

D R A F T

SUMMARY

Directs Environmental Quality Commission to adopt by rule consolidated permitting program for motorized in-stream placer mining and motorized upland placer mining. Requires adoption of certain rules related to review of applications, issuance of permits and conditions on permits.

Authorizes Department of Environmental Quality and certain other state agencies to enter memoranda of agreement assigning department duties related to permitting of motorized in-stream placer mining and motorized upland placer mining.

Repeals moratorium on mining using motorized equipment.

Requires operating permit to engage in motorized in-stream placer mining or motorized upland placer mining.

Prohibits motorized in-stream placer mining or motorized upland placer mining in certain protected areas.

Imposes civil penalties of not more than \$1,000 per day for violating permit provisions.

Punishes violation of permitting provisions by maximum of \$2,000 fine.

Becomes operative January 2, 2016. Authorizes Environmental Quality Commission to take certain actions prior to operative date.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to mining; creating new provisions; amending ORS 468B.052; repealing sections 2, 3 and 4, chapter 783, Oregon Laws 2013; and declaring an emergency.

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

REPEAL OF MORATORIUM ON CERTAIN MINING OPERATIONS

SECTION 1. Sections 2, 3 and 4, chapter 783, Oregon Laws 2013, are

1 **repealed.**

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**CONSOLIDATED PERMITTING PROGRAM
FOR MOTORIZED IN-STREAM PLACER MINING
AND MOTORIZED UPLAND PLACER MINING**

6

7 **SECTION 2. As used in sections 2 to 10 of this 2015 Act:**

8 (1) **“Biological resource habitat” means essential indigenous**
9 **anadromous salmonid habitat and habitat that is essential to the re-**
10 **covery and conservation of pacific lamprey, bull trout and freshwater**
11 **mollusks.**

12 (2) **“Line of ordinary high water” has the meaning given that term**
13 **in ORS 274.005.**

14 (3) **“Motorized in-stream placer mining” means mining using any**
15 **form of motorized equipment, including but not limited to the use of**
16 **a motorized suction dredge, for the purpose of extracting gold, silver**
17 **or any other precious metal from placer deposits of the beds or banks**
18 **of the waters of the state.**

19 (4) **“Motorized upland placer mining” means:**

20 (a) **Mining that uses any form of motorized equipment for the pur-**
21 **pose of extracting gold, silver or any other precious metal from placer**
22 **deposits located between the line of ordinary high water and 100 yards**
23 **upland perpendicular to the line of ordinary high water of the length**
24 **of any waters of the state; and**

25 (b) **Any activity related to mining described in paragraph (a) of this**
26 **subsection, including the establishment of camps or access routes,**
27 **that takes place in a location that is between the line of ordinary high**
28 **water and 100 yards upland perpendicular to the line of ordinary high**
29 **water of the length of any waters of the state.**

30 (5) **“Operator” means any person that is engaged in motorized in-**
31 **stream placer mining operations or motorized upland placer mining**

1 operations.

2 (6) "Waters of the state" has the meaning given that term in ORS
3 468B.005.

4 **SECTION 3.** (1) An operator may not engage in motorized in-stream
5 placer mining or motorized upland placer mining without holding or
6 being covered by a valid operating permit issued by Department of
7 Environmental Quality. Separate permit coverage is required for each
8 separate motorized mining operation. An operator seeking an operat-
9 ing permit or permit coverage from the department shall submit an
10 application by completing an online application form developed by the
11 department by rule and available on the department's website that
12 contains the following information:

13 (a) The name and address of the operator;

14 (b) The global positioning system coordinates for where the motor-
15 ized in-stream placer mining or motorized upland placer mining oper-
16 ation is proposed to occur;

17 (c) Information on how the mining location will be accessed by the
18 operator;

19 (d) An affirmation by the operator that the operator has reviewed
20 information available as part of the online application process related
21 to cultural resource preservation and best management practices for
22 motorized in-stream placer mining and motorized upland placer min-
23 ing; and

24 (e) Any other information that the department requires by rule to
25 be included in the application.

26 (2) The department may authorize motorized in-stream placer min-
27 ing and motorized upland placer mining under a general permit or an
28 individual permit. An operator proposing to conduct an action under
29 a general permit shall apply to the department in accordance with this
30 section and shall pay the applicable fee required under ORS 468B.052.

