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Senate Environment & Natural Resources Committee

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RE: COMMENTS ON SB 3

(For the OLS Public Record on SB 3)

Dear Committee Members;

Considering the comments this committee has already received concerning SB 838 and now SB 3 (by the Waldo Mining District and many others from the mining community); and that SB 838 is still the law in Oregon and that SB 3 would, if anything expand the scope of SB 838; it seems that our comments are falling on deaf ears and that the democratically controlled legislature is ultimately out to destroy at least small-scale mining in Oregon.

Be-that-as-it-may, I will try one last time to raise enough doubt in this committee with the hope that just maybe enough of you will realize how wrong and unlawful these bills are . . . and will do the right thing and kill both bills.

1. SCIENCE: I know enough peer reviewed studies have been submitted to at least show a totally insignificant harm and possibly very real beneficial effects; and yet we (and the studies) are ignored.
2. ECONOMIC EFFECTS: I know this committee has received copies of a recent analysis of the economic effects from suction dredge mining based on USDA Siskiyou National Forest data that show that the "average" suction dredge miner mines 35 days a year and:
 - A. Spends an estimated \$10,000 per year on equipment, living and operating expenses; and
 - B. Might recover on average anywhere from \$240 to \$600 per day in gold (Xs 35 days = \$8,400 to \$21,000 per year, per miner).

Added together we see that the "average" suction dredge miner is pumping \$18,400 to \$31,000 (or more) per year into the Oregon economy. According to DEQ, in 2004/05 DEQ issued 1,984 permits or MOUs for suction dredge mining. **This shows that on a whole, in 2004/05 the permitted suction dredge community in Oregon contributed from \$36.5M to \$61.5M to Oregon's economy... and yet we are ignored (or worse).**

3. CULTURAL HERITAGE: Gold Mining is “the” Pioneer Industry that settled much of Oregon – mostly by single individuals and families by the 10’s of thousands whose needs brought in everything else (supply businesses, logging, roads, schools, government, etc.). Mining is in our blood. For the most part, we are not large-scale miners (and don’t want to be). Bills like SB 838 and SB 3 are destroying our heritage in order to appease the Tribes and members of the environmental movement who want to lock everything up and turn it into their own “park”; or by the fishing community whose ultimate goal is to kill fish for “fun” and “profit”. . . and yet we are ignored.

4. THE 1872 MINING LAW: I have been told that the committee doesn’t want to hear about the law – especially the 1872 Mining Law. The 1872 Act is a grant by Congress making “**all valuable mineral deposits**” in lands of the United States “**free and open to exploration**”; including those found underwater in or beneath the beds of present day streams (some of which require motorized equipment to reach).

The intent of the National Mining & Mineral Policy Act (1970) is to “foster and encourage mining”.

SB 838 and SB 3 are in opposition to the federal laws; i.e.;

A. The moratorium prohibits motorized equipment necessary to even discover some deposits; and

B. Banning and prohibiting is not fostering and encouraging.

5. SB 838 & SB 3 ARE IN VIOLATION OF THE OREGON ADMISSION ACTS [Approved June 3, 1859]: Which reads in part:

Provided, That the foregoing propositions, hereinbefore offered, are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, **that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof...** (Section 4, (5))

By prohibiting the equipment necessary to even discover deposits, or to extract them, Oregon is interfering with the primary disposal of the soil by the United States in that mining claims cannot be located without first making a valid Discovery, and claims cannot be held if they cannot be worked at a profit. Mining claims that have been tested and proven to pass validity can be patented whereby total ownership (land & minerals) is transferred to the claimowner. Oregon’s ban on the necessary equipment puts the Discoveries on active claims made using a suction dredge in jeopardy (i.e.; if you can’t use a dredge, and a dredge is the only practical method, there is no Discovery and the claim could be declared invalid).

Unlike most large-scale mining equipment, most of the small-scale equipment (including suction dredges, high-bankers, etc.) is used both for “prospecting” (i.e.; searching for deposits) and for “mining” (i.e.; working the deposit once found).

For all practical purposes, a suction dredge is REQUIRED to explore deposits found under much more than one (1) foot of water – and the deeper it gets, the more a dredge is necessary.

Citizens operating under the 1872 Mining Law have rights to Real Property (under both federal & state law), not only to the minerals but also the right to mine them, and to gain ownership of the land. SB 838 & SB 3 violate the Admission Acts by making it impossible to make Discoveries on many submerged deposits and jeopardizes the Discoveries made on thousands of existing claims that require the use of motorized equipment to find or mine.

