

Senate Bill 3

Sponsored by Senator COURTNEY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies area where moratorium on mining using motorized equipment applies.

Exempts certain mining operations from exclusion certificate requirements.

Operative January 2, 2019, excludes certain upland placer mining operations from moratorium and requires certain upland placer mining operators to hold operating permit. Requires motorized equipment used for certain upland placer mining operations to be operated only during certain hours. Punishes upland placer mining operation outside certain hours or without permit coverage by maximum of \$2,000 fine.

Establishes permitting requirements for motorized in-stream placer mining. Requires Director of Department of State Lands and Director of Department of Environmental Quality to enter memorandum of understanding allowing Department of Environmental Quality to issue certain removal fill permits. Authorizes Department of Environmental Quality to issue consolidated water quality and removal fill permits for motorized in-stream placer mining. Places certain restrictions on motorized in-stream placer mining.

Punishes motorized in-stream placer mining without permit coverage by maximum of \$2,000 fine.

Requires motorized equipment used for motorized in-stream placer mining to be inspected at aquatic invasive species check stations.

Provides that motorized in-stream placer mining permitting, use restriction, inspection and penalty provisions become operative January 3, 2021.

Requires consultation to determine whether state and federal mining programs can be better coordinated.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to mining; creating new provisions; amending ORS 517.753, 517.990, 830.589 and 830.998 and section 2, chapter 783, Oregon Laws 2013; repealing ORS 468B.052 and sections 12 and 13, chapter 783, Oregon Laws 2013; and declaring an emergency.

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

MORATORIUM ON MINING USING MOTORIZED EQUIPMENT PROVISIONS OPERATIVE UNTIL JANUARY 1, 2019

SECTION 1. Section 2, chapter 783, Oregon Laws 2013, is amended to read:

Sec. 2. (1) A moratorium is imposed until January 2, 2021, on mining that uses any form of motorized equipment for the purpose of extracting gold, silver or any other precious metal from placer deposits of the beds or banks of the waters of this state, as defined in ORS 196.800, or from other placer deposits, that results in the removal or disturbance of streamside vegetation in a manner that may impact water quality. [*The moratorium applies up to the line of ordinary high water, as defined in ORS 274.005, and 100 yards upland perpendicular to the line of ordinary high water that is located above the lowest extent of the spawning habitat in any river and tributary thereof in this state containing essential indigenously anadromous salmonid habitat, as defined in ORS 196.810, or naturally reproducing populations of bull trout, except in areas that do not support populations of anadromous salmonids or natural reproducing populations of bull trout due to a naturally occurring*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *or lawfully placed physical barrier to fish passage.]*

2 **(2) The moratorium applies:**

3 **(a) Up to the line of ordinary high water, as defined in ORS 274.005, and 100 yards upland**
 4 **perpendicular to the line of ordinary high water that is located above the lowest extent of**
 5 **the spawning habitat in any river in this state containing:**

6 **(A) Essential indigenous anadromous salmonid habitat, as defined in ORS 196.810;**

7 **(B) Naturally reproducing populations of bull trout; or**

8 **(C) Habitat essential to the recovery and conservation of Pacific lamprey; and**

9 **(b) To any tributary to a river in this state, if the confluence of the tributary with the**
 10 **river is above the lowest extent of a segment of the river containing habitat described in**
 11 **paragraph (a) of this subsection.**

12 [(2)] **(3) The moratorium does not apply to any mining for which the State Department of**
 13 **Geology and Mineral Industries issues an operating permit under ORS 517.702 to 517.989.**

14 [(3) *In areas where the moratorium does not apply as described in subsection (1) of this section,*
 15 *the Department of State Lands shall limit the individual permits issued under ORS 196.810 and the*
 16 *general authorizations issued under ORS 196.850 to not more than 850 permits and authorizations for*
 17 *mining described in this section at any time during the moratorium period. The Department of State*
 18 *Lands shall give priority, to the greatest extent practicable, to persons who held permits or authori-*
 19 *zations for the longest period of time before January 1, 2014.]*

20 (4) Any maps developed by the State Department of Fish and Wildlife, or any other state agency,
 21 that delineate the area of the moratorium established by subsection (1) of this section are not sub-
 22 ject to the rulemaking requirements of ORS chapter 183.

