

Senate Bill 115

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Environment and Natural Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits placer mining using any form of motorized equipment or motorized dredge. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to placer mining; creating new provisions; amending ORS 196.910 and 390.835; and declar-
3 ing an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) Placer mining using any form of motorized equipment or motorized**
6 **dredge is prohibited in this state.**

7 **(2) Subsection (1) of this section does not apply to:**

8 **(a) Prospecting described in ORS 390.835.**

9 **(b) Prospecting described in ORS 196.810.**

10 **(c) Prospecting, small scale mining and recreational mining described in ORS 517.120 to**
11 **517.133.**

12 **(3) Violation of subsection (1) of this section is a Class A misdemeanor.**

13 **SECTION 2.** ORS 196.910 is amended to read:

14 196.910. The Department of State Lands shall:

15 (1) Monitor removal and fill activities, including but not limited to prospecting [*and placer*
16 *mining*], within designated essential indigenous anadromous salmonid habitat areas to determine the
17 effects of such activities on salmonid spawning and rearing habitat and compile the results in an
18 annual report.

19 (2) Cooperate with the State Department of Fish and Wildlife and other interested parties to
20 develop and distribute public education and information materials designed to increase understand-
21 ing and awareness of permit requirements and acceptable removal and fill practices related to
22 prospecting [*and placer mining*].

23 (3) Report periodically to the appropriate legislative committee on the progress of the Depart-
24 ment of State Lands in implementing ORS 196.810.

25 **SECTION 3.** ORS 390.835 is amended to read:

26 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
27 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
28 in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water
29 impoundment facility shall be constructed on waters within scenic waterways. No water diversion
30 facility shall be constructed or used except by right previously established or as permitted by the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
2 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
3 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-
4 section.

5 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of
6 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be
7 prohibited, except as permitted by the Director of the Department of State Lands upon a finding that
8 such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic
9 waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and
10 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this
11 state. The Director of the Department of State Lands shall administer and enforce the provisions
12 of this subsection.

13 (3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands
14 may issue a temporary permit for the removal, filling or alteration of the beds or banks within a
15 scenic waterway. The temporary permit shall include conditions developed after consultation with
16 the State Department of Fish and Wildlife and the State Parks and Recreation Department.

17 (b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary
18 to prevent irreparable harm, injury or damage to persons or property.

19 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-
20 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS
21 196.835.

22 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-
23 mission to construct facilities or make improvements to facilitate the passage or propagation of fish
24 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805
25 to 390.925 affects the authority of the Water Resources Commission to construct and maintain
26 stream gauge stations and other facilities related to the commission's duties in administration of the
27 water laws.

28 (6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Com-
29 mission may issue a water right for human consumption not to exceed 0.005 cubic feet per second
30 per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second
31 per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if
32 the Water Resources Commission makes the following findings:

33 (a) That issuing the water right does not significantly impair the free-flowing character of these
34 waters in quantities necessary for recreation, fish and wildlife.

35 (b) That issuing the water right is consistent with provisions pertaining to water appropriation
36 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

37 (c) That construction, operation and maintenance of the diversion system will be carried out in
38 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

39 (d) If the water right is for human consumption, an additional finding that:

40 (A) The applicant cannot reasonably obtain water from any other source;

41 (B) Denial of the water right would result in loss of reasonable expectations for use of the
42 property; and

43 (C) The system installed to divert water shall include monitoring equipment to permit water use
44 measurement and reporting.

45 (e) If the water right is for livestock consumption, an additional finding that:

1 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

2 (B) The applicant cannot reasonably obtain water from any other source; and

3 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

4 (7) In making the findings required under subsection (6) of this section, the Water Resources
5 Commission shall consider the existing or potential cumulative impacts of issuing the water right.

6 (8) The Water Resources Commission may not allow human consumption and livestock uses au-
7 thorized under subsection (6) of this section in excess of a combined cumulative total of one percent
8 of the average daily flow or one cubic foot per second, whichever is less, unless:

9 (a) The Water Resources Commission, the State Parks and Recreation Department, the State
10 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
11 State Lands unanimously agree to exceed that amount; and

12 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
13 ters in quantities necessary for recreation, fish and wildlife.

14 (9)(a) The provisions of this section shall not apply to a water right application for the use of
15 ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director
16 based on a preponderance of evidence that the use of ground water will measurably reduce the
17 surface water flows necessary to maintain the free-flowing character of a scenic waterway in quan-
18 tities necessary for recreation, fish and wildlife.