- 6. OREGON CONTINUES TO IGNORE BENEFICIAL EFFECTS:** Although to date no study on the effects of suction dredge mining has shown a significant harm, several studies have shown at least as many potentially beneficial effects and some have shown definite beneficial effects . . . and yet Oregon refuses to even consider “the good” when regulating what they believe to be “the bad”.
- 7. OREGON CONTINUES TO LICENSE THROWING LEAD INTO OREGON WATERS AND PROHIBITS MINERS THAT REMOVE IT FOR FREE:** This country has spent \$Billions removing lead from our environment; and yet, every year Oregon issues (sells) thousands if not millions of Fishing Licenses; and every year 1,000’s of pounds of lead (sinkers) are lost - polluting and poisoning our waters with this deadly element.

To add to this insanity, Oregon’s unwarranted attacks on suction dredge mining over the years stops those few that have the capability to remove much of this lost lead safely, effectively, and at no cost to the state or public! (Note: Dredges operating in known fishing streams can easily recover several pounds of lead per day, and 100+ pound days have been documented).

- 8. SB 838 & SB 3’s MORITORIUM IS IN VIOLATION OF THE U.S. SUPREME COURT IN GRANITE ROCK v CALIFORNIA COASTAL COMMISSION.** Here the Supreme Court ruled 5-4 that states could “reasonably” regulate mining on lands of the United States open to mining, usually through the use of a “standards based” permit system – AND NOT THROUGH THE USE OF LAND USE PLANS.

A “standard” would be like setting a limit on the amount of turbidity allowed – regardless of what equipment was used. Prohibiting all motorized equipment, regardless of the size or scale (like a 2” dredge in a huge river) is Land Use Planning – i.e.; “standard-less” – and thus is preempted by the federal law.

- 9. RECREATIONAL MINING vs MINING:** Under the 1872 Mining Law, there is no such thing as “recreational mining”. Even simple gold panning is considered (by the courts) “mining”. (This does not mean that deposits can be economically worked with just a gold pan – but instead the scale or equipment, or that it may or may not be fun, has little to do with it.

MINING (and all uses incident to mining) on lands of the United States open to mining under the 1872 Mining Law is “mining” – and is performed as a congressionally granted statutory right.

RECREATIONAL MINING is a figment of Oregon defined in ORS 517.120, and can take place on lands NOT open to mining under the 1872 Mining Law (such as on State lands, or federal lands closed to mining but open for recreational purposes). In all such cases, recreational mining is a privilege – i.e.; NO RIGHTS ATTACH. Oregon gave the miners permission to mine with certain types and sizes of equipment and in certain places – and at any time Oregon could “just say no”.

Had SB 838 focused solely on recreational suction dredge mining – which by the way would have been totally legal and within the powers of Oregon – then this whole mining issue would have died in 2013. Unfortunately, somehow, influence was peddled and 838 expanded to include mining on lands of the United States open to Mining – something Oregon has very limited authority over as we are dealing with rights, not a mere privilege. We are dealing with property, and at least the partial economic well-being of thousands of Oregon prospectors and miners, along with their ties to the Cultural Heritage and the sheer goodness of getting out and reaping the rewards from one’s own physical labor.

CLOSING COMMENTS:

For at least the past 20 years I have been heavily involved working with both state and federal agencies regulating suction dredge mining. And sad to say, 98% of the time I am working with people (regulators & legislators) that know little or nothing about suction dredge mining (or any other kind of mining), and the uniqueness of the rights granted by the 1872 Mining Law . . . and worse, don’t have the time or interest to learn.

More recently, I was a member of the Governor’s SB 838 Study Group and attended every meeting. This ignorance of the mining, the science, and the law was readily apparent... and yet this group was going to make “recommendations”. (The miners on the committee had to request scheduling to get time (1 hour), in 1 meeting, to cover mining, suction dredge mining, mineral deposits, etc.). In order to be appointed to the committee, I had to promise NOT to talk about the Mining Law.

Initially, SB 838 was a knee-jerk reaction to stop suction dredge mining in the Rogue River near Medford where it was disturbing homeowners and other users of the river, and as mentioned above, had 838 focused on just those problem areas (there were (and are) many solutions from limiting the number of dredges to zero, noise restrictions, spacing, hours, etc.. Special Permits could have been required with fees high enough to cover enforcement. Had all that been done (and just that), YOU would not be reading this now, I would not have had to spend hours writing this . . . there would not be suits in court by miners against Oregon, and the legislature could spend more time on issues more important than an activity that has been (up until recently) considered to cause insignificant environmental effects, has real beneficial effects, and pumps \$30 to \$60M annually into Oregon’s (most rural & depressed) economy.

Oregon claims it is not prohibiting all mining, even in the areas covered by the SB 838 Moratorium. “Non-Motorized” placer mining is still allowed, such as with a gold pan or sluice box. In many respects, the reasoning behind this is illogically flawed.

