

Comments on HB 2841-1
Agriculture and Natural Resource Committee
By Guy Michael, April 4, 2013

Regarding: comments and appreciation for scheduling of hearing for April 16, 2013

Dear Chair Representative Brad Witt and Legislators:

I am highly appreciative of scheduling HB 2841. I also ask that the amended Bill HB 2841-1 would be the Bill brought forward for the hearing. It is no secret that environmental organizations have been at odds with the recreational and small scale miners (even the large mining companies have not escaped their lawsuits and attempts at new legislation).

The small miners here in Oregon have been fighting in the courts and with environmental agencies of the State too, for many years concerning the federal grant and property rights under the 1872 Mining Law. There are 13 mining organizations that have been in court against permitting by Oregon Dept. of Environmental Quality (DEQ) since 2005, on the 2005 permit and now on the 2010 suction dredge permit. This is costing the State and the miners' considerable sums of money, which would be better spent somewhere else.

The consultation requirement of ORS 517.125 needed more teeth to get a more thorough consultation with DEQ before any permitting requirements are established, to protect the primary stakeholder standing of the miners'. The miners have been submitting relevant scientific studies with their comments over the years, yet DEQ has been disregarding these studies and using selective studies which are less relevant. Therefore, the requirement to consult and to "**Consider all available and relevant scientific studies**" was added to the Bill.

I am asking that HB 2841-1 receive a passing yes vote for several reasons. This Bill does not really change the concept of the current statute (ORS 517.125); it is about strengthening the concept of consultation **to resolve disputes and to address the rights of parties that engage in recreational or small scale mining.** (Section 1, (2)(a) for "rules" & at Section 1, (3)(a) for "orders"). The extra teeth in the Bill require that if consultation is not adhered to when promulgating any new rules or orders they become "not valid".

The miners' understand that not all issues can be resolved without the help of the courts; however, by the consultation requirements in this Bill, it will certainly go a long ways to resolve those issues that can be resolved and to narrow any issues that are taken to Court, which in the end, reduces the costs to both parties, the miners and the budgets of the State agencies.

Representatives' are protectors of property ownership and the peace, safety and happiness of the citizens of Oregon (Oregon Constitution, Article I, Section 1, 10 & 18); HB 2841-1 goes a long way to promote that peace in a reasonable manner.

The 1872 Mining Law grant rights to explore, prospect, mine and claim the land by locating the deposits discovered on Federal public lands that are open to mineral entry. (30 U.S.C. 22 & 26) This includes the gravel deposits that are traversed by the non-navigable streams in the public lands. (43 U.S.C. 1301 (f) “The term ‘lands beneath navigable waters’ does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States...”); Also, (Under certain conditions non-navigable bodies of water may be meandered, and of course, title to the beds of such lakes or rivers vests in the United States until sold; *US v. Oregon*, 295 US 1 (1935))

The State of Oregon has long since recognized the Mining claim as “realty” (whether quartz or placer) the “owner of the possessory right thereto has a legal estate therein within the meaning of ORS 105.005.” (ORS 517.080). The miners own property, which includes the minerals in the stream beds; and these lands are destined for mining as is granted to them and recognized by the State of Oregon.

The U.S. Supreme Court did not review any “reasonable environmental regulation in *California Costal Comm’n. v. Granite Rock Co.*, 480 U.S. 572, because it was not the issue presented in the case. The issue was about whether the State had authority to permit based on “reasonable environmental regulation”, which was affirmed; but, “[n]either do we take the course of condemning the permit requirement on the basis of as yet unidentifiable conflicts with the federal scheme.” (*Id.* at 594.)

The issue of what is “reasonable” then is of the highest concern for the miners. They view that the property right includes mining, and it cannot be prohibited, because it would frustrate the purpose of the grant by Congress. See *Perez v. Campbell*, 402 U.S. 637 (1971) (“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”).

