Chapter 517

1977 REPLACEMENT PART

Mining and Mining Claims

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MINING CLAIMS

(Veins or Lodes)

517.010 Location of mining claims upon veins or lodes. (1) Any person, a citizen of the United States, or one who has declared his intention to become such, who discovers a vein or lode of mineral-bearing rock in place upon the unappropriated public domain of the United States within this state, may locate a claim upon such vein or lode by posting thereon a notice of such discovery and location. The notice shall contain:

(a) The name of the lode or claim.

(b) The names of the locators.

(c) The date of the location.

(d) The number of linear feet claimed along the vein or lode each way from the point of discovery, with the width on each side of the lode or vein.

(e) The general course or strike of the vein or lode as nearly as may be, with reference to some natural object or permanent monument in the vicinity, and by defining the boundaries upon the surface of each claim so that the same may be readily traced.

(2) Such boundaries shall be marked within 30 days after posting of such notice by six substantial posts, projecting not less than three feet above the surface of the ground, and not less than four inches square or in diameter, or by substantial mounds of stone, or earth and stone, at least two feet in height, to wit: one such post or mound of rock at each corner and at the center ends of such claims.

517.020 [Repealed by 1971 c.228 §1]

517.030 Recording copy of location notice; fee. The locator shall, within 60 days from the posting of the location notices by him upon the lode or claim, file for record with the clerk of the county where the claim is situated, who shall be the custodian of mining records and miners' liens, a copy of the notice posted by him upon the lode or claim and shall pay the clerk a fee of $3 for such record, which sum the clerk shall immediately pay over to the treasurer of the county and shall take his receipt therefor, as in case of other county funds coming into the possession of such officer. The clerk shall immediately record the location notice.

[Amended by 1971 c.228 §2; 1971 c.621 §33; 1973 c.598 §4; 1975 c.607 §36]

517.040 Abandoned claims. Abandoned claims are unappropriated mineral lands, and titles thereto shall be obtained as specified in ORS 517.010 to 517.030, without reference to any work previously done thereon.

(Placer Deposits)

517.042 "Legal subdivision" defined for ORS 517.042 to 517.052. As used in ORS 517.042 to 517.052, unless the context requires otherwise, "legal subdivision" means a subdivision of a state survey or of a United States survey which has been extended over the geographic area to be described.

[1961 c.525 §1]

517.044 Location of claims upon placer deposits; posting notice. Any individual, a citizen of the United States, or one who has declared his intention to become such, who discovers a placer deposit of minerals upon the unappropriated public domain of the United States within this state, which minerals are subject to location under the mineral and mining laws of the United States, may locate a placer claim thereon by posting in a conspicuous place thereon a notice of such discovery and location. The notice shall contain:

(1) The name of the claim.

(2) The name of the individual or individuals locating the claim.

(3) The date of the location of the claim.

(4) The number of feet or acres claimed, together with a description, either by legal subdivisions, if practicable, or if not, then by reference to some natural object or permanent monument in the vicinity of the claim, which will identify the claim located.

[1961 c.525 §2]

517.046 Marking boundaries of claim or locating by legal subdivisions. (1) Unless the claim for placer deposit referred to in ORS 517.044 is located by legal subdivisions, the surface boundaries of the claim must be marked so that the same may be readily traced. Such boundaries shall be marked within 30 days after the posting of the notice described in ORS 517.044 by substantial posts or other monuments of the same size, materials and dimensions as in the case of quartz claims. The boundaries of the claim shall be marked at each corner or angle, and, when any side or end of the claim extends for more than 1,320 feet without a corner or

angle, then at intervals of not less than 1,320 feet along such side or end.

(2) Where the claim for placer deposit referred to in ORS 517.044 is taken by legal subdivisions, no other reference in the notice of claim required to be posted and filed under the provisions of ORS 517.042 to 517.052 than to the legal subdivisions shall be required and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions in the notice required to be filed under ORS 517.052 shall be deemed the equivalent of marking the surface boundaries of the claim.
[1961 c.525 §3]

517.048 [1961 c.525 §4; repealed by 1971 c.228 §1]

517.050 [Renumbered as part of 517.065]

517.052 Recording copy of location notice; fee. The individual locating a placer deposit shall, within 60 days from the posting of the location notice upon the claim, file for record with the clerk of the county where the claim is situated, a copy of the notice posted by him upon the claim. The fee for filing such location notice shall be the same as required by ORS 517.030 for recording location notices of mineral-bearing rock claims. The clerk shall immediately record the location notice in a book kept by him for that purpose.
[1961 c.525 §5; 1971 c.228 §3]

(General Provisions)

517.060 Correcting defective notice of location. If at any time an individual who has located a mining claim within the meaning of ORS 517.010 or 517.044, or his assigns, apprehends that the original notice of location of the mining claim was defective, erroneous, or that the requirements of the law had not been complied with before the filing of the notice, such locator or assigns may post and file for record in the manner now provided by law, an amended notice of the location which shall relate back to the date of the original location; provided, that the posting and filing of the amended notice of location shall not interfere with the existing rights of others at the time of posting the amended notice.
[Amended by 1961 c.525 §7]

517.065 Effect of noncompliance with law in locating claim. (1) Subject to ORS 517.060, all locations or attempted locations of quartz mining claims subsequent to December 31, 1898, that do not comply with ORS 517.010 to 517.030 are void.

(2) Except as provided in ORS 517.060, all locations or attempted locations of placer mining claims made after August 9, 1961, that do not comply with the provisions of ORS 517.042 to 517.052 are void.
[Subsection (1) formerly 517.050; subsection (2) enacted as 1961 c.525 §6]

517.070 Certain locations subject to prior rights. Any location of any mining claim made upon any natural stream, or contiguous or near to any placer mine, or upon or below the dump of any placer mine, shall be subject to the prior right of all mines in operation prior to the making of such location, to discharge debris, gravel, earth, and slickens which were or may be discharged at the time of making such subsequent location.

