

# D R A F T

## SUMMARY

Requires certain state agencies to consult with certain federal agencies to determine whether state and federal mining programs can be better coordinated.

Excludes nonaggregate upland placer mining from moratorium on mining using motorized equipment.

Requires, until January 1, 2017, motorized equipment used for nonaggregate upland placer mining to be operated only during certain hours.

Requires certain nonaggregate upland placer mining to hold operating permit. Becomes operative January 1, 2017.

Exempts certain mining operations from exclusion certificate requirements.

Allows State Department of Geology and Mineral Industries to condition operating permits to protect cultural resources.

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 removal fill permits required under motorized in-stream placer mining permitting provisions. 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. Becomes operative January 2, 2021.

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.

Allows State Department of Geology and Mineral Industries, Department of State Lands and Environmental Quality Commission to take actions necessary prior to operative dates to develop permitting provisions.

Declares emergency, effective on passage.

1 Relating to mining; creating new provisions; amending ORS 517.120, 517.753,  
2 830.589 and 830.998 and section 2, chapter 783, Oregon Laws 2013; repeal-  
3 ing ORS 468B.052 and sections 12 and 13, chapter 783, Oregon Laws 2013;  
4 and declaring an emergency.

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

6  
7 **CONSULTATION WITH FEDERAL AGENCIES**  
8

9 **SECTION 1. The Department of Environmental Quality, the State**  
10 **Department of Geology and Mineral Industries and the Department**  
11 **of State Lands shall consult with the United States Forest Service and**  
12 **Bureau of Land Management to determine whether state and federal**  
13 **mining programs can be better coordinated.**  
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15 **NONAGGREGATE UPLAND PLACER MINING**  
16 **(Exclusion of Nonaggregate Upland Placer Mining From**  
17 **Moratorium on Mining Using Motorized Equipment)**  
18

19 **SECTION 2.** Section 2, chapter 783, Oregon Laws 2013, is amended to  
20 read:

21 **Sec. 2.** (1) A moratorium is imposed until January 2, 2021, on mining that  
22 uses any form of motorized equipment for the purpose of extracting gold,  
23 silver or any other precious metal from placer deposits of the beds or banks  
24 of the waters of this state, as defined in ORS 196.800[, *or from other placer*  
25 *deposits, that results in the removal or disturbance of streamside vegetation in*  
26 *a manner that may impact water quality*]. The moratorium applies up to the  
27 line of ordinary high water, as defined in ORS 274.005, [*and 100 yards upland*  
28 *perpendicular to the line of ordinary high water*] that is located above the  
29 lowest extent of the spawning habitat in any river and tributary thereof in  
30 this state containing essential indigenous anadromous salmonid habitat, as  
31 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 or lawfully placed physical barrier to fish passage.

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

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

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

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

**(Regulations on Nonaggregate Upland Placer Mining  
Operative Until January 1, 2017)**

**SECTION 3. (1) Motorized equipment used for nonaggregate placer mining operations located in the area between the line of ordinary high water and 100 yards upland perpendicular to the line of ordinary high water may be operated only between the hours of 9 a.m. and 5 p.m.**

**(2) Violation of subsection (1) of this section is a Class A violation.**

**SECTION 4. Section 3 of this 2016 Act is repealed on January 1, 2017.**

(Regulations on Nonaggregate Upland Placer Mining  
Operative on January 1, 2017)

**SECTION 5.** (1) Notwithstanding the yard and acre limitations in ORS 517.750 (15), an operator engaging in nonaggregate placer mining that meets the following conditions is subject to the provisions of ORS 517.702 to 517.989:

(a) The nonaggregate placer mining operation is located in the area between the line of ordinary high water and 100 yards upland perpendicular to the line of ordinary high water; and

(b) Motorized equipment is used at the nonaggregate placer mining operation for the purpose of site preparation or excavation.

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

**SECTION 5a.** Sections 5 and 6 of this 2016 Act are added to and made a part of ORS 517.702 to 517.989.

**SURFACE MINING OPERATING PERMIT CONDITIONS**

**SECTION 6.** The State Department of Geology and Mineral Industries may deny or condition an operating permit required under ORS 517.790 as necessary to ensure compliance with laws protecting Native American burial places, archeological sites or other cultural resources.

