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January 23, 2019

BY EMAIL SENR.EXHIBITS@OREGONLEGISLATURE.GOV

Senate Committee on Environment and Natural Resources
c/o Remy Watts
900 Court Street NE
Salem, OR 97301

Re: Comments on SB 46 – Surface Mining Exemptions

Dear Chair Dembrow and Committee Members:

This office represents Thomas and Dorbina Bishop, Trustees of the Bishop Family Trust and owners of property outside of Bend in Deschutes County, Oregon. This letter is in opposition to Senate Bill 46 that proposes to add a surface mining permit exemption under ORS 517.750(16)(b)(H) as follows:

"(H) Excavation or grading operations that are necessary for the on-site construction of a building, public works project or other physical improvement authorized by the local jurisdiction with land use authority, unless any excavated minerals are sold into the commercial market."

How will this apply to a currently litigated matter outside of Bend involving an unpermitted water ski lake, and to construction of other water ski lakes, as well as to excavation on lands designated as protected winter range for deer and elk? As currently drafted, the Bishops are concerned that the bill creates a large-carve out for this kind of activity throughout the state.

Recall, in 2007, in SB 149, onsite construction exemption was *removed* as a surface mining exemption in state law as a result of at least two years of negotiation between the agency, the aggregate industry's trade association, and others, including work with the Attorney General's office to discuss enforcement. Attachment 1 includes the legislative history removing the onsite construction exemption that SB 46 now proposes to initiate. Note that the concern of area farmers was taken into consideration and protections for mining activities in connection with farming were included in 2007.

If anything, the circumstances on the ground show an increased need for state oversight of surface mining, not less oversight. If the problem is adequate staff and resources to review reclamation plans, then those topics should be addressed directly rather than removing protections for property neighbors from extensive excavation and surface mining under the guise

TOMASI SALYER MARTIN
Chair Dembrow and Committee Members
Page 2

of "onsite construction." This bill would, without any transparent or collaborative process, eliminate the 2007 amendment that was meant to level the playing field. In addition, in counties without grading ordinances, such as Deschutes County, residents and the public interest have suffered from the hands-off approach of the county. Placing this onsite construction exemption at the local government's fingertips will enable impacts to onsite and surrounding uses, which the mining act and reclamation requirements are meant to protect against, as well as harmful impacts to other natural resources, such as has occurred with protected wildlife habitat in Deschutes County. This proposal deserves a work group before being proposed in session and the work group should be comprised of stakeholders, not only from the industry, but from environmental and neighborhood groups who would be adversely affected by this proposed legislation.

I request that ORS 517.750(16)(b)(H) be removed from the bill, or expressly exclude reservoir and recreation facilities from the exemption in subsection (H). Thank you for your prompt attention to this matter.

Sincerely,



Jennifer M. Bragar

Enclosure



Oregon

Theodore R. Kulongoski, Governor

Department of Geology & Mineral Industries
Mineral Land Regulation and Reclamation
229 Broadalbin St
Albany, OR 973

Before the Senate Committee on Energy and Natural Resources
Testimony on SB 149

Department of Geology and Mineral Industries
Presented by Gary Lynch
January 25, 2007

541-9
FAX 541-9

MEASURE: SB 149
EXHIBIT: F
Sen. Environment & Natural Resources
DATE: 01/25/07 PAGES: 2
SUBMITTED BY: Gary Lynch

Introduction

Aggregate is literally a basic building block for Oregon and its economy. As with most things, the vast majority of mine operators who produce aggregate follow the rules. When someone doesn't, both citizens and reputable mine operators are damaged. Prompt fair enforcement is a necessary part of any effective regulatory program. This is so for two main reasons: 1) rules need to be enforced against those who violate them to implement the protections the rules provide and 2) to be fair to the majority of mine operators who diligently follow them. Most permittees are conscientious, hard working, and follow the rules even if they may not agree with them. DOGAMI's field presence (approximately 1500 field inspections per biennium) keeps enforcement actions to a minimum and provides a constructive and positive relationship with the regulated community and citizens who live near mine sites. However, when a permittee does not follow the rules, current enforcement tools lead to expensive and long drawn-out processes, results that DOGAMI as well as many in the regulated community feel need to be improved. The DOGAMI Mineral Land Regulation and Reclamation (MLRR) program is a fee-based regulatory program and therefore excessive enforcement costs is ultimately borne by the permittees who follow the rules. A number of operators have fairly criticized the MLRR program for what they feel is unfair treatment because we have had unresolved enforcement actions which have gone on for six months or more with the violator still competing in the market without a proper permit or in violation of their permit.