517.080 Mining claims as realty. All mining claims, whether quartz or placer, are real estate. The owner of the possessory right thereto has a legal estate therein within the meaning of ORS 105.005.

517.090 Application to claims of law governing transfers and mortgages of realty. All conveyances of mining claims or of interests therein, either quartz or placer, whether patented or unpatented, are subject to the provisions governing transfers and mortgages of other realty as to execution, recordation, foreclosure, execution sale and redemption; but such redemption by the judgment debtor must take place within 60 days from date of confirmation, or such right is lost.

517.100 Sums payable on redemption of claim; interest. In case of redemption from sale under judgment or decree, the redemptioner shall pay such sums as are now required by law for redemption under execution sale, and such additional sum as may have been expended upon the property so redeemed by the purchaser under execution, or his assigns, in order to keep alive the possessory right thereto after the execution sale, not exceeding $100 for each claim, with 10 percent interest thereon from date of such expenditures.

517.110 Grubstaking contracts. All contracts of mining copartnership, commonly known as "grubstaking," shall be in writing, and filed for record with the clerk of the county wherein the locations thereunder are made. Such contracts must contain the names of the parties thereto and the duration thereof; otherwise they are void.

MILLSITES

517.160 Location of nonmineral land as millsite. (1) The proprietor of a vein or lode, or placer claim, or the owner of a quartz mill or reduction works, may locate not more than five acres of nonmineral land as a millsite. Such locations shall be made in the same manner as provided in ORS 517.044 for locating placer claims, except that no discovery or location work is required. Where a millsite is appurtenant to a mining claim, either lode or placer, the notice of location of such millsite shall describe by appropriate reference the mining claim to which it is appurtenant.

(2) The locator of a millsite shall, within 30 days from the date of posting his notice thereon, record a copy thereof with the same county officer and shall pay the same fee therefor, as in the case of quartz or placer claims. Such location notices shall be recorded in the same manner as location notices of quartz or placer claims but need have no affidavit of location work attached.
[1963 c.123 §1]

ASSESSMENT WORK

517.210 Recordation of affidavit of annual labor. Within 30 days after the performance of labor or making of improvements, required by law to be annually performed or made upon any mining claim, the person in whose behalf such labor was performed or improvement made, or someone in his behalf, knowing the facts, shall make and have recorded in the mining records of the county in which the mining claim is situated, an affidavit setting forth:

(1) The name of the claim or claims if grouped and the book and page of the record where the location notice of each such claim is recorded.

(2) The number of days' work done and the character and value of the improvements placed thereon, together with their location.

(3) The dates of performing the labor and making the improvements.

(4) At whose instance or request the work was done or improvements made.

(5) The actual amount paid for the labor and improvements, and by whom paid, when the same was not done by the claim owner.

517.220 Affidavit or lack thereof as evidence; recording fee. The affidavit described in ORS 517.210, when so recorded, or a duly certified copy thereof, is prima facie evidence of the facts therein stated. Failure to file such affidavit within the prescribed time is prima facie evidence that such labor has not been done. The fee for recording the affidavit is $3. All claims constituting one group belonging to the same person, persons, association or corporation may be included in one affidavit without additional charge.
[Amended by 1971 c.621 §34; 1975 c.607 §37]

517.230 Performance of assessment work by coowners. Whenever any quartz or placer mines are owned by one or more persons, or are owned in common by any persons, any person owning any legal or equitable interest in the mines may perform the annual assessment work upon them which is required by the laws of the United States and Oregon. Such work, when it complies with said laws, shall protect the mines from relocation.

517.240 Failure of coowner to contribute; notice. Upon failure of any coowner of any mine to contribute his proportion of expenditures required in assessment work, or to perform or pay for his proportion, the coowners who performed or caused to be performed the labor or assessment work, may, at the expiration of the year for which the assessment work was performed, give the delinquent coowner notice that the assessment work for that year has been performed, stating by whom performed, the amount of work performed and the dates between which it was performed; together with a statement of the amount due from the delinquent coowner for his proportion of the work, and requiring him, within 90 days from the date of service of the notice, to pay to the coowners who performed or caused to be performed such work, his proportion. The notice shall further state that if the delinquent coowner fails or refuses to contribute his proportion due for the work, his interest in the mine will become the property of the coowners who performed or caused to be performed the assessment work.

517.250 Form of notice; service; publication. The notice shall be in writing and signed by the coowner who performed or caused to be performed the assessment work. It shall be served upon the delinquent coowner personally by the sheriff of the county in which the mine is situated, if the delinquent coowner is within the county. If he can be found in any other county, then the notice shall be served by the sheriff of that county. If the delinquent coowner cannot be found within the state, or if at the time of giving the

notice he is without the state, service of the notice shall be made by publication thereof in the weekly newspaper published in the county nearest to where the mine is situated. If there are two or more papers published in the county at the same distance from the mine, the coowner giving notice may elect in which paper the notice shall be published. If no weekly newspaper is published within the county, service of the notice shall be made by publication in any other weekly newspaper within the state published nearest the mine. The notice shall be published at least once a week for a period of 90 days after the first publication.

517.260 Notice; return and proof of service. If the notice is served by any sheriff as provided in ORS 517.250, he shall make return by filing the notice with his return showing service with the county recorder, or if there is none, with the county clerk, for the county within which the mine is situated. If personal service cannot be had as provided in ORS 517.250, proof of service shall be made by filing with the county recorder, or if there is none, with the county clerk of the county in which the mine is situated, the notice as published, attached to an affidavit made by the printer, foreman, or publisher of the newspaper, to the effect that it is of general circulation throughout the county, is published weekly, and that the notice was published at least once a week in that newspaper for a period of not less than 90 days after the first publication of the notice.

517.270 Vesting of interest of delinquent coowner. If at the expiration of 90 days from the date of personal service of the notice upon the delinquent coowner or from the date of the last publication of the notice, the delinquent coowner has not paid his proportion to the coowners who performed or caused to be performed the assessment work, the title to the interest of the delinquent coowner in the mine shall be immediately vested in the coowners who performed or caused to be performed the assessment work.

