

law; court cases; Georgia Attorney General opinions; research and historical documents on traditional use; presence of state-owned boat ramps; and stream characteristics such as stream width and flow rate (measured in cubic feet per second or “cfs”).³ While the U.S. Army Corps of Engineers maintains a “Major Navigable Rivers” list based on its application of federal law for waterways within its jurisdiction, the Georgia Department of Natural Resources does not maintain a similar list of Georgia waters based on its application of state law.

Determining navigability informs the rights of adjoining landowners of that river or stream. In 1863, Georgia codified its definition of navigability. For navigable streams, according to O.C.G.A. §44-8-5, adjacent landowner rights to that navigable stream extend to the low-water mark in the bed of the stream. The state, therefore, owns the submerged land unless the adjacent landowner’s title can be traced to 1863 or before. With non-navigable streams, on the other hand, the adjacent landowner owns to the center of the stream. If the landowner owns both sides of the stream, therefore, the landowner owns the entire bed of the stream and can exclude others. These rights with respect to non-navigable streams also include exclusive fishing rights.

The committee heard testimony from fishermen and landowners seeking clarity on whether local streams are navigable or non-navigable to avoid disputes while fishing and to be able to confidently ascertain their property rights. However, members of the public differed on whether that desire for clarity requires a change in the definition of navigability in Georgia law. Some members of the public testified to a belief that while old, the current definition is adequate to discern navigability. Other members of the public, particularly those living on or near smaller streams, urged against a change in the definition to avoid the risk of broadening the definition where smaller streams previously thought non-navigable are deemed navigable. Many members of the public referenced the physical characteristics of local waters that render them non-navigable, as well as noting their local streams would be unlikely to meet a flow rate test threshold. Members of the public who live near rivers like the Flint River or Toccoa River testified to varying navigability in particular sections of river due to natural or man-made obstructions.

Navigability, the Flint River, and Senate Bill 115

A key issue in the current discussion in Georgia related to navigability and private property rights stems from recent litigation concerning the Flint River. More than 344 miles long, the Flint River is one of Georgia’s largest and is home to both historic commercial river traffic and current outdoor recreation opportunities. A number of landowners along the river, including some who testified before the committee, have deeds that state they own to the center of the Flint River and noted the taxes they pay on that river property. One example pertains to a stretch of the Flint River known as Yellow Jacket Shoals, home to prized shoal bass populations, whose adjoining landowners barred anglers from fishing on that section of the river without permission. The Georgia Department of Natural Resources, though, considered that part of the river to be navigable and did not issue citations for fishing. This discrepancy has boiled over into riverside

³ DNR built and currently maintains 259 boat ramps and access areas across the state, and they hold that streams with state-owned boat ramps are open for public use.