Background

SB 149 is a collaborative effort to improve DOGAMI's mine regulatory tools. The effort began last session. Since then, as a result of working with the industry's trade association and working with the Attorney General's office on the difficult issue of proper enforcement tools, we have a proposal that will significantly improve our enforcement ability. The bill is a result of the most recent attempt to resolve the details. It is fair to say there is agreement in principle.

House Bill 2121

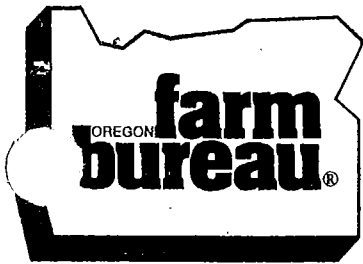
The key provisions of this bill are:

- To make an architectural change moving all definitions into the same section on the recommendation of legislative council. (Section 5)
- To clarify and strengthen the process and substance of enforcement. DOGAMI worked with the AG's office on this as well as industry. A representative from the AG's office is with me today to address specific changes.

- Section 14 does not have consensus at this point. It provides the department with criminal sanctions. (Class A misdemeanor when a person's actions are intentional or reckless and there is substantial harm to human health and the environment.)

Summary

DOGAMI believes SB 149 will make the playing field fairer for all permittees as well as reduce costs. We recognize the industry supports this bill in principle but has legitimate concerns of whether or not it goes too far. We look forward to continuing to work with the legislature and the industry to resolve any concerns.



MEASURE: SB 149
EXHIBIT: 9
Sen. Environment & Natural Resources
DATE: 01/25/07 PAGES: 3
SUBMITTED BY: Bruce Chapin

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Proposed Amendments to SB 149

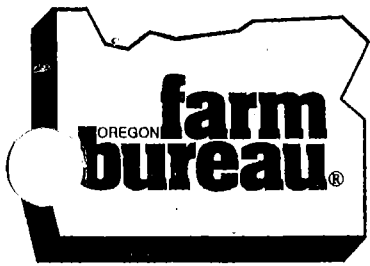
1. On page 1 after line 21 add;

(f) The Water Resources Department finds that the water level of irrigation or domestic wells in the area has been lowered by 2 feet.

2. On page 2, line 30 insert after the semicolon "**including but not limited to a reduction in the water level of irrigation or domestic wells in the area by 2 feet.**"

3. On page 4 line 21 amend (B) to read; "**Excavation or grading operations conducted in the process of farming or on-site construction activities, provided that the appropriate land use authority approves the operations and the operations are reasonably necessary for the farming or construction activities;**"

4. On page ⁷6 line ¹⁰ delete the bold print and reinstate the word "shall".



January 25, 2007

Testimony Regarding SB 149

Mr. Chairman and members of the Committee I am Bruce Chapin Chairman of the Oregon Farm Bureau Aggregate Committee and a member of the Oregon Farm Bureau Board of Directors. I reside at 9965 Wheatland Rd. N Salem Oregon 97303

1. Section 2 establishes an extremely limited set of conditions where the department can revoke, terminate or refuse to renew an operating permit. One issue that is very important to agriculture is maintaining water supplies. The water issue is not even mentioned in this draft. We suggest that dropping the water table 2 feet be added as condition that allows the department the authority to take corrective action. See proposed amendments on the attached page

2. Section 4 establishes the conditions where the department can modify the operating permit or reclamation plan and once again these conditions are very limited and make no mention of the water issue. Substantial harm to off-site property” needs to be defined to include but not be limited to a reduction in the water level of irrigation or domestic wells in the area by 2 ft.”

3. Section 5 number 15 addresses the definition of “surface mining”. The old definition excluded “excavation or grading operations conducted in the process of farming”. I have concerns about that exclusion being lost. The author of the new wording appears to feel the definition of surface mining is unclear without clarifying that the definition does not include the “excavation or grading operations conducted in the process of on-site construction” but failed to clarify whether or not “surface mining” includes or excludes similar activities conducted in the process of farming.

In agriculture we move a lot of soil. For example a six bottom 18 inch plow going 5 miles per hour will move 5,000 cubic yards of soil in about 34 minutes but I hope nobody intends to consider a farmer who is plowing his field to be a surface miner. This grey area can be cleared up by reinstating the word “farmer” twice in the paragraph as shown on the attached sheet of proposed amendments.