**SURFACE MINING EXCLUSION CERTIFICATES**

**SECTION 7.** ORS 517.753 is amended to read:

517.753. (1) Notwithstanding the yard and acre limitations of ORS 517.750 (15), a person must obtain an exclusion certificate from the State Department

of Geology and Mineral Industries to engage in surface mining that results in the extraction of 5,000 cubic yards or less of minerals or affects less than one acre of land within a period of 12 consecutive calendar months. Except as provided in ORS 517.755, a mining operation subject to a valid exclusion certificate is not subject to the operating permit or reclamation requirements set forth in ORS 517.702 to 517.989.

(2) A person shall submit an exclusion certificate application on a form provided by the department, accompanied by a fee not to exceed \$400. If the department does not approve or disapprove the application within 90 days after the date the application is filed with the department, the application shall be deemed approved.

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

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

(b) The total acreage of surface disturbance by the mining operation as of the date that the renewal is submitted; and

(c) Any additional information required by the department to determine that the mining operation continues to qualify for an exclusion certificate.

**(4) This section does not apply to:**

**(a) Persons subject to section 5 of this 2016 Act; and**

**(b) Persons engaged solely in mining operations that do not use motorized equipment for site preparation or excavation.**

**SECTION 8.** ORS 517.120 is amended to read:

517.120. As used in ORS 517.120 to 517.133:

(1) "Mining" means the removal of gold, silver or other precious minerals from aggregate or a vein of ore.

(2) "Mining claim" means a portion of the public lands claimed for the valuable minerals occurring in those lands and for which the mineral rights are obtained under federal law or a right that is recognized by the United States Bureau of Land Management and given an identification number.

(3) "Prospecting" means to search or explore, using motorized or nonmotorized methods, for samples of gold, silver or other precious minerals from among small quantities of aggregate or ore.

(4) "Recreational mining" means mining in a manner that is consistent with a hobby or casual use, including use on public lands set aside or withdrawn from mineral entry for the purpose of recreational mining, or using pans, sluices, rocker boxes, other nonmotorized equipment and dredges with motors of 16 horsepower or less and a suction nozzle of four inches or less in diameter.

(5) "Small scale mining" means mining on a valid federal mining claim operating under a notice of intent [*or plan of operations*] while using whatever equipment is necessary, as approved by the notice of intent [*or plan of operations*], to locate, remove and improve the claim.

## **MOTORIZED IN-STREAM PLACER MINING PROVISIONS**

**OPERATIVE JANUARY 2, 2021**

**(Motorized In-Stream Mining Permitting Process)**

### **SECTION 9. As used in sections 9 to 16 of this 2016 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 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

1 468B.005.

2 **SECTION 10.** (1) Notwithstanding the permit requirements of ORS  
3 196.810 and notwithstanding the provisions of ORS 196.800 (3) and (13),  
4 an operator may not engage in motorized in-stream placer mining  
5 without having an individual permit issued pursuant to ORS 196.810  
6 or being covered by a general permit issued pursuant to ORS 196.817.

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

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

13 (4) An application for a permit or permit coverage under subsection  
14 (1) or (2) of this section must include:

15 (a) The name and address of the operator;

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

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

20 (d) A written affirmation furnished by the operator stating that the  
21 operator has reviewed information that is available as part of an on-  
22 line application process and that is related to cultural resource pres-  
23 ervation and best management practices for motorized in-stream  
24 placer mining; and

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

27 (5) An operator's permit or permit coverage may be denied if the  
28 operator has not substantially complied with the conditions of a pre-  
29 viously issued permit or the provisions of the applicable statutes and  
30 rules under which the permit was issued.

31 **SECTION 11.** (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.

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

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

**SECTION 12.** (1) Subject to section 11 of this 2016 Act, and to the extent permitted by the Federal Water Pollution Control Act (P.L. 92-500, as amended), the Department of Environmental Quality may issue a consolidated permit under ORS 196.810 and 468B.050, or under ORS 196.817 and 468B.050, for motorized in-stream placer mining.

