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March 30, 2017

Oregon State Senate
Energy and Environment Committee
Oregon State Capitol
Salem, OR 97301

Re: Senate Bill 644:

Chair Dembrow and Committee Members:

Thank you for the opportunity to testify in support of Senate Bill 644. SB 644 is an important bill for Oregon's economy, and in particular for the economy of rural Oregon. The amendments to the bill that we are proposing (the dash – amendments), will streamline the permitting process for large-scale mineral mines (non-aggregate) in seven eastern Oregon counties – Baker, Grant, Harney, Lake, Malheur, Union, and Wallowa. In addition, the amendments provide protection from nuisance and trespass claims for miners conducting lawfully permitted mining activities within the scope of their permits. Finally, the amendments will allow the Oregon Department of Geology and Mineral Industries (DOGAMI) to continue their important work on identifying and mapping the significant mineral resource potential in southern and eastern Oregon.

As you probably know, the 2015 Oregon legislature approved House Bill 3089. HB 3089 declared mining an important natural resource use in Oregon that is important to the economy of rural Oregon, and directed DOGAMI to conduct a study of mineral resource potential in southern and eastern Oregon. In September, 2016, DOGAMI published its study. To no one's surprise, the DOGAMI study demonstrated significant resource potential for large-scale mines throughout southern and eastern Oregon. From potential nickel deposits in Curry, Josephine and Jackson Counties to gold and silver in Lake, Harney, Malheur, Baker, Grant, Union and Wallowa Counties, along with a variety of other minerals (bentonite, sunstones, chromium etc.), the DOGAMI report painted an encouraging picture of mineral potential in rural Oregon.

This shouldn't be surprising, given the similar geography and proximity of this portion of Oregon to the mines of northern Nevada. Mining in Nevada is a well-established industry, generating 3.3% of the state's GDP in 2015. In 2015, mining accounted for 2.3% of Nevada's total employment (public and private), and 4.2% of Nevada's total salaries and wages. Nevada's mining sector paid 4.9% of all taxes generated for the state's general fund.

Even more exciting, especially for rural Oregon, are the wages paid by the mining sector. In 2015, the average wage in Nevada's mining sector was over $96,000. This is twice the average wage for all other Nevada employment sector, and nearly three times the average weekly wage in Oregon's southeastern counties.

Most importantly, however, these tremendous economic numbers were generated by only 119 active Nevada mines. A large-scale mine requires a significant deposit, and even in a mineral rich state like Nevada, significant deposits are rare. When one is found, however, the economic impact to the local and state economy is profound. That is why it is vital to encourage large-scale mining in Oregon, and to protect large-scale mine sites when they are explored and located. Unfortunately, Oregon law does not encourage mining, and in fact, makes mining more difficult. This must change.

Current Oregon mining law requires an applicant for a proposed large-scale mine to demonstrate compliance with stringent siting, environmental and reclamation requirements . At the state level, an applicant for a large-scale mine is required to obtain an operating permit from DOGAMI, along with various other agency permits, through the consolidated application provisions found in ORS 517.952 – 517.989.

As part of the application, the mining applicant must submit the following plans:

Mine Plan

Processing Plan

Water Budget (i.e. how much water will be used in the mining operations, where it will come from, necessary permits, etc)

Fish/Wildlife Protection and Mitigation Plan

Operational Monitoring Plan

Reclamation Plan

Spill Prevention/Accident Contingency Plan

Special Natural Areas Plan

Based upon those plans, in addition to complying with all applicable federal laws, the applicant must obtain the following permits:

Surface Mining Operating Permit (DOGAMI)

Fill and Removal Permit (DSL)

Surface/Ground Water Appropriation Permit (WRD)

National Pollutant Discharge Elimination System (NPDES) Permit (DEQ)

Water Pollution Control Facility Permit (DEQ)

Air Contaminant Discharge Permit (DEQ)