23 (5) Violation of the moratorium established by subsection (1) of this section is a Class A
 24 [misdemeanor] **violation.**

25
 26 **MORATORIUM ON MINING USING MOTORIZED EQUIPMENT**
 27 **PROVISIONS OPERATIVE JANUARY 2, 2019**
 28

29 **SECTION 2.** Section 2, chapter 783, Oregon Laws 2013, as amended by section 1 of this 2017
 30 Act, is amended to read:

31 **Sec. 2.** (1) A moratorium is imposed until January 2, 2021, on mining that uses any form of
 32 motorized equipment for the purpose of extracting gold, silver or any other precious metal from
 33 placer deposits of the beds or banks of the waters of this state, as defined in ORS 196.800, *or from*
 34 *other placer deposits, that results in the removal or disturbance of streamside vegetation in a manner*
 35 *that may impact water quality].*

36 (2) The moratorium applies:

37 (a) Up to the line of ordinary high water, as defined in ORS 274.005, [*and 100 yards upland*
 38 *perpendicular to the line of ordinary high water]* that is located above the lowest extent of the
 39 spawning habitat in any river in this state containing:

40 (A) Essential indigenous anadromous salmonid habitat, as defined in ORS 196.810;

41 (B) Naturally reproducing populations of bull trout; or

42 (C) Habitat essential to the recovery and conservation of Pacific lamprey; and

43 (b) To any tributary to a river in this state, if the confluence of the tributary with the river is
 44 above the lowest extent of a segment of the river containing habitat described in paragraph (a) of
 45 this subsection.

1 (3) The moratorium does not apply to any mining for which the State Department of Geology
 2 and Mineral Industries issues an operating permit under ORS 517.702 to 517.989.

3 (4) Any maps developed by the State Department of Fish and Wildlife, or any other state agency,
 4 that delineate the area of the moratorium established by subsection (1) of this section are not sub-
 5 ject to the rulemaking requirements of ORS chapter 183.

6 (5) Violation of the moratorium established by subsection (1) of this section is a Class A vio-
 7 lation.

8
 9 **SURFACE MINING EXCLUSION CERTIFICATES**

10
 11 **SECTION 3.** ORS 517.753 is amended to read:

12 517.753. (1) Notwithstanding the yard and acre limitations of ORS 517.750 (15), a person must
 13 obtain an exclusion certificate from the State Department of Geology and Mineral Industries to en-
 14 gage in [*surface mining*] **commercial surface mining of sand, gravel or crushed stone** that re-
 15 sults in the extraction of 5,000 cubic yards or less of minerals or affects less than one acre of land
 16 within a period of 12 consecutive calendar months. Except as provided in ORS 517.755, a mining
 17 operation subject to a valid exclusion certificate is not subject to the operating permit or reclama-
 18 tion requirements set forth in ORS 517.702 to 517.989.

19 (2) A person **engaged in commercial surface mining of sand, gravel or crushed stone** shall
 20 submit an exclusion certificate application on a form provided by the department, accompanied by
 21 a fee not to exceed \$400. If the department does not approve or disapprove the application within
 22 90 days after the date the application is filed with the department, the application shall be deemed
 23 approved.

24 (3) Each holder of an exclusion certificate shall annually pay to the department a renewal fee
 25 of \$150, accompanied by a description of:

26 (a) The amount of minerals extracted pursuant to the certificate during the previous 12 months;

27 (b) The total acreage of surface disturbance by the mining operation as of the date that the re-
 28 newal is submitted; and

29 (c) Any additional information required by the department to determine that the mining opera-
 30 tion continues to qualify for an exclusion certificate.

