

Senate Bill 678

Sponsored by Senator PROZANSKI (at the request of Jerry DeLoach)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes restrictions on prospecting, using nonmotorized methods, of beds and banks of state scenic waterways without permit. Allows mining of beds and banks of state scenic waterways, using nonmotorized or motorized methods, after obtaining permit.

A BILL FOR AN ACT

1
2 Relating to state scenic waterways; amending ORS 390.835.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 390.835 is amended to read:

5 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
6 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
7 in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water
8 impoundment facility shall be constructed on waters within scenic waterways. No water diversion
9 facility shall be constructed or used except by right previously established or as permitted by the
10 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
11 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
12 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-
13 section.

14 (2) *[Filling of the beds or removal of material from or other alteration of the beds or banks of*
15 *scenic waterways for purposes other than recreational prospecting not requiring a permit shall be*
16 *prohibited, except as permitted by the Director of the Department of State Lands upon a finding that*
17 *such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic*
18 *waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and*
19 *196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this*
20 *state. The Director of the Department of State Lands shall administer and enforce the provisions of this*
21 *subsection.]* **A person may not fill the beds of scenic waterways or remove material from or**
22 **otherwise alter the beds or banks of scenic waterways unless:**

23 **(a) The person is prospecting; or**

24 **(b) The Director of the Department of State Lands issues a permit to the person in ac-**
25 **cordance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870.**

26 (3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands
27 may issue a temporary permit for the removal, filling or alteration of the beds or banks within a
28 scenic waterway. The temporary permit shall include conditions developed after consultation with
29 the State Department of Fish and Wildlife and the State Parks and Recreation Department.

30 (b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary
31 to prevent irreparable harm, injury or damage to persons or property.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-
2 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS
3 196.835.

4 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-
5 mission to construct facilities or make improvements to facilitate the passage or propagation of fish
6 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805
7 to 390.925 affects the authority of the Water Resources Commission to construct and maintain
8 stream gauge stations and other facilities related to the commission's duties in administration of the
9 water laws.

10 (6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Com-
11 mission may issue a water right for human consumption not to exceed 0.005 cubic feet per second
12 per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second
13 per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if
14 the Water Resources Commission makes the following findings:

15 (a) That issuing the water right does not significantly impair the free-flowing character of these
16 waters in quantities necessary for recreation, fish and wildlife.

17 (b) That issuing the water right is consistent with provisions pertaining to water appropriation
18 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

19 (c) That construction, operation and maintenance of the diversion system will be carried out in
20 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

21 (d) If the water right is for human consumption, an additional finding that:

22 (A) The applicant cannot reasonably obtain water from any other source;

23 (B) Denial of the water right would result in loss of reasonable expectations for use of the
24 property; and

25 (C) The system installed to divert water shall include monitoring equipment to permit water use
26 measurement and reporting.

27 (e) If the water right is for livestock consumption, an additional finding that:

28 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

29 (B) The applicant cannot reasonably obtain water from any other source; and

30 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

31 (7) In making the findings required under subsection (6) of this section, the Water Resources
32 Commission shall consider the existing or potential cumulative impacts of issuing the water right.

33 (8) The Water Resources Commission may not allow human consumption and livestock uses au-
34 thorized under subsection (6) of this section in excess of a combined cumulative total of one percent
35 of the average daily flow or one cubic foot per second, whichever is less, unless:

36 (a) The Water Resources Commission, the State Parks and Recreation Department, the State
37 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
38 State Lands unanimously agree to exceed that amount; and

39 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
40 ters in quantities necessary for recreation, fish and wildlife.

41 (9)(a) The provisions of this section [shall] **may** not apply to a water right application for the
42 use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Di-
43 rector based on a preponderance of evidence that the use of ground water will measurably reduce
44 the surface water flows necessary to maintain the free-flowing character of a scenic waterway in
45 quantities necessary for recreation, fish and wildlife.

1 (b) The Water Resources Department shall review every application for the use of ground water
2 to determine whether to make the finding specified in paragraph (a) of this subsection. The finding
3 shall be based upon the application of generally accepted hydrogeologic methods using relevant and
4 available field information concerning the proposed use.

5 (c) In making the determination required by paragraph (a) of this subsection, the Water Re-
6 sources Department shall consider the timing of projected impacts of the proposed use in relation
7 to other factors, including but not limited to: Changing climate, recharge, incidental precipitation,
8 out-of-stream appropriations and return flows.