4. In many locations throughout this bill the word “shall” has been replaced by the word “may”. It is my understanding that the word “shall” is a directive for action while the word “may” allows the option of acting or not acting and likewise the phrase “may not” also allows for the option of acting or not acting. Changing “shall” to “may” provides

DOGAMI with much fewer restrictions on their authority. This has the potential to create a major change in the division of roles and duties between local governments and DOGAMI.

Section 8 number 3 a, in the last sentence the word "shall" is replaced with the word "may" and this change appears to allow DOGAMI the option of approving or not approving an operating permit and reclamation plan even if the local land use application had been denied. Allowing DOGAMI to over rule local governments in the aggregate permitting process is not in the best interest of the state. This issue can be cleared up by simply restating the word "shall".

Thank you for the opportunity to testify today.


Bruce R. Chapin
503-393-6327



**LEAGUE OF WOMEN VOTERS®
OF OREGON**

MEASURE: SB 149
EXHIBIT: H
Sen. Environment & Natural Resources
DATE: 01/25/07 PAGES: 1
SUBMITTED BY: Liz Frenkel

January 25, 2007

TO: Senate Environment and Natural Resources Committee
RE: SB 149 - Modifies statutes relating to mine reclamation

The League of Women Voters of Oregon (LWVOR) is a statewide, grassroots, non-partisan political organization that encourages the informed and active participation of citizens in government. We have followed aggregate issues through a number of legislative sessions and have also been a participant in the Aggregate/Farmland Consensus Group that was formed in 2004 and just recently terminated.

LWVOR believes in the management of land as a finite resource, the preservation of the physical, chemical and biological integrity of ecosystems, and the protection of public health. In keeping with this position, we also support the reclamation of lands damaged by surface mining. When SB 149 was introduced we contacted the Mineral Land Regulation and Reclamation Program of the Oregon Department of Geology and Mineral Industries (DOGAMI) to learn more about the bill. We were told that the bill would have some critical amendments. Because those amendments have not been made available to us, our comments at this time will be fairly general. However, we request the opportunity at a later date to address SB 149 in more detail once we have read the amendments.

In general we find that several sections of the bill add clarity and specificity to existing statute. However, we do have concerns with the new policy statements in Section 2 and Section 11 regarding "marketable mineral reserves." In Section 2, the new language limits the ability of the agency to "revoke, terminate or refuse to renew" an operating permit. Section 11 allows the agency to delay reclamation activities if "marketable mineral reserves exist."

We are also concerned about the new definition in Section 13 (6) of "substantial harm to human health or the environment." We note that in Section 14 (8) regarding civil penalties, the deleted language reads "no immediate threat to human health, safety or the environment." It is puzzling that the word "safety" was not retained.

We will appreciate the opportunity to explain our concerns in detail after reviewing the agency's proposed amendments.

Thank you for your attention.

Sincerely,

Margaret Noel
President

Liz Frenkel
Natural Resources Coordinator



Oregon

Theodore R. Kulongoski, Governor

MEASURE: SB 149
EXHIBIT: N
Department of Geology and Mineral Industries
Sen. Environment & Natural Resources
DATE: 03/29/07 PAGES: 2
SUBMITTED BY: Gary Lynch

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Before the Senate Committee on Environment and Natural Resources
Testimony on SB 149
Department of Geology and Mineral Industries
Presented by Gary Lynch
March 29, 2007

Introduction

I appreciate everyone's patience on working with the Department of Geology and Mineral Industries (DOGAMI) on this bill and the proposed amendments that we believe will strengthen and clarify proper enforcement of statute and rules that apply to mining. Since the last hearing we have worked with all stakeholders who had concerns.

The committee may remember at the last hearing there were concerns about the bill voiced by the Farm Bureau, the League of Women Voters and OCAPA. DOGAMI has worked with those stakeholders and others to remedy their concerns. We believe we have accomplished that. Specifically, we modified the bill language to make clear the language regarding the farming practices that clearly should be exempt from the bill and the Bureau's concern for protection of ground water.

We also believe we eliminated the concerns of the League by limiting the time to one year for a site with a revoked permit to remain unreclaimed.

The dash-1 amendments we believe address the industry's concerns by clarifying the criminal penalty provisions.

In addition, the proposed amendments clarify language in the bill that may have appeared ambiguous and are housekeeping in nature.

