

Senate Committee on Environment and Natural Resources

Re: SB838

Dear Madam Chair, and Committee members,

On behalf of the members of the Eastern Oregon Mining Association (EOMA), I present our association's opposition to SB838.

This bill is completely unnecessary. As justification for SB838, the bill talks about a perception that the drafters of this bill must have had that "*mining in the...banks*" of streams has increased. SB838 goes on to say, "*agencies are unable to determine the actual amount of mining*". These statements are simply not factual.

Currently, **mining in the stream banks of Oregon waterways is prohibited**. Suction dredge miners must mine only within the wetted area of the stream beds. All Plans of Operation where miners work beside the waterways of federal lands have a site specific, no entry buffer requirement, designed to prevent discharge and protect water quality and fish.

According to SB838, state agencies "*are unable to determine the amount of mining that is occurring in this state*". I can only surmise that the reason some State agencies are unable to make this determination is because **they haven't asked other state agencies such as DEQ and DOGAMI and the federal agencies to provide it**. This information is readily available. The state does not need to waste time and money on hiring personnel and conducting unnecessary studies that have already been done. The federal agencies keep detailed track of mining activity. The state needs to contact the Forest Service, BLM, DEQ, DOGAMI and the counties instead of introducing a bill based on a false perception that mining in the banks of Oregon's streams and rivers is on the increase.

Mining Plans of Operation are never approved if they would result in a discharge to waters of the state, or would adversely impact stream bank stability, water quality or fish habitat. The federal agencies have written many NEPA documents for mining operations throughout Oregon, and these documents provide the details of each submitted plan of operation and discuss what mitigating measures are needed for protection of the environment.

The Supplemental Environmental Impact Statement for the North Fork Burnt River Mining Projects EIS (2012) is a very recent NEPA document which covers the effects, not only of off-channel mining operations, but also documents the effects of suction dredge mining. The Forest Service will not allow suction dredge mining unless water quality and fish habitat are protected. The EIS demonstrates that neither suction dredge mining nor mining beside the river will cause adverse impacts that cannot be mitigated. The EIS also documents the beneficial effects of suction dredge mining, such as the resulting pools and spawning gravels.

SB838 will have a profound adverse effect on the business of mining throughout the State. These are federal minerals, and under Federal law, these minerals are a private property right. The State of Oregon has long since recognized that "*Mining claims are realty*", "[t]he owner of the possessory right thereto has a legal estate therein within the meaning of ORS 105.005." (ORS 517.080). These lands are destined for mining as is granted to them and recognized by the State of Oregon. EOMA understands the right of Oregon to require "*reasonable environmental regulation*." However, whether the moratorium on mining within 300 feet of waterways is reasonable is at issue here. This moratorium is not justified simply because there is a perception that Oregon miners may possibly be dredging up the banks of Oregon waterways. The information that this is not true is clearly available to the State. The State cannot

prohibit mining without justification, because this action would “*frustrate*” the purpose of the grant by Congress. (*Perez v. Campbell*, 402 US 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”).

As stated previously, the Federal agencies, Forest Service and BLM, and the state agency of DOGAMI conduct site specific investigations to establish buffer width for all mining beside streams using mechanized equipment, and coordinate with DEQ before plan approval. For logging operations on private land, under the Forest Practices Act (FPA) DEQ requires as little as a 20 foot setback from streams. DEQ has agreed with the Forest Service that a 20 foot buffer would be adequate to protect water quality in an anadromous stream for the Tracy Placer Mining proposal on the Siskiyou National Forest (Bob Baumgartner, Water Quality Division, 2009). DEQ also agreed that buffers ranging from 20 feet to 30 feet were acceptable for the 42 miners in the North Fork Burnt River watershed, based on the site specific analysis of those plans of operation. On private land, DOGAMI requires a 20-25 foot buffer for mining operations, depending on site specific characteristics of the stream. Thus, Oregon’s own agencies, DEQ and DOGAMI, consider a 20-25 foot buffer as protective. **SB838’s requirement for 300 feet on either side of the waterway is not reasonable.**

If SB838 is passed, there would be many expensive consequences to the state in terms of litigation. But there will also be many expensive consequences to the miners, during the litigation process. It costs miners hundreds of dollars every year just to maintain ownership of mining claims. All this money will be a drain on finances during a period when no mining will be allowed. Existing disturbances where miners have operations off-channel, will be left unreclaimed, and reclamation bonds will have to be maintained at another big expense to the miner. Expensive machinery will sit idle, while equipment payments continue. Water rights will be jeopardized if they cannot be used.

SB838 would require the state to do a lot of surveys, write a single permit for all in-stream mining operations in the state, charge enough money for the permit to fund the staff needed to run this agency and conduct studies and conduct monitoring. **None of this is necessary.** All these things are already done by the Forest Service, BLM, DOGAMI and DEQ. There is no justification for a moratorium on mining beside the waterways, when the bill focuses only on studies of the effects of in-stream mining. It worries me that the permit mitigations would be based on “*precautionary principles*”, whatever these are. And at the end of six years, with a costly new permitting agency in place, who will be left to buy the new permit?

The bill is unnecessary. It would waste state funds duplicating the very studies, analysis and monitoring that other state and federal agencies already conduct. The bill is based on an untrue premise that there is increased illegal mining in the banks of Oregon’s streams. The bill prohibits mining beside the waterways for no reason at all. Not only does SB 838 require that the State waste time and money on unnecessary studies, but the State would also suffer the loss of revenue and jobs that are currently being generated by the mining industry. Please vote no on SB 838.

Sincerely,

Jan Alexander, Minerals Policy Director, EOMA  
P.O. Box 932  
Baker City, OR 97814  
Ph. 541-446-3413