9 (d) If the Water Resources Director makes the finding specified in paragraph (a) of this sub-
10 section, the Water Resources Director shall issue an order denying the application unless:

11 (A) Mitigation is provided in accordance with subsection (10) of this section; or

12 (B) The applicant submits evidence to overcome the finding under paragraph (a) of this sub-
13 section.

14 (e) Except as provided under subsection (13) of this section, if the Water Resources Director
15 does not make the finding specified in paragraph (a) of this subsection, the Water Resources Direc-
16 tor shall issue an order approving the application if the application otherwise meets the require-
17 ments of ORS 537.505 to 537.795.

18 (f) A protest of any order issued under this subsection may be filed in the same manner as a
19 protest on any application for a right to appropriate ground water.

20 (g) Each water right permit and certificate for appropriation of ground water issued after July
21 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-
22 tioned to allow the regulation of the use if analysis of data available after the permit or certificate
23 is issued discloses that the appropriation will measurably reduce the surface water flows necessary
24 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,
25 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-
26 quently reduced.

27 (h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS
28 537.545.

29 (10) The Water Resources Commission or Water Resources Director shall consider mitigation
30 measures and may include mitigation measures as conditions in any water right permit or certificate
31 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-
32 essary for recreation, fish and wildlife.

33 (11) The Water Resources Commission and the Water Resources Director shall carry out their
34 responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways
35 in conformity with the provisions of this section.

36 (12) As used in this section, "measurably reduce" means that the use authorized under sub-
37 section (9) of this section will individually or cumulatively reduce surface water flows within the
38 scenic waterway in excess of a combined cumulative total of one percent of the average daily flow
39 or one cubic foot per second, whichever is less, unless:

40 (a) The Water Resources Department, the State Parks and Recreation Department, the State
41 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
42 State Lands unanimously agree to exceed that amount; and

43 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
44 ters in quantities necessary for recreation, fish and wildlife.

45 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway

1 in amounts up to but not exceeding the amounts described in subsection (12) of this section, the
2 Water Resources Director shall find:

3 (a) That the appropriation will not significantly impair the free-flowing character of these waters
4 in quantities necessary for recreation, fish and wildlife.

5 (b) That the appropriation is consistent with provisions pertaining to water appropriations and
6 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

7 (c) That construction, operation and maintenance of the appropriation will be carried out in a
8 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

9 *[(14) No placer mining shall be permitted on waters within scenic waterways other than recre-*
10 *ational placer mining.]*

11 *[(15)] (14) [No person shall be required to obtain a permit for recreational prospecting resulting in*
12 *the fill, removal or other alteration of less than one cubic yard of material at any one individual site*
13 *and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of*
14 *any single scenic waterway in a single year.]* **The Director of the Department of State Lands may**
15 **not require a person to obtain a permit under subsection (2) of this section if the person is**
16 **prospecting.**

17 **(15)** *[Recreational prospecting shall not occur]* **A person may not engage in prospecting** at any
18 site where fish eggs are present.

19 *[(16) No provision of this section shall be construed to exempt recreational placer mining on a*
20 *scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the*
21 *provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800*
22 *to 196.825 and 196.845 to 196.870.]*

23 *[(17) Recreational placer mining, other than recreational prospecting not requiring a permit, shall*
24 *not:]*

25 *[(a) Dam or divert a waterway or obstruct fish passage;]*

26 *[(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the*
27 *wet perimeter;]*

28 *[(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter*
29 *other than movement by hand and nonmotorized equipment;]*

30 *[(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-*
31 *gardless of their location;]*

32 *[(e) Include excavation from the streambank;]*

33 *[(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon*
34 *leaving the site;]*

35 *[(g) Include operation of a suction dredge without a suction dredge waste discharge permit from*
36 *the Department of Environmental Quality including, but not limited to, a prohibition against dredging*
37 *during periods when fish eggs could be in the dredging site gravel;]*

38 *[(h) Be conducted on federal lands except as allowed by agencies of the federal government;]*

39 *[(i) Impede boating;]*

40 *[(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a res-*
41 *idence or within 500 feet of a campground except within a federally designated recreational mining site;*
42 *or]*

43 *[(k) Include operation of a dredge within the marked or posted swimming area of a designated*
44 *campground or day use area except within a federally designated recreational mining site.]*

45 **[(18)] (16)** As used in this section:

1 (a) “Bed” means the land within the wet perimeter and any adjacent nonvegetated dry gravel
2 bar.

3 (b) “Prospecting” means to search or explore for samples of gold, silver or other precious min-
4 erals, using nonmotorized methods, from among small quantities of aggregate.