Aggregate is literally a basic building block for Oregon and its economy. As with most things, the vast majority of mine operators who produce aggregate follow the rules. When someone doesn't, both citizens and reputable mine operators are damaged. Prompt, fair enforcement is a necessary part of any effective regulatory program. This is so for two main reasons: 1) rules need to be enforced against those who violate them to implement the protections the rules provide, and 2) to be fair to the majority of mine operators who diligently follow them. Most permittees are conscientious, hard working, and follow the rules even if they may not agree with them. DOGAMI's field presence (approximately 1500 field inspections per biennium) keeps enforcement actions to a minimum and provides a constructive and positive relationship with the regulated community and citizens who live near mine sites. However, when a permittee does not follow the rules, current enforcement tools lead to expensive and long drawn-out processes, results that DOGAMI as well as many in the regulated community feel need to be improved. The DOGAMI Mineral Land Regulation and Reclamation (MLRR) program is a fee-based regulatory program and therefore excessive enforcement costs are ultimately borne by the permittees who follow the rules. A number of operators have fairly criticized the MLRR program for what they feel is unfair treatment because we have had unresolved enforcement actions which have gone on for six months or more with the violator still competing in the market without a proper permit or in violation of their permit.

Background

SB 149 is a collaborative effort to improve DOGAMI's mine regulatory tools. The effort began last session. Since then, as a result of working with stakeholders and the Attorney General's office on the difficult issue of proper enforcement tools, we have a proposal that will significantly improve our enforcement ability and clarify existing language.

Senate Bill 149

The key provisions of this bill are:

- To make architectural changes, for example, moving all definitions into the same section on the recommendation of legislative council.
- To clarify and strengthen the process and substance of enforcement. DOGAMI worked with the AG's office and other stakeholders to accomplish this.
- With the aid of the stakeholders working with us on this bill and the dash-1 amendments, we now believe we have a proposed bill that will provide better enforcement, clarifies existing statutory language and maintains proper protection of off-site resources.

Summary

DOGAMI believes SB 149 with the dash-1 amendments will make the playing field fairer for all permittees and citizens as well as reduce costs. We believe all stakeholders had legitimate concerns that helped improve the bill. We believe all concerns were addressed satisfactorily, and we look forward to working with all of them in the rule writing process should the bill become law.

SB 149-1
(LC 618)
3/16/07 (DLT/mb/ps)

**PROPOSED AMENDMENTS TO
SENATE BILL 149**

1 On page 1 of the printed bill, line 7, delete “and 4” and insert “, 4 and
2 4a”.

3 In line 27, delete “and”.

4 In line 28, delete the period and insert “; and

5 “(c) Remove any excavated materials from buffers, setbacks or other areas
6 not approved for disturbance and restore the areas to the approximate pre-
7 mining contours with materials approved by the department.”.

8 On page 2, after line 38, insert:

9 **“SECTION 4a. (1)(a) The governing board of the State Department
10 of Geology and Mineral Industries may adopt rules requiring the sur-
11 veying or marking of surface mining operations.**

12 **“(b) The rules may include, but are not limited to, requirements for
13 maps or diagrams showing areas excavated or approved for excavation,
14 setbacks or buffers established by the operating permit and the lo-
15 cation of buildings, wells, ponds, haul roads, stockpiles, bodies of wa-
16 ter and floodways.**

17 **“(c) The rules may require that information required under this
18 subsection be updated if the mining operations are subject to:**

19 **“(A) A notice of violation under ORS 517.860;**

20 **“(B) A suspension order under ORS 517.880; or**

21 **“(C) A significant modification of the operating permit or reclama-
22 tion plan under section 4 of this 2007 Act.**

1 “(d) The rules may exempt mining operations from survey or
2 marking requirements based on the size or location of the operations
3 or on the distance of the operations from ground and surface waters.

4 “(e) The rules must allow for reasonable compliance schedules for
5 existing mining operations.

6 “(2) The governing board may adopt rules requiring surface mining
7 operators to collect and report information relating to amount and
8 nature of materials excavated or processed at a surface mining oper-
9 ation and the impacts of mining operations on ground or surface wa-
10 ter.”.

11 On page 4, line 21, after “operations” insert “reasonably necessary for
12 farming;” and delete the rest of the line and lines 22 through 24.

13 On page 5, line 44, after “railroads” delete “and” and insert a comma and
14 after “facilities” insert “, wells, irrigation ditches, ponds, stockpiles, buffers,
15 setbacks and excavation boundaries”.