31 (3) The department may refuse to issue an operating permit or

1 grant permit coverage to an operator who has not, in the determi-
2 nation of the department, substantially complied with the conditions
3 of an operating permit, the provisions of this section or section 4 or 6
4 of this 2015 Act or the rules adopted by the department to carry out
5 the purposes of this section or section 4 or 6 of this 2015 Act.

6 **SECTION 4.** (1) The Environmental Quality Commission, in con-
7 sultation with the Department of Environmental Quality, the Depart-
8 ment of State Lands, the State Historic Preservation Officer, and
9 federally recognized Indian tribes in Oregon, shall adopt by rule a
10 program for the authorization by permit of motorized in-stream placer
11 mining and motorized upland placer mining in this state.

12 (2) Rules adopted under this section must:

13 (a) Provide for the Department of Environmental Quality to serve
14 as the single point of contact for operators with relation to the per-
15 mitting of mining described in this section;

16 (b) Include an application review process that allows for the De-
17 partment of State Lands, the State Historic Preservation Officer,
18 federally recognized Indian tribes in Oregon and any other state
19 agencies with an interest in or statutory responsibility related to
20 mining described in this section to have adequate time and authority
21 to make recommendations to the Department of Environmental
22 Quality regarding permit conditions or whether to approve or deny a
23 permit for motorized in-stream placer mining or motorized upland
24 placer mining;

25 (c) Include criteria for the issuance of permits by the Department
26 of Environmental Quality that are consistent with all applicable state
27 and local laws; and

28 (d) Provide for an expedited application review process for applica-
29 tions submitted under section 3 of this 2015 Act that meet certain
30 criteria as determined by the commission.

31 (3) The commission shall adopt by rule conditions that may be ap-

1 **plied to permits as necessary to:**

2 **(a) Limit the amount of removal or fill activity in waters of the**
3 **state and the amount of removal or disturbance of streamside vege-**
4 **tation that may occur under the permit;**

5 **(b) Ensure that permits are displayed in plain view and clearly vis-**
6 **ible on or near motorized equipment in order to aid in the identifica-**
7 **tion of operators;**

8 **(c) Prevent or mitigate social conflict due to the noise caused by,**
9 **or the proximity of, mining described in this section to residences,**
10 **campgrounds, parks or other areas where social conflict could rea-**
11 **sonably be expected to occur;**

12 **(d) Ensure that motorized in-stream placer mining equipment is**
13 **operated at a distance from other motorized equipment that is safe for**
14 **the operators and protective of water quality;**

15 **(e) Protect cultural resources and high value natural resources;**

16 **(f) Protect drinking water;**

17 **(g) Require operators to keep daily activity logs of information re-**
18 **lated to the location and extent of mining that may be reportable to**
19 **the department; and**

20 **(h) Require motorized in-stream placer mining operators to secure**
21 **equipment that is not in use in a manner that:**

22 **(A) Does not prevent or obstruct navigation within the beds or**
23 **banks of waters of the state; and**

24 **(B) Ensures the removal of hazardous materials from the equip-**
25 **ment while it is unattended.**

26 **(4) Rules adopted under this section may include the establishment**
27 **of a system of management zones, to the extent allowed by law, that**
28 **are designed to address conditions unique to the management zone**
29 **through:**

30 **(a) The establishment of caps on the total number of permits for**
31 **motorized in-stream placer mining and motorized upland placer min-**

1 **ing that may occur in a management zone;**

2 **(b) Notwithstanding subsection (3) of this section, the establishment**
3 **of conditions that may be applied to permits issued under this section**
4 **that are in addition to, or in lieu of, the requirements under sub-**
5 **section (3) of this section and that are specific to the management**
6 **zone; and**

7 **(c) Research, monitoring, compliance and enforcement efforts that**
8 **are specific to the management zone.**

9 **(5) Rules adopted under this section must, to the extent feasible and**
10 **practicable, allow for adaptive management, be based on the best**
11 **available science and precautionary principles, and incorporate best**
12 **management practices.**

13 **SECTION 5. (1) The Department of State Lands and the Department**
14 **of Environmental Quality may enter into a memorandum of agree-**
15 **ment concerning motorized in-stream placer mining and motorized**
16 **upland placer mining with respect to the operating permit program**
17 **established under sections 2 to 10 of this 2015 Act, water pollution**
18 **programs administered by the Department of Environmental Quality**
19 **under ORS chapter 468B and the issuance of permits under the pro-**
20 **visions of ORS 196.600 to 196.905.**

