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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending)
the "Columbia County Natural)
Resources Depletion Fee) ORDINANCE NO. 2001-1
Ordinance")
_____)

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 2001-1. Exhibit "A", which is attached hereto and incorporated herein by this reference, shall be known as the "Columbia County Natural Resources Depletion Fee Ordinance".

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035 and 203.055.

SECTION 3. PURPOSE.

The purpose of this ordinance is to refer to the electors of Columbia County amendments to the "Columbia County Natural Resources Depletion Fee Ordinance" as follows:

a. The depletion fee would no longer apply to natural resources which are used to reclaim surface mines, or for agricultural operations, within Columbia County.

b. Housekeeping amendments would be adopted.

SECTION 4. AMENDMENT; REFERRAL.

a. The "Columbia County Natural Resources Depletion Fee Ordinance", as approved and ratified by the electors of Columbia County, Oregon, voting at the November 5, 1996, general election, is amended to read as shown on Exhibit "A", which is attached hereto and incorporated herein by this reference, subject to the approval of and ratification by the electors voting at the biennial general election to be held on May 15, 2001.

b. The "Columbia County Natural Resources Depletion Fee Ordinance", as amended by Section 4.a above, is referred to the electors of Columbia County at the biennial general election to be held on May 15, 2001.

c. The ballot title attached hereto, labeled Exhibit "B", and incorporated herein by this reference, is hereby approved.

SECTION 5. REPEALER; SAVINGS CLAUSE.

If the electors voting at the biennial general election to be held on May 15, 2001, do not approve and ratify the "Columbia County Natural Resources Depletion Fee Ordinance" as amended herein, this ordinance, Ordinance No. 2001-1, shall be repealed automatically effective as of June 1, 2001. In case of such repeal, the "Columbia County Natural Resources Depletion Ordinance", as approved and adopted by the electors of Columbia County, Oregon, voting at the November 5, 1996, general election, shall continue in effect uninterrupted as if this ordinance, Ordinance No. 2001-1, had never been adopted.

SECTION 6. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this ordinance invalid, or any portion of the attached Exhibit "A", such portion shall be deemed a separate, distinct and independent portion, and any such holdings shall not affect the validity of the remaining portions thereof.

SECTION 7. EMERGENCY; EFFECTIVE DATE.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declared to exist and this ordinance shall take effect upon its adoption. If Exhibit "A" is approved and ratified by the electors at the biennial general election to be held on May 15, 2001, Exhibit "A" shall take effect on July 1, 2001.

DATED this 14th day of March, 2001.

Approved as to form by

By: John Kelly
Office of County Counsel

Attest:

By: Arthur Zetts
Recording Secretary
First Reading: February 28, 2001
Second Reading: March 14, 2001
Effective Date: March 14, 2001

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: John M. Gerhardt
Chair

By: _____
Commissioner

By: John Corbett
Commissioner

EXHIBIT "A"

COLUMBIA COUNTY
NATURAL RESOURCES DEPLETION FEE ORDINANCE

Adopted by Ordinance No. 90-20 on September 5, 1990

Approved by the Electors of Columbia County
at the General Election of November 6, 1990

Amended by Ordinance No. 91-3 on March 27, 1991

Amended by Ordinance No. 96-2 on September 4, 1996

Approved by the Electors of Columbia County
at the Biennial General Election of November 5, 1996

Amended by Ordinance No. 2001-1 on March 14, 2001.

Referred to the Electors of Columbia County
at the Biennial General Election of May 15, 2001.

[Note: Proposed additions are in bold;
proposed deletions are in ~~strikeout~~.]

COLUMBIA COUNTY
NATURAL RESOURCES DEPLETION FEE ORDINANCE

The People of Columbia County, Oregon, ordain as follows:

SECTION 1. TITLE.

This ordinance shall be known as the "Columbia County Natural Resources Depletion Fee Ordinance", and shall be cited herein as "this ordinance".

[Enacted by Ordinance No. 90-20.]

SECTION 2. PURPOSE.

The purpose of this ordinance is to provide revenues for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system and to reimburse the County for the cost of regulating surface mining.

[En.Ord.90-20; Amended by Ordinance No. 91-3;Am.Ord.96-2.]