16 In line 45, after “be” insert “protected or”.

17 On page 6, line 12, after “may” delete the rest of the line and lines 13 and
18 14 and insert “waive the requirement for preparation and approval of a rec-
19 lamation plan if:

20 “(a) The operation is conducted as part of the on-site construction of a
21 building, public works project or other physical improvement of the subject
22 property;

23 “(b) The operation is reasonably necessary for such construction; and

24 “(c) The proposed improvements are authorized by the local jurisdiction
25 with land use authority.”.

26 In line 15, delete “a” and insert “the owner or owners of the surface and
27 mineral interests of the lands included within the surface mining area”.

28 In line 16, delete “landowner that will be affected by the operation”.

29 In line 17, delete “landowner” and insert “owner or owners of all surface
30 and mineral interests of the lands included within the surface mining

1 area”.

2 On page 10, line 15, after “time” insert “not to exceed one year”.

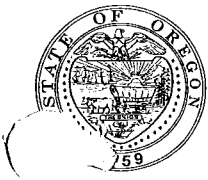
3 In line 31, after the period insert “Failure to comply includes, but is not
4 limited to, disturbing land within the permit boundary that has not been
5 approved by the department for excavation, placement of debris or removal
6 of vegetation.”.

7 In line 35, after “operation” insert “, including the restoration of buffers,
8 setbacks or other areas not approved for disturbance”.

9 On page 11, line 3, delete “Class A misdemeanor” and insert “violation
10 subject to a fine of not more than \$10,000”.

11 In line 5, delete “for which a permit is” and insert “without a valid op-
12 erating permit as”.

13



Oregon

Theodore R. Kulongoski, Governor

Department of Geology and Mineral Industries

MEASURE: SB 149A
EXHIBIT: B
H. COMM. ON AGRICULTURE & NATURAL RESOURCES
DATE: 5/15/07 PAGES: 2pp
SUBMITTED BY: Gary Lynch

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Before the House Agriculture and Natural Resources Committee
Testimony on SB 149
Department of Geology and Mineral Industries
Presented by Gary Lynch
May 15, 2007

Introduction

We have worked with many organizations and interest groups and the bill has no identified opposition. In addition, we have support from the regulated community in particular, the Oregon Concrete and Aggregate Producers Association, the Defenders of Wildlife, ODOT, and others.

Aggregate is literally a basic building block for Oregon and its economy. As with most things, the vast majority of mine operators who produce aggregate follow the rules. When someone doesn't, both citizens and reputable mine operators are damaged. Prompt, fair enforcement is a necessary part of any effective regulatory program. This is so for two main reasons: 1) rules need to be enforced against those who violate them to implement the protections the rules provide, and 2) to be fair to the majority of mine operators who diligently follow them. Most permittees are conscientious, hard working, and follow the rules even if they may not agree with them. DOGAMI's field presence (approximately 1500 field inspections per biennium) keeps enforcement actions to a minimum and provides a constructive and positive relationship with the regulated community and citizens who live near mine sites. However, when a permittee does not follow the rules, current enforcement tools lead to expensive and long drawn-out processes, results that DOGAMI as well as many in the regulated community feel need to be improved. The DOGAMI Mineral Land Regulation and Reclamation (MLRR) program is a fee-based regulatory program and therefore excessive enforcement costs are ultimately borne by the permittees who follow the rules. A number of operators have fairly criticized the MLRR program for what they feel is unfair treatment because we have had unresolved enforcement actions that have gone on for six months or more with the violator still competing in the market without a proper permit or in violation of their permit.

Background

SB 149A is a collaborative effort to improve DOGAMI's mine regulatory tools. This effort began last session and since then, as a result of working with stakeholders and the Attorney General's office on the difficult issue of proper enforcement tools, we have a bill that will significantly improve our enforcement ability and clarify existing language.

Senate Bill 149A

The key provisions of this bill are:

- To make architectural changes, for example, moving all definitions into the same section on the recommendation of legislative council.
- To clarify and strengthen the process and substance of enforcement. DOGAMI worked with the AG's office and other stakeholders to accomplish this.

- With the aid of the stakeholders working with us on this bill and the dash-1 amendments, we believe we have a bill that will provide better enforcement, clarifies existing statutory language and maintains proper protection of off-site resources.

Summary

DOGAMI believes SB 149A will make the playing field fairer for all permittees and citizens as well as reduce costs. We believe all stakeholders had legitimate concerns that helped improve the bill.