

BOARD OF COUNTY COMMISSIONERS
WALLA WALLA COUNTY, WASHINGTON

IN THE MATTER OF AN
AMENDMENT TO WALLA
WALLA COUNTY CODE,
TITLE 12, WATERCRAFT
REGULATIONS SPECIFI-
CALLY TO LIMIT MOTOR
BOATS ON CERTAIN
REACHES OF THE WALLA
WALLA RIVER

ORDINANCE NO. 195

Docket No. CC-87-01

WHEREAS, the use of motorized watercraft on most reaches of the Walla Walla River could be damaging to riparian vegetation and habitat because of the streams narrow width and shallow depth, and

WHEREAS, the use of motorized craft on a stream this size could be disruptive to sportsman and other recreational users of the Walla Walla River, and

WHEREAS, property owners living along the certain reaches of the Walla Walla River and Tri-State Steel Headers have requested the Board of County Commissioners limit power boats on the Walla Walla River, and

WHEREAS, the Board of County Commissioners held a public hearing on March 3, 1987, after publishing Notice and took testimony on this matter, now, therefore,

BE IT RESOLVED by the Board of County Commissioners of Walla Walla County that they will approve the amendment to Title 12 of the Walla Walla County Code set forth in attached

Done this 3rd day of March, 1987

Attest:

Clerk of the Board.

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners
of Walla Walla County, Washington.

FILED FOR RECORD
IN WALLA WALLA CO. WASH.
BY *Co. Commodore*

EXHIBIT "A"

MAR 3 3 56 PM '87

JANICE E. BATES
COUNTY AUDITOR

ORDINANCE REGARDING WATERCRAFT ON THE WALLA WALLA RIVER

Walla Walla County Ordinance Section 12.20.030(b) is amended to read as follows:

Motorboat means any watercraft propelled in any respect by machinery, including those temporarily equipped with a detachable motor; provided for the purpose of this chapter the term "motorboat" shall not include motorboats regulated by the Washington Utilities and Transportation Commission; motorboats owned and operated by the United States, or any state or political subdivision of the state.

There is hereby added to Walla Walla County Code a new Section 12.20.345, which shall read as follows:

A. No person shall operate a motorboat on the Walla Walla River at any point between the Burlington Northern tressel at Zangar Junction (RM 8.75) and the Oregon-Washington state boundary.

B. The Sheriff shall annually prepare and post at convenient public places adjacent to the Walla Walla River which shall specify the specific restrictions applicable to the particular area set out in this chapter. Notices shall be posted on the wharf or dock of each boat livery and adjacent to public launching ramps, docks or wharfs, and at such locations as will reasonably inform the boating public of these restrictions.

OP ✓
711 ✓ W.W. River -
6768 ✓ each Comm.


27 February 1987

Dear County Commissioners,

Concerning the 3 March hearing on motorized craft on the Walla Walla River, I personally would like to see no motorized craft on the Walla Walla River above the trestle below 2 mile bridge. Motorized craft about this point will lead to increased erosion of the river bank, noise pollution for land owners, and to confrontations between bank fishermen & boat operators since the river in this section is more aptly described as a stream & thus has little if any room for both groups at the same time.

Walter Gary
1393 4th Street
Walla Walla, W.A.

MEMO

To: Chairman and Board of County Commissioners
From: Jim W. Beard, Planning Director 
Date: December 18, 1986
Re: Rivers in Walla Walla County Classified as Navigable

There are two types of designation of navigable affecting rivers in the state.

Pursuant to the Rivers and Harbors Act the Corps of Engineers has designated the Walla Walla River navigable from the mouth to River Mile 15.8 approximately four miles upstream of the Nine Mile Bridge. This designation is intended to assure navigation is not obstructed by placement of fill or other activities in or above the channel which may interfere with the movement of waterborne commerce. The Corps designation does not affect ownership of the river bed however, it does require a Section 10 Permit for any permanent structure in or over the water.

The State Department of Natural Resources designates rivers as navigable based on ownership and notoriety. When the U.S. Government surveyed the Washington Territory prior to disposing of the lands, they excluded lands below the meander line (ordinary high water mark) where navigation was occurring at the time. These lands were retained for public use and later transferred to the people of Washington upon statehood. Parcels created that excluded bottom lands of rivers were described as Government Lots or that sixteenth of a section containing less than 40 acres.