Solid Waste Disposal Permit (DEQ)

Explosives and Harmful Substances in Water Permit (ODFW)

Hazardous Waste Storage Permit (DEQ)

Any other state permit

In addition to the above permits, the mining applicant must demonstrate compliance with ORS 517.956, which states:

> "(1) Mining operations shall be undertaken in a manner that minimizes environmental damage through the use of the best available, practicable and necessary technology to ensure compliance with environmental standards.
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> (2) Protection measures for fish and wildlife shall be consistent with policies of the State Department of Fish and Wildlife, including:
>
> (a) Protective measures to maintain an objective of zero wildlife mortality. All chemical processing solutions and associated waste water shall be covered or contained to preclude access by wildlife or maintained in a condition that is not harmful to wildlife.
>
> (b) On-site and off-site mitigation ensuring that there is no overall net loss of habitat value.
>
> (c) No loss of existing critical habitat of any state or federally listed threatened or endangered species.
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> (d) Fish and wildlife mortality shall be reported in accordance with a monitoring and reporting plan approved by the State Department of Fish and Wildlife.
>
> (e) The State Department of Fish and Wildlife shall establish by rule standards for review of a proposed mining operation for the purpose of developing conditions for fish and wildlife habitat protection that satisfy the terms of this section for inclusion in a consolidated permit by the State Department of Geology and Mineral Industries.
>
> (3) Surface reclamation of a mine site shall:
>
> (a) Ensure protection of human health and safety, as well as that of livestock, fish and wildlife;
>
> (b) Ensure environmental protection;
>
> (c) Require certification to the operator, by the State Department of Fish and Wildlife and the State Department of Agriculture, that a self-sustaining ecosystem, comparable to undamaged

ecosystems in the area, has been established in satisfaction of the operator's habitat restoration obligations; and
(d) Include backfilling or partial backfilling as determined on a case-by-case basis by the State Department of Geology and Mineral Industries when necessary to achieve reclamation objectives that cannot be achieved through other mitigation activities."

In addition to these requirements, DOGAMI will prepare (or hire an outside contractor at the applicant's expense to prepare) a socioeconomic study and an environmental impact study describing the impacts of the proposed mine application. Before an operating permit is issued, DOGAMI must consult with ODFW, and ODFW shall develop conditions for protection of fish and wildlife resources.

If the proposed mine site is located in whole or in part on federal land, in addition to submitting the consolidated application and satisfying the criteria listed above, a mine site applicant must also obtain a plan of operation (POO) from the Bureau of Land Management (BLM). A POO is reviewed by BLM according to the criteria set forth in BLM rule (43 CFR 3809.420). Those requirements include compliance with the:

Clean Air Act – performance and emission standards for air emissions

Clean Water Act – point source discharges into navigable waters

Resource Conservation and Recovery Act – disposal and treatment of solid waste

Federal Land Policy and Management Act (FLPMA)

National Environmental Policy Act (NEPA)

As part of the application, the BLM will prepare an Environmental Impact Statement under NEPA, and after reviewing the proposed application for compliance with federal environmental law, including the various acts listed above, will ultimately issue a record of decision approving or denying the proposed mine.

Assuming a mine site applicant can comply with both the state and federal (if applicable) requirements and obtain approval of both the consolidated application and the POO, there remains the local land use process. Mining on EFU land is regulated by both Oregon Statute (ORS 215.213(Lane and Washington Counties) and 215.283 (remaining 34 counties)), and LCDC Statewide Planning Goal 5. The Goal 5 administrative rule for mining is OAR 660-023-0180.

Under ORS 215.283(2)(b)(B), mining may be allowed as a conditional use in an EFU zone. The statute specifically authorizes:

"(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298"

As a conditional use under subsection (2) of 215.283, a county is free to impose additional criteria on the proposed use. In addition, an applicant for a large-scale mine would be required to demonstrate compliance with ORS 215.296, which requires an analysis of the potential impacts of the mining operation with farm and forest practices on surrounding lands.

