Hi

Please accept the attached documents as my testimony for HB 5034, OPRD Budget. I will refer to them with brief oral testimony today to quickly touch on a couple of the following points:

I. ORS showing OPRD responsibility to propose expansion of State Scenic Waterways Act.

II. A FAQ document on the State Scenic Waterways Act

III. Conflict on the Rise: Recent Permitting of Suction Dredges in Oregon

IV. Impacts of suction dredge mining on our waterways

V. Lack of enforcement/compliance with potential $10,000 penality

Thank you!

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ORS § 390.855

Designation of additional scenic waterways

The State Parks and Recreation Department shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the Water Resources Commission, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of ORS 390.805 (Definitions for ORS 390.805 to 390.925) to 390.925 (Enforcement). Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of ORS 390.805 (Definitions for ORS 390.805 to 390.925) to 390.925 (Enforcement). The department shall consult with the State Fish and Wildlife Commission, the State Department of Agriculture, the Environmental Quality Commission, the Department of State Lands, and such other persons or agencies as it considers appropriate. The State Parks and Recreation Department shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience. [1971 c.1 §6]

Oregon State Scenic Waterways

Frequently Asked Questions

Q1: If a segment of river is designated as a State Scenic Waterway, what activities or uses would be regulated?

The overarching goal of the Oregon State Scenic Waterways program is to protect the natural, free-flowing qualities of designated rivers, and associated ecological and social values, while allowing for responsible use and development of neighboring lands.

- No new dams, reservoirs, or water impoundment facilities would be constructed on waterways designated as State Scenic. ORS 390.835 (1).

- Individual recreational mining and prospecting without the use of machinery is allowed. An individual miner does not need a permit to be prospecting less than one cubic yard of material, but he/she would not be allowed to do so where fish eggs are present. An Individual Removal-Fill permit from the Department of State Lands is required to remove up to 25 cubic yards annually (recreational pacer mining).

- Though the statutory language is unclear, Department of State Lands regulations make clear that suction dredge mining is not allowed on State Scenic Waterways. A provision of law allowing suction dredge mining in scenic waterways sunsetted on Dec. 31, 2005. The Department of State Lands is no longer authorized to issue recreational placer mining permits for these waterways. OAR 141-100-005(5). Further, the Department of Environmental Quality states with regard to its (NPDES) 700-PM general permit, “Suction dredging is not allowed in state scenic waterways”.

  For more information on mining and permits, see:

  http://www.oregon.gov/dsl/PERMITS/Pages/scenicwaterways.aspx

  www.oregon.gov/DSL/PERMITS/docs/**placer**_facts.pdf

  http://www.deq.state.or.us/wq/wqpermit/mining.htm#GeneralNPDES

- The Water Resources Department has authority to deny or permit activities that take or divert water resources on State Scenic Waterways. If an activity will ultimately affect the free-flowing character of a Scenic Waterway, then WRD is not supposed to grant a water right for that activity. According to a 2003 study on the Oregon Scenic Waterways System by Oregon State University, “the agency (WRD) has been

routinely criticized for…allowing too much water to be withdrawn". *David Bernell and Jeff Behan, "The Oregon Scenic Waterways System: A Review and Assessment". Institute for Natural Resources, Oregon State University, 2002-3. Page 9.*

Q2: How does the State Scenic Waterways Act impact property rights?

The lead agency administering the State Scenic Waterways program is the State Parks and Recreation Department. The lion's share of the agency's efforts regarding the State Scenic Waterway program, the time of 4 employees, involve working with landowners collaboratively to encourage new development to blend in with what is already there. No attempt is made to restore scenic waterways to a pristine condition, and no claim is made to their beauty being present only in a natural, unaltered state. This program only applies to new or proposed developments.

Landowners along ¼ mile corridors of either side of designated waterways are supposed to notify the Oregon Parks and Recreation Department of activities such as cutting of trees, mining, construction of roads, railroads, utilities, buildings, or the building of other structures. The proposed uses or activities are not supposed to be started until the written notification is approved. If the Parks and Recreations Department does not approve of the activity within one year, however, the notice is accepted.

The program does not:

- Restrict the use of existing water rights. Once a river is designated, developments may remain and are protected.
- Allow public use of private property without consent of the landowner.
- Require the removal of existing development or private property use.

For more information, please see:

The Oregon Scenic Waterways Program, A Landowners Guide. Oregon State Parks and Recreation Department.