In addition to those original designations, the Department of Natural Resources has since designated lands navigable where evidence has been presented that historically a river had been used to transport commerce. These designations of notoriety are in effect by administrative rule until removed by a Court of Law. In Walla Walla County the Walla Walla River has been designated navigable from the mouth to approximately River Mile 26 (eastline of T7N, R33, E.W.M) or 1 1/4 miles downstream from Lowden Bridge.

The only other bodies of water in Walla Walla County designated navigable are the Snake and Columbia Rivers.

Dan Barth, Aquatic Lands Division, D.N.R. informed me there are

some lakes in King County designated navigable by the Department of Natural Resources that prohibit motorized craft.

In conclusion the designation of navigability does not appear to directly prohibit or permit motorized craft on a body of water. It may, however, be an issue relative to accessibility of public recreation areas below the ordinary high water mark. For instance, where the public owns the river bottoms along a navigable stretch of river and the only access is by water, accessibility to those recreation areas from downstream locations would be enhanced by allowing motorized craft.

Received (1-12-87)



WASHINGTON STATE DEPARTMENT OF
Natural Resources

BRIAN BOYLE
Commissioner of Public Lands

December 29, 1986

OLYMPIA, WA 98504

Mr. Rick Webb
Department of Game
Route 5 Box 355
Walla Walla, WA 99362

Dear Mr. Webb:

Re: Walla Walla River

As requested, I have reviewed the Department of Natural Resources' files on Walla Walla River in respect to state ownership.

Through Article XVII of our state constitution, the state asserts ownership to the tidelands, shorelands and beds of all navigable bodies of water within the state. In the case of nontidal areas the landward limit of state ownership is the line of ordinary high water. This line has been equated to the line of permanent upland vegetation.

In Washington State the ultimate decision on the navigability for title purposes rests with the judicial system. In the absence of a decision by a court of competent authority, the department considers any of the following to be sufficient evidence to consider a water body as being navigable for title purposes.

- The water body was used at any time in the past for the transport of useful commerce. Transport may be by steamboat, canoe, rowboat, raft or other watercraft, and may include floating or propelling of log booms, as distinguished from single logs to some point for processing or further hauling by other means.
- The water body was capable and susceptible of being used in its natural state for the transport of useful commerce.
- The water body was meandered during the original U.S. Government General Land Office surveys.
- The water body is tidal.

Mr. Rick Webb
Page 2
December 29, 1986

The department has not completed a study on the Walla Walla River to determine the extent of the public aquatic land ownership. Our files do have several documents (old newspaper articles) which support the use of the river in certain areas for the transport of useful commerce. Our records do include a 1976 letter from the department stating the department considers the river navigable 16.2 miles above the mouth. An attorneys general letter, in 1975, identifies the river as possibly navigable to river mile 33.5, being the mouth of Mill Creek in Section 31 of Township 7 North, Range 35 East.

I wish I could be more helpful at this time. I would appreciate any information you or others may have to either support or deny the navigability of the river. This material may be personal accounts, affidavits, news articles, books, journals, or other documents.

The department's position on rivers like this, is that it must claim it as being navigable unless proven otherwise. The courts have upheld the burden of proof of nonnavigability rests with those claiming such.

Additionally, I understand the Walla Walla County Commissioners are considering limiting boat traffic on the Walla Walla River. As this state's proprietary manager of public aquatic land, a decision by this local agency to limit recreational boat traffic would not interfere with our proprietary management policies. Case law supports the public's right to navigate over the surface of the water on both navigable and nonnavigable waterbodies. The department believes this is a local decision and takes no position on regulating boat traffic.

Sincerely,



Dan Barth, Lease Administrator
Division of Aquatic Lands

nr

(1-12-87)
(Exhibit A)

GAME DEPARTMENT SUMMARYS:

1986 plant of StH. 140,000 @ 5 lb. = 28,000 lbs.

Cost of producing \$4/lb. = \$112,000 annually

We expected this planting level to continue barring budget cutbacks.

1985-86 Sport Harvest = 1828 Steelhead

Average value per steelhead (Based on cost expenditures) was \$69/fisherman trip
(Source: Four 1972-76 coastal studies and a 1985 Idaho study)

Average number trips per fish = 4

$\$69 \times 4 = \$276.00/\text{fish} \times 1828 = \$504,528$

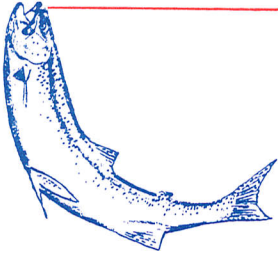
$140,000 \times .02 = 2800$ fish returning from releases

Per year in W.W. Riv.