21 **(2) The memorandum described in subsection (1) of this section may**
22 **assign sole responsibility for permitting to the Department of Envi-**
23 **ronmental Quality when the motorized in-stream placer mining or**
24 **motorized upland placer mining would otherwise be under the permit-**
25 **ting jurisdiction of both the Department of State Lands and the De-**
26 **partment of Environmental Quality.**

27 **(3) In addition to a memorandum entered into under subsection (1)**
28 **of this section, the Department of Environmental Quality and any**
29 **other state agencies imposing requirements on motorized in-stream**
30 **placer mining or motorized upland placer mining may enter into**
31 **agreements for the department to act on behalf of the agencies in in-**

1 **forming operators of the requirements and overseeing enforcement of**
2 **the requirements.**

3 **(4) Nothing in this section shall be interpreted as authorizing the**
4 **Department of Environmental Quality to issue a permit for motorized**
5 **in-stream placer mining or motorized upland placer mining without**
6 **first meeting the review and consultation requirements adopted by the**
7 **department by rule under section 4 (2) of this 2015 Act.**

8 **SECTION 6. (1) In addition to the prohibition against placer mining**
9 **in scenic waterways under ORS 390.835, no motorized in-stream placer**
10 **mining may be permitted to occur directly in the banks of the waters**
11 **of the state or up to the line of ordinary high water in the beds of**
12 **segments of waters of the state that are:**

13 **(a) Designated biological resource habitat, unless protection for the**
14 **habitat may be otherwise achieved pursuant to rules adopted under**
15 **section 4 of this 2015 Act. “Biological resource habitat” as defined un-**
16 **der section 2 of this 2015 Act shall be further defined and designated**
17 **by rule by the Department of State Lands in consultation with the**
18 **State Department of Fish and Wildlife and in consultation with other**
19 **affected parties.**

20 **(b) Waters listed as water quality impaired under the Federal Water**
21 **Pollution Control Act (P.L. 92-500, as amended) for sediment, turbidity,**
22 **toxics or heavy metals that are associated with sediments.**

23 **(c) Waters flowing through a state park.**

24 **(d) Unless otherwise specifically authorized by the federal agency**
25 **with jurisdiction over the area, waters flowing through or wholly**
26 **contained within a federally designated wilderness area or wilderness**
27 **study area, national monument, national botanical area or an area of**
28 **critical environmental concern designated by the Bureau of Land**
29 **Management.**

30 **(e) Waters flowing through public land set aside or withdrawn from**
31 **mineral entry, unless the land is set aside or withdrawn for the pur-**

1 **pose of recreational mining.**

2 **(f) Unless specifically authorized by the appropriate Indian tribe**
3 **pursuant to the application review process provided for by rules**
4 **adopted under section 4 of this 2015 Act:**

5 **(A) Waters forming the boundaries of an Indian reservation; or**

6 **(B) Waters flowing through or wholly contained within an Indian**
7 **reservation, tribal trust lands or property that is owned exclusively**
8 **by an Indian tribe or an entity wholly owned by an Indian tribe.**

9 **(2) No motorized upland placer mining may be permitted to occur**
10 **on land that is between the line of ordinary high water and 100 yards**
11 **upland perpendicular to the line of ordinary high water of the full**
12 **length of any segment of waters of the state that are:**

13 **(a) Designated biological resource habitat, as that term is defined**
14 **under section 2 of this 2015 Act and subsection (1) of this section, un-**
15 **less protection for the habitat may be otherwise achieved pursuant to**
16 **the rules adopted under section 4 of this 2015 Act.**

17 **(b) Scenic waterways in this state designated under ORS 390.826 and**
18 **bodies of water flowing through state parks.**

19 **(c) Unless otherwise specifically authorized by the federal agency**
20 **with jurisdiction over the area, waters flowing through or wholly**
21 **contained within a federally designated wilderness area or wilderness**
22 **study area, national monument, national botanical area or an area of**
23 **critical environmental concern designated by the Bureau of Land**
24 **Management.**

25 **(d) Waters flowing through public land set aside or withdrawn from**
26 **mineral entry, unless the land is set aside or withdrawn for the pur-**
27 **pose of recreational mining.**

28 **(e) Unless specifically authorized by the appropriate Indian tribe**
29 **pursuant to the application review process provided for by rules**
30 **adopted under section 4 of this 2015 Act;**

31 **(A) Waters forming the boundaries of an Indian reservation; or**

1 (B) Waters flowing through or wholly contained within an Indian
2 reservation, tribal trust lands or property that is owned exclusively
3 by an Indian tribe or an entity wholly owned by an Indian tribe.