A sluice box is a sluice box, they all work the same way; differing mostly in size and construction. In placer gold mining, the sluice box is the part of the system that initially recovers and concentrates the gold from the excavated raw material. In all placer gold mining, raw material is excavated, delivered to the recovery system (usually a sluice box), and then discarded. Small-scale non-motorized methods would involve a shovel where the miner had a sluice near enough to shovel directly into it, or far enough away that the material had to be transported to the sluice (using buckets, barrows, etc.). Or a flume would be set-up with flowing water that would carry the shoveled material to the sluice. The modern suction dredge does all of these operations at once making them highly efficient for what they do.

The dredge excavates the material using water & suction, automatically delivers the material – through a hose, to the sluice box that may or may not be floating on the surface. The material (minus any heavy materials such as iron, lead and gold) and water pass through the sluice and then fall back into the stream with absolutely nothing added or changed.

In all cases, whether motorized or non-motorized, if I move and process 1 cubic yard of streambed material through a shovel-fed sluice box or with an average 3" – 4" suction dredge, the immediate effects are nearly identical in that a man with a shovel can shovel just as much material per hour as the man with the dredge can dredge in an hour. 1 cubic yard of material processed during the same amount of time creates the same amount of turbidity, cobbles, and tailings. The only difference is that the non-motorized mining is more destructive and can cause damage that can last 100's of years whereas the effects from suction dredge mining nearly always disappear after just one winter's high flow.

The goal for the miner is to reach bedrock as that's usually where the most gold is concentrated. To explore for a placer deposit in a streambed using a shovel requires digging a hole until the water is too deep (about 3 ft. max.) and then the miner has to start digging a long level trench in an upstream direction with the overburden getting deeper and deeper until the bedrock climbs up out of the water. In some places, this could require digging a trench 1-200+ feet long just to reach bedrock under 6 feet of overburden under 1 foot of water . . . just to find out nothing is there. With a suction dredge, the miner can reach that same bedrock in 1-2 days as instead of having to move 50-100+ cubic yards digging a trench he can dredge nearly straight down and maybe only needs to move 2-4 yards to reach bedrock.

In other words, Oregon is banning the most environmentally friendly method of placer mining yet developed but is allowing far more destructive methods.

BESIDES the whole concept of states banning mining on federal lands, there are a few other problems with SB 838 & SB 3:

- A. Permitting schemes are more and more leaning towards site-specific and costly permits for suction dredge mining. Although this might work if a single permit could be obtained to cover a claim or block of claims on a specific stream, it does nothing for the prospector needing to use a dredge to search for and make a Discovery on unclaimed lands open to mining.

THERE MUST be some type of nonsite-specific permit available to allow the movement of something like 5-10-20 cubic yards without divulging the location of the suspected valuable deposit. For the prospector, site-specific permits would be impossible and would require divulging highly confidential information.

- B. Miners MUST be able to move rocks, boulders, and anything else in the way – that’s what miners do! The miner has right to extract his property – the minerals. If my gold is under that rock, the rock has to be moved. The state can require I leave the rock in the stream, and advise how to limit any adverse effects, but not tell me I can’t move the rock. There is also a huge safety issue... if I can’t safely move the rock using a hand winch or pry bar, then I must either leave my gold behind, or somehow get the rock to move by itself (by undermining it until it rolls over) – which is very dangerous. How many miners must die?
- C. SB 3 also has some ridiculous restriction on hours of operation.... 9am to 5pm I think. Mining is a business. Suction dredge miners are already curtailed by ODFW In-Water Work Rules and are only allowed in the water when ODFW says fish eggs are not present (usually 2-3 summer months). And now Oregon wants to tell me what part of the day I can operate? WHY? Is it noise? I, like most suction dredge miners, are out in the forests miles from anyone on our mining claims. In July & August, the best time to be in the water is the late afternoon to evening when the water is warmest. DEQ’s own permit allows dredging during daylight hours. Walmart doesn’t close at 5pm.

I could go on and on, and fill endless pages that will probably be ignored. However, in the off-chance someone is still reading all this, my suggestion would be to revoke SB 838, kill SB 3 and any other new anti-mining bill (with the exception of a bill to stop recreational mining if that’s what Oregon wants), roll everything back to the 2004-05 DEQ permit and wait the outcome of the lawsuit by miners against the DEQ permit in 2005 and 2010 (there is a hearing scheduled for May 4 2017 in the Oregon Court of Appeals over the permit) . . . and in the meantime set up a Technical Advisory Committee to really study the issues, take measurements, see actual suction dredge (and other methods) mining and make recommendations before you kill the proverbial goose that lays the golden eggs.

Thank you for considering these comments.

Respectfully submitted by;

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