517.280 Certificate of ownership; issuance. The coowners who performed the assessment work may file with the county clerk of the county where the mine is situated, their affidavits that the payment has not been made. Upon the filing of such affidavits, the clerk shall record the notice, proof of service and affidavits in a book kept by him for that purpose. He shall then and there issue to the coowners who performed or caused to be performed the assessment work, a certificate to the effect that he has filed and recorded the notice, proof of service and affidavits of nonpayment, and that the coowners who performed or caused to be performed the assessment work have become and are the owners of all the right, title and interest of the delinquent coowner or coowners of the property.

517.290 Fee for certificate. The certificate described in ORS 517.280 shall not be issued until the coowners entitled to it pay to the clerk a fee of $3.

[Amended by 1971 c.621 §35; 1975 c.607 §38]

517.300 Effect of certificate; certified copy of certificate, notice and return admissible as evidence. (1) A certificate issued as provided in ORS 517.280 shall be equivalent to a deed from a delinquent coowner of all his interest in and to all mines described in the notice, and shall convey the interest of the delinquent coowner in the premises to the coowner or coowners who performed or caused to be performed the assessment work. The certificate may be introduced in evidence in any cause where ownership of the property may become material. When so introduced, it shall have the same force and effect as would a duly executed and delivered deed from the delinquent coowner.

(2) A certified copy of the certificate, and of the notice and return, when made and certified to by the county clerk, shall be admissible in evidence in any trial where it is material to establish proof of service of the notice or ownership of the property.

517.310 Recording and indexing certificate; fee; effect. The certificate given by the county clerk shall be entitled to record in the office of the officer issuing it, upon payment of the same fees as are required for recording mining conveyances. The officer shall keep a record book, showing the record of such certificates recorded by him. Upon recording, he shall index them in a book kept by him for that purpose and shall likewise index them in the deed records of mining conveyances kept by him. Such indexing and recording shall have the same force and effect as the indexing and recording of deeds to other real property, and shall give like constructive notice.

517.320 Counteraffidavits of delinquent owner; suit to quiet title; decree. If prior to the issuing of the certificate there has been filed with the county clerk an affidavit

by the delinquent coowner that the payment has been made, the clerk shall not issue a certificate, but the parties shall be left to establish such fact by suit to quiet the title to the premises. If in the suit it appears either that the assessment work was not performed by the coowners claiming to have performed it, or that the delinquent coowner has performed or paid his proportion of the assessment work, a decree shall be entered in the suit to that effect; but if it is established that the assessment has been performed by or has been caused to be performed by the coowners so claiming and that the delinquent coowner has not performed or paid his proportion, a decree shall be entered decreeing the coowners who performed the assessment work to be the owners of all the interest of the delinquent coowner in the premises. The decree shall be entitled to record in the miscellaneous records kept by the county clerk in the county, and shall be indexed in the index with the record of deeds and mining conveyances for the county.

517.330 Accounting for fees. All fees collected under ORS 517.290 and 517.310 are the property of the county in which they are collected, and shall be accounted for by the officer collecting them as other recording fees are accounted for.

MINING LEASES

517.410 [Amended by 1961 c.419 §1; part renumbered 273.920; remainder renumbered 273.355]

517.420 Location of claim on state land; limitation on claim; evidence of right to lease a located claim; application for lease. (1) No land which is owned by the state or whereon mineral rights are reserved to the state, except land or mineral rights under the jurisdiction and control of the Division of State Lands which are chiefly valuable for mineral purposes, shall be subject to mineral location. The manner of locating a lode or placer mineral claim upon such state land or upon mineral rights subject to the jurisdiction and control of the Division of State Lands shall be in accordance with the laws of this state and the United States regulating the location of lode or placer mineral claims upon government lands, but no mineral locator shall acquire any right to oil, gas or other hydrocarbons underlying any such lode or placer mineral claim, or the exclusive right to the possession of the surface of such lode or placer mineral claim.

(2) Whenever a person perfects the location of a lode or placer mineral claim upon land or mineral rights under the jurisdiction and control of the Division of State Lands, evidence of the location shall be sufficient to establish a right to lease the claim, subject to the rights of any lessee claiming under a prior, existing lease or agreement with the Division of State Lands; provided, that application for such lease, giving a description of the claim, shall be made to the Division of State Lands within 60 days after the notice of location has been filed pursuant to ORS 517.030.

[Amended by 1955 c.528 §1; 1961 c.419 §2]

517.430 Use of timber by lessee. (1) The lessee of the Division of State Lands under ORS 273.551 may use down timber found on the premises for fuel, and may cut and use green timber in the construction of buildings required in the operation of a mine on the premises, or for lining test pits or shafts, or for timbering drifts or excavations, or for other mining purposes, but for no other purpose.

(2) The lessee of the State Forester under ORS 273.551 may use down timber found on the premises for fuel and may cut and use green timber for lining test pits or shafts, or for timbering drifts or excavations, or for other mining purposes, but for no other purpose.

[Amended by 1953 c.65 §5]

517.440 Lessee, licensee, or operator of mine deemed bailee of yield until payment of lessor and workmen. Any lessee, licensee, or person other than the owner, who operates or works a mine, lode, mining claim, or deposit yielding metal or mineral of any kind, has custody and control of whatever metal or mineral may be produced in such operation or work, as bailee only and not as owner, until the sum due the lessor is paid and the wages due from such lessee to the lessor or to any workman who has performed labor under contract of service on, in or about such mine, lode, mining claim, or deposit are wholly paid.

517.450 [Repealed by 1971 c.743 §432]

ROGUE RIVER COORDINATION BOARD

517.510 Rogue River Coordination Board. There is created a board to be known as the Rogue River Coordination Board, referred to in ORS 517.520 to 517.550 as the "board."