19 (b) The Water Resources Department shall review every application for the use of ground water
20 to determine whether to make the finding specified in paragraph (a) of this subsection. The finding
21 shall be based upon the application of generally accepted hydrogeologic methods using relevant and
22 available field information concerning the proposed use.

23 (c) In making the determination required by paragraph (a) of this subsection, the Water Re-
24 sources Department shall consider the timing of projected impacts of the proposed use in relation
25 to other factors, including but not limited to: Changing climate, recharge, incidental precipitation,
26 out-of-stream appropriations and return flows.

27 (d) If the Water Resources Director makes the finding specified in paragraph (a) of this sub-
28 section, the Water Resources Director shall issue an order denying the application unless:

29 (A) Mitigation is provided in accordance with subsection (10) of this section; or

30 (B) The applicant submits evidence to overcome the finding under paragraph (a) of this sub-
31 section.

32 (e) Except as provided under subsection (13) of this section, if the Water Resources Director
33 does not make the finding specified in paragraph (a) of this subsection, the Water Resources Direc-
34 tor shall issue an order approving the application if the application otherwise meets the require-
35 ments of ORS 537.505 to 537.795.

36 (f) A protest of any order issued under this subsection may be filed in the same manner as a
37 protest on any application for a right to appropriate ground water.

38 (g) Each water right permit and certificate for appropriation of ground water issued after July
39 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-
40 tioned to allow the regulation of the use if analysis of data available after the permit or certificate
41 is issued discloses that the appropriation will measurably reduce the surface water flows necessary
42 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,
43 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-
44 quently reduced.

45 (h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS

1 537.545.

2 (10) The Water Resources Commission or Water Resources Director shall consider mitigation
3 measures and may include mitigation measures as conditions in any water right permit or certificate
4 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-
5 essary for recreation, fish and wildlife.

6 (11) The Water Resources Commission and the Water Resources Director shall carry out their
7 responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways
8 in conformity with the provisions of this section.

9 (12) As used in this section, "measurably reduce" means that the use authorized under sub-
10 section (9) of this section will individually or cumulatively reduce surface water flows within the
11 scenic waterway in excess of a combined cumulative total of one percent of the average daily flow
12 or one cubic foot per second, whichever is less, unless:

13 (a) The Water Resources Department, the State Parks and Recreation Department, the State
14 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
15 State Lands unanimously agree to exceed that amount; and

16 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
17 ters in quantities necessary for recreation, fish and wildlife.

18 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway
19 in amounts up to but not exceeding the amounts described in subsection (12) of this section, the
20 Water Resources Director shall find:

21 (a) That the appropriation will not significantly impair the free-flowing character of these waters
22 in quantities necessary for recreation, fish and wildlife.

23 (b) That the appropriation is consistent with provisions pertaining to water appropriations and
24 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

25 (c) That construction, operation and maintenance of the appropriation will be carried out in a
26 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

27 (14) No placer mining shall be permitted on waters within scenic waterways [*other than recre-*
28 *ational placer mining*].

29 (15) No person shall be required to obtain a permit for recreational prospecting resulting in the
30 fill, removal or other alteration of less than one cubic yard of material at any one individual site
31 and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter
32 of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site
33 where fish eggs are present.

34 [(16) *No provision of this section shall be construed to exempt recreational placer mining on a*
35 *scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the*
36 *provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800*
37 *to 196.825 and 196.845 to 196.870.*]

38 [(17) *Recreational placer mining, other than recreational prospecting not requiring a permit, shall*
39 *not:*]

40 [(a) *Dam or divert a waterway or obstruct fish passage;*]

41 [(b) *Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the*
42 *wet perimeter;*]

43 [(c) *Include movement of boulders, logs, stumps or other woody material from the wet perimeter*
44 *other than movement by hand and nonmotorized equipment;*]

45 [(d) *Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-*

1 *ardless of their location;]*

2 *[(e) Include excavation from the streambank;]*

3 *[(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon*
4 *leaving the site;]*

5 *[(g) Include operation of a suction dredge without a suction dredge waste discharge permit from*
6 *the Department of Environmental Quality including, but not limited to, a prohibition against dredging*
7 *during periods when fish eggs could be in the dredging site gravel;]*

8 *[(h) Be conducted on federal lands except as allowed by agencies of the federal government;]*

9 *[(i) Impede boating;]*

10 *[(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a res-*
11 *idence or within 500 feet of a campground except within a federally designated recreational mining site;*
12 *or]*

13 *[(k) Include operation of a dredge within the marked or posted swimming area of a designated*
14 *campground or day use area except within a federally designated recreational mining site.]*

15 *[(18)] (16) As used in this section:*

16 (a) “Bed” means the land within the wet perimeter and any adjacent nonvegetated dry gravel
17 bar.