5 [(c) “Recreational placer mining” includes, but is not limited to, the use of nonmotorized equipment
6 and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four
7 inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise
8 reduction standards. “Recreational placer mining” does not include recreational prospecting that does
9 not require a permit.]

10 [(d)] (c) “Wet perimeter” means the area of the stream that is underwater, or is exposed as a
11 nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
12 activity occurs.

13 **SECTION 2.** ORS 390.835, as amended by section 8, chapter 516, Oregon Laws 2001, is amended
14 to read:

15 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
16 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
17 in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water
18 impoundment facility may not be constructed on waters within scenic waterways. A water diversion
19 facility may not be constructed or used except by right previously established or as permitted by the
20 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
21 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
22 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-
23 section.

24 (2) *[Filling of the beds or removal of material from or other alteration of the beds or banks of*
25 *scenic waterways for purposes other than recreational prospecting not requiring a permit shall be*
26 *prohibited, except as permitted by the Director of the Department of State Lands upon a finding that*
27 *such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic*
28 *waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and*
29 *196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this*
30 *state. The Director of the Department of State Lands shall administer and enforce the provisions of this*
31 *subsection.]* **A person may not fill the beds of scenic waterways or remove material from or**
32 **otherwise alter the beds or banks of scenic waterways unless:**

33 **(a) The person is prospecting; or**

34 **(b) The Director of the Department of State Lands issues a permit to the person in ac-**
35 **cordance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870.**

36 (3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands
37 may issue a temporary permit for the removal, filling or alteration of the beds or banks within a
38 scenic waterway. The temporary permit shall include conditions developed after consultation with
39 the State Department of Fish and Wildlife and the State Parks and Recreation Department.

40 (b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary
41 to prevent irreparable harm, injury or damage to persons or property.

42 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-
43 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS
44 196.835.

45 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-

1 mission to construct facilities or make improvements to facilitate the passage or propagation of fish
2 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805
3 to 390.925 affects the authority of the Water Resources Commission to construct and maintain
4 stream gauge stations and other facilities related to the commission's duties in administration of the
5 water laws.

6 (6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Com-
7 mission may issue a water right for human consumption not to exceed 0.005 cubic feet per second
8 per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second
9 per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if
10 the Water Resources Commission makes the following findings:

11 (a) That issuing the water right does not significantly impair the free-flowing character of these
12 waters in quantities necessary for recreation, fish and wildlife.

13 (b) That issuing the water right is consistent with provisions pertaining to water appropriation
14 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

15 (c) That construction, operation and maintenance of the diversion system will be carried out in
16 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

17 (d) If the water right is for human consumption, an additional finding that:

18 (A) The applicant cannot reasonably obtain water from any other source;

19 (B) Denial of the water right would result in loss of reasonable expectations for use of the
20 property; and

21 (C) The system installed to divert water shall include monitoring equipment to permit water use
22 measurement and reporting.

23 (e) If the water right is for livestock consumption, an additional finding that:

24 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

25 (B) The applicant cannot reasonably obtain water from any other source; and

26 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

27 (7) In making the findings required under subsection (6) of this section, the Water Resources
28 Commission shall consider the existing or potential cumulative impacts of issuing the water right.

29 (8) The Water Resources Commission may not allow human consumption and livestock uses au-
30 thorized under subsection (6) of this section in excess of a combined cumulative total of one percent
31 of the average daily flow or one cubic foot per second, whichever is less, unless:

32 (a) The Water Resources Commission, the State Parks and Recreation Department, the State
33 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
34 State Lands unanimously agree to exceed that amount; and

35 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
36 ters in quantities necessary for recreation, fish and wildlife.

37 (9)(a) The provisions of this section do not apply to a water right application for the use of
38 ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director
39 based on a preponderance of evidence that the use of ground water will measurably reduce the
40 surface water flows necessary to maintain the free-flowing character of a scenic waterway in quan-
41 tities necessary for recreation, fish and wildlife.

42 (b) The Water Resources Department shall review every application for the use of ground water
43 to determine whether to make the finding specified in paragraph (a) of this subsection. The finding
44 shall be based upon the application of generally accepted hydrogeologic methods using relevant and
45 available field information concerning the proposed use.

1 (c) In making the determination required by paragraph (a) of this subsection, the Water Re-
2 sources Department shall consider the timing of projected impacts of the proposed use in relation
3 to other factors, including but not limited to: Changing climate, recharge, incidental precipitation,
4 out-of-stream appropriations and return flows.