Q3: Is the state required to study and propose new river segments for designation as State Scenic Waterways?

Yes. ORS 390.855 states:

The State Parks and Recreation Department shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the Water Resources Commission, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of ORS 390.805 (Definitions for ORS

390.805 to 390.925) to 390.925 (Enforcement). Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of ORS 390.805 (Definitions for ORS 390.805 to 390.925) to 390.925 (Enforcement). The department shall consult with the State Fish and Wildlife Commission, the State Department of Agriculture, the Environmental Quality Commission, the Department of State Lands, and such other persons or agencies as it considers appropriate. The State Parks and Recreation Department shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

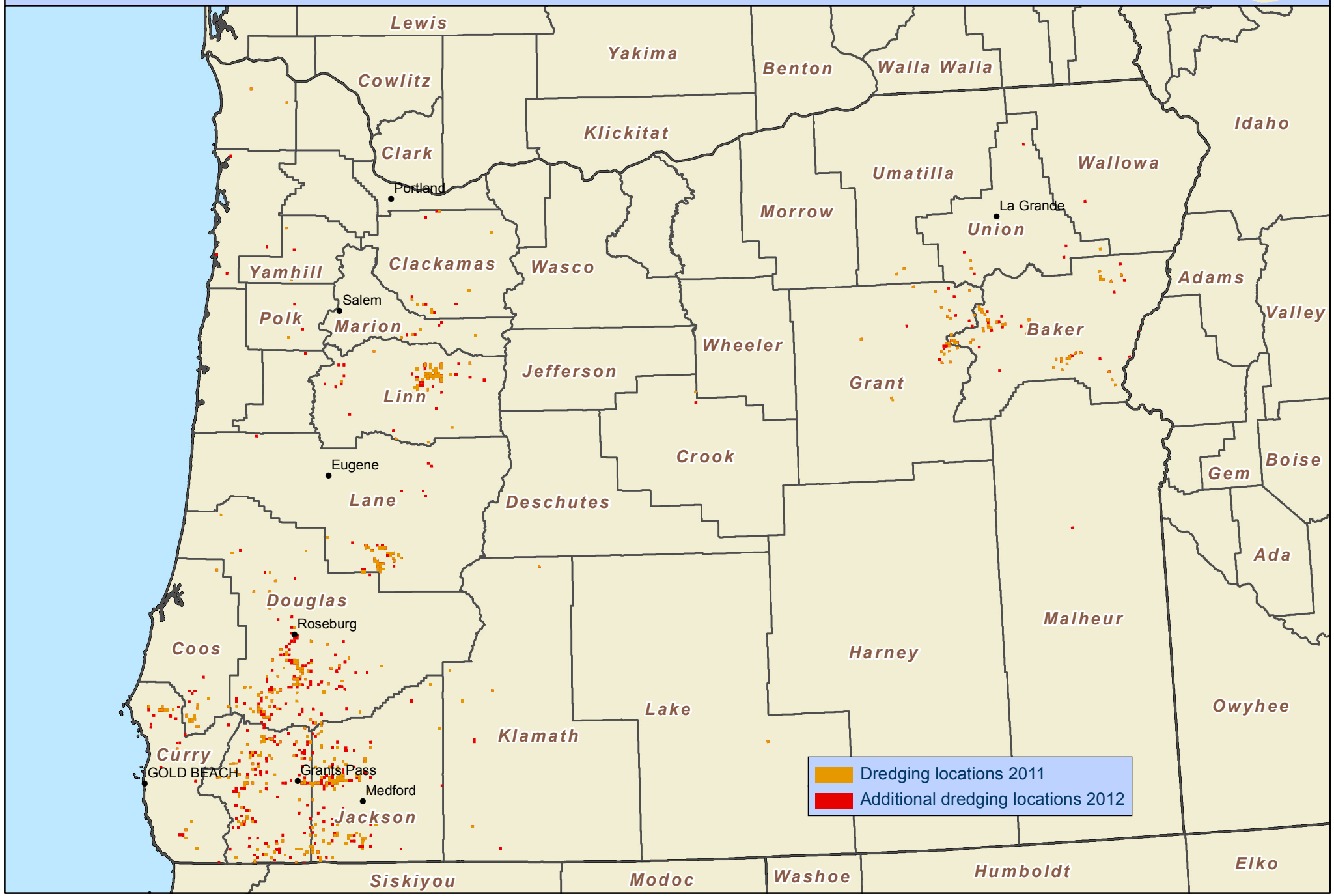
(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience. [1971 c.1 §6]

2012 Suction Dredge Locations

0 25 50 100 Miles

Data from DEQ, Rogue Riverkeeper, and ESRI.
Revised 12/14/2012.