31
 32 **UPLAND PRECIOUS METALS PLACER MINING PROVISIONS**
 33 **OPERATIVE JANUARY 2, 2019**

34
 35 **SECTION 4.** Sections 5 and 6 of this 2017 Act are added to and made a part of ORS 517.702
 36 to 517.951.

37
 38 **(Permitting Requirements)**

39
 40 **SECTION 5.** (1) Notwithstanding the yard and acre limitations in ORS 517.750 (15), an
 41 operator engaging in placer mining that meets the following conditions is subject to the
 42 provisions of ORS 517.702 to 517.951:

43 (a) The mining involves the use of motorized equipment for the purpose of extracting
 44 gold, silver or other precious metals from placer deposits;

45 (b) The placer mining operation is located in the area between the line of ordinary high

1 water, as defined in ORS 274.005, and 100 yards upland perpendicular to the line of ordinary
2 high water; and

3 (c) Motorized equipment that is six horsepower or greater is used at the placer mining
4 operation for the purpose of site preparation or excavation.

5 (2) The State Department of Geology and Mineral Industries may limit the requirements
6 related to reclamation plans or financial assurance applicable to an operating permit re-
7 quired pursuant to this section.

8
9 (Use Restrictions)

10
11 **SECTION 6. Motorized equipment used for the purpose of extracting gold, silver or any**
12 **other precious metal from placer deposits located between the line of ordinary high water,**
13 **as defined in ORS 274.005, and 100 yards upland perpendicular to the line of ordinary high**
14 **water may be operated only between the hours of 9 a.m. and 5 p.m.**

15
16 (Penalties)

17
18 **SECTION 7.** ORS 517.990 is amended to read:

19 517.990. (1) A person who conducts a surface mining operation without a valid operating permit
20 as required by ORS 517.750 to 517.901 commits a Class A violation.

21 (2) Subject to ORS 153.022, violation of any provision of ORS 517.750 to 517.901, or any rules
22 promulgated pursuant thereto, or of any conditions of an operating permit is a Class A violation.

23 (3) Subject to ORS 153.022, violation of ORS 517.910 to 517.989, or any rules promulgated pur-
24 suant thereto, or of any conditions of an operating permit for a nonaggregate surface mining oper-
25 ation is punishable, upon conviction, by a fine of not more than \$10,000.

26 (4) **Subject to ORS 153.022, a person who conducts a placer mining operation without a**
27 **valid operating permit as required by section 5 of this 2017 Act commits a Class A violation.**

28 (5) **Subject to ORS 153.002, violation of section 6 of this 2017 Act is a Class A violation.**

29 [(4)] (6) Notwithstanding any other provision of the law, a person who conducts a nonaggregate
30 surface mining operation without a valid operating permit as required by ORS 517.910 to 517.989
31 shall be punished, upon conviction, by a fine of not more than \$10,000.

32 [(5)] (7) A person commits a violation subject to a fine of not more than \$10,000 if the person
33 knowingly or recklessly causes substantial harm to human health or the environment while:

34 (a) Conducting a surface mining operation without a valid operating permit as required by ORS
35 517.750 to 517.901; or

36 (b) Violating an operating permit, a reclamation plan, a provision of this chapter or any rule
37 adopted by the State Department of Geology and Mineral Industries to carry out the provisions of
38 this chapter.

39 [(6)] (8) For purposes of this section, “substantial harm to human health or the environment”
40 means:

41 (a) Physical injury, as defined in ORS 161.015, or risk of serious physical injury, as defined in
42 ORS 161.015, to humans; or

43 (b) Substantial damage to wildlife, plants, aquatic and marine life, habitat or stream buffers.

44
45 **MOTORIZED IN-STREAM PLACER MINING PROVISIONS**

OPERATIVE JANUARY 3, 2021

(Permitting Process)

SECTION 8. As used in sections 8 to 16 of this 2017 Act:

(1) “Biological resource habitat” means essential indigenous anadromous salmonid habitat as defined in ORS 196.810 and habitat that is essential to the recovery and conservation of Pacific lamprey, bull trout and freshwater mollusks.

