

waterways, as well as testimony from landowners providing input on the navigability question. 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. Finally, paddlers sought to ensure any change in the definition of navigability did not foreclose boating opportunities on smaller streams. 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. People who live near rivers like the Toccoa River testified to varying navigability in particular sections of river due to natural or man-made obstructions. People who testified also directed criticism at using flow rates as the determining factor for navigability for a multitude of reasons: changes in flow as a result of rainfall, flow rates obscuring natural factors in the water channel, and difficulty gauging flow rates. In short, public comment focused on flow rates failing to appreciate unique characteristics in Georgia's rivers.

Changes to the definition of navigability can affect industries connected to Georgia waterways. For example, testimony was provided by Georgia trappers that under current law, trappers cannot trap on public waters. Thus, waterways deemed navigable would be closed off to trappers and inhibit their ability to manage key wildlife species along those waterways. Failing to manage nuisance wildlife could present risks to the livelihoods of trappers and risks to communities in the form of ecological damage.

Private Property Rights and Resolving Disputes

Private property rights are enshrined in the Georgia Constitution.⁷ Those private property rights can not only inform what constitutes one's property, but also what one can do with one's property. Determining those rights when a piece of property is adjacent to a river requires analysis based on Georgia law and Georgia precedent.

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 completely 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.

⁷ Georgia Constitution, Article I, Section I, Paragraphs I and II.