4 (3) Subsections (1) and (2) of this section shall not be interpreted
5 to require the denial of a permit for motorized in-stream placer mining
6 or motorized upland placer mining if the denial of the permit would:

7 (a) Result in an obligation for compensation under Article I, section
8 18, Oregon Constitution, or the Fifth Amendment to the United States
9 Constitution; or

10 (b) Be in violation of federal law.

11 SECTION 7. Any person who violates any provision of section 3, 4
12 or 6 of this 2015 Act or any rule, order or permit adopted or issued
13 under section 3, 4 or 6 of this 2015 Act shall be subject to a civil penalty
14 in an amount to be determined by the Department of Environmental
15 Quality of not more than \$1,000 per day of violation.

16 SECTION 8. Violation of any provisions of section 3, 4 or 6 of this
17 2015 Act, or any rule, order or permit adopted or issued under section
18 3, 4 or 6 of this 2015 Act is a Class A violation.

19 SECTION 9. Sections 2 to 8 of this 2015 Act do not apply to any
20 mining for which the State Department of Geology and Mineral In-
21 dustries issues an operating permit under ORS 517.702 to 517.989.

22 SECTION 10. The Department of Environmental Quality shall an-
23 nually convene a team of representatives of each of the parties listed
24 in section 4 (1) of this 2015 Act to review the effectiveness of the pro-
25 gram adopted under section 4 of this 2015 Act. The department shall
26 submit a report with the team's findings, that may include recom-
27 mendations for legislation, to the Legislative Assembly in the manner
28 provided in ORS 192.245 on or before February 1 of each odd-numbered
29 year.

30
31 CONFORMING AMENDMENT

1 **SECTION 11.** ORS 468B.052 is amended to read:

2 468B.052. (1) Unless the Environmental Quality Commission, as provided
3 in ORS 468.065, establishes different fees for permits issued under [*ORS*
4 *468B.050, a person who operates a suction dredge having a suction hose with*
5 *an inside diameter of eight inches or less*] **section 4 of this 2015 Act, a**
6 **motorized in-stream placer mining operator or motorized upland**
7 **placer mining operator** shall, upon application for or renewal of a permit
8 issued under [*ORS 468B.050*] **section 4 of this 2015 Act**, pay to the Depart-
9 ment of Environmental Quality:

10 (a) For an individual permit:

11 (A) A one-time application fee of \$300; and

12 (B) An annual renewal fee of \$25.

13 (b) For a general permit, either:

14 (A) A \$25 annual fee for each year the person registers under the general
15 permit; or

16 (B) A \$100 fee for a five-year registration under the general permit.

17 (2)(a) In addition to the fees described in subsection (1) of this section,
18 by rule the commission may establish an additional fee for a permit issued
19 under [*ORS 468B.050*] **section 4 of this 2015 Act** for a person to [*operate a*
20 *suction dredge*] **engage in motorized in-stream placer mining or motor-**
21 **ized upland placer mining** described in this section. The fee must be ade-
22 quate to cover the costs of administration, compliance, monitoring and
23 enforcement related to the permit.

24 (b) After a fee is established by the commission pursuant to this sub-
25 section, the fee is subject to the limitations on increases imposed by ORS
26 468B.051.

27
28 **MISCELLANEOUS**
29

30 **SECTION 12.** The unit captions used in this 2015 Act are provided
31 **only for the convenience of the reader and do not become part of the**

1 **statutory law of this state or express any legislative intent in the**
2 **enactment of this 2015 Act.**

3 **SECTION 13. (1) Sections 1 to 10 of this 2015 Act and the amend-**
4 **ments to ORS 468B.052 by section 11 of this 2015 Act become operative**
5 **on January 2, 2016.**

6 **(2) The Environmental Quality Commission may take any action**
7 **before the operative date specified in subsection (1) of this section that**
8 **is necessary for the commission to exercise, on and after the operative**
9 **date specified in subsection (1) of this section, all of the duties, func-**
10 **tions and powers conferred on the commission by sections 1 to 10 of**
11 **this 2015 Act and the amendments to ORS 468B.052 by section 11 of this**
12 **2015 Act.**

13 **SECTION 14. This 2015 Act being necessary for the immediate**
14 **preservation of the public peace, health and safety, an emergency is**
15 **declared to exist, and this 2015 Act takes effect on its passage.**

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