Mining under ORS 215.283(2)(b)(B) is subject to the requirements of ORS 215.298. ORS 215.298(1) requires a mining applicant to obtain a land use permit from the County for any mining activity involving more than 1,000 cubic yards of material. A large-scale mine site certainly exceeds that amount, and thus requires a land use permit, subject to whatever conditions the local government may impose and the requirements of ORS 215.296.

In addition to compliance with the requirements of ORS 215.283 and 215.296, "significant" mining operations are also subject to LCDC's Goal 5 requirements found in OAR 660-023-0180. If a County deems a proposed mine site a "significant" Goal 5 mineral resource, the County may choose to allow mining on the site, or may refuse to allow mining on the site. For mineral resources, the Goal 5 rules do not define a "significant" resource site. Rather, the County is left with virtually unlimited discretion to determine whether a proposed mine site is "significant" or not, and if it is, whether to allow mining. In addition, because mining is allowed under ORS 215.283(2), it is subject to any additional criteria the county wishes to impose, and the requirements of ORS 215.296.

Moreover, unlike the administrative process for determining whether to approve a consolidated application and a POO, decisions made in the local land use process, and the interpretation of local criteria, are made by decision makers who are likely unfamiliar with mining practices and environmental science. Both Congress and the Oregon legislature created administrative processes for large-scale mine applications to ensure that decisions on mines were made by experts familiar with the various permits required and mining practices. That expertise is missing in the local government land use process, which is poorly designed for a complicated, technical land use like a large-scale mine.

Given the uncertainty with the "significance" determination under the Goal 5 rules, the criteria imposed upon a "significance" determination, the ability of the County to adopt additional criteria beyond those found in statute/LCDC rule, the subjectivity of the ORS 215.296 test, and the general lack of mining expertise by the decision maker in the local land use process, it is difficult for a mining company to risk the significant capital investment and time needed to obtain a mining permit in Oregon, despite our vast potential.

As Rich Angstrom and I have told many of you, we have been told many times in the past two years by industry experts (both national and international) that Oregon is a state where they will not go, simply because of the uncertainty in obtaining all needed permits. This is understandable when you consider the risk that a company must undertake before submitting an application. This sentiment is proven by the fact that since Oregon adopted its consolidated application statutes in 1991, only one company has submitted an application, which is currently pending. That's not a history we should be proud of, given the lack of economic opportunities in eastern Oregon and the positive benefits that large scale mining would make in that part of the state.

Unlike other natural resources, since mineral deposits are rarely found at surface level, mining involves exploration, and exploration is expensive. It is not unusual for a mining company, after staking a claim, to spend in excess of $10 million in exploration costs prepatory to filing an application. In fact, in the one consolidated application that is currently pending, the applicant has already invested over $40 million in exploration costs. It is expensive to determine the size of a proposed deposit. Core samples must be taken at varying depths. Typically, taking a core sample involves drilling through solid rock at depths that sometimes exceed 1,000 feet. That's an expensive proposition. In some cases, the cost of taking one core sample exceeds $100,000. Multiply that by the number of core samples needed to determine the location and size of the proposed deposit, and you get an idea of why exploration costs are so high.

If we are going to ask companies to come to our state, incur significant exploration costs, and submit to a lengthy and uncertain application process, we should ensure that the application process is based in science, with decisions made by experts. That is certainly the case with the consolidated application and POO requirements, and OMA is not attempting to change those requirements with the dash-3 amendments.

Unfortunately, that is not the case with the local land use process. That is why OMA is seeking your approval of the dash-3 amendment. Section 1 of the dash-3 amendment limits the scope of the local land use process for a large scale resource mine to clear and objective criteria that are not considered by the BLM as part of the POO application or the various state agencies as part of the consolidated application process. The amendments do not eliminate the local land use process. Rather, they limit the process to three criteria that are part and parcel of many types of land use applications – 1) adequate road capacity, 2) safety conflicts generated by increased bird activity due to reclamation ponds, and 3) safety concerns for nearby residences.

