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Oregon Senate Committee on  
Environment and Natural Resources

RE: PLACER MINING & SB 838

Dear Senate Committee on Environment and Natural Resources;

My name is Tom Kitchar, and since 2001, I have had the honor of being President of Oregon's oldest mining district, the Waldo Mining District (Est. 1852).

**ABOUT MYSELF:**

I moved to Oregon in 1986 after working and living in the Black Hills of SD as a Underground Hardrock Miner 1<sup>st</sup> Class at the Homestake Mine in Lead (at depths beyond 8,000 ft.). Since 1986, I have supported myself as a self-employed placer gold miner. I have located and own interests in several mining claims (on BLM & USFS managed lands) which I work and live on year-round, mostly with a suction dredge in the summer & fall, and some pick & shovel work during the winter & spring (weather and floods permitting).

I have years of hands-on experience operating most forms of the smaller-scale placer mining methods, along with experience operating heavier equipment.

Over the years, I have been forced to become very familiar with the U.S. Mining Laws, BLM & USFS regulations, the Endangered Species Act, the Environmental Protection Act, NEPA, the Clean Water Act, and a host of other federal laws, rules & regulations. I've also had to become knowledgeable in the Oregon Revised Statutes, Administrative Rules (and Orders), Oregon Water Quality Standards, permitting by such agencies as DEQ, DSL, ODFW, Parks and DOGAMI (and in my spare time I've had to become half a lawyer).

As President of the WMD, I have provided expert testimony in several trials, provided thousands of pages of comments to various agencies, and I'm currently a plaintiff in a suit against DEQ since 2010.<sup>1</sup>

From August 2004 to June 2005 I (and others), with the help and support of then Representative Gordon Anderson worked extensively with the DEQ permit writers as they drafted a new suction dredge mining permit (which is a horror story that would take hours to tell and is continuing to this day).

And due to the never-ending increasing restrictions, I've become familiar with most of the published studies on the effects of suction dredge and other forms of placer mining on fish,

<sup>1</sup> More information about the WMD or myself can be found at

fish habitat and the environment in general. As a placer gold miner, I've seen the so-called effects from what I and other miners do today, and what was done in the past. The two do not compare.

I've also served as a charter member of the Siskiyou National Forest Resource Advisory Committee representing Energy & Minerals from 2003 – 2012.

... and, I love mining.

### COMMENTS ON SB 838

1. Humankind has been placer mining gold for well over 5,000 years. The Age of Discovery was in part a search for gold. It was the search for gold in the late 1840s and early '50's that settled much of the American West, including much of Oregon Territory in the early '50's. The WMD dates back to those times, and was the first government in SW Oregon, years before Statehood.<sup>2</sup>

The heavily restricted placer mining of today is but a shadow of what has gone before. At best, we are the Living Heritage of many who first settled much of the west. By prohibiting placer mining, the State of Oregon would be destroying the very real heritage, and if you will, the environment or conditions necessary for them to survive. In many ways, the individual prospector & miner is an Endangered Species.

2. Let there be no doubt, no law or force of Man in thousands of years has yet been able to stop people from placer gold mining. The only thing that stops placer gold mining is if or when the price of gold is low... which doesn't appear to be too likely in the foreseeable future. LC 2125 would make many honest hard-working citizen miners into criminals.

3. Put bluntly, the states do not have the authority to prohibit what the federal laws not only grant, but also foster and encourage. There are many court decisions that back this up.<sup>3</sup>

4. Unpatented mining claims are "real property" in the highest sense under both state and federal law. The purpose (and only allowed use) of a mining claim is to mine it. By prohibiting placer mining, suddenly thousands of placer claims throughout Oregon would be made useless and worthless. The state could expect thousands of suits for the wrongful taking of property.

5. SB 838 doesn't prohibit just placer gold mining. The term "placer" is defined as any mineral deposit other than a "lode" (lodes are defined as mineral in place – such as in the crust of the earth). As soon as a lode deposit becomes exposed it begins to erode and thus

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<sup>2</sup> Hundreds of thousands of Oregonians today have a miner somewhere in their family tree.

<sup>3</sup> The current situation in California with the moratorium on suction dredge mining is similar to what SB 838 attempts to do; but with several key differences making LC 2125 have an even less chance of surviving. The moratorium (and others can see) that the moratorium in California has gone on for so long is

becomes a placer deposit. A prohibition on "all" forms of motorized placer mining is a ban on all economically viable mining of any minerals that aren't found as a lode deposit.

Sand & gravel plants are large-scale placer mines... (Which brings up the problem that SB 838 doesn't define what "placer mining" is, or what is being mined. The effect of such a prohibition would be devastating to many Oregonians that work to supply the minerals we all use and need.)

6. This is Hate Legislation, pure and simple. There is no emergency. I've seen the science. To date, after over 30 years of 100's of suction dredges operating every year in the Siskiyou Natl. Forest,<sup>4</sup> a recent cumulative effects study done by Professor Peter Bayley concluded that even taking into consideration good and bad miners, any effect that might be present "...could not be detected at the commonly used Type I error rate of 0.05."<sup>5</sup>

The list of what's wrong with this legislation goes on and on; including the illegality of the State Scenic Waterways Act (whereby it already prohibits all placer mining within a SSW even if the land is federal land claimed under the Mining Law); and the Essential Salmon Habitat designations also. Both of these acts or designations are a form of "Land Use Plan"... and the courts have ruled that even though the states have the authority to reasonably regulate mining through the use of environmental protection from specific threats (usually with a permit), they do not have the authority to regulate mining through use of a Land Use Plan... nor do they have the authority to prohibit. The only reason these laws have not been challenged is the cost of such litigation.

7. If SB 838 is enacted (in any form I can imagine), it will be instantly challenged in court. However, such litigation can take years to wind its way through the system, and in the meantime, lives will be destroyed needlessly.

8. SB 838 "Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Declares emergency, effective on passage."

Violations of SB 115 (Class A Misdemeanor) call for up to one year imprisonment, \$6,250 fine, or both. To put this in some form of perspective, other crimes in Oregon have the following fines: Operating a motor boat without an aquatic species permit - \$500 max, Furnishing alcohol to a minor - \$2000 max, Delivery of marijuana near a school - \$2000 max, Possession of controlled substance - \$2000 max, Speeding 100 mph or greater - \$2000 max, Unlawful taking of wildlife - \$1500 (max), Unlawful killing of an animal of an endangered species - \$1000, DUI - \$1000 (first offense), DUI - \$2000 (THIRD offense).

<sup>4</sup> The SNF, mostly within Josephine County has the highest number of suction dredge mining in the state.

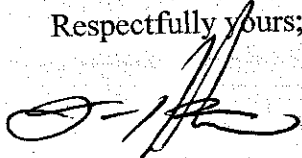
<sup>5</sup> "Response of fish to cumulative effects of suction dredge and hydraulic mining in the Illinois subbasin, Siskiyou National Forest, Oregon" by Peter B. Bayley, Dept. Fisheries & Wildlife, Oregon State University.

In other words, the maximum combined fines if I was found guilty of:

Delivering marijuana near a school  
+  
Speeding over 100 mph  
+  
Unlawfully killing an endangered species  
+  
All while driving drunk . . .

are less than what I would face if found guilty in violation of SB 838!

Respectfully yours;



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