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

(3) “Operator” means any person that is engaged in motorized in-stream placer mining operations.

(4) “Waters of the state” has the meaning given that term in ORS 468B.005.

SECTION 9. (1) Notwithstanding the permit requirements of ORS 196.810 and notwithstanding the provisions of ORS 196.800 (3) and (13), an operator may not engage in motorized in-stream placer mining without having an individual permit issued pursuant to ORS 196.810 or being covered by a general permit issued pursuant to ORS 196.817.

(2) An operator may not allow a discharge to waters of the state from any motorized in-stream placer mining operation or activity without having an individual permit, or being covered by a general permit, issued pursuant to ORS 468B.050.

(3) Separate permit coverage is required for each motorized in-stream placer mining operation.

(4) An application for a permit or permit coverage for a motorized in-stream placer mining operation must include:

(a) The name and address of the operator;

(b) The geographic coordinates for the proposed motorized in-stream placer mining operation;

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

(d) A written affirmation furnished by the operator stating that the operator has reviewed information that is available as part of an online application process and that is related to cultural resource preservation and best management practices for motorized in-stream placer mining; and

(e) Any other information required by rule to be included in the application.

(5) An operator’s permit or permit coverage may be denied if the operator has not substantially complied with the conditions of a previously issued permit or the provisions of the applicable statutes and rules under which the permit was issued.

SECTION 10. (1) The Director of the Department of State Lands and the Director of the Department of Environmental Quality shall enter into a memorandum of understanding providing for the Department of Environmental Quality to issue the permits required under ORS 196.600 to 196.905 for motorized in-stream placer mining operations.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the Department of Environmental Quality may:

(a) Perform any function of the Department of State Lands relating to the regulation and control of removal and filling of waters of the state.

1 (b) Inspect any motorized in-stream placer mining operation for the purpose of investi-
2 gating compliance with ORS 196.600 to 196.905 or any rule adopted or permit issued under
3 ORS 196.600 to 196.905.

4 (3) Subject to the terms of the memorandum of understanding, the Department of State
5 Lands may waive or reduce, or transfer to the Department of Environmental Quality the
6 authority to charge, the fees established under ORS 196.815 and 196.817 for permits required
7 pursuant to ORS 196.600 to 196.905 that are issued by the Department of Environmental
8 Quality.

9 **SECTION 11.** (1) Subject to section 10 of this 2017 Act, and to the extent permitted by
10 the Federal Water Pollution Control Act (P.L. 92-500, as amended), the Department of Envi-
11 ronmental Quality may issue a consolidated permit under ORS 196.810 and 468B.050, or under
12 ORS 196.817 and 468B.050, for motorized in-stream placer mining.

13 (2) A consolidated permit under this section may be issued only pursuant to an applica-
14 tion review process adopted by the Environmental Quality Commission by rule that allows
15 for the Department of State Lands, the State Historic Preservation Officer, federally recog-
16 nized Indian tribes in Oregon and other state and federal agencies with an interest in or
17 statutory responsibility related to the mining operation to make recommendations regarding
18 permit conditions or whether to grant or deny a permit for motorized in-stream placer
19 mining.

20 **SECTION 12.** (1) In order to protect important natural resources, and in addition to the
21 prohibition against placer mining in scenic waterways under ORS 390.835, motorized in-
22 stream placer mining may not be permitted to occur in the beds or banks of the waters of
23 the state that:

24 (a) Are designated as biological resource habitat.

25 (b) Are listed as water quality impaired under the Federal Water Pollution Control Act
26 (P.L. 92-500, as amended) for sediment, turbidity, toxics or heavy metals that are associated
27 with sediments.

28 (c) Are flowing through a state park.

29 (d) Are flowing through or wholly contained within a federally designated wilderness area
30 or wilderness study area, national monument, Botanical Special Interest Area designated by
31 the United States Forest Service or an area of critical environmental concern designated by
32 the Bureau of Land Management.