TRI-STATE STEELHEADERS

A CONSERVATION ORGANIZATION

P.O. Box 1375 — Walla Walla, Washington 99362



January 12, 1987

Walla Walla County Commissioners
Walla Walla, WA 99362

Dear Sirs:

Tri-State Steelheaders is a steelhead conservation and sportsman organization based in Walla Walla. The club membership is approximately five hundred members of which one hundred are local businesses.

As a fishing organization, we strive to enhance the anandramous fishery, sportsmanship and relations with landowners. The officers and board of Tri-State Steelheaders would like to see the banning of motorized craft on the Walla Walla River above Nine Mile. This will insure a quality fishing experience to the bank fishermen and help prevent the chances of a confrontation between bank and motorized craft fishermen. By selecting Nine Mile as the demarcation line, there would be minimal impact on the warm-water fishermen as most of this fishing takes place below there.

As the number of steelhead in the Walla Walla River increases, we can be assured that there will be an increase in fishermen. The increased demand by sport fishermen, especially the well-heeled urban dweller, will cause entrepreneurs to provide jet boat services in order to profit off the fishery. This has and is happening currently on various northwest streams.

Tri-State Steelheaders believes that action should be taken now to save the Walla Walla River from the pressure of motorized craft, and to preserve the quality fishing that the bank anglers have been and will be enjoying.

Sincerely,


Larry Zalaznik
President

FISHING FUN FOR EVERYONE

Public Hearing - Jan. 12, 1987.

Regarding Watercraft on Walla Walla River -
Present:

<u>Name</u>	<u>address</u>
George Borgens	Rt. 1, Lowden, Wa
Frank Lucas	68 Engle, W.W., W.M.
LARRY REZNICK	RT. 1, WALLA WALLA
LARRY ZALAZNIK	Rt. 3 Box 189, W.W.
Ken Woltering	2057 Lark Drive, W ²
RICK WEBB	Rt. 5, Box 355 W ²
BOB BAUMGART	1524 WALLA ² ST W ²
FRED SPORLEDER	9418 PLEASANT
Melvin Buttic	929 Home ave ^{W W} W ²
Mark Schock	411 S. FIRST, DAYTON, WA.
Russ Berquin	
Jim Beard	Planning Dept.

Donald W. Schacht

PROSECUTING ATTORNEY

407 DRUMHELLER BUILDING

P.O. BOX 834

WALLA WALLA, WA 99362-0018

TELEPHONE 527-3232

OFFICE OF THE

PROSECUTING ATTORNEY

OF

WALLA WALLA COUNTY

WASHINGTON STATE

JAMES L. NAGLE, DEPUTY
DONALD W. SCHACHT, DEPUTY
MARY A. KOCH, DEPUTY

January 5, 1987

RECEIVED

JAN - 6 1987

WALLA WALLA COUNTY
COMMISSIONERS

Robert Petersen, Chairman
Board of County Commissioners
Walla Walla County Courthouse
Walla Walla, Washington 99362

COPY

FILE

ACTION

2

1 v J. Beard

Dear Mr. Petersen:

This letter is per your phone call inquiring whether the County Commissioners have jurisdiction to pass an ordinance restricting watercraft use on the Walla Walla River.

The threshold question that must be answered is whether the Walla Walla River has been adjudicated a navigable or non-navigable stream. In Walla Walla County Cause No. 19075, the Walla Walla County Superior Court determined that the Walla Walla River and its tributaries are non-navigable, natural water courses tributary to the Columbia River. This adjudication was made on September 12, 1928. To the best of my knowledge that has never been overturned. This is non-navigable in the legal sense.

The second question is does the legislative body of Walla Walla County have authority to enact and enforce an ordinance regulating and controlling the use of the Walla Walla River. Our opinion, in this instance, would be yes. However, it would further be our opinion that the legislative body cannot override individual property rights through legislative acts, without due process of law.

We believe the general rule of law to be, and also the rule in the State of Washington, pursuant to the case of Griffith v. Holman, 23 Wash. 347 (1900) that a person who owns property along a non-navigable stream owns the stream bed to the center of the river from the side which he owns. As the case stated:

The riparian proprietor upon the banks of a non-navigable, freshwater stream, owns the exclusive right of fishery in the waters flowing opposite his land, as the far as the middle of the stream.

