

Senate Bill 765

Sponsored by Senators ATKINSON, HASS; Senator BATES

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**.

Creates offense of practicing recreational dredge mining without license. Punishes by maximum of 30 days' imprisonment, \$1,250 fine, or both.

Directs counties to establish process for issuing recreational dredge mining licenses. Imposes licensing fee of \$50 for residents and \$2,500 for nonresidents. Exempts persons who hold recreational dredge mining license from fill and removal program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to recreational dredge mining; creating new provisions; amending ORS 196.905 and 390.835;
2 and declaring an emergency.

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

SECTION 1. As used in sections 1 to 3 of this 2011 Act:

4 (1) "Nonresident" means a person who is not a resident;

5 (2)(a) "Recreational dredge mining" means the use of a motorized dredge or other mo-
6 torized equipment to:

7 (A) Remove material from the beds or banks of state waterways for purposes that are
8 consistent with a hobby or casual use; or

9 (B) Fill a state waterway for purposes that are consistent with a hobby or casual use.

10 (b) "Recreational dredge mining" does not include:

11 (A) The removal of material from the beds or banks of any state waterway that abuts
12 land owned by the person conducting or authorizing the removal; or

13 (B) The filling of any state waterway that abuts land owned by the person conducting or
14 authorizing the removal.

15 (3) "Resident" means a person who has resided in this state for at least 180 days prior
16 to the date on which the person applies for a recreational dredge mining license.

17 (4) "Scenic waterway" has the meaning given that term in ORS 390.805.

18 **SECTION 2. (1) A person commits the crime of practicing recreational dredge mining
19 without a license if the person practices recreational dredge mining without acquiring a
20 recreational dredge mining license as required by section 3 of this 2011 Act.**

21 (2) Practicing recreational dredge mining without a license is a Class C misdemeanor.

22 **SECTION 3. (1) A person may not practice recreational dredge mining in this state unless
23 the person acquires a recreational dredge mining license from a county. A recreational
24 dredge mining license is valid only in the county that issues the license.**

25 (2) Each county shall establish a process by which the county clerk issues recreational
26 dredge mining licenses. Each county clerk shall charge for the issuance of a recreational
27 dredge mining license a fee of:
28
29

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 (a) \$50 for a resident; or

2 (b) \$2,500 for a nonresident.

3 (3) A recreational dredge mining license expires one year after the date on which the
4 county issues the license.

5 (4) At the time that a person applies for a recreational dredge mining license, the person
6 must declare whether the person intends to practice recreational dredge mining on a scenic
7 waterway. If the person intends to practice recreational dredge mining on a scenic waterway,
8 the county clerk shall transmit the person's application to the Department of State Lands
9 so that the Director of the Department of State Lands may make a finding under ORS 390.835
10 (2). The director shall return the application to the county clerk within two weeks of re-
11 ceiving the application.

12 (5) The county clerk shall deposit all fees collected under this section into an account
13 maintained by the county treasurer. The moneys in the account and the interest earned by
14 the account are reserved for the purpose of funding law enforcement activities related to
15 enforcing section 2 of this 2011 Act.

16 **SECTION 4.** ORS 196.905 is amended to read:

17 196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this
18 state for the purpose of constructing, operating and maintaining dams or other diversions for which
19 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which
20 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

21 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks
22 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

23 (a) Such waterway or portion is situated within forestland; and

24 (b) Such removal or filling is directly connected with a forest management practice conducted
25 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

26 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted
27 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,
28 cultivating, conventional crop rotation or harvesting.

29 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for
30 exclusive farm use as described in ORS 215.203 for the following activities:

31 (a) Drainage or maintenance of farm or stock ponds; or

32 (b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands
33 or any other waters of this state.

34 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for subsurface
35 drainage by deep ripping, tiling or moling on converted wetlands that are zoned for exclusive farm
36 use pursuant to ORS 215.203.