33 (e) Are flowing through public land set aside or withdrawn from mineral entry, unless
34 the land is set aside or withdrawn for the purpose of recreational mining.

35 (f) Unless specifically authorized by the appropriate Indian tribe pursuant to the appli-
36 cation review process adopted by rule under section 11 of this 2017 Act:

37 (A) Constitute the boundaries of an Indian reservation, tribal trust lands or property that
38 is owned exclusively by an Indian tribe or an entity wholly owned by an Indian tribe; or

39 (B) Are flowing through or are wholly contained within an Indian reservation, tribal trust
40 lands or property that is owned exclusively by an Indian tribe or an entity wholly owned by
41 an Indian tribe.

42 (2) "Biological resource habitat" as defined in section 8 of this 2017 Act shall be further
43 defined and designated by rule by the Department of State Lands in consultation with the
44 State Department of Fish and Wildlife, the Department of Environmental Quality, other af-
45 fected state and federal agencies and other affected parties.

1 a violation has not taken place in the presence of the enforcement officer, if the enforcement
 2 officer has reasonable grounds to believe that the conduct constitutes a violation on the ba-
 3 sis of information received from an employee of the Department of Environmental Quality,
 4 the Department of State Lands, the State Department of Fish and Wildlife or the State De-
 5 partment of Geology and Mineral Industries.

6
 7 (Fees and Fund)

8
 9 **SECTION 15.** ORS 468B.052 and sections 12 and 13, chapter 783, Oregon Laws 2013, are
 10 repealed.

11 **SECTION 16.** Any moneys remaining in the Suction Dredge Study Fund, established by
 12 section 13, chapter 783, Oregon Laws 2013, on the operative date specified in section 20 of this
 13 2017 Act that are unexpended, unobligated and not subject to any conditions shall be trans-
 14 ferred by the State Treasurer to the credit of an account of the Department of Environ-
 15 mental Quality to be used in the same manner as fees collected for permits issued under ORS
 16 468B.050.

17
 18 (Motorized Equipment Subject to Invasive
 19 Species Check Station Provisions)

20
 21 **SECTION 17.** ORS 830.589 is amended to read:

22 830.589. (1) The State Department of Fish and Wildlife, the State Marine Board or the State
 23 Department of Agriculture may require a person transporting a recreational or commercial
 24 watercraft, **or a piece of motorized equipment used for motorized in-stream placer mining as**
 25 **defined in section 8 of this 2017 Act,** to stop at a check station to inspect the watercraft **or mo-**
 26 **torized equipment** for the presence of aquatic invasive species. The purpose of the administrative
 27 search authorized under this section is to prevent and limit the spread of aquatic invasive species
 28 within Oregon.

29 (2) The State Department of Fish and Wildlife, the State Marine Board or the State Department
 30 of Agriculture may decontaminate, or recommend decontamination of, any recreational or commer-
 31 cial watercraft, **or a piece of motorized equipment used for motorized in-stream placer min-**
 32 **ing,** that the agency inspects at a check station operated under authority of this section.

33 (3) All check stations operated under authority of this section must be plainly marked by signs
 34 that comply with all state and federal laws and must be staffed by at least one uniformed employee
 35 of the State Department of Fish and Wildlife, the State Marine Board or the State Department of
 36 Agriculture trained in inspection and decontamination of recreational or commercial watercraft **and**
 37 **motorized equipment.**

38 (4) An agency that operates a check station under this section shall require all persons trans-
 39 porting recreational or commercial watercraft, **or pieces of motorized equipment used for mo-**
 40 **torized in-stream placer mining,** to stop at the check station, and the agency shall inspect every
 41 recreational or commercial watercraft, **or piece of motorized equipment used for motorized in-**
 42 **stream placer mining,** that goes through the check station.

43 (5) Notwithstanding ORS 496.992, a person transporting a recreational or commercial
 44 watercraft, **or a piece of motorized equipment used for motorized in-stream placer mining,**
 45 who stops at a check station for inspection and who cooperates in the decontamination process is

1 not subject to criminal sanctions for possessing or transporting aquatic invasive species.