SECTION 3. DEFINITIONS.

The definitions of words used in this ordinance shall be as follows:

- A. "Administrator" means the person designated by the Board to administer the provisions of this ordinance.
- B. "Board" means the Board of County Commissioners for Columbia County.
- C. "Severing" or "severed" ~~and "depleting" or "depleted"~~ means the physical removal of ~~the~~ a natural resource from the soils or waters of the earth by any means and "depleting" or "depleted" means the physical removal of a natural resource from the premises of the operator.
- D. "Natural resource" ~~means~~ **includes** coal, clay, soil, stone, shale, sand, gravel, metallic ore, aggregate and any other solid material or substance, **whatsoever, located in natural deposits in the soils or waters of the earth, and also includes dredge spoils, whether in natural deposits or not.** ~~severed and depleted or proposed to be severed and depleted from natural deposits or dredge spoils located in this county for commercial, construction or industrial use anywhere, or from natural deposits or dredge spoils located outside of this county and transported into this county for commercial, construction or industrial use within this county.~~ For purposes of this ordinance, "natural resource" does not include oil or natural gas.

- E. "Operator" means any individual (including employers, employees, agents, permittees, contractors, subcontractors, lessors and lessees), partnership, joint venture, association, public or private corporation, political subdivision, agency, board or department of this state, any municipality, firm, receiver, trust, estate or any other legal entity whatsoever, that is or has engaged in, or proposes or attempts to engage in the business of severing and depleting **natural resources from the soils and waters of Columbia County for commercial, construction or industrial use anywhere, or the business of transporting — natural resources into Columbia County for commercial, construction or industrial use within Columbia County.** In instances where contracts, either oral or written, are entered into whereby persons, organizations or businesses are **engaged retained to engage** in the business of severing and depleting, or transporting, a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or otherwise has an economic interest in the natural resource is the operator.
- F. "Premises" means the yard, pit, mine or other **directly contiguous area, whether in Columbia County or not,** in the possession or control of the operator and from which the operator engages in severing and depleting of a natural resource.
- G. "Related parties" means two (2) or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests.
- H. "Economic interest" for the purpose of this chapter is synonymous with the economic interest ownership required by Internal Revenue Code, Title 26 U.S.C. section 611 in effect on December 31, 1989, entitling the operator to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest.
[En.Ord.90-20;Am.Ord. 91-3;Am.Ord.96-2;Am.Ord.00-02.]
- I. "Agricultural operations" means the "current employment of land for farm use" as defined in ORS 215.203(2) (b) (A) , (B) , (C) , (I) and (J) (1999 Edition) , but does not include the activities described in ORS 215.203(2) (b) (D) , (E) , (F) , (G) , (H) and (K) (1999 Edition) .

SECTION 4. IMPOSITION OF FEE.

A. Depletion Fee.

For the privilege of severing and depleting natural

resources from the soils and waters of Columbia County for commercial, construction or industrial use anywhere, operators shall pay a fee levied at the rate of \$0.15 (fifteen cents) per ton.

B. Transportation Fee.

For the privilege of transporting natural resources into this county Columbia County for commercial, construction or industrial use within this county Columbia County, operators shall pay a fee levied at the rate of \$0.15 (fifteen cents) per ton.

C. Conversion Formula.

If an operator measures the natural resource severed or depleted by volume, the operator shall convert that volume into weight by using either:

- (1) The standard conversion factor of 1.5 tons per cubic yard; or
- (2) A site specific conversion factor, following a written request and substantial evidence submitted by a particular operator, and upon written approval by the Administrator.

D. Scope.

The depletion and transportation fees shall be in addition to all other fees and taxes imposed by law.

[En.Ord.90-20;Am.Ord.91-3;Am.Ord.96-2;Am.Ord.00-02.]

SECTION 5. EFFECTIVE DATE OF FEE.

The fees levied by section 4 of this ordinance, as adopted pursuant to Ordinance No. 90-20 and amended by Ordinance No. 91-3, shall be payable on all natural resources ~~depleted and severed and depleted~~ in Columbia County on or after January 1, ~~1997~~ 1991, through December 31, 1996.

The fees levied by section 4 of this ordinance, as amended pursuant to Ordinance No. 96-2, shall be payable on all natural resources severed and depleted in, or transported into, Columbia County on or after January 1, 1997.