517.520 Maintenance of fishing conditions; cooperation of placer and fishing interests. It is the intent of ORS 517.510 to 517.550 that, from the standpoint of turbidity, fishing conditions in the Rogue River and its tributaries shall be maintained in Curry County comparable to such fishing conditions in Josephine County, and to provide a medium through which the placer mining interests and fishing interests on the Rogue River and its tributaries may cooperate for the mutual benefit of both. The personnel of the board shall exercise the authority conferred upon the board to that end.

517.530 Members of board; assistants; expenses; quorum. The board shall consist of three members to be appointed by the Governor. One member shall be a fisherman or angler residing in Curry County, one a miner residing in Josephine County and one member at large who shall be neither a fisherman nor a miner and who shall act as chairman of the board. The board shall select one of its members as secretary, who shall have custody of the records. The board is authorized to employ such clerks and assistants as may be necessary and to fix their compensation. Each member of the board shall be allowed and paid his necessary expenses while engaged in the performance of his duties. A majority of the board shall constitute a quorum to transact business and the act or decision of any two members of the board shall be deemed the act or decision of the board.

517.540 Jurisdiction of board; powers and duties. The board shall have complete jurisdiction over the placer mining operations in the waters of and along the Rogue River and each of its tributaries. In respect to the exercise of such jurisdiction it shall:

(1) Make a survey of the placer mining operations in and along the waters of Rogue River and its tributaries for the purpose of ascertaining the effect thereof upon the angling conditions in such waters.

(2) Establish from the facts found by the survey and study a system of rotating, alternating or coordinating the operations of the various placer mining activities in and along such waters to the end that suitable and favorable conditions for angling and game fishing in such waters, or any part or parts thereof, may be brought about and maintained during certain periods of time by the control or prevention of turbidity caused by placer mining operations in such waters or part or parts thereof.

(3) Cause to be suspended the placer mining operations being carried on by any person or company in or along such waters for any period or periods of time it shall deem necessary to accomplish the purposes of the system.

(4) Make such rules, regulations and orders as it shall deem necessary to carry out the purposes expressed in ORS 517.520. Such rules, regulations and orders shall have the force and effect of law.

517.550 Cooperation of police officers with board. Every state police officer and sheriff whose other duties require him to be in the vicinity of the Rogue River or any of its tributaries shall cooperate with and assist the board in enforcing the provisions of ORS 517.540 and every rule, regulation or order made pursuant thereto.

MINING WITH DREDGING MACHINE

517.610 [Repealed by 1953 c.188 §2]

517.611 Definitions for ORS 517.611 to 517.700. As used in ORS 517.611 to 517.700:

(1) "Division" means the Division of State Lands.

(2) "Consulting committee" means the committee established by ORS 517.700.

(3) "Dredging operation" means any dredge-mining operation, except industrial mineral or sand and gravel production, conducted in this state which substantially disturbs more than 15 acres per year of the topsoil or ground cover of the land on which it is conducted, if the land so disturbed constitutes the floor of a valley.

[1957 c.580 §1]

517.620 [Repealed by 1953 c.188 §2]

517.621 License required; application; fee; applicant's guarantee of faithful performance. (1) No person shall conduct a dredging operation without securing a license from the division as provided in ORS 517.611 to 517.700. Applications for a license shall be verified, shall be in a form prescribed by the division and shall contain where possible an accurate legal description of the land on which the dredging operation is to be conducted, specifying the number of acres thereof. If the applicant is not the owner of the lands described in the application, the owner thereof

shall indorse his approval on the application. The application shall be accompanied by an application fee of $50 for each 50 acres of land, or fraction thereof, covered by the application. The fees received shall be deposited in the General Fund to the credit of a special account, hereby established; and such fees are continuously appropriated for the purposes of ORS 517.611 to 517.700.

(2) A majority of the consulting committee shall conduct a field examination of the land covered by the application and at its discretion may require the applicant to file with the division a surety bond not to exceed the sum of $300 for each acre of land, or fraction thereof, covered by the application. The applicant shall be the principal obligor on the bond, and there shall be sureties thereon acceptable to the division. The bond shall run in favor of the State of Oregon and shall be conditioned upon the faithful performance by the applicant of all the requirements imposed by the division within the limits of the provisions of ORS 517.611 to 517.700. In lieu of a surety bond, the applicant may deposit cash with the division in an amount computed in the manner prescribed in this subsection. The division shall deliver the cash to the State Treasurer who shall receive and hold the same subject to the lawful orders of the division, and the treasurer and his sureties shall be liable on his official bond for its safekeeping. The cash shall be retained as security for the faithful performance by the applicant of all the requirements imposed by the division within the limits of the provisions of ORS 517.611 to 517.700.
[1957 c.580 §2]

517.630 [Repealed by 1953 c.188 §2]

517.631 Issuance of license; conditions requiring land restoration. (1) The division shall issue a license to any applicant complying with the requirements of ORS 517.621. The license shall contain where possible an accurate legal description of the land on which the dredging operation is to be conducted and shall specify the number of acres thereof. The license shall be conditioned upon the licensee's doing all things which in the opinion of the division are necessary to restore the land on which the dredging operation is to be conducted as nearly as practicable or desirable for future use. At the discretion of the division, the license may be conditioned upon the licensee's:

(a) Replacing the topsoil and ground cover disturbed in the course of the dredging operation and restoring the area involved in the dredging operation to its reasonably useful condition.

(b) Replacing any stream disturbed in the course of the dredging operation and with a pool structure conducive to good fish habitat and recreational use.

(c) Constructing settling ponds of sufficient capacity and character to remove silt caused by the dredging operation before the water is discharged into a stream.