37 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
38 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
39 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
40 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
41 successor agency, so long as commercial agricultural production on the land has not been aban-
42 doned for five or more years.

43 (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-
44 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
45 in effect on January 1, 2010.

1 (8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal
2 that involves changing an area of wetlands to a nonfarm use.

3 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
4 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
5 ditches, irrigation ditches and tile drain systems, provided that:

6 (a) The structure was serviceable within the past five years; and

7 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or
8 other waters of this state to a greater extent than the wetlands or waters of this state were affected
9 as a result of the original construction of those structures.

10 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
11 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
12 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
13 ments or approaches.

14 **(11) Nothing in ORS 196.800 to 196.900 applies to recreational dredge mining, as defined**
15 **in section 1 of this 2011 Act.**

16 [(11)] (12) The Department of State Lands may adopt a rule that exempts from the requirement
17 to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have
18 only minimal adverse impact on waters of this state.

19 [(12)] (13) As used in this section:

20 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,
21 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
22 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
23 are managed for commercial agricultural purposes.

24 (b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any
25 other waters of this state that are located within or adjacent to a converted wetland area.

26 **SECTION 5.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section 13,
27 chapter 253, Oregon Laws 2003, and section 4, chapter 342, Oregon Laws 2009, is amended to read:

28 196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit
29 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters
30 of this state when:

31 (a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters
32 into a use to which it was not previously subject; and

33 (b)(A) The flow or circulation of the waters of this state may be impaired; or

34 (B) The reach of the waters may be reduced.

35 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or banks
36 or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

37 (a) Such waterway or portion is situated within forestland; and

38 (b) Such removal or filling is directly connected with a forest management practice conducted
39 in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

40 (3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted
41 wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting,
42 cultivating, conventional crop rotation or harvesting.

43 (4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for
44 exclusive farm use as described in ORS 215.203 for the following activities:

45 (a) Drainage or maintenance of farm or stock ponds; or

1 (b) Maintenance of farm roads, provided that:

2 (A) The farm roads are constructed and maintained in accordance with construction practices
3 designed to minimize any adverse effects to the aquatic environment;

4 (B) Borrow material for farm road maintenance does not come from waters of this state unless
5 authorized by the Department of State Lands; and

6 (C) Maintenance activities are confined to the scope of construction for the original project.

7 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity
8 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS
9 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by
10 the Natural Resources Conservation Service of the United States Department of Agriculture, or its
11 successor agency, so long as commercial agricultural production on the land has not been aban-
12 doned for five or more years.

13 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablish-
14 ment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as
15 in effect on January 1, 2010.

16 (7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal
17 that involves changing an area of wetlands or converted wetlands to a nonfarm use.

18 (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
19 or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage
20 ditches, irrigation ditches and tile drain systems, provided that:

21 (a) The structure was serviceable within the past five years; and

22 (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or
23 other waters of this state to a greater extent than the wetlands or waters of this state were affected
24 as a result of the original construction of those structures.

25 (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams
26 constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the
27 following conditions are satisfied:

28 (a) The removal or filling is conducted during periods that minimize adverse effects to fish and
29 wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

30 (b) The removal or filling does not jeopardize a threatened or endangered species or adversely
31 modify or destroy the habitat of a threatened or endangered species listed under federal or state
32 law; and

33 (c) Temporary fills are removed in their entirety and the area is restored to its approximate
34 original elevation.

35 (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance,
36 including emergency reconstruction of recently damaged parts, of currently serviceable roads or
37 transportation structures such as groins and riprap protecting roads, causeways and bridge abut-
38 ments or approaches.

39 (11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance
40 of access roads constructed to move mining equipment, subject to the following conditions:

41 (a) The access roads are constructed and maintained in accordance with construction practices
42 that minimize adverse effects to the aquatic environment;

43 (b) Borrow material for access road maintenance does not come from waters of this state unless
44 authorized by the Department of State Lands; and

45 (c) Maintenance activities are confined to the scope of construction for the original project.