18 (b) “Prospecting” means to search or explore for samples of gold, silver or other precious min-
19 erals, using nonmotorized methods, from among small quantities of aggregate.

20 *[(c) “Recreational placer mining” includes, but is not limited to, the use of nonmotorized equipment*
21 *and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four*
22 *inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise*
23 *reduction standards. “Recreational placer mining” does not include recreational prospecting that does*
24 *not require a permit.]*

25 *[(d)] (c) “Wet perimeter” means the area of the stream that is underwater, or is exposed as a*
26 *nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the*
27 *activity occurs.*

28 **SECTION 4.** ORS 390.835, as amended by section 8, chapter 516, Oregon Laws 2001, is amended
29 to read:

30 390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways
31 are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained
32 in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water
33 impoundment facility may not be constructed on waters within scenic waterways. A water diversion
34 facility may not be constructed or used except by right previously established or as permitted by the
35 Water Resources Commission, upon a finding that such diversion is necessary to uses designated in
36 ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to
37 390.925. The Water Resources Commission shall administer and enforce the provisions of this sub-
38 section.

39 (2) Filling of the beds or removal of material from or other alteration of the beds or banks of
40 scenic waterways for purposes other than recreational prospecting not requiring a permit shall be
41 prohibited, except as permitted by the Director of the Department of State Lands upon a finding that
42 such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic
43 waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and
44 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this
45 state. The Director of the Department of State Lands shall administer and enforce the provisions

1 of this subsection.

2 (3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands
3 may issue a temporary permit for the removal, filling or alteration of the beds or banks within a
4 scenic waterway. The temporary permit shall include conditions developed after consultation with
5 the State Department of Fish and Wildlife and the State Parks and Recreation Department.

6 (b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary
7 to prevent irreparable harm, injury or damage to persons or property.

8 (4) Any person adversely affected or aggrieved by the grant or denial of a permit under sub-
9 section (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS
10 196.835.

11 (5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Com-
12 mission to construct facilities or make improvements to facilitate the passage or propagation of fish
13 or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805
14 to 390.925 affects the authority of the Water Resources Commission to construct and maintain
15 stream gauge stations and other facilities related to the commission's duties in administration of the
16 water laws.

17 (6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Com-
18 mission may issue a water right for human consumption not to exceed 0.005 cubic feet per second
19 per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second
20 per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if
21 the Water Resources Commission makes the following findings:

22 (a) That issuing the water right does not significantly impair the free-flowing character of these
23 waters in quantities necessary for recreation, fish and wildlife.

24 (b) That issuing the water right is consistent with provisions pertaining to water appropriation
25 and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

26 (c) That construction, operation and maintenance of the diversion system will be carried out in
27 a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

28 (d) If the water right is for human consumption, an additional finding that:

29 (A) The applicant cannot reasonably obtain water from any other source;

30 (B) Denial of the water right would result in loss of reasonable expectations for use of the
31 property; and

32 (C) The system installed to divert water shall include monitoring equipment to permit water use
33 measurement and reporting.

34 (e) If the water right is for livestock consumption, an additional finding that:

35 (A) The right is necessary to prevent the livestock from watering in or along the stream bed;

36 (B) The applicant cannot reasonably obtain water from any other source; and

37 (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

38 (7) In making the findings required under subsection (6) of this section, the Water Resources
39 Commission shall consider the existing or potential cumulative impacts of issuing the water right.

40 (8) The Water Resources Commission may not allow human consumption and livestock uses au-
41 thorized under subsection (6) of this section in excess of a combined cumulative total of one percent
42 of the average daily flow or one cubic foot per second, whichever is less, unless:

43 (a) The Water Resources Commission, the State Parks and Recreation Department, the State
44 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
45 State Lands unanimously agree to exceed that amount; and

1 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
2 ters in quantities necessary for recreation, fish and wildlife.

3 (9)(a) The provisions of this section do not apply to a water right application for the use of
4 ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director
5 based on a preponderance of evidence that the use of ground water will measurably reduce the
6 surface water flows necessary to maintain the free-flowing character of a scenic waterway in quan-
7 tities necessary for recreation, fish and wildlife.

8 (b) The Water Resources Department shall review every application for the use of ground water
9 to determine whether to make the finding specified in paragraph (a) of this subsection. The finding
10 shall be based upon the application of generally accepted hydrogeologic methods using relevant and
11 available field information concerning the proposed use.

