

Oregon Citizens Lobby

A growing statewide collaborative effort by citizens to promote legislative accountability.

Oregon Citizens Lobby opposes SB401 for the following reasons.

This bill designates certain rivers and creeks as scenic waterways.

Personal Choice

Homeowners will lose the right to manage their property as the restrictions are 1/4 a mile from the waterway, to get any changes done could take a year for approval. Farmers and ranchers would also have the restrictions affect their ability to earn a living. The added waterways are some of the States best mining waters, this bill would end any prospecting on these waters. There are horror stories of how homeowners have lost: In 1970, shortly after the passage of the Oregon Scenic Waterway Act, a Grants Pass woman named Helen Scott was forced to sue the State of Oregon. Scott owned eight acres adjacent to the Rogue River which she had purchased in the 1960's for the purpose of subdividing and developing. She tried to work with the State of Oregon and submitted a development plan for the property which she believed was more than reasonable. Her plan was to subdivide the property in half and build two houses on the river. These were to be high end homes suitable for summer recreational use on the river. The two houses would be painted gloss white. Helen Scott's plan was not good enough for the State of Oregon and in particular, the state protested about the homes being painted white because they would not blend in with the scenery on the river. Scott was forbidden from developing her property and subsequently took the State of Oregon to court, asking for \$25,000 in damages as she believed that the State of Oregon had committed a takings of her property for public purposes. Scott spent the next five years in court, losing in both Circuit Court and also in the Oregon Court of Appeals. Both courts ruled that the state had been within its rights and that Scott's property rights had not been violated. (See "Smith v. State Highway Commission")

Fiscal Responsibility

This bill would affect Farmers and Ranchers by the restrictions placed on the added waterways, this cost will be passed on to consumers, or worse as this may put them out of business. Miners would be the most affected, as this would stop many families that rely on prospecting for their income. I copied this from a mining family: "Myself and others are completely disturbed to see this type legislation back again we as miners and citizens of Oregon have done what has been asked of us by having to buy permits to dredge and follow DEQ's and DSL guidelines, we have been regulated so much that it has taken a toll on our well being, myself as well as others have spent a lot of money in equipment, fuel and other cost related to mining, we spend a lot of time working our claims which is required by BLM. It seems that miners are under attack and it never seems to end."

Limited Government

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). 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. The State of Oregon does not have the authority to take private property by establishing a “Scenic easement” 1/4 mile from the bank of any river either without 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

Local Control

There is no need for this type of legislation that will bind and restrict land that belongs to not only public but private ownership. Making land uses law invalidated at the county level only the Oregon State Parks and Recreation Department may adopt rules for the Scenic easement

Free Markets

SB 401 adds thousands of miles of waterway control and injurious legislation on top of litigation that will likely negate the intentions of this Bill. Why should the State of Oregon spend Millions of tax dollars on litigation. In addition the 10’s of Millions of losses tourism dollars that would be affected towns that rely on miners and tourism dollars each year. This will affect many families and commercial interests that rely on prospecting for their income. Also tourism will be affected and the surrounding towns that rely on miners and tourists that shop and use local restaurants. A ripple effect will be felt across this State. Farmers and Ranchers will also be affected as they will be at a disadvantage with the restrictions placed upon them and will be unable to compete in the free market.