[En.Ord.90-20;Am.Ord.96-2;Am.Ord.00-02.]

SECTION 6. ADMINISTRATION OF ORDINANCE.

The Board shall appoint a person to administer the provisions of this ordinance and shall delegate to that person the powers,

rights, duties and authority so delegated with respect to rules, regulations, collection, refunding and administration of the fees levied under section 4 of this ordinance.

[En.Ord.90-20.]

[SECTION 7. COLLECTION OF FEES.]

[En.Ord.90-20;Del.Ord.91-3.]

SECTION 8. MONTHLY REPORTING AND PAYMENT.

- A. Report and Payment. On or before the last day of the month following each calendar month, every operator, using the forms prescribed by the Administrator, shall report the weight of natural resources ~~removed from the premises of the operator~~ severed and depleted from the soils and waters of Columbia County for commercial, construction or industrial use anywhere, or transported into the county Columbia County for commercial, construction or industrial use within Columbia County, during the preceding month, and pay the amount of fees due.
- B. Returns to be Signed. Returns shall be signed by the operator required to file the return or by ~~his or her~~ the operator's duly authorized agent but need not be verified by oath.
- C. Information Required. Returns required under this section shall contain such information as the Administrator deems necessary for the proper administration of this ordinance.
- D. Remittance. The operator required to file the return provided under this section shall deliver the return together with a remittance of the amount of the fee due to Columbia County.
- E. Other Reporting and Payment Periods. For the purposes of facilitating the administration, payment or collection of the fees levied under this ordinance, the Administrator may permit or require returns or fee payments other than monthly. When permitted, returns for periods other than monthly shall be filed and paid in such manner as the Administrator may prescribe.
- F. Written Notice Before Change. No operator shall change the reporting system required under this section or permitted in writing by the Administrator without the prior written authorization of the Administrator.
- G. No Exceptions. A report and fee return are required for each reporting period even though there may be no natural resources ~~sold or removed from the premises of the operator~~ severed and depleted from the soils and waters of Columbia County for commercial, construction or industrial use, or transported

into Columbia County for commercial, construction or industrial use, during the preceding month, nor any fees due.

- H. Failure to File Reports. If any operator fails to make a report of the information required by this section within the time and manner prescribed, the Administrator shall examine the books, records and files of any such operator to ascertain the amount of ~~such production~~ **natural resources severed and depleted, or transported into Columbia County**, and to compute the fee thereon as provided by this ordinance.
- I. Confidentiality. The reports and records submitted by operators in connection with the payment of the fees under this ordinance are production records exempt from public disclosure by ORS 192.501(5). Accordingly, the Board shall adopt a policy of non-disclosure of such records to preserve their confidentiality.
[En.Ord.90-20;Am.Ord.91-3;Am.Ord.96-2;Am.Ord.00-02.]

SECTION 9. OPERATOR REQUIRED TO KEEP RECORDS.

- A. Record keeping. Every operator liable for the reporting or payment of the fee levied by this ordinance shall keep such records, receipts, invoices, and other pertinent papers in such form as the Administrator may require.
- B. Three-year Minimum; Exception. Every such operator shall keep such records for not less than three (3) years from the making of such records unless the Administrator in writing authorizes their destruction sooner.
[En.Ord.90-20.]

SECTION 10. DISPOSITION OF REVENUE; ADJUSTMENT.

- A. Except as provided by subsection B of this section, all revenues collected from the severance and depletion or transportation of natural resources under this ordinance shall be used as follows:
- (1) The first \$0.10 (ten cents) per ton shall be used exclusively for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system.
 - (2) The remaining \$0.05 (five cents) per ton shall be dedicated to the regulation of surface mining in Columbia County. Legitimate expenses for the use of such fees shall include the salary of the Surface Mining Administrator, necessary staff, secretarial and clerical support, and the vehicles, supplies and equipment involved in the regulation of surface mining in Columbia

County and any other expenses incurred by the County in the regulation of surface mining. The remaining five cents per ton may also be used to reimburse the County for the costs of administering this ordinance and collecting the fee levied under this ordinance.