12 (c) In making the determination required by paragraph (a) of this subsection, the Water Re-
13 sources Department shall consider the timing of projected impacts of the proposed use in relation
14 to other factors, including but not limited to: Changing climate, recharge, incidental precipitation,
15 out-of-stream appropriations and return flows.

16 (d) If the Water Resources Director makes the finding specified in paragraph (a) of this sub-
17 section, the Water Resources Director shall issue an order denying the application unless:

18 (A) Mitigation is provided in accordance with subsection (10) of this section; or

19 (B) The applicant submits evidence to overcome the finding under paragraph (a) of this sub-
20 section.

21 (e) Except as provided under subsection (13) of this section, if the Water Resources Director
22 does not make the finding specified in paragraph (a) of this subsection, the Water Resources Direc-
23 tor shall issue an order approving the application if the application otherwise meets the require-
24 ments of ORS 537.505 to 537.795.

25 (f) A protest of any order issued under this subsection may be filed in the same manner as a
26 protest on any application for a right to appropriate ground water.

27 (g) Each water right permit and certificate for appropriation of ground water issued after July
28 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be condi-
29 tioned to allow the regulation of the use if analysis of data available after the permit or certificate
30 is issued discloses that the appropriation will measurably reduce the surface water flows necessary
31 to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation,
32 fish and wildlife in effect as of the priority date of the right or as those quantities may be subse-
33 quently reduced.

34 (h) This subsection does not limit the use of ground water for a use exempted under ORS
35 537.545.

36 (10) The Water Resources Commission or Water Resources Director shall consider mitigation
37 measures and may include mitigation measures as conditions in any water right permit or certificate
38 to ensure the maintenance of the free-flowing character of the scenic waterway in quantities nec-
39 essary for recreation, fish and wildlife.

40 (11) The Water Resources Commission and the Water Resources Director shall carry out their
41 responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways
42 in conformity with the provisions of this section.

43 (12) As used in this section, "measurably reduce" means that the use authorized under sub-
44 section (9) of this section will individually or cumulatively reduce surface water flows within the
45 scenic waterway in excess of a combined cumulative total of one percent of the average daily flow

1 or one cubic foot per second, whichever is less, unless:

2 (a) The Water Resources Department, the State Parks and Recreation Department, the State
3 Department of Fish and Wildlife, the Department of Environmental Quality and the Department of
4 State Lands unanimously agree to exceed that amount; and

5 (b) Exceeding that amount will not significantly impair the free-flowing character of these wa-
6 ters in quantities necessary for recreation, fish and wildlife.

7 (13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway
8 in amounts up to but not exceeding the amounts described in subsection (12) of this section, the
9 Water Resources Director shall find:

10 (a) That the appropriation will not significantly impair the free-flowing character of these waters
11 in quantities necessary for recreation, fish and wildlife.

12 (b) That the appropriation is consistent with provisions pertaining to water appropriations and
13 water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

14 (c) That construction, operation and maintenance of the appropriation will be carried out in a
15 manner consistent with the purposes set forth in ORS 390.805 to 390.925.

16 (14) Placer mining is not permitted on waters within scenic waterways[, *other than recreational*
17 *placer mining*].

18 (15) A person may not be required to obtain a permit for recreational prospecting or other
19 nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one
20 cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards
21 of material from within the bed or wet perimeter of any single scenic waterway in a single year.
22 Recreational prospecting shall not occur at any site where fish eggs are present.

23 *[(16) This section does not exempt recreational placer mining on a scenic waterway, other than*
24 *recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800*
25 *to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to*
26 *196.870.]*

27 *[(17) Recreational placer mining may not:]*

28 *[(a) Dam or divert a waterway or obstruct fish passage;]*

29 *[(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the*
30 *wet perimeter;]*

31 *[(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter*
32 *other than movement by hand and nonmotorized equipment;]*

33 *[(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, re-*
34 *gardless of their location;]*

35 *[(e) Include excavation from the streambank;]*

36 *[(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon*
37 *leaving the site;]*

38 *[(g) Include operation of a suction dredge without a suction dredge waste discharge permit from*
39 *the Department of Environmental Quality including, but not limited to, a prohibition against dredging*
40 *during periods when fish eggs could be in the dredging site gravel;]*

41 *[(h) Be conducted on federal lands except as allowed by agencies of the federal government;]*

42 *[(i) Impede boating;]*

43 *[(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a res-*
44 *idence or within 500 feet of a campground except within a federally designated recreational mining site;*
45 *or]*