(2) A consolidated permit under this section may be issued only pursuant to an application review process adopted by the Environmental Quality Commission by rule that allows for the Department of State Lands, the State Historic Preservation Officer, federally recognized Indian tribes in Oregon and other state and federal agencies with an interest in or statutory responsibility related to the mining operation to make recommendations regarding permit conditions or



whether to grant or deny a permit for motorized in-stream placer mining.

**SECTION 13.** The Department of State Lands, in consultation with the State Department of Fish and Wildlife, the Department of Environmental Quality and other affected state and federal agencies, shall designate by rule biological resource habitat, as defined in section 9 of this 2016 Act, for waters of the state.

**SECTION 14.** (1) In order to protect important natural resources, and in addition to the prohibition against placer mining in scenic waterways under ORS 390.835, no motorized in-stream placer mining may be permitted to occur in the beds or banks of the waters of the state that:

(a) Are designated as biological resource habitat.

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

(c) Are flowing through a state park.

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

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

(f) Unless specifically authorized by the appropriate Indian tribe pursuant to the application review process adopted by rule under section 12 of this 2016 Act:

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

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

(2) A prohibition under subsection (1) of this section may be waived in a permit issued to the owner of a federal mining claim, but only to the extent that the permit applicant demonstrates that the exercise of the provision will violate federal law or constitute a regulatory taking requiring compensation under the Constitution of the United States or the Constitution of the State of Oregon. An applicant seeking a waiver must provide substantial evidence specific to the mineral claim in question that establishes the potential violation or regulatory taking. The Department of Environmental Quality shall review and make a determination regarding the request for a waiver as part of the permit decision.

**SECTION 15.** (1) In addition to any other requirement imposed under ORS 196.600 to 196.905, rules for a consolidated permit issued pursuant to section 12 of this 2016 Act must:

(a) Prohibit the movement of rock or large woody debris, as defined in ORS 196.800, if the rock or large woody debris could not physically be moved by a person without the aid of another person or tools;

(b) Require that permits be displayed in plain view, and be clearly visible, on or near motorized equipment in order to aid in the identification of operators;

(c) Prevent or mitigate social conflict due to the noise caused by, or the proximity of, mining under a permit described in this section to residences, campgrounds, parks or other similar noise sensitive areas;

(d) Require that motorized in-stream placer mining equipment be operated at a distance from other motorized equipment that is safe for the operators and protective of the environment;

(e) Protect cultural resources and high-value natural resources;

1 (f) Protect drinking water;

2 (g) Require operators to keep daily activity logs of information re-  
3 lated to the location and extent of mining that may be reportable to  
4 the Department of State Lands;

5 (h) Require operators to stop and submit to an inspection at an  
6 aquatic invasive species check station as provided under ORS 830.589  
7 while transporting motorized in-stream placer mining equipment;

8 (i) Require motorized in-stream placer mining operators to secure  
9 idle equipment in a manner that:

10 (A) Does not prevent or obstruct navigation within the beds or  
11 banks of waters of the state; and

12 (B) Ensures the removal of hazardous materials from the equip-  
13 ment while it is unattended; and

14 (j) Prevent deleterious impacts to private, state or federal efforts  
15 to restore water quality or habitat for salmon, Pacific lamprey, bull  
16 trout and freshwater mollusks.

17  
18 (Penalties)  
19

20 **SECTION 16.** (1) In addition to any other penalty provided by law,  
21 motorized in-stream placer mining without a permit or permit cover-  
22 age as required by section 10 of this 2016 Act or in violation of the  
23 terms and conditions of the permit is a Class A violation.