Mr. Petersen

1/5/87

P. - 2

One who owns both banks along a non-navigable stream has title also to the land and the bed of the stream, and may lawfully place a fence across the stream thus flowing through and over his land.

It is well established that, except in salt water streams, the question of navigability is one of fact that must be established by those who seek to use it as such; and it is also well established that the stream must be navigable in its natural state, unaided by artificial means or devices.

Therefore, we are of the opinion that the Board of Commissioners of Walla Walla County does have legislative authority to pass an ordinance regulating and controlling the use of the Walla Walla River. However, that regulation cannot infringe upon or alter the property rights of those persons owning property abutting the Walla Walla River.

There does not appear to be a Washington case addressing the issue of whether one may hunt or fish by floating upon the water of an adjudicated non-navigable river, where the river is navigable in fact for purposes of hunting or fishing, and where the river passes through private property wholly owned on both sides of the river. A couple of recent Idaho cases address this problem and have held that where the river is navigable in fact for purposes of hunting and fishing, the public has a recreational right to use that water for those purposes, even though it is non-navigable by law, and even though the property on either side of the river is privately owned. We further believe, however, that if that were to be the case, that the general public could not stop the boat to trespass on the adjoining land, could not retrieve wounded game, which may necessitate a trespass, nor could they leave the boat and get into the water such that they would then be touching the land or stream bed, i.e. they could not wade along the edge of the river and hunt or fish.

I hope this will be of help to you in discussing your proposed ordinance.

Respectfully Submitted



DONALD W. SCHACHT
Prosecuting Attorney

Proof of Publication

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN That the Board of County Commissioners of Walla Walla County, Washington, will hold a public hearing on Monday, December 15, 1986, at the hour of 11:00 A.M., in the office of the Board of County Commissioners, County Courthouse, 315 West Main Street, Walla Walla, Washington, on the following proposed ordinance:

ORDINANCE REGARDING WATERCRAFT ON THE WALLA WALLA RIVER.

Walla Walla County Ordinance Section 12.20.030(b) is amended to read as follows:

Motorboat means any watercraft propelled in any respect by machinery, including those temporarily equipped with a detachable motor; provided for the purpose of this chapter the term "motorboat" shall not include motorboats with motors either permanent or temporary less than 7½ horse power in size, motorboats engaged in interstate and foreign commerce; motorboats regulated by the Washington utilities and Transportation Commission; motorboats owned and operated by the United States, or any state or political subdivision of the state; and commercial vessels when operated by a person holding a commercial fishing license provided in RCW 75.28.

There is hereby added to the Walla Walla County Code a new Section 12.20.345, which shall read as follows:

A. No person shall operate a motorboat on the Walla Walla River at any point between the mouth of the Walla Walla River and the Oregon-Washington state boundary.

B. The Sheriff shall annually prepare and post at convenient public places adjacent to the Walla Walla River which shall specify the specific restrictions applicable to the particular area set out in this chapter. Notices shall be posted on the wharf or dock each boat livery and adjacent to public launching ramps, docks or wharfs, and at such locations as will reasonably inform the boating public of these restrictions.

Dated at Walla Walla, Washington, November 20, 1986.

Erllys Fink
Clerk of the Board
of County Commissioners

The Times
November 27, 1986.

Case No. _____

STATE OF WASHINGTON,
County of Walla Walla

} ss.

Thomas C. Baker

, being first duly sworn on oath, deposes and says: That he is the Publisher of The Times, a weekly newspaper which has been established, published in the English language, and circulated continuously as a weekly newspaper in the City of Waitsburg, and in said County and State, and of general circulation in said County for more than six (6) months prior to the date of the first publication of the Notice hereto attached.

That said newspaper is the official newspaper of the City of Waitsburg and of the County of Walla Walla.

That The Times was, on the 14th day of June, 1955, approved as a legal newspaper by the Superior Court of said Walla Walla County, and that the annexed is a true copy of a

Notice of Hearing

as it appeared in the regular and entire issue of said newspaper itself and not in a supplement thereof for a period of one consecutive weeks, commencing on the 27 day of November, 19 86 and ending on the _____ day of _____, 19 _____ and that said newspaper was regularly distributed to its subscribers during all of this period.

That the full amount of \$ 24.64 has been paid in full, at the rate of \$ 3.08 per column inch.

Thomas C Baker, Publisher

Subscribed and sworn to before me this

27 day of November, 19 86

Bettie L. Chase

Notary Public in and for the State of Washington,
Residing at Waitsburg, Washington 99361