5 (d) If the Water Resources Director makes the finding specified in paragraph (a) of this sub-
6 section, the Water Resources Director shall issue an order denying the application unless:

7 (A) Mitigation is provided in accordance with subsection (10) of this section; or

8 (B) The applicant submits evidence to overcome the finding under paragraph (a) of this sub-
9 section.

10 (e) Except as provided under subsection (13) of this section, if the Water Resources Director
11 does not make the finding specified in paragraph (a) of this subsection, the Water Resources Direc-
12 tor shall issue an order approving the application if the application otherwise meets the require-
13 ments of ORS 537.505 to 537.795.

14 (f) A protest of any order issued under this subsection may be filed in the same manner as a
15 protest on any application for a right to appropriate ground water.

16 (g) Each water right permit and certificate for appropriation of ground water issued after July
17 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-
18 tioned to allow the regulation of the use if analysis of data available after the permit or certificate
19 is issued discloses that the appropriation will measurably reduce the surface water flows necessary
20 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,
21 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-
22 quently reduced.

23 (h) This subsection does not limit the use of ground water for a use exempted under ORS
24 537.545.

25 (10) The Water Resources Commission or Water Resources Director shall consider mitigation
26 measures and may include mitigation measures as conditions in any water right permit or certificate
27 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-
28 essary for recreation, fish and wildlife.

29 (11) The Water Resources Commission and the Water Resources Director shall carry out their
30 responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways
31 in conformity with the provisions of this section.

32 (12) As used in this section, "measurably reduce" means that the use authorized under sub-
33 section (9) of this section will individually or cumulatively reduce surface water flows within the
34 scenic waterway in excess of a combined cumulative total of one percent of the average daily flow
35 or one cubic foot per second, whichever is less, unless:

36 (a) The Water Resources Department, the State Parks and Recreation Department, the State
37 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
38 State Lands unanimously agree to exceed that amount; and

39 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
40 ters in quantities necessary for recreation, fish and wildlife.

41 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway
42 in amounts up to but not exceeding the amounts described in subsection (12) of this section, the
43 Water Resources Director shall find:

44 (a) That the appropriation will not significantly impair the free-flowing character of these waters
45 in quantities necessary for recreation, fish and wildlife.

1 (b) That the appropriation is consistent with provisions pertaining to water appropriations and
2 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

3 (c) That construction, operation and maintenance of the appropriation will be carried out in a
4 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

5 *[(14) Placer mining is not permitted on waters within scenic waterways, other than recreational
6 placer mining.]*

7 *[(15)] (14) [A person may not be required to obtain a permit for recreational prospecting or other
8 nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one cu-
9 bic yard of material at any one individual site and, cumulatively, not more than five cubic yards of
10 material from within the bed or wet perimeter of any single scenic waterway in a single year.]* **The
11 Director of the Department of State Lands may not require a person to obtain a permit un-
12 der subsection (2) of this section if the person is prospecting.**

13 **(15)** *[Recreational prospecting shall not occur]* **A person may not engage in prospecting** at any
14 site where fish eggs are present.

15 *[(16) This section does not exempt recreational placer mining on a scenic waterway, other than
16 recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800
17 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to
18 196.870.]*

19 *[(17) Recreational placer mining may not:]*

20 *[(a) Dam or divert a waterway or obstruct fish passage;]*

21 *[(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the
22 wet perimeter;]*

23 *[(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter
24 other than movement by hand and nonmotorized equipment;]*

25 *[(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-
26 gardless of their location;]*

27 *[(e) Include excavation from the streambank;]*

28 *[(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon
29 leaving the site;]*

30 *[(g) Include operation of a suction dredge without a suction dredge waste discharge permit from
31 the Department of Environmental Quality including, but not limited to, a prohibition against dredging
32 during periods when fish eggs could be in the dredging site gravel;]*

33 *[(h) Be conducted on federal lands except as allowed by agencies of the federal government;]*

34 *[(i) Impede boating;]*

35 *[(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a res-
36 idence or within 500 feet of a campground except within a federally designated recreational mining site;
37 or]*

38 *[(k) Include operation of a dredge within the marked or posted swimming area of a designated
39 campground or day use area except within a federally designated recreational mining site.]*

40 **[(18)] (16)** As used in this section:

41 (a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel
42 bar.

43 (b) "Prospecting" means to search or explore for samples of gold, silver or other precious min-
44 erals, using nonmotorized methods, from among small quantities of aggregate.

45 *[(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment*

1 *and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four*
2 *inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise*
3 *reduction standards. "Recreational placer mining" does not include recreational prospecting that does*
4 *not require a permit.]*

5 [(d)] (c) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a
6 nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the
7 activity occurs.

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