24 (2) Notwithstanding ORS 153.042, an enforcement officer, as defined  
25 in ORS 153.005, may issue a citation under subsection (1) of this section  
26 when the conduct alleged to constitute a violation has not taken place  
27 in the presence of the enforcement officer, if the enforcement officer  
28 has reasonable grounds to believe that the conduct constitutes a vio-  
29 lation on the basis of information received from an employee of the  
30 Department of Environmental Quality, the Department of State  
31 Lands, the State Department of Fish and Wildlife or the Department

1 **of Geology and Mineral Industries.**

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3 **(Fees and Fund)**

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5 **SECTION 17. ORS 468B.052 and sections 12 and 13, chapter 783,**  
6 **Oregon Laws 2013, are repealed.**

7 **SECTION 17a. Any moneys remaining in the Suction Dredge Study**  
8 **Fund, established by section 13, chapter 783, Oregon Laws 2013, on the**  
9 **operative date specified in section 21 (1) of this 2016 Act that are un-**  
10 **expended, unobligated and not subject to any conditions shall be**  
11 **transferred by the State Treasurer to the credit of an account of the**  
12 **Department of Environmental Quality to be used in the same manner**  
13 **as fees collected for permits issued under ORS 468B.050.**

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15 **(Motorized Equipment Subject to Invasive**  
16 **Species Check Station Provisions)**

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18 **SECTION 18. ORS 830.589 is amended to read:**

19 830.589. (1) The State Department of Fish and Wildlife, the State Marine  
20 Board or the State Department of Agriculture may require a person trans-  
21 porting a recreational or commercial watercraft, **or piece of motorized**  
22 **equipment used for motorized in-stream placer mining as defined in**  
23 **section 9 of this 2016 Act,** to stop at a check station to inspect the  
24 watercraft for the presence of aquatic invasive species. The purpose of the  
25 administrative search authorized under this section is to prevent and limit  
26 the spread of aquatic invasive species within Oregon.

27 (2) The State Department of Fish and Wildlife, the State Marine Board  
28 or the State Department of Agriculture may decontaminate, or recommend  
29 decontamination of, any recreational or commercial watercraft, **or piece of**  
30 **motorized equipment used for motorized in-stream placer mining,** that  
31 the agency inspects at a check station operated under authority of this sec-

tion.

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

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

(5) Notwithstanding ORS 496.992, a person transporting a recreational or commercial watercraft, **or piece of motorized equipment used for motorized in-stream placer mining**, who stops at a check station for inspection and who cooperates in the decontamination process is not subject to criminal sanctions for possessing or transporting aquatic invasive species.

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

**SECTION 19.** ORS 830.998 is amended to read:

830.998. (1) A person who is transporting a recreational or commercial watercraft, **or piece of motorized equipment used for motorized in-stream placer mining as defined in section 9 of this 2016 Act**, and fails to stop and submit to an inspection at an aquatic invasive species check station operated by the State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture as provided under ORS 830.589 commits a Class D violation.

(2) Notwithstanding ORS 153.042, an enforcement officer may issue a ci-

tation under subsection (1) of this section when the conduct alleged to constitute a violation has not taken place in the presence of the enforcement officer, if the enforcement officer has reasonable grounds to believe that the conduct constitutes a violation on the basis of information received from an employee of an agency authorized to operate an aquatic invasive species check station who observed the violation.

## OPERATIVE DATES

**SECTION 20. (1) Section 5 of this 2016 Act becomes operative January 1, 2017.**

**(2) The State Department of Geology and Mineral Industries may take any action before the operative date specified in subsection (1) of this section that is necessary for the department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department by section 5 of this 2016 Act.**

**SECTION 21. (1) Sections 9 to 17a of this 2016 Act and the amendments to ORS 830.589 and 830.998 by sections 18 and 19 of this 2016 Act become operative January 2, 2021.**

**(2) The Department of State Lands and the Environmental Quality Commission may take any action before the operative date specified in subsection (1) of this section that is necessary for the Department of State Lands, the Environmental Quality Commission and the Department of Environmental Quality to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the departments or commission by sections 9 to 17a of this 2016 Act and the amendments to ORS 830.589 and 830.998 by sections 18 and 19 of this 2016 Act.**

## CAPTIONS

1     **SECTION 22.** The unit captions used in this 2016 Act are provided  
2 only for the convenience of the reader and do not become part of the  
3 statutory law of this state or express any legislative intent in the  
4 enactment of this 2016 Act.

5  
6                             **EMERGENCY CLAUSE**

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8     **SECTION 23.** This 2016 Act being necessary for the immediate  
9 preservation of the public peace, health and safety, an emergency is  
10 declared to exist, and this 2016 Act takes effect on its passage.  
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