(2) The license, unless terminated as provided in ORS 517.641, shall permit dredging operations upon the lands described therein beginning on the date of the license.
[1957 c.580 §3]

517.640 [Repealed by 1953 c.188 §2]

517.641 Revocation of license; forfeiture; land restoration. (1) The division may revoke any license for any violation of the provisions of ORS 517.611 to 517.700 or the conditions of the license. No license shall be revoked until after a hearing on the alleged violation is held by the division or its examiner. The hearing shall be held not less than 20 days after written notice to the licensee and his sureties. The notice shall be served by registered mail addressed to the licensee and his sureties at the addresses given in the application for a license or in the bond. The division shall make findings based on the evidence introduced at the hearing, and shall revoke the license if violations of the provisions of ORS 517.611 to 517.700 or the conditions of the license are found.

(2) In revoking the license, the division may declare forfeited so much of the bond or cash deposit as may be necessary for the restoration of lands and streams damaged by the dredging operation, not to exceed $300 per acre of land to be restored. The amount so forfeited shall be applied by the division to the restoration of the lands and streams in accordance with the conditions specified in the license.
[1957 c.580 §4]

517.650 Appeal. An appeal may be taken from any order of the division revoking a license or forfeiting a bond or cash deposit by any person aggrieved thereby. The appeal shall be taken to the circuit court for the county within which the lands covered by the license or some part thereof are located. The appeal shall be taken within 30 days after receipt of a copy of the order of revocation or forfeiture.
[1957 c.580 §5]

517.660 Inspections of dredging operations. The division shall make periodic inspections of dredging operations to determine whether ORS 517.611 to 517.700 are being complied with.
[1957 c.580 §6]

517.670 Enjoining illegal dredging operations. The circuit courts of this state shall, upon proper proceedings therefor, restrain and enjoin any person conducting a dredging operation in violation of the provisions of ORS 517.621.
[1957 c.580 §7]

517.680 Rules. The division may make necessary rules and regulations to carry out the provisions of ORS 517.611 to 517.700.
[1957 c.580 §8]

517.690 Certain rights and obligations not affected. The provisions of ORS 517.611 to 517.700 are not intended to deprive any person, city, county or municipal corporation of any rights, causes of suit or action or remedies. The issuance of a license under ORS 517.631 shall not relieve any licensee of any obligation imposed upon him by other law.
[1957 c.580 §9]

517.700 Consulting committee. (1) A consulting committee hereby is established. The committee shall be composed of the State Fish and Wildlife Director, the State Geologist, the Director of Agriculture and the Director of the Division of State Lands who shall serve as the committee chairman. In addition to the foregoing members, when a field examination of the land covered by an application is conducted under ORS 517.621, the members of the county court or board of county commissioners of the county or counties in which such land is located shall also be members of the consulting committee.

(2) The consulting committee shall convene at the call of its chairman for the purpose of performing its duties under ORS 517.611 to 517.700.
[1957 c.580 §10]

RECLAMATION OF MINING LANDS

517.750 Definitions for ORS 517.750 to 517.900. As used in ORS 517.750 to 517.900 and subsection (4) of 517.990, unless the context requires otherwise:

(1) "Abandonment of surface mining" means a cessation of surface mining operation that was not set forth in a permittee's plan of operation or similar written notice extending:

(a) For more than 24 consecutive months; or

(b) For a period of less than 24 consecutive months in length, determined by the department to be sufficient to characterize such cessation of the surface mining operation as an abandonment of surface mining and where the permittee fails to submit sufficient evidence to the department that such operation has not been abandoned within 30 days after his receipt of written notification from the department of its intention to declare the operation abandoned.

(2) "Board" means the governing board of the State Department of Geology and Mineral Industries.

(3) "Completion" means termination of surface mining activities including reclamation of the surface-mined land in accordance with the approved reclamation plan and operating permit.

(4) "Department" means the State Department of Geology and Mineral Industries.

(5) "Landowner" means the person possessing fee title to the natural mineral deposit being surface mined.

(6) "Minerals" includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits situated within or upon lands in this state.

(7) "Operator" means any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in surface mining operations.

(8) "Overburden" means the soil, rock and similar materials that lie above natural deposits of minerals.

(9) "Reclamation" means the employment in a surface mining operation of procedures, reasonably designed to minimize as much as practicable the disruption from the surface mining operation and to provide for the rehabilitation of any such surface resources adversely affected by such surface mining operations through the rehabilitation of plant cover, soil stability, water resources and other measures appropriate to the subsequent

beneficial use of such mined and reclaimed lands.

(10) "Reclamation plan" means a written proposal, submitted to the department as required by ORS 517.750 to 517.900 and subsection (4) of 517.990 and subsequently approved by the department as provided in ORS 517.750 to 517.900 and subsection (4) of 517.990, for the reclamation of the land area adversely affected by a surface mining operation and including, but not limited to the following information:

(a) Proposed measures to be undertaken by the operator in protecting the natural resources of adjacent lands.

(b) Proposed measures for the rehabilitation of the surface-mined lands and the procedures to be applied.

(c) The procedures to be applied in the surface mining operation to control the discharge of contaminants and the disposal of surface mining refuse.

(d) The procedures to be applied in the surface mining operation in the rehabilitation of affected stream channels and stream banks to a condition minimizing erosion, sedimentation and other factors of pollution.

(e) The map required by paragraph (e) of subsection (1) of ORS 517.790 and such other maps and supporting documents as may be requested by the department.

(f) A proposed time schedule for the completion of reclamation operations.

(11) "Spoil bank" means a deposit of excavated overburden or mining refuse.

(12) "Surface mining" includes all or any part of the process of mining minerals by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 2,500 cubic yards of minerals are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining operations, auger mining operations, production of surface mining refuse, the construction of adjacent or off-site borrow pits (except those constructed for use as access roads), and prospecting and exploration activities coming within the quantity or area specifications set forth herein or when such activities affect more than one acre of land for each eight acres of land prospected or explored; but excluding excavations of sand, gravel, clay, rock or other similar materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, onsite road construction or other onsite construction, or underground mines; and also excluding rock, gravel, sand, silt or other similar substances removed from the beds or banks of any waters of this state pursuant to permit issued under ORS 541.605 to 541.660.