1 **(12) Nothing in ORS 196.800 to 196.900 applies to recreational dredge mining, as defined**
 2 **in section 1 of this 2011 Act.**

3 [(12)] **(13)** The department may adopt a rule that exempts from the requirement to obtain a
 4 permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal
 5 adverse impact on waters of this state.

6 [(13)] **(14)** As used in this section:

7 (a)(A) “Converted wetlands” means agriculturally managed wetlands that, on or before June 30,
 8 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or
 9 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that
 10 are managed for commercial agricultural purposes.

11 (B) “Converted wetlands” does not include any stream, slough, ditched creek, spring, lake or any
 12 other waters of this state that are located within or adjacent to a converted wetland area.

13 (b) “Harvesting” means physically removing crops or other agricultural products.

14 (c) “Plowing” includes all forms of primary tillage, including moldboard, chisel or wide-blade
 15 plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil
 16 to prepare it for planting crops or other agricultural products. “Plowing” does not include:

17 (A) The redistribution of soil, rock, sand or other surface materials in a manner that changes
 18 areas of waters of this state into dry land; or

19 (B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-
 20 duction of water storage and recharge capability, or the overburdening of natural water filtration
 21 capacity.

22 (d) “Seeding” means the sowing of seed or placement of seedlings to produce crops or other
 23 agricultural products.

24 **SECTION 6.** ORS 390.835 is amended to read:

25 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
 26 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
 27 in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water
 28 impoundment facility shall be constructed on waters within scenic waterways. No water diversion
 29 facility shall be constructed or used except by right previously established or as permitted by the
 30 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
 31 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
 32 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-
 33 section.

34 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of
 35 scenic waterways for purposes other than recreational prospecting not requiring a permit **or license**
 36 shall be prohibited, except as permitted by the Director of the Department of State Lands upon a
 37 finding that [*such activity*] **the issuance of a permit or license** would be consistent with the poli-
 38 cies set forth under ORS 390.805 to 390.925 for scenic waterways and, **notwithstanding ORS**
 39 **196.905 (11)**, in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and
 40 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this
 41 state. [*The Director of the Department of State Lands shall administer and enforce the provisions of*
 42 *this subsection.*] **The director shall make a finding for the issuance of a license under this**
 43 **subsection within two weeks of receiving the application from the county clerk who trans-**
 44 **mitted the application pursuant to section 3 of this 2011 Act.**

45 (3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands

1 may issue a temporary permit for the removal, filling or alteration of the beds or banks within a
2 scenic waterway. The temporary permit shall include conditions developed after consultation with
3 the State Department of Fish and Wildlife and the State Parks and Recreation Department.

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

6 (4) Any person adversely affected or aggrieved by the grant or denial of a permit **or license**
7 under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in
8 ORS 196.835.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS
33 537.545.

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

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

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

45 (a) The Water Resources Department, the State Parks and Recreation Department, the State

1 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
2 State Lands unanimously agree to exceed that amount; and

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

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

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

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

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

14 (14) No placer mining shall be permitted on waters within scenic waterways other than recre-
15 ational placer mining.

16 (15) No person shall be required to obtain a permit **or license** for recreational prospecting re-
17 sulting in the fill, removal or other alteration of less than one cubic yard of material at any one
18 individual site and, cumulatively, not more than five cubic yards of material from within the bed or
19 wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not
20 occur at any site where fish eggs are present.

21 (16) No provision of this section shall be construed to exempt recreational placer mining on a
22 scenic waterway, other than recreational prospecting not requiring a permit **or license**, from com-
23 pliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pur-
24 suant to ORS 196.800 to 196.825 and 196.845 to 196.870.

