



Oregon State Senate

May 3, 2017

RE: SB 3A

Chair Helm, Vice-Chairs Johnson and Power, members of the Energy & Environment Committee:

I'm pleased to bring you SB 3A, which deals with the long-standing question of how the State of Oregon should permit the practice of suction-dredge mining in our rivers and streams in a way that protects endangered fish and other important natural resources. It is a carefully crafted compromise, the result of a great deal of work by many people.

SB 3 resolves an issue that the Legislature has been wrestling with for a number of years now. It's the result of two parallel developments in the first decade of this century: a growing number of Californians coming to Oregon to mine, as a result of prohibitions put in place in that state; and a growing concern within the scientific community about the impacts of suction dredge mining on natural habitat ecology, with adverse effects on fragile fish populations.

These twin developments led inevitably to SB 838 in 2013. SB 838 put a moratorium on rivers and riparian areas in much of the state starting in January 2016 and lasting until January 2021. It also created a study group convened by the Governor, consisting of state agencies, tribes, federal representatives, and representatives both from the mining community and the environmental community—with the goal of reaching consensus on where and when mining could occur in a way that would not be harmful to habitat—ideally in time to avoid the need for the moratorium.

The study group did yeoman's duty on this effort. I can speak to that personally. By then I had entered the Senate and temporarily assumed my predecessor's role as Chair of Environment and Natural Resources. I was able to participate in some of the meetings along with Senators Brian Boquist and the late Senator Bates, both of whom were very committed to solving this issue. I can tell you that participants worked long and hard.

But in the end they didn't reach consensus. So, it was left to the legislative process in 2015 and 2016 to try to settle the question of where mining could occur and where it could not. Despite really heroic efforts by Doc Bates, we weren't able to get there in those sessions.

What we have here in SB 3A is a policy that incorporates the findings of the SB 838 study, takes the framework proposed in the 2015 and 2016 bills, as well as the introduced version of SB 3, and simplifies it.

In the Senate committee's public hearing on SB 3, we heard very clearly from many that we absolutely **MUST** protect fish and fish habitat through smart state policy. But we also heard that the bill was overly complex, overly restrictive, and overly expensive for miners and for the agencies. There was concern that it ultimately would extend to all the waters of the state, as well as broad areas adjacent to streams, and would effectively prohibit mining in this state.

That was NOT the intent of those who'd been working on this policy for years, and if that was going to be the result, then clearly the bill needed work. So, working with a small bipartisan work group and with ODFW, DSL, DOGAMI, and DEQ over the next six weeks, we were able to put together the policy that is before you today.

In a nutshell, it stipulates that in the streams where there is sensitive, protected fish habitat, you cannot mine. In all other streams you CAN mine, though of course you must obtain a permit and mine responsibly.

Let me put the major elements of the program on the record.

First, it repeals the moratorium that is currently in place.

Second, it prohibits motorized mining in areas designated as essential indigenous anadromous salmonid habitat, which is also considered vital to the recovery and conservation of Pacific lamprey. The prohibition extends from the stream bed up to the ordinary high water line. It does not include streams that are upstream from natural barriers to fish, like waterfalls and certified human-made dams. The maps identifying this habitat are created periodically by DSL through a public process. Non-motorized mining (such as gravity dredges, syphon dredges, and of course panning) are allowed.

The prohibition can be waived for valid mining claims on federal land if the courts rule that this prohibition violates federal law and constitutes an unlawful taking. If the courts so rule, mining can occur under a DEQ general or individual permit. However, Legislative Counsel believes that it is likely the prohibition will stand, as long as the reason for the restriction is to protect ESH.

Third, in the remaining streams and in all the riparian areas adjacent to streams, mining is allowed, but the miner must obtain a permit from DEQ, which includes specified time, place, and manner conditions articulated in the bill and in the general permit. These conditions are designed to make sure that ALL miners act responsibly and are not a nuisance to neighbors.

DEQ can require payment of a permit fee up to \$250 to cover its expenses for administering and enforcing the permit.

Fourth, the bill allows enforcement of the prohibition and permit through a citation process.

House colleagues, there will be some for whom even this sensible program is a step too far, even if it means relief from the current moratorium, permitting mining in many areas from which miners are now barred. Many miners object to the notion that they are harming the environment. They believe that they are not. In fact, you will likely hear arguments that they are actually improving fish habitat by loosening up the streambed material, removing lead sinkers, removing trapped mercury. They base this belief on their own direct experience and the experience of some wildlife managers.

Colleagues, based on my experience with these miners in the SB 838 study group and in their Senate testimony, I believe that we can both respect their perspective and disagree with their conclusions. There is a growing body of scientific evidence, documented in peer-reviewed scientific journals, that makes it clear that we need to treat in-stream suction dredge mining with great caution. Even when restricted to times of the year that salmonids are not present and spawning, suction dredging can disturb and damage habitat and invertebrates that are essential to their success.

In the words of Dr. Matthew Sloat, director of science for the Wild Salmon Center in his testimony before the Senate committee,

The scientific literature has identified a number of impacts to salmon, trout and their habitats from suction dredge mining. The impacts occur across a variety of life stages, ranging from direct and indirect

mortality during egg and larvae incubation, to impacts to the food resources and cover habitats that are essential for juvenile salmon and trout.

Dr. Sloat's conclusions are based on a broad review of the scientific literature, with the following findings:

- *Suction dredge mining disturbs cover habitat for salmon and trout.*
- *Suction dredge mining reduces the reproductive success of Pacific salmon.*
- *Suction dredge mining results in direct mortality to incubating eggs and juvenile fish.*
- *Suction dredge mining increases sedimentation in downstream habitats.*

By loosening up the streambed strata, suction dredge mining actually makes the streambeds MORE vulnerable to degradation from powerful winter runoff. And while it may seem logical that sucking up mercury and capturing it in the sluice box would be good for river health, in fact there is growing evidence that the opposite is true. In the process of displacing it from the substrata where it is safely lodged, the mercury can degrade, break up, and be dispersed in the water.

It's not just listed fish that need to be considered. We are also seeing growing interest, particularly among our tribes in the restoration of Pacific lamprey, and recognition among fish biologists of the importance of freshwater mussels in filtering and clarifying river water.

House colleagues, no one knows better than we do that public policy is all about balancing competing needs and competing interests.

We have a strong tradition of mining in this state, and those who participate in recreational suction-dredge mining have created their own sense of community and continuity.

But Oregon also has a powerful interest in restoring and building our salmon runs. Salmonids are a keystone species for our environment. Maintaining their viability is a huge part of our tradition as a state. All the many facets of our sportfishing industry revolving around salmonids add hundreds of millions of dollars to our state economy. And finally, as we all know, for our Native American brothers and sisters, these fish and all that they represent carry deep cultural and spiritual significance.

Passage of SB 3A will allow both of these traditions to continue. Mining will continue where it is safe to mine. Fish habitat will be protected where it must be protected. This bill strikes a solid balance in allowing miners to keep pursuing their passion, while we also protect native fish species and encourage their recovery. That's why it passed the Senate with strong bipartisan support.

For all these reasons, Mr. Chair and committee members, I urge you to support SB 3 in its A-Engrossed form.

Thank you,



Michael Dembrow
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