Oregon State Scenic Waterways

1. Clackamas River
- North Fork (12 miles)
- South Fork (4 miles)
★ • Main stem from Ollalie Lake Scenic Area to North Reservoir (54 miles)
- River Mill Dam to Carver (12 miles)

2. Deschutes River
★ • Upper Deschutes: various segments from Little Lava Lake (headwaters) to Lake Billy Chinook (99 miles)
★ • Lower Deschutes: Pelton Dam to Columbia River (100 miles)

3. Elk River
★ • North Fork (5 miles)
- South Fork (5 miles)
★ • Main stem from confluence of North and South Forks to Elk River Fish Hatchery (11 miles)

4. Grand Ronde River
★ • Confluence with Wallowa River to Washington border (42 miles)

5. Illinois River
★ • Deer Creek to Rogue River (46 miles)

6. John Day River
★ • North Fork from North Fork John Day Wilderness boundary to River Mile 20.2 above Monument (56 miles)
★ • South Fork from Post-Paulina Road crossing to Murderers' Creek Wildlife Area above Dayville (29 miles)
- Middle Fork from Crawford Bridge crossing to confluence with North Fork (71 miles)
★ • Main stem from Parrish Creek to Tumwater Falls (160 miles)

7. Klamath River
★ • John Boyle Dam powerhouse to California border

8. McKenzie River
- South Fork from Three Sisters Wilderness boundary to main stem, excluding Cougar Reservoir (21 miles)
★ • Main stem to Paradise National Forest Service Campground (16 miles)

9. Metolius River
★ • Metolius Springs to Candle Creek (14 miles)

10. Minam River
★ • Minam Lake to Wallowa River (45 miles)

11. Nestucca River
★ • Main stem from McGuire Dam to Blaine (23 miles)

12. North Fork of Middle Fork of Willamette River
★ • Waldo Lake to River Mile 1.5 near Westfir (43 miles)

13. Owyhee River
★ • Crooked Creek to Birch Creek at the boundary of Rogue River National Forest
★ • Idaho border to Three Forks (25 miles)

14. Rogue River
★ • Upper Rogue: Crater Lake National Park to River Mile 172.8
★ • Lower Rogue: Applegate River to Lobster Creek (88 miles)

15. Sandy River
★ • Bull Run River to Stark Street Bridge (12 miles)

16. North Santiam River
- Little North Fork: Battle Ax Creek to River Mile 16.7 at Willamette National Forest boundary (7 miles)

