants to limit our rights to wade river and protect our fisheries, and they'll gladly resort to (at best) misleading statements and outright fabrications (like classifying suction dredging as "benign" to do so.

If you haven't taken a minute to send e-mails to the Supervisors identified in my first post (especially the first couple), then please do so. While the ability of the Board of Supervisors to actually enforce a "non-navigable" standard is dubious, it's clear that even an illegal declaration will cause no end of problems to fly fishermen.

Take care,  
Tom Chandler

My Response to Supervisor Armstrong:

Ms. Armstrong;

Your selective use of the Harbor codes is misleading at best; that hardly qualifies your statement that only the Klamath is navigable under current law. It is the only river that's been declared navigable, but that's simply because the others haven't yet been declared so by judicial review. By any reading of the Army Corp of Engineers code pertaining to water ways (link below), many of the rivers specifically mentioned in the natural resources plan qualify:

From the Army Corp of Engineers Web page on navigability of waterways:

#### Section 329.4 - General definition

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

The Upper Sacramento and McCloud Rivers were both connected to the ocean (prior to the installation of the Shasta Dam), and both were used for commercial purposes.

Thus, both meet the definition "under law." For you to suggest otherwise does your constituency a disservice...

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## Re:Response to Upper Sac Wading Issue from Supervisor

Posted by FeatherFisher - 2007/10/06 10:59

I am no expert on this, but I do recall that the State definition and the Federal definition of navigability are fairly different. Army Corp deals in the Fed version, and it sounds like the Supervisor was referencing a State source. I beleive this has been a really confusing area and often takes litigation to sort out the conflicts.

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## Re:Response to Upper Sac Wading Issue from Supervisor

Posted by FeatherFisher - 2007/10/06 11:12

I read a few more of the responses to your original message since posting my previous response. I beleive the reference



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in Charlies message accurately describes the state definition. The Fed definition was based on past commerical use. The State definition is much more liberal and based on the ability of small recreational craft to navigate. In either event, the County Govt has no role in defining navigability. I lived in Siskiyou County for five years a while back. I had the unfortunate opportunity to deal with the County Supes on several issues including navagbility. They are the most right wing rabid property rights folks I have ever met. Marsha Armstrong wasn't on the Board back then, but I did have some dealings with her. She may be the most radical of the bunch.

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## Re:Response to Upper Sac Wading Issue from Supervisor

Posted by TCWriter - 2007/10/06 12:03

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Sadly, your observations seem right on point.

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## Re:Response to Upper Sac Wading Issue from Supervisor

Posted by TCWriter - 2007/10/06 12:04

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Actually, Armstrong's reference wasn't a definition of navigability -- simply a listing of those rivers already defined as navigable.

Typically misleading.

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## Supervisors Wavering on Plan Denying Stream Access Rights

Posted by TCWriter - 2007/10/08 11:46

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First, a heartfelt "thanks" to everyone who took a minute (literally) to contact Siskiyou County's supervisors regarding their attempt to criminalize wading and fishing in the Upper Sac and McCloud Rivers (among others).

Two e-mails were even sent from overseas.

Several supervisors are starting to back away from the provision of the county's Natural Resources Plan that designates the Upper Sacramento, McCloud, Shasta and Scott Rivers as "non-navigable" -- which means the rivers would become private property, and wading below the high water marks -- rights you've enjoyed for hundreds of years -- would become illegal.

The supervisor most responsible for this terrible Natural Resources Plan has even suggested changing it so that only the Scott and Shasta Rivers are designated non-navigable, but that's simply not good enough.

We have a legal right to access ALL Siskiyou County's rivers (which are clearly "navigable" in fact and by definition), and there's no reason to give any of those rights away.

If you haven't yet taken a minute to contact the supervisors (at the e-mail addresses listed in my original post), please do so. Simply tell them you're not willing to give away your legal right to access all the navigable rivers in Siskiyou County -- and that your interpretation of law says they're all navigable.

I'll keep you posted on our progress. Thanks again!  
Tom Chandler

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