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P.O. Box 307  
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Reference:  
Public Comments SB 401

Senator Jackie Dingfelder , Chair and  
Senator Alan Olsen, Vice-Chair  
Environment and Natural Resources Committee

Honorable Senators,

Please include the attached letter as public comments for Senate Bill 401, which is scheduled for public hearing on Monday, April 15, 2013.

As a “small scale miner”, I respectfully request that you oppose Senate Bill 401 for the following reasons:

SB 401 Designates certain rivers and creeks as scenic waterways. Declares emergency, effective on passage. This affects approximately 38 waterways (rivers and creeks) in Oregon. What is the emergency?

Have all property owners along these proposed addition waterways been notified that their property rights are being affected by this bill? Once the public finds out about this sneaky bill, all hell will break loose!

'Related adjacent land' means all land within one-fourth of one mile of the bank.

'Scenic easement' means the right to control the use of related adjacent land, including airspace above such land, for the purpose of protecting the scenic view from waters within a scenic waterway;

The above two statements create a “Taking” per state and federal laws. And the next statement allows State Parks and Recreation Department to make the law and change the law any time they wish.

The legislature of the State of Oregon is elected to make the Law, not delegated it to unelected officials. Would please sign a few blank personal checks and send them to me, that is what you are doing with the statement below.

The State Parks and Recreation Department may adopt rules or take any other action before the operative date specified in paragraph (a) of this subsection that is necessary to implement, on or after the operative date specified in paragraph (a) of this subsection, the amendments to ORS 390.805 and 390.826 by sections 1 and 2 of this 2013 Act.

This bill also ignores the defined best use for Oregon water as stated in ORS 390.835.“ (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses.” **This statement is mentioned 15 times in this ORS**, “for purposes other than

recreational prospecting not requiring a permit shall be prohibited,” **This statement is mentioned 5 times in this ORS.**

This 2013 Act violates ORS 541.110 and the (Oregon) General Act of 1899 (H.B. 362):

*“HB 362: Be it enacted by the legislative assembly of the state of Oregon:*

Section 1. **That the use of the water** of the lakes and running streams of the state of Oregon **for the purpose of developing the mineral resources** of the state... **is declared to be a public and beneficial use and a public necessity**, and the right to divert unappropriated waters of any such lakes or streams for **such public and beneficial use is hereby granted.**

Section 2. All persons... having title or possessory right to any mineral or other land, **shall be entitled to the use and enjoyment of the water...** within the state for mining and other purposes in the development of the mineral resources of the state...; and such waters may be made available to the full extent of the capacity thereof **without regard to deterioration in quality or diminution in quantity**, so that such use of the same does not materially affect or impair the rights of prior appropriations. (Emphasis added)”.

**Summary:** The rights of property owners are being violated. The Oregon Department of Parks and Recreation (an unelected group) is being given permission to write whatever “rules”/laws they wish. This bill also ignores the defined best use for Oregon water as stated in ORS 390.835.“ (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses.” **This statement is mentioned 15 times in this ORS**, “for purposes other than recreational prospecting not requiring a permit shall be prohibited,” **This statement is mentioned 5 times in this ORS.** It also violates ORS 541.110 and the (Oregon) General Act of 1899 (H.B. 362) as stated above.

Respectively, I request that the Oregon legislature oppose SB 401, along with SB 115, SB 370 and SB 838.

Thank you,  
s/s  
Theo Stanley