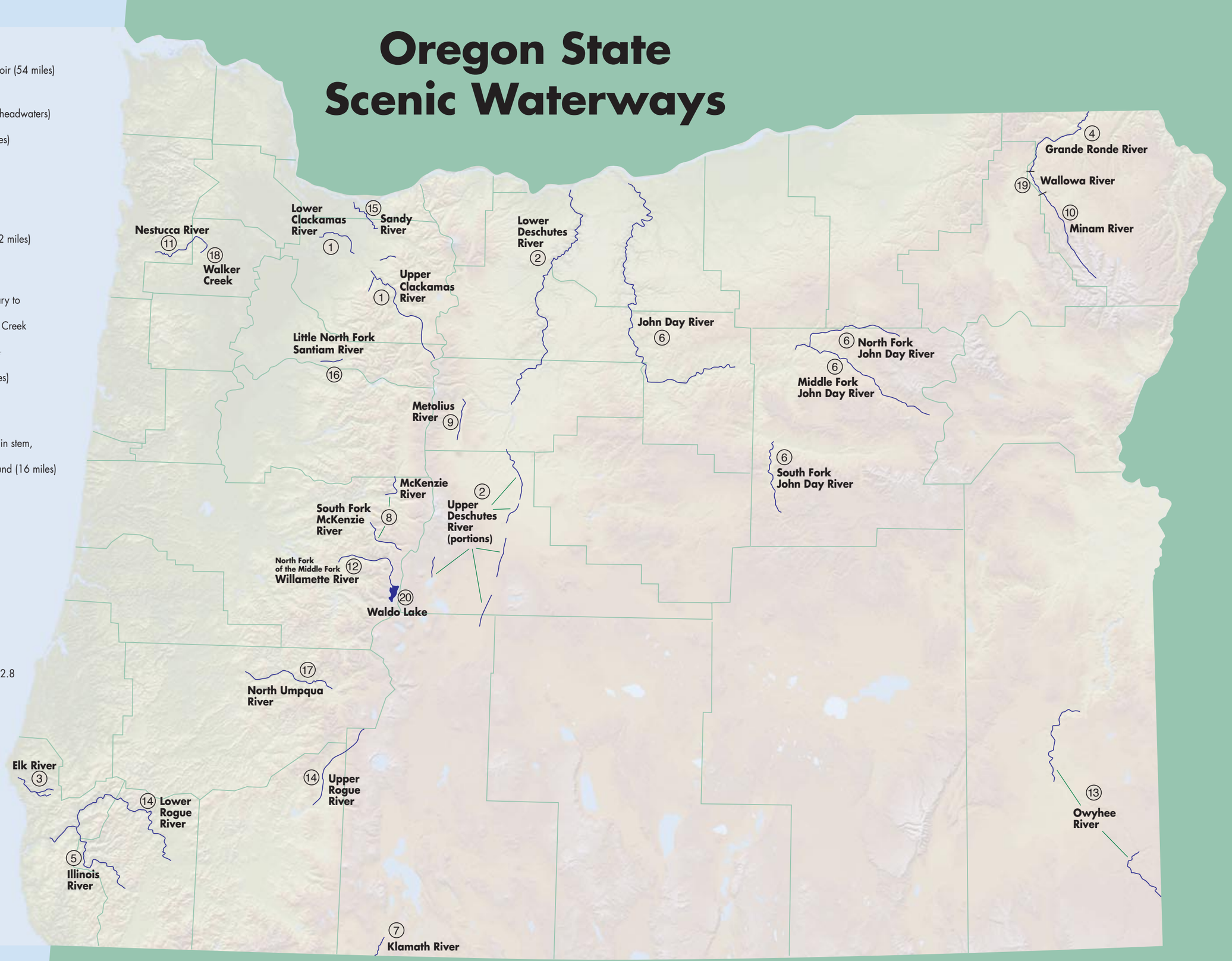
17. North Umpqua River
★ • Mt. Thielsen Wilderness boundary to Lemolo Reservoir (6 miles)
★ • Soda Springs Dam powerhouse to Rock Creek (34 miles)

18. Walker Creek
- Source to confluence with Nestucca River (3 miles)

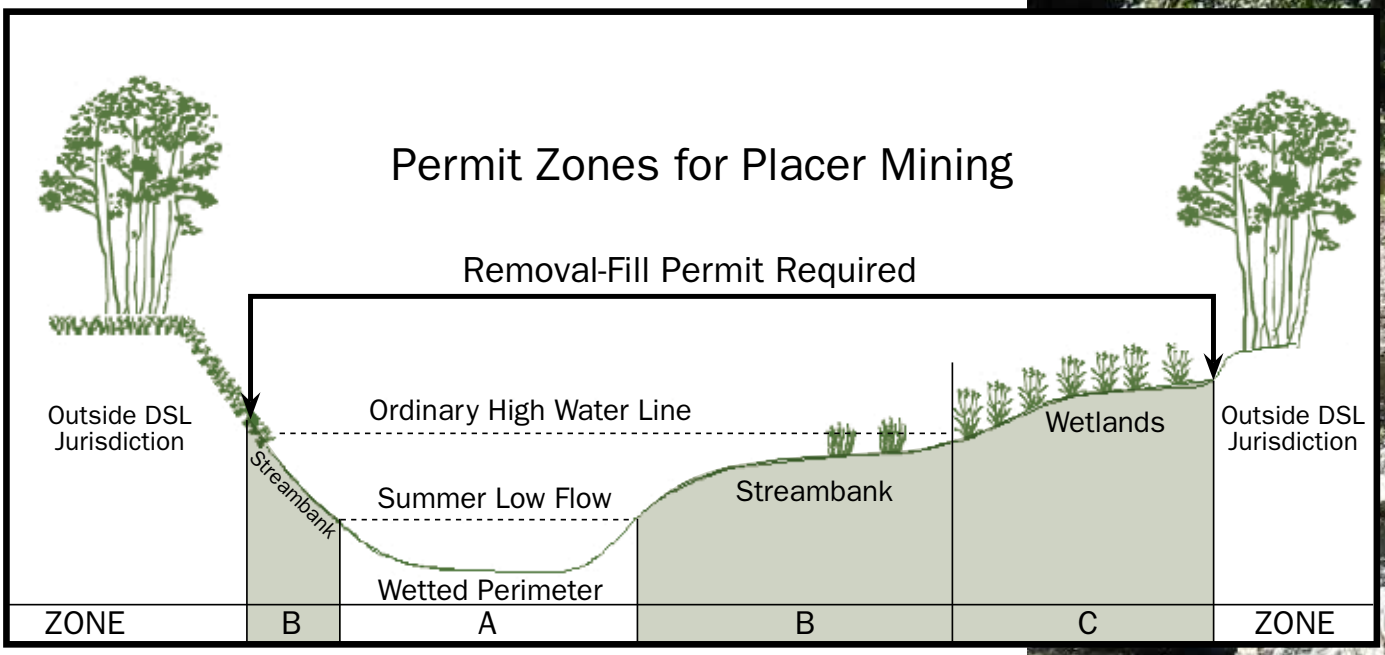
19. Wallowa River
★ • Confluence with Minam to confluence with Grande Ronde (10 miles)

