

Attention Senate Environment and Resources Committee

Attention: To SB115, SB401 and SB370 Please make this letter part of the public record.

Dear Senator Dingfelder,

2/4/2013

I OPPOSE the following bills SB115, SB401 and SB370 and ask this letter be made as part of the public record.

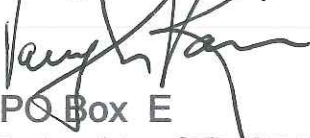
Dear Senator Dingfelder:

All of the bills listed will cause financial hardship including mineral trespass for Oregon citizens with respect to our 1872 mining rights and Oregon mining law.

SB401 in particular will cause a "Takings" for some of Oregon's most valuable placer mining streams with active Federal mining claims. SB401 will also eliminate future mining claims with respect to the new proposed Oregon Scenic Waters. Oregon already has 19 Oregon Scenic Waters including Waldo Lake. Please be aware with the proposed Oregon Scenic Waters addition Oregon cannot afford a "Takings" class action lawsuit from hundreds of Oregon Federal claim owners.

Please read attached "**Bullet Points against SB 401**".

Vaughn Rains



PO Box E
Lakeside, OR 97449.

cc:

Senator Alan Olsen
Senator Alan Bates
Senator Bill Hansell
Senator Mark Hass

Bullet Points against SB 401

1. The State of Oregon does not have the authority to take private property by establishing a "Scenic easement" one-fourth mile from the bank of any river without either the consent of the owner, or without compensation. Establishing a scenic easement is a taking of private property or lands managed by the Federal Government, for public use without first offering compensation under the Oregon Constitution (Article I Section 18).
2. The "right to control the use of related adjacent land" and air space above for future uses that are currently lawful are outside the authority of the State of Oregon, and especially so with no offer of compensation. (Article I Section 18 Oregon Constitution and the Fifth Amendment U.S. Constitution)
3. Mining in all of its forms are the intended use and rights of the citizens; it "shall be free and open" to prospecting, exploring, locating and occupying and purchasing the valuable mineral deposit, which includes the surface in lands open to mineral entry and belonging to the Federal Government. (30 USC 22, 26 & 35)
4. Under the Supremacy Clause, any state law that conflicts with a federal law is preempted. *Gibbons v. Ogden*, 22 U.S. 1 (1824). Any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause, regardless of the underlying purpose of its enactors, *Perez v. Campbell*, 402 U.S. 637, 651-52, 91 S.Ct. 1704 20 L. Ed.2d 233 (1971). Article VI, Section 2 of the U.S. Constitution provides that the "... Constitution and Laws of the United State... shall be the supreme Law of the Land."
5. The current scenic waterways statutes conflict with Federal Law governing use of federal lands, specifically prohibiting placer mining. SB 401 not only adds several more waterways to the conflicting law, but also compounds the existing problems by adding an improper savings clause that does not save the future right of use of property by the owner.
6. SB 401 cannot legally apply to "removal or fill activity", because the gravel's in such waterways in the public lands belong to the upland owner, which includes the mining Claimant.
7. Certain water rights to use the lakes and running streams were "hereby granted" by the State of Oregon as a "public necessity" and a "beneficial use" for mining purposes (1899 Act) and partly codified in ORS 541.110 and cannot be denied or require permitting to the mining claimant. The State granted that right away.
8. SB 401 or any previous statutes governing the scenic waterway cannot restrict the public use of roads, railroads or utilities constructed within any creeks and rivers or "waterways", especially RS 2477 right of ways, for maintenance and access to minerals on federal lands also see Oregon Constitution Article I, Section 18, which are "necessary to promote the transportation of raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state..."
9. An emergency has not been established.