(13) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by surface mining operations within the operating permit area, including all waste materials deposited in or upon lands within such operating permit area.

[1971 c.719 §2; 1975 c.724 §1; 1977 c.59 §1]

517.755 Mining operations affecting more than five acres. Notwithstanding the yard and acre limitations of subsection (11) of ORS 517.750, as soon as any mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990 apply to the mining operation.

[1975 c.724 §1a]

Note: 517.755 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 517 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

517.760 Policy. (1) The Legislative Assembly finds and declares that:

(a) The extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation.

(b) Proper reclamation of surface-mined lands is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety and property rights of the citizens of this state.

(c) Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological and social conditions are significantly different and that reclamation operations and the specifications therefor must vary accordingly.

(d) It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials and that the very character of many types of surface mining operations precludes complete restoration of the affected lands to their original condition.

(e) Reclamation of surface-mined lands as provided by ORS 517.750 to 517.900 and subsection (4) of 517.990 will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of the mined and reclaimed lands.

(2) The Legislative Assembly, therefore, declares that the purposes of ORS 517.750 to 517.900 and subsection (4) of 517.990 are:

(a) To provide that the usefulness, productivity and scenic values of all lands and water resources affected by surface mining operations within this state shall receive the greatest practical degree of protection and reclamation necessary for their intended subsequent use.

(b) To provide for cooperation between private and governmental entities in carrying out the purposes of ORS 517.750 to 517.900 and subsection (4) of 517.990.
[1971 c.719 §1]

517.770 Application of ORS 517.750 to 517.900. (1) Nothing in ORS 517.750 to 517.900 and subsection (4) of 517.990 applies to:

(a) The reclamation of lands within the surfaces and contours of surface mines as of July 1, 1972, or to vertical extensions of those surfaces and contours. The surfaces and contours of surface mines shall not include those areas over which the mining operator merely leveled terrain or cleared vegetative cover.

(b) Dredging operations conducted pursuant to ORS 517.611 to 517.700.

(c) A landowner or operator who, on July 1, 1972, is a party to a valid contract, in existence on January 1, 1971, to surface mine; but this exemption will not apply to existing contracts upon expiration, or in instances where a fiduciary relationship exists between the contracting parties, and in no case will the exemption continue after January 1, 1981.

(2) Notwithstanding paragraph (a) of subsection (1) of this section, if in the judgment of the department meaningful reclamation cannot be accomplished the department may waive the permit and reclamation requirements of ORS 517.750 to 517.900 and subsection (4) of 517.990 even though the mine surfaces and contours as of July 1, 1972, have been extended horizontally.
[1971 c.719 §15; 1973 c.709 §1; 1975 c.724 §2]

517.775 Permit fee for certain landowners and operators. Notwithstanding the provisions of subsections (1) and (3) of ORS 517.770, any landowner or operator conducting surface mining on July 1, 1972, shall pay the permit fee as provided in ORS 517.800.
[1971 c.719 §17]

517.780 Effect on local zoning laws or ordinances; local reclamation permit and fee in lieu of state permit and fee; certain operations exempt. (1) The provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990 and the rules and regulations adopted thereunder shall not supersede any zoning laws or ordinances in effect on July 1, 1972; however, if such zoning laws or ordinances are repealed on or after July 1, 1972, the provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990 and the rules and regulations adopted thereunder shall be controlling. The department may adopt rules and regulations with respect to matters presently covered by such zoning laws and ordinances.

(2) In lieu of the permit required by ORS 517.790, an operator may conduct surface mining provided such surface mining is done pursuant to a valid permit issued by the appropriate authority of a city or county in which the mining is taking place, if such authority has adopted an ordinance, approved by the department, requiring reclamation of land that has been surface mined.

(3) City or county operated surface mining operations which sell less than 2,500 cubic yards of minerals within a period of 12 consecutive calendar months, are exempt from the provisions of ORS 517.750, 517.755, 517.770, 517.810, 517.830, 517.860, 517.865 and this section provided the city or county adopts an ordinance which shall include a general reclamation scheme for all surface mining within the boundaries of the city or county, which shall provide for the means and methods whereby reclamation is to be achieved.

(4) A city or county may determine and collect fees for any function performed pursuant to subsection (2) of this section. However, no such fee shall exceed the amounts prescribed in ORS 517.800. A city or county shall issue a permit for each regulated surface mining activity within its jurisdiction, and all such permittees are subject to the payment of any fee charged by the city or county. However, those activities described in ORS 517.770 are not required to comply with mined land reclamation plans. City or county fees shall be in lieu of any surface mining permit fees assessed by the department.
[1971 c.719 §16; 1975 c.724 §3; 1977 c.524 §1]

517.790 Operating permit required for surface mining on certain lands; application for permit; proposed reclamation plans. (1) Except as otherwise provided by subsection (2) of ORS 517.780, after July 1, 1972, no landowner or operator shall permit or engage in surface mining on land not surface mined on July 1, 1972, without having first applied for and received an operating permit from the department for such surface mining operation. A separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department the landowner or operator must submit an application on a form provided by the department that contains information considered by the department to be pertinent in its review of the application, including but not limited to:

(a) The name and address of the landowner and the operator and the names and addresses of any persons designated by them as their agents for the service of process.

(b) The materials for which the surface mining operation is to be conducted.

(c) The type of surface mining to be employed in such operation.

(d) The proposed date for the initiation of such operation.

(e) The size and legal description of the lands that will be affected by such operation, and, if more than 10 acres of land will be affected by such operation and if the department considers the conditions to warrant it, a map of the lands to be surface mined that shall include the boundaries of the affected lands, topographic details of such lands, the location and names of all streams, roads, railroads and utility facilities within or adjacent to such lands, the location of all proposed access roads to be constructed in conducting such operation and the names and addresses of the owners of all surface and mineral interests of the lands included within the surface mining area.