20. Waldo Lake
- 6,672 acres, 13 miles north of Oregon Highway 58

★ National Wild and Scenic Rivers



State Regulation of Recreational Placer Mining and Prospecting



The Department of State Lands (DSL) regulates recreational and small-scale placer mining in Oregon waterways.

There are two types of DSL authorizations for recreational placer mining:

1) A **General Authorization (GA)** is required for activities involving less than 25 cubic yards of removal and fill annually in **Essential Salmon Habitat (ESH)**.
2) An **Individual Removal-Fill Permit (IP)** is required for recreational placer mining in **State Scenic Waterways (SSW),** and for activities that do not qualify for the recreational placer mining GA or that involve 50 cubic yards or more of removal-fill activity in **non-ESH** waters.

Suction and other methods of dredging are not allowed in SSW. There also are restrictions in ESH waterways. A recreational placer miner must have a valid authorization from the Department of State Lands on-site and available for inspection when engaged in mining.

More detail on restrictions is contained in this fact sheet.

OREGON DEPARTMENT OF STATE LANDS

STATE SCENIC WATERWAYS (SSW)

Mining method/equipment used	Zone(s)	In-water Work Period	CY
Suction and other forms of dredging-*PROHIBITED* in SSW*	NONE	N/A	0
Recreational Placer Mining (motorized)**	A	Applies	<25
Prospecting (Non-motorized) – No prospecting is allowed where fish eggs are present.	A, B, C	N/A	<1 per site; ≤5 per stream

*Due to action by the Oregon Legislature, effective January 1, 2006, DSL is no longer authorized to issue permits for suction or other methods of dredging in SSW.
** Persons engaged in recreational placer mining in SSW (including sluice boxes and other motorized equipment, but not including dredging which is prohibited) must have a valid permit (IP) from DSL to conduct such activities, and must have it available on-site for inspection.

State Scenic Waterway select definitions

- **Dredging** means to dig, gather or pull out with a machine.
- **Prospecting/Recreational Prospecting** means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods, by filling, removing or moving by artificial means less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year.
- **Recreational Placer Mining** means to remove, fill or move by artificial means, one cubic yard or more of material at any one individual site and cumulatively, less than 25 cubic yards of material annually from or within the bed of a State Scenic Waterway by methods other than dredging. "Recreational placer mining" does not include dredging, which is no longer authorized in SSW. "Recreational placer mining" also does not include recreational prospecting that does not require a permit.
- **Scenic Waterway** as described in ORS 390.805(3) includes Waldo Lake, or any river segment that has been designated under ORS 390.805 to 390.925 or any subsequent act, and includes related adjacent lands.
- **Wet Perimeter** means the area of the stream that is underwater, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

ESSENTIAL SALMONID HABITAT (ESH) STREAMS* – NON SSW

Mining method/equipment used	Zone(s)	In-water Work Period	CY
Suction Dredging	A	Applies	<25**
Recreational Placer Mining (motorized)	A	Applies	<25**
Prospecting (Non-motorized) – No prospecting is allowed where fish eggs are present.	A, B, C	N/A	<1 per site; ≤5 per stream

* Persons engaged in recreational placer mining in ESH must have a ≤4 inch inside diameter nozzle, a valid authorization from DSL to conduct such activities, and must have the authorization available on-site.
**Any motorized equipment or suction dredge >4 inch inside diameter nozzle; moving 25 cubic yards or more; or operating in zones B or C requires an Individual Removal-Fill Permit. The permit must be available on-site for inspection.