We hope the committee appreciates the limited scope of Section 1 of the dash-3 amendment. By its terms, the amendment does not apply to aggregate uses – only non-aggregate minerals are affected. The bill applies only to exclusive farm use (EFU) zoned property – it does not apply to property zoned for forest use or rural residential use. To those that would say that EFU zones are for agriculture only, we would remind the committee that 97% of the privately owned land (and an even higher percentage of public property) outside of urban growth boundaries in Oregon is zoned for farm or forest use. A mine site, by its nature, is best suited to areas outside of urban growth boundaries. So if we are going to mine in Oregon, it is going to be done in an EFU or forest zone.

To avoid conflicts with city residents, Section 1 applies only to mine sites located at least one mile from the city limits of the nearest incorporated city. The amendment also applies only to mines that are truly large-scale in nature. The current amendment language defines a "significant mineral resource site" as a site with an estimated quantity of resources exceeding 500,000 ounces. With today's prices, a gold mine of this size would have a value exceeding $615,000,000. That is truly a large mine, and a deposit of that size is rare. The committee may wish to reduce that size a bit to ensure that Oregon is able to attract mine sites that are not quite as promising, but nevertheless would create jobs and opportunities for eastern Oregon residents.

The lack of population and access to critical infrastructure makes it highly unlikely that the seven counties affected by Section 1 of the dash-3 amendment (Baker, Grant, Harney, Lake, Malheur, Union, Wallowa) are going to attract a new Intel or Nike plant. When those companies build new facilities in Washington County, politicians flock to the ribbon-cutting ceremony, and efforts are made at all levels of government to attract investment and secure needed government approvals to permit the use.

Instead of high tech or some other industry, natural resources will remain the primary use in those counties. Fortunately, mining is a key natural resource use that DOGAMI has identified for that area. In those counties a $615,000,000 mine would have an impact equivalent to an Intel or Nike plant. Shouldn't the state encourage the use, and undertake the same efforts to attract these jobs as they would for a new high tech plant in Hillsboro?

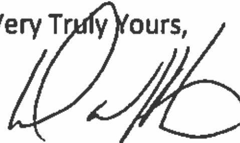
Sections 3 through 5 of the dash-3 amendment create a shield for surface mines that have gone through all of the permitting hurdles and have a final operating permit issued by DOGAMI, through either the consolidated application process or the standard process in ORS 571.790. These sections ensure that a miner who is operating within the scope of all of their permits can continue their operations without fear of a nuisance or trespass claim based on their permitted activities. If the operator is acting outside of or in violation of their permits, then no protection is provided.

The rigor and scope of the review process and the myriad of state and federal requirements and permits that a mining operator must obtain make mining the most heavily regulated natural resource use. OMA accepts that, and is not attempting to change the permitting requirements or standards. However, if a mining operator obtains all of the permits, and operates within the scope of those permits, the operator should be assured that they will not be subjected to nuisance or trespass claims by those seeking to impede the lawfully permitted operation.

Finally, Section 6 of the dash-3 amendment requires DOGAMI to publish their developed mineral resource data online, so it is more accessible to the public. In their initial budget, DOGAMI developed a Policy Option Package (POP 106) seeking funding from the state to undertake this project. Unfortunately, DOGAMI's request was removed from the Governor's budget before it was presented to the legislature. OMA believes that DOGAMI's request was a good one, and that DOGAMI should continue to develop and refine their database on mineral potential in southern and eastern Oregon. This bill will enable DOGAMI to complete that work, should the legislature be willing to provide the modest funding it will require to complete the task.

Thank you again for the opportunity to comment and for your consideration of this legislation. If we are going to help Oregon's rural areas, we need legislation like this bill.

Very Truly Yours,



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