(f) If economically practicable, a plan for visual screening by vegetation or otherwise that will be established and maintained on the lands within such operation for the purpose of screening such operation from the view of persons using adjacent public highways, public parks and residential areas.

(2) The application referred to in subsection (1) of this section must also contain a proposed reclamation plan that is acceptable to and approved by the department.

[1971 c.719 §4; 1973 c.709 §2]

517.800 Fees. (1) Each application for an operating permit under ORS 517.750 to 517.900 and subsection (4) of 517.990 shall be accompanied by a fee of $265.

(2) Annually on the anniversary date of each such operating permit, each holder of an operating permit shall pay to the department a fee of $165.

[1971 c.719 §7; 1973 c.709 §3; 1977 c.524 §2]

517.810 Bond or security deposit required of applicant; public and governmental bodies exempt; other security in lieu of bond from landowner. (1) Before issuing or reissuing an operating permit for any surface mining operation, the department shall require that the applicant for such permit file with it a bond or security deposit, conditioned upon the faithful performance of the reclamation plan and of the other requirements of ORS 517.750 to 517.900 and subsection (4) of 517.990 and the rules and regulations adopted thereunder in a sum equal to the estimated cost of the completion of the reclamation work. The applicant may deposit with the department, in lieu of a bond, cash or other security in a sum satisfactory to the department. In no event shall such bond or deposit of cash or security exceed the sum of $500 per acre of land to be surface mined under the terms of the operating permit therefor. The amount of the bond shall be determined by the department.

(2) Nothing in this section shall apply to any public or governmental agency.

(3) In lieu of the bond or other security required of the applicant in subsection (1) of this section, the department may accept a similar security from the landowner, including a mortgage or trust deed equal to the estimated cost of reclamation as determined by the department, not to exceed $500 per acre. The cost of title or mortgage insurance, or costs for title searches or examinations necessary to insure the department's security shall be the responsibility of the applicant.

[1971 c.719 §8; 1975 c.724 §4]

517.820 Extensions of time for submission of proposed reclamation plans; time limit for reclamation completion; consultation with state agencies. (1) Upon good cause shown, the department may grant reasonable extensions of time for the completion by the landowner or operator and his submission to the department of a proposed reclamation plan required by subsection (2) of ORS 517.790. Each reclamation plan submitted to the department must provide that all

reclamation activities shall be completed within three years after the termination of mineral extraction from the surface mining operation conducted within each separate area for which an operating permit is requested. Each such reclamation plan shall be approved by the department if it adequately provides for the reclamation of surface-mined lands.

(2) The department, prior to approving a proposed reclamation plan, shall consult with all other interested state agencies and appropriate local planning authorities.
[1971 c.719 §5; 1977 c.59 §2]

517.830 Inspection of operating site; approval of application for operating permit; effect of failure to approve or refusal to approve reclamation plan; appeal from denial of plan; transfer of permittee's interest. (1) Upon receipt of an application for an operating permit, the department shall cause the operating site described therein to be inspected. Within 30 days after the date on which such application is received and upon receipt of the required permit fee, the department shall issue the operating permit applied for or, if it considers such application incomplete, return the application to the applicant for correction of the deficiencies indicated by the department.

(2) Failure by the department to act upon the reclamation plan submitted with an application for an operating permit within the 30-day period referred to in subsection (1) of this section shall not be considered a denial by the department of the operating permit applied for. The department, pending final approval of a reclamation plan, may issue a provisional permit subject to reasonable limitations that may be prescribed by the department and conditioned upon the applicant's compliance with the bond and security requirements established by ORS 517.810. For all operations ongoing as of July 1, 1972, a provisional permit shall be issued except in those instances where there is reason to believe that a reclamation plan will not be approved and the operating permit ultimately denied.

(3) If the department refuses to approve a reclamation plan in the form submitted by the applicant, it shall notify the applicant, in writing, of its reasons for the refusal to approve such reclamation plan, including additional requirements as may be prescribed by the department for inclusion in such reclamation plan. Within 60 days after the receipt of such notice, the applicant shall comply with the additional requirements prescribed by the department for such reclamation plan or file with the department a notice of appeal from the decision of the department with respect to such reclamation plan. If a notice of appeal is filed with the department by the applicant, the department may issue a provisional permit to such applicant.

(4) An operating permit issued by the department under this section shall be granted for the period required to mine the land described in such permit and shall be valid, subject to payment of the renewal fee, until the surface mining operation described in the operating permit is completed or abandoned. Each such operating permit shall provide that the reclamation plan described therein may be modified upon agreement between the department and the permittee to change the reclamation plan included within the operating permit.

(5) When a person succeeds to the interest of a permittee in any uncompleted surface mining operation by sale, assignment, lease or other means, the department shall release the permittee from the duties imposed upon him under his operating permit if his successor assumes fully the duties of the former permittee with respect to the reclamation of the surface-mined lands. Upon the assumption by such person of the duties of the permittee as provided in this subsection, the department shall transfer the operating permit to the successor upon the approval of such successor's bond or security deposit as required under ORS 517.750 to 517.900 and subsection (4) of 517.990.
[1971 c.719 §6; 1975 c.724 §5]

517.840 Administration and enforcement of ORS 517.750 to 517.900. The board shall administer and enforce the provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990 and may:

(1) Conduct or cause to be conducted investigations, research, experiments and demonstrations and may collect and disseminate information related to surface mining and the reclamation of surface-mined lands.

(2) Cooperate with other governmental and private agencies of this state or of other states and with agencies of the Federal Government, including the reimbursement for any services provided by such agencies to the department at its request.

(3) Apply for, accept and expend public and private funds made available for the reclamation of lands affected by surface mining in accordance with the purposes of

ORS 517.750 to 517.900 and subsection (4) of 517.990.

(4) In accordance with the applicable provisions of ORS chapter 183, adopt rules and regulations considered by the board to be necessary in carrying out the provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990. However, such rules and regulations shall be subject to existing rights under any permit, license, lease or other valid authorization granted or issued by a governmental entity.

