

Testimony for HB 2841-1, April 16, 2013 Agriculture and Natural Resource Committee  
By Guy Michael, 2640 14<sup>th</sup> Street, Baker City OR 97814 April 11, 2013

“At its core, the 1872 Mining Law was about ensuring the settled expectations of the emerging mining corporations...[p]roviding...with security of ownership, protection against popular hostility, and the opportunity to advance their control at the state level were the compelling motivations behind the legislation...[i]t is the Magna Carta of mining on public land; its provisions have a status higher than that of ordinary law” Id. at 1186  
(U.S. Court of Appeals for the Tenth Circuit, 454 F.3d 1177 (2006))

The purpose for HB 2841-1 is stated in the Bill: “**(2)(a) In order to resolve disputes and to address the rights of parties that engage in recreational or small scale mining**”.

- The miners claim that DEQ has consistently not consulted with them in anything more than a few meetings where they would accept comments, but never have a discussion aimed at reaching agreements concerning the rights of miners or the lack of harm to the environment from the activity.
- Therefore, the need to amend ORS 517.125 to provide a more true definition of the term “consultation” and provide more teeth by making “not valid” any permitting changes based on rules or orders, should any agency not engage the affected parties in consultation.

The reason for requiring the same consultation requirement for an “order” is that for the first time, the 2010 700PM suction dredge permit is based on an “order” rather than “any rule”.

- DEQ specifically stated, *they did not need to consult, because the new permit will be issued as an order*, when they were working on the new 2010 permit in March of 2010.
- The 517.125 statute needed to be up dated, since the rights to mine their property did not go away.
- We believe that it would be possible to limit the lengthy multiple lawsuits with miners, saving the State of Oregon and DEQ’s budget to defend against its rule making and its orders, if they were more willing to consult and work out the problems, than to battle it out in the courts.

It may be a surprise that none of the DEQ employees responsible for the 2010 suction dredge permit, has seen a dredge operate up close or for any length of time. Nor had any of them considered any beneficial effects from suction dredge mining when they wrote the permits. This was discovered during the depositions recently conducted in (Oregon Miners et al., case No. 10C-24263, Marion County) (on going over the 2010, 700PM permit)

I have two examples of beneficial effects; there are dozens of relevant studies available:

- *Forty Mile River...Final Report* (1999), paid for by EPA; they 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...**However, the study found that there was an increase in macroinvertebrate density in mined area...**"
- “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).

The State of California is 165 Billion in debt and Oregon is heading the same direction. Voting yes on HB 2841-1 is a step toward keeping small scale mining productive and resolving differences over reasonable environmental regulation.