In 1999, The Legislative Assembly (ORS 517.123) found that “prospecting, small scale mining and recreational mining”:

- (1) Are important parts of the heritage of the State of Oregon;
- (2) Provide economic benefits to the state and local communities; and
- (3) Can be conducted in a manner that is not harmful and may be beneficial to fish habitat and fish propagation. [1999 c.354 §2]

This same Act, in 1999, also required rules to be adopted in consultation with the affected parties in (ORS 517.125), to which HB 2841-1 address by requiring better consultation for rules and for orders. The concerns of the miners’ are the increasing avoidance of the sound studies submitted, which some show that there is an actual benefit to the environment from the activity and a lack of harm. For example, in the *Forty Mile River...Final Report* (1999), paid for by EPA; they studied the use of an 8-inch and a 10-inch suction dredge. The report showed:

"One year after dredging at both sites showed recovery of Macroinvertebrate diversity appeared to be substantial. The University started the study with the hypotheses that the greater the background mining activity, the fewer the macroinvertebrate populations.

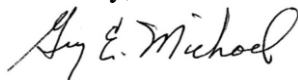
However, the study found that there was an increase in macroinvertebrate density in mined area, and could discern no natural reason for this difference. Thus, they concluded that this positive result was from the greater disturbance from all forms of mining, historic and current." (Emphasis added)

Another study stated: "If there were a cumulative effect of dredging, an increasing number of taxa should have declined in abundance after June at downstream stations." Harvey (1986). These are only two, but there are dozens more, however, to keep these comments brief, I have attached a one page bullet list of some of the older studies with their findings. There are also many newer ones that confirm these older ones, as well. I haven't completed listing them yet, but if requested, I would be willing to forward the results of that newer list.

HB 2841-1 is a Bill that requires an increase consultation with the affected parties to resolve differences and to narrow the issues that would ultimately be decided by the courts, which in the end would save the time and costs of continued multilevel issues in litigation. This would be good for the miners' and the issues of protecting the environment that has been handed to the State agencies. Therefore, I ask that you vote yes on HB 2841-1.

Please add these comments to the record.

Sincerely,



Guy Michael
2640 14th Street
Baker City, OR 97814

Phone: (541) 519-7606

Email: gymmining@hotmail.com

Partial List of Scientific Studies attached to Comments by Guy Michael
For HB 2841-1

- Forty Mile River...Final Report (1999) paid for by EPA, which studied the use of an 8-inch and a 10-inch suction dredge: “One year after dredging at both sites showed recovery of Macroinvertebrate diversity appeared to be substantial...the study found that there was an increase in macroinvertebrate density in mined area...”
- In contrast to Sigler et al (1984), young steelhead in Canyon Creek sought out dredge plums to feed on exposed invertebrates Hassler, et al (1986), Huber and Blanchet (1992) and Stern (1988).
- Fish and invertebrates displayed considerable adaptability to dredging, probably because the stream naturally has substantial seasonal and annual fluctuations. Harvey (1980)
- Cumulative effects of suction dredging have probably not been determined, but there is considerable evidence of only localized and temporary effects from multiple dredges. Harvey (1980), Harvey, et al (1982), Hassler, et al (1986), McClenegham and Johnson (1983)
- Three years of monitoring on the Chugach National Forest found no noticeable impacts to water quality from dredges of 6-inches or less. Huber and Blanchet (1992)
- In a few cases, sediment went further downstream than found in other studies because of steep stream gradient and fine sediment. Somer and Hassler (1992)
- Suspended sediment returned to ambient levels 30 to 60 meters downstream [less than 200 feet] Harvey (1986), Thomas (1985)
- Maximum sediment concentrations were only a minute fraction of the great loads needed to impact fish feeding and respiration. Stern (1988)
- The tank tests at Reed College showed that young fish live well up to thirty days in good water mixed with natural soil materials. The tests used sediment loads from two to three times as large as the extreme load contributed to the Rogue River by maximum conditions of hydraulic placer mining. Ward (1938)
- Dr. Ward reviewed another study, which found young Alaskan salmon suffered no ill effects from heavy sediment loads ten times that found at Agness. Ward (1938)
- A five inch dredge could improve the intergravel environment for both fish eggs and benthos. Lewis (1962)
- Adult salmon have been observed to spend considerable time within yards of active dredgers and to hold in the dredged holes. Stern (1988)
- “If there were a cumulative effect of dredging, an increasing number of taxa should have declined in abundance after June at downstream stations.” Harvey (1986)
- Even though cumulative effects and some other questions have not been thoroughly studied, there has been nothing to date to substantiate closure of the small scale mining operations. USGS (1998)