[1971 c.719 §3]

517.850 Inspection of permit area. At such reasonable times as the department may elect, the department, after reasonable advance notice has been given to the permittee, may cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the rules and regulations of the department.

[1971 c.719 §9]

517.860 Failure to comply with reclamation plan; notice of noncompliance; performance period; extension; department may perform work and assess costs against permittee or landowner. (1) If from inspections conducted pursuant to ORS 517.850, or from any other source the department shall determine that the permittee has not or is not complying with the reclamation plan or the rules and regulations of the department, it shall give written notice thereof to the permittee, specifically outlining the deficiencies. Within 30 days thereafter, the permittee shall commence action to rectify those deficiencies and diligently shall proceed until they are all corrected. However, the department may extend performance periods for delays occasioned for causes beyond the permittee's control, but only when the permittee is, in the opinion of the department, making a reasonable effort to comply.

(2) (a) If the permittee has not commenced action to rectify the deficiencies within said period of time, and after notification by the department, or

(b) If the permittee has commenced such action and fails to diligently pursue it, or

(c) If reclamation is not properly completed in conformance with the reclamation plan within three years after surface mining on any segment of the permit area has terminated, or

(d) If reclamation is not properly completed in conformance with the reclamation plan upon determination by the department that abandonment of surface mining has occurred on any segment of the permit area,

the department may perform the reclamation required by the reclamation plan, complete such reclamation and give written notice that the amount of the reasonably necessary costs and expenses so incurred is due and payable to the department by the permittee. In performing the reclamation under this subsection the department shall be limited to expending funds to complete the reclamation plan, but in no event shall the expenditure exceed $500 per acre. If the amount specified in the notice is not paid within 30 days following such notice the Attorney General, upon request of the department, shall institute proceedings to recover the amount specified in the notice.

(3) If the landowner has given security as provided in subsection (3) of ORS 517.810 and the permittee is in default as specified in subsection (2) of this section, the landowner shall be held responsible for complying with the reclamation plan of the permitee. The department shall furnish written notice of the default to the landowner and require the landowner to complete the reclamation as specified in the permittee's reclamation plan acceptable to the department. If the landowner has not commenced action to rectify the deficiencies within 30 days after receiving notice, or if he fails to diligently pursue reclamation in conformance with the plan, the department may complete the reclamation and otherwise proceed as provided in subsection (2) of this section, or the department may bring suit to compel the landowner to complete the reclamation plan.

[1971 c.719 §10; 1975 c.724 §6; 1977 c.59 §3]

517.865 Failure to faithfully perform reclamation; insufficient bond; lien; notice; priority; foreclosure. (1) If a permittee fails to faithfully perform the reclamation required by his reclamation plan and if the bond or security deposit required by ORS 517.810 is not sufficient to compensate the department for all reasonably necessary costs and expenses incurred by it in performing the reclamation required by the reclamation plan, the amount due, not to exceed $500 per acre, shall be a lien in favor of the department upon all property, whether real or personal, belonging to the permittee.

(2) The lien shall attach upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the demand, the insufficiency of the bond or security deposit to compensate the

department and the failure of the permittee to perform the reclamation required.

(3) The lien created by this section is prior to all other liens and encumbrances, except that the lien shall have equal priority with tax liens.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property.
[1975 c.724 §8]

517.870 Adjustment of bond or security deposit of permittee upon satisfactory completion of reclamation work. Upon request of the permittee, and when in the judgment of the department the reclamation has been completed in accordance with the reclamation plan, the permittee shall be notified that the work has been found to be satisfactorily performed and is acceptable and his bond or security deposit shall be adjusted accordingly.
[1971 c.719 §11]

517.880 Order for suspension of surface mining operation operating without required permit; enjoining operation upon failure of operator to comply; completion of reclamation by department. When the department finds that an operator is conducting a surface mining operation for which an operating permit is required by ORS 517.750 to 517.900 and subsection (4) of 517.990, but has not been issued by the department under the provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990 or by the rules and regulations adopted thereunder, it may order such operator to suspend such operation until an operating permit has been issued by the department for such surface mining operation or until such time as the department is assured that such operator will comply therewith. If the operator fails or refuses to comply with such order, the Attorney General at the request of the department shall initiate any necessary legal proceeding to enjoin such surface mining operation and to provide for the completion of the reclamation of the lands affected by such operation.
[1971 c.719 §12]

517.890 Appeals. Appeals from determinations made by the department in carrying out the provisions of ORS 517.750 to 517.900 and subsection (4) of 517.990 and the rules and regulations adopted thereunder shall be conducted in the manner provided by the applicable provisions of ORS chapter 183 for appeals from orders in contested cases.
[1971 c.719 §13]

517.900 Information submitted by operators and landowners is confidential. Operators' reports and other information submitted by operators and landowners as required under ORS 517.750 to 517.900 and subsection (4) of 517.990, with the exception of the reclamation plan as approved by the department, shall be confidential.
[1971 c.719 §14]

PENALTIES

517.990 Penalties. (1) A person who violates ORS 517.450 shall be guilty of theft and punished as provided in ORS 164.045 or 164.055.

(2) Violation of any rules, regulations and orders made pursuant to subsection (4) of ORS 517.540 is punishable, upon conviction, by a fine of not less than $25 nor more than $250, or by imprisonment in the county jail for not more than 60 days, or both.

(3) Any person conducting a dredging operation in violation of the provisions of ORS 517.611 to 517.700 is guilty of a misdemeanor.

(4) Any landowner or operator who shall conduct a surface mining operation, for which a permit is required by ORS 517.750 to 517.900 and this subsection, without a valid operating permit therefor shall be punished, upon conviction, by a fine of not more than $1,000.
[Amended by 1953 c.188 §2; subsection (3) enacted as 1957 c.580 §11; 1971 c.743 §398; subsection (4) enacted as 1971 c.719 §18]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel

CHAPTERS 518 AND 519

[Reserved for expansion]