25 (17) Recreational placer mining, other than recreational prospecting not requiring a permit **or**
26 **license**, shall not:

27 (a) Dam or divert a waterway or obstruct fish passage;

28 (b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the
29 wet perimeter;

30 (c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter
31 other than movement by hand and nonmotorized equipment;

32 (d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-
33 gardless of their location;

34 (e) Include excavation from the streambank;

35 (f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon
36 leaving the site;

37 (g) Include operation of a suction dredge without a suction dredge waste discharge permit from
38 the Department of Environmental Quality including, but not limited to, a prohibition against dredg-
39 ing during periods when fish eggs could be in the dredging site gravel;

40 (h) Be conducted on federal lands except as allowed by agencies of the federal government;

41 (i) Impede boating;

42 (j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a
43 residence or within 500 feet of a campground except within a federally designated recreational
44 mining site; or

45 (k) Include operation of a dredge within the marked or posted swimming area of a designated

1 campground or day use area except within a federally designated recreational mining site.

2 (18) As used in this section:

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

5 **(b) “License” means a recreational dredge mining license issued under section 3 of this**
6 **2011 Act.**

7 **(c) “Permit” means a fill or removal permit issued under ORS 196.800 to 196.900.**

8 [(b)] (d) “Prospecting” means to search or explore for samples of gold, silver or other precious
9 minerals, using nonmotorized methods, from among small quantities of aggregate.

10 [(c)] (e) “Recreational placer mining” includes, but is not limited to, the use of nonmotorized
11 equipment and motorized surface dredges having an intake nozzle with an inside diameter not ex-
12 ceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding
13 factory-installed noise reduction standards. “Recreational placer mining” does not include recre-
14 ational prospecting that does not require a permit **or license**.

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

18 **SECTION 7.** ORS 390.835, as amended by section 8, chapter 516, Oregon Laws 2001, is amended
19 to read:

20 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
21 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
22 in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water
23 impoundment facility may not be constructed on waters within scenic waterways. A water diversion
24 facility may not be constructed or used except by right previously established or as permitted by the
25 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
26 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
27 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-
28 section.

29 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of
30 scenic waterways for purposes other than recreational prospecting not requiring a permit **or license**
31 shall be prohibited, except as permitted by the Director of the Department of State Lands upon a
32 finding that [*such activity*] **the issuance of a permit or license** would be consistent with the poli-
33 cies set forth under ORS 390.805 to 390.925 for scenic waterways and, **notwithstanding ORS**
34 **196.905 (12)**, in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and
35 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this
36 state. [*The Director of the Department of State Lands shall administer and enforce the provisions of*
37 *this subsection.*] **The director shall make a finding for the issuance of a license under this**
38 **subsection within two weeks of receiving the application from the county clerk who trans-**
39 **mitted the application pursuant to section 3 of this 2011 Act.**

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

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

1 (4) Any person adversely affected or aggrieved by the grant or denial of a permit **or license**
2 under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in
3 ORS 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 do not apply to a water right application for the use of
42 ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director
43 based on a preponderance of evidence that the use of ground water will measurably reduce the
44 surface water flows necessary to maintain the free-flowing character of a scenic waterway in quan-
45 tities 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) This subsection does not 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) Placer mining is not permitted on waters within scenic waterways, other than recreational
10 placer mining.

11 (15) A person may not be required to obtain a permit **or license** for recreational prospecting
12 or other nonmotorized recreational activity resulting in the fill, removal or other alteration of less
13 than one cubic yard of material at any one individual site and, cumulatively, not more than five
14 cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a
15 single year. Recreational prospecting shall not occur at any site where fish eggs are present.

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

20 (17) Recreational placer mining may not:

21 (a) Dam or divert a waterway or obstruct fish passage;

22 (b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the
23 wet perimeter;

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

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

28 (e) Include excavation from the streambank;

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

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

34 (h) Be conducted on federal lands except as allowed by agencies of the federal government;

35 (i) Impede boating;

36 (j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a
37 residence or within 500 feet of a campground except within a federally designated recreational
38 mining site; or

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

41 (18) As used in this section:

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

44 (b) "License" means a recreational dredge mining license issued under section 3 of this
45 **2011 Act.**