Essential Salmonid Habitat select definitions

- **Dredging** means removal of bed material using other than hand held tools.
- **Essential Indigenous Anadromous Salmonid Habitat (ESH)** means the habitat that is designated pursuant to ORS 196.810 and is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.
- **Prospecting** means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods, by filling, removing or moving by artificial means less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single ESH stream in a single year.
- **Recreational Placer Mining** means to remove, fill or move by artificial means, either through motorized or non-motorized methods, less than 25 cubic yards of material annually from or within the bed of a stream designated as ESH.
- **Wet Perimeter,** as used in OAR 141-089-0820 through 0835, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

NON-ESH STREAMS

Mining Method/Equipment used	Zone(s)	In-water Work Period	R/F Permit Required?	
Suction Dredging*	A, B, C	Fill: Applies	<50 CY No	≥50 CY Yes
		Removal: Applies	≤50 CY No	>50 CY Yes
Rec. Placer Mining (motorized)*	A, B, C	Applies	No	Yes
Prospecting (Non-motorized) - No prospecting is allowed where fish eggs are present.	A, B, C	N/A	No	Yes

*Dredge/equipment size does not matter; volume of material moved below ordinary high water mark establishes the threshold for permit requirements. Removing and/or filling a combined total of greater than 50 cubic yards below ordinary high water mark requires an IP from DSL.

Citations for specific violations*

Mining Without a Permit

ORS 196.810 Permit required to remove material from bed or banks of waters; status of permit; exceptions; rules.

(1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800(3) and (12), if any removal or fill activity is proposed in essential indigenous anadromous salmonid habitat, except for those activities customarily associated with agriculture, a permit is required.

NOTE: The general authorization for recreational placer mining in ESH does not allow for a nozzle inside diameter exceeding 4 inches. Any large equipment found operating in ESH waters must have an IP since it is ineligible for the GA.

Mining Outside the In-Water Work Period

OAR 141-089-0650(7) The authorization holder shall conduct the activity only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", unless after consultation with ODFW, a waiver is granted by the department for a longer or alternative time period.

Recreational Placer Mining in a State Scenic Waterway

ORS 390.835(14) No placer mining shall be permitted within SSW other than recreational placer mining.

OAR 141-100-0055(2) A complete application in accordance with OAR 141-085-0550 and authorization under OAR 141-100-0045 will be required for non-dredge recreational placer mining involving filling, removing or moving by artificial means any amount of material from within the bed or wet perimeter of any single scenic waterway or waters within jurisdictional waters within related adjacent lands.

Suction Dredging in a State Scenic Waterway

Since January 1, 2006 any recreational placer mining dredging permits issued by DSL for that activity on SSW are no longer valid. Furthermore, DSL no longer has authority to issue new dredging permits. After December 31, 2005, there can be no valid DSL permits for recreational placer mining by dredging on scenic waterways.

*Violators may be fined up to $10,000 per violation per day. Illegal mining activities in waters of the state may also constitute a misdemeanor.

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OREGON DEPARTMENT OF STATE LANDS

Sucking up our Streams

Impacts of Suction Dredge Mining on Aquatic Communities

Suction dredging directly kills aquatic insects, mollusks, fish eggs, fish larvae, amphibian eggs and amphibian tadpoles when they are entrained by the dredge.[1] The gravel substrates of streams that once teamed with life suffer large losses.

When salmon spawn in areas with dredged tailing piles, the salmon eggs are more likely to be scoured out by winter floods.[2] This means that there will be fewer baby salmon emerging from the gravel and fewer juvenile salmon swimming to the ocean the following year.