2 (6) The State Department of Fish and Wildlife, the State Marine Board and the State Depart-
3 ment of Agriculture may adopt rules to carry out the provisions of this section.

4 **SECTION 18.** ORS 830.998 is amended to read:

5 830.998. (1) A person who is transporting a recreational or commercial watercraft, **or a piece**
6 **of motorized equipment used for motorized in-stream placer mining as defined in section 8**
7 **of this 2017 Act**, and fails to stop and submit to an inspection at an aquatic invasive species check
8 station operated by the State Department of Fish and Wildlife, the State Marine Board or the State
9 Department of Agriculture as provided under ORS 830.589 commits a Class D violation.

10 (2) Notwithstanding ORS 153.042, an enforcement officer may issue a citation under subsection
11 (1) of this section when the conduct alleged to constitute a violation has not taken place in the
12 presence of the enforcement officer, if the enforcement officer has reasonable grounds to believe that
13 the conduct constitutes a violation on the basis of information received from an employee of an
14 agency authorized to operate an aquatic invasive species check station who observed the violation.

15 16 CONSULTATION WITH FEDERAL AGENCIES

17
18 **SECTION 19.** The Department of Environmental Quality, the State Department of
19 Geology and Mineral Industries and the Department of State Lands shall consult with the
20 United States Forest Service and Bureau of Land Management to determine whether state
21 and federal mining programs can be better coordinated.

22 23 OPERATIVE DATES

24
25 **SECTION 20.** (1) Sections 4 to 6 of this 2017 Act, the amendments to ORS 517.990 by
26 section 7 of this 2017 Act and the amendments to section 2, chapter 783, Oregon Laws 2013,
27 by section 2 of this 2017 Act become operative on January 2, 2019.

28 (2) The State Department of Geology and Mineral Industries may take any action before
29 the operative date specified in subsection (1) of this section that is necessary for the de-
30 partment to exercise, on and after the operative date specified in subsection (1) of this sec-
31 tion, all of the duties, functions and powers conferred on the department by section 4 to 6
32 of this 2017 Act, the amendments to ORS 517.990 by section 7 of this 2017 Act and the
33 amendments to section 2, chapter 783, Oregon Laws 2013, by section 2 of this 2017 Act.

34 **SECTION 21.** (1) Sections 8 to 14 and 16 of this 2017 Act, the amendments to ORS 830.589
35 and 830.998 by sections 17 and 18 of this 2017 Act and the repeal of ORS 468B.052 and sections
36 12 and 13, chapter 783, Oregon Laws 2013, by section 15 of this 2017 Act become operative
37 on January 3, 2021.

38 (2) The State Department of Geology and Mineral Industries, the Department of State
39 Lands, the Environmental Quality Commission and the Department of Environmental Qual-
40 ity may take any action before the operative date specified in subsection (1) of this section
41 that is necessary for the State Department of Geology and Mineral Industries, the Depart-
42 ment of State Lands, the Environmental Quality Commission and the Department of Envi-
43 ronmental Quality to exercise, on and after the operative date specified in subsection (1) of
44 this section, all of the duties, functions and powers conferred on the departments or com-
45 mission by sections 8 to 14 and 16 of this 2017 Act, the amendments to ORS 830.589 and

1 830.998 by sections 17 and 18 of this 2017 Act and the repeal of ORS 468B.052 and sections 12
2 and 13, chapter 783, Oregon Laws 2013, by section 15 of this 2017 Act.

3
4 **CAPTIONS**

5
6 **SECTION 22.** The unit captions used in this 2017 Act are provided only for the conven-
7 ience of the reader and do not become part of the statutory law of this state or express any
8 legislative intent in the enactment of this 2017 Act.

9
10 **EMERGENCY CLAUSE**

11
12 **SECTION 23.** This 2017 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
14 on its passage.

15 _____