



TESTIMONY: Senate Rules

June 26, 2017

Oregon Farm Bureau, Harney County Farm Bureau and Grant County Farm Bureau OPPOSES SB 644 and the -6 Amendments

Chair Burdick and Members of the Committee:

On behalf of our farmers and ranchers in Eastern Oregon and statewide, the Oregon Farm Bureau Federation (OFB), Harney County Farm Bureau and Grant County Farm Bureau respectfully ask the Committee to oppose SB 644 and the -6 amendments, which would give mining priority over agricultural uses on lands zoned for exclusive farm use.

This bill is unnecessary. Mining projects do not have trouble getting land use permits. We are at a loss to understand why this legislation is being proposed. According to data from DLCDC, these counties have seen 105 permit applications since 1997. **Four of the impacted counties – Baker, Malheur, Harney, and Lake – have a 100% success rate with applications for aggregate and surface mining. In the other three counties, the approval rate ranges from 92% to 97%.** In short, mining projects are getting permitted in these counties. We do not understand why an exclusion or change in the permit is needed when the local land use process isn't impeding mining.

The bill is proposing statewide changes with unknown consequences. Additionally, the bill is proposing statewide changes to the mining permitting process under the guise of a county specific approach. The definitional changes to the Chapter 215 and the large-scale changes to ORS Chapter 517 appear to apply for all mining sites. We are not clear why the changes are being made across all of Chapter 517 for an "eastern Oregon specific" bill. The potential consequences of these changes for other mining sites statewide is unknown. This could be especially impactful for the provisions that change how a permit may be conditioned and that limit the impact area of the proposed mining site (a change which is being put into ORS Chapter 215, which governs land use in exclusive farm use zones). The changes in this bill have not been properly vetted and could impact permitting of mines statewide.

The bill does not adequately address impacts to neighbors. We have significant concerns about removal of the ORS 215.296 standards that proscribe the process for counties to ensure that impacts to agriculture are avoided. The bill is still designed to prioritize mining over agriculture in an agriculture zone, which would have a direct negative impact on our members.

Additionally, Section 5 suggests that there are some mines in the state that would fall under Chapter 517, but not be subject to the consolidated process. The process in Section 5 is insufficient to address the types of conflicts that could occur through this type of large-scale mining, and we are concerned that eliminating the land use process creates a loop hole for mines to not be subject to any significant permitting process designed to look at land use compatibility under the guise of a consolidated process. This is particularly true given that the only conditions that appear to be allowed under Section 5 are those that are “necessary for the mining operation to comply with applicable review standards and criteria imposed or enforced by the department.” In the case of agricultural impacts, if the consolidated process doesn’t apply, then those standards would likely not be imposed or enforced by the department in those instances.

Within the consolidated process, ODA (not the coordinating committee) should be the one to decide whether there are conflicts with agricultural operations, and how those conflicts should be addressed. The bill language conflicts on this point - in one section it says that the coordinating committee will come up with conditions, in another it says the cooperating agencies each get to come up with conditions within their expertise. This ambiguity should be resolved. The bill also allows a mine to compensate a neighbor for impacts to their operations. We do not think compensation is the appropriate way to address conflict – conflicts should be mitigated. At any rate, we are unclear on who decides what fair compensation would be. Aside from ODA, the coordinating committee will not have the requisite expertise in agricultural operations to decide what appropriate compensation should look like, and it is not clear whether compensation would be made annually or up front for the life of the mine.

Additionally, we are unclear why the many definitional changes are needed in the bill, particularly the changes to the definition of reclamation, which is defined elsewhere in the statute.

Right to Mine Provisions

We also have concerns that the right to mine process provided for in the -6 amendments is much broader than right to farm. This bill seeks to expand beyond nuisance and trespass, and find that a mining operator is not negligent or engaging in an ultrahazardous activity if the mine is operating within all its permits. Those permits only cover a limited number of impacts. Nuisance, trespass, negligence and strict liability claims can be regarding impacts that are not even addressed by the permit, so this limitation is far too broad.

Additionally, if the right to mine protection applies broadly to “surface mining,” which is not defined in that section, but is certainly much broader than the class of mining activities considered a significant mineral resource site. The findings address significant mineral resource sites, but the actual provisions in Section 14 are much broader.

Right to farm and forest also contains an exception if you cause damage to your neighbor's crops or livestock. Right to mine has no such protections for neighbors, even though these activities would be taking place in a farm zone.

Finally, the impact of the negligence and strict liability findings are unclear, but appear that they could preclude a worker from suing a mine over an accident or other harm provided that the mine didn't violate a permit. Again, this is much broader than the protection provided under right to farm. It is very conceivable that there are a number of situations where a mine could be negligent, but not in violation of their permit since the permit cannot cover every conceivable activity.

We support mining, but not at the expense of existing agricultural uses. Universally, our county Farm Bureaus in the impacted counties support mining and would like to see more of it in their counties. However, we do not want to see mining established at the expense of agriculture, which is the primary economic driver in each of the impacted counties. Given the high existing success rate of the mining industry in obtaining local land use permits, we think the existing process strikes the correct balance in ensuring mining can be successful in these counties while avoiding negative impacts on existing agricultural operations.

Thank you for the opportunity to submit comments on the -6 amendments to SB 644. We urge you to oppose this attempt to grow one industry at the expense of another, particularly when objective data shows there is no need to change the existing processes.

Please contact Mary Anne Nash at maryanne@oregonfb.org with any questions.