Dredging causes turbid plumes of fine sediment for several hundred feet below the dredge.[3] The fine sediment settles as a fine coating on the stream bottom that degrades habitat for aquatic insects and juvenile fish.[4]

Suction dredgers sometimes illegally excavate into streambanks (i.e. high banking). Excavating streambanks damages streamside vegetation, increases erosion, causes harmful sedimentation, greatly increases turbidity, and causes channels to become shallower and wider.[5] The damaged stream banks will take decades to be restored naturally. Extreme turbidity caused by excavating streambanks can have harmful effects on fish and other aquatic animals.

Suction dredging may mobilize elemental mercury buried deeply in streambeds. Some of this mobilized mercury likely contributes to bio-accumulation of mercury in the food chain.[6] Health warnings have been issued in Oregon for consuming freshwater fish contaminated with mercury.

Noise, fumes, and turbidity caused by suction dredging makes streams being dredged less desirable for swimming, boating and fishing.[7]

What is a suction dredge?

Suction dredge mining takes place directly in river and stream channels using a floating, gas-powered vacuum attached to a sluice box. The miner vacuums up the river bottom and runs the sediment through a mechanized sluice to separate out gold flakes. The sediment is then spit back into the river in long, murky plumes.

The size and power of a dredge can vary, with motors typically ranging from 2 to 50 horsepower and the vacuum nozzle ranging from 2 to 10 inches.

Suction dredging represents a chronic and unnatural disturbance to the river and is known to harm fisheries, aquatic habitat, and degrade water quality.

Dredgers sometimes leave unsightly messes of trash, gasoline barrels, and equipment in remote pristine forests.[8]

Suction dredging is currently prohibited in California because of potentially deleterious impacts to fish.[9]

Except for temporary dredge holes[10], scientific studies have found no benefit to aquatic animals or improved stream habitat from suction dredging. Overall impacts have been found to be neutral or adverse but not beneficial.[11]

"Develop suction dredging regulations that minimize or prevent impacts to coho salmon. Consider special closed areas, closed seasons and restrictions on methods and operations."

- One recommended "recovery action" in the National Marine Fisheries Service's draft plan to recover coho salmon in southern Oregon and northern California. Of the 30 independent populations studied in the recovery plan, 25 were found to be at "high risk" of extinction.

[1] Harvey and Lisle. 1998. Effects of Suction Dredging on Streams: A review and an evaluation strategy. Fisheries Vol. 23 (8):9.
[2] Harvey and Lisle. 1999. Scour of Chinook salmon redds on suction dredge tailings. North American Journal of Fisheries Management 19: 613-617.
[3] Oregon Department of Environmental Quality. 2010. 700PM-General Permit Fact Sheet.
[4] Harvey and Lisle. 1998.
[5] Harvey and Lisle. 1998.
[6] Draft Subsequent Environmental Impact Report (DSEIR), Suction Dredge Permitting Program, California Department Fish&Game. 2011.Chapter 4.2
[7] Recreational Placer Mining in the Oregon Scenic Waterways System. 2003. D. Bernell, J. Behan, B. Shelby.
[8] DSEIR: 4.6-13
[9] DSEIR
[10] Harvey and Lisle. 1998.
[11] DSEIR, Chapter 4 Environmental Impacts and Chapter 8 References.

"Given the current level of uncertainty about the effects of dredging, where threatened or endangered aquatic species inhabit dredged areas, fisheries managers would be prudent to suspect that dredging is harmful to aquatic resources."

- Harvey and Lisle in "Effects of Suction Dredging on Streams: a Review and an Evaluation Strategy"

California's moratorium — In July 2011, California Governor Brown signed Assembly Bill 120, which extended a statewide moratorium on suction dredging in any river, stream, or lake in California until June 2016, or until 1) the California Department of Fish and Game has completed a review of existing regulations, 2) new regulations fully mitigate all identified significant environmental impacts, and 3) a fee structure is in place that will fully recover all costs to the state related to the administration of the program, including enforcement.

Oregon's Problem — In the last few years, Oregon has seen a dramatic increase in suction dredge mining, particularly in southwest Oregon. The Oregon Department of State lands issued 656 permits in 2007/2008 and 1,527 permits in 2010/2011—a 233% increase in the last four years. Existing state regulations for suction dredge mining are inadequate in Oregon to protect sensitive aquatic communities, including coho salmon that are listed under the Endangered Species Act, and other fish species. In addition, there is a lack of funding for enforcement of regulations.

Help us protect our rivers and fish from suction dredge mining: www.rogueriverkeeper.org

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