(3) If the revenues collected in paragraph (2) above exceed the cost of regulating surface mining, any excess revenues shall also be used exclusively for the construction, reconstruction, improvement, repair and maintenance of the Columbia County road system.

B. Any adjustment of fees, penalties or interest that is necessary to adjust any error in collection or distribution may be made at a subsequent collection or disbursement or by the procedure set forth in section 11.
[En.Ord.90-20;Am.Ord.91-3;Am.Ord.96-2.]

SECTION 11. REFUND.

A. Refund. Upon its own recommendation or the recommendation of the Administrator, the Board may refund any overpayment of the fee on natural resources imposed by this ordinance that an operator pays, provided that the operator submits a proper claim for refund of the overpayment within 60 days of the due date of the return, or the date the fees were paid, whichever is the later.

B. Form for Refund. The Administrator shall develop criteria and procedures to refund such fees pursuant to subsection A of this section, including a reasonable procedure for submission of proof by the purchasing or contracting entity that such sales qualify for such refund.
[En.Ord.90-20.]

SECTION 12. DELINQUENCY; EXTENSION.

A. Delinquency. Unless an operator obtains an extension pursuant to subsection B below, the operator becomes delinquent with respect to this ordinance any time the operator fails:

- (1) To submit its reports completely and accurately, on time, or as otherwise required by this ordinance; or
- (2) To remit its fee payment fully, on time, or as otherwise required by this ordinance.

B. Extension.

- (1) The Administrator may upon written request received on or prior to the due date of the report or fee, for good

cause satisfactory to the Administrator, extend the time for filing the return or paying the fee for a period not to exceed 30 days.

- (2) Any operator to whom an extension is granted and who pays the fee within the period for which the extension is granted shall pay, in addition to the fee, interest at the rate of ~~10~~ 9% per annum from the date on which the fee would otherwise have been due.

[En.Ord.90-20.]

SECTION 13. PENALTIES; INTEREST.

This ordinance is enforceable under, and violators hereof are subject to the penalties provided in, the Columbia County Enforcement Ordinance, and to one or more of the following sanctions:

A. Inadequate or Untimely Reporting. If an operator is delinquent in submitting reports, the Administrator may assess the fee at no more than twice the amount estimated to be due and add a penalty of 10% of the amount of the fee assessed. This penalty shall be in addition to all other penalties. **An operator may file a claim for a refund under Section 11 of this ordinance. To the extent the amount estimated to be due exceeds the actual amount due, if any, as determined by the Board, the fee and penalty shall be reduced accordingly.**

B. Inadequate or Late Fee Payments. If an operator is delinquent in making fee payments:

- (1) The Administrator ~~may~~ **shall** assess interest payments on the outstanding fee accounts at a rate of ~~10~~ 9% per annum from the date due until the date of payment. **Interest imposed under this subsection shall be in addition to any penalty imposed under subsection A of this section.**

- (2) These fees shall operate as a first lien and privilege on the natural resource, which lien and privilege shall follow the natural resource into the hands of third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state. In addition, ~~interests in minerals, and minerals, mineral rights, and rights of any kind to the ownership of any natural resource severed from the soil or water,~~ **such natural resources** shall be subject to seizure and sale for the payment of the fee levied in this ordinance in preference to all other claims, liens and privileges.

[En.Ord.90-20;Am.Ord.91-3;Am.Ord.96-2;Am.Ord.00-02.]

SECTION 14. AMENDMENTS.

The Board is authorized to amend this ordinance in the manner provided by ORS 203.035 through 203.065.
[En.Ord.90-20;Am.Ord.96-2.]

SECTION 15. INTERPRETATIONS.

The Board is authorized to interpret this ordinance by adopting written interpretations to clarify the meaning of this ordinance.

[En.Ord.00-02.]

SECTION 16. EXEMPTION.

Notwithstanding any other provision of this ordinance, the following natural resources are exempt from the fee levied by Section 4 of this ordinance:

- A. Natural resources used for the reclamation of a surface mine in Columbia County pursuant to a reclamation plan approved by the Board of County Commissioners. The Board shall adopt, by order, criteria for the approval of reclamation plans under this section. This exemption is retroactive to July 1, 1990.

- B. Natural resources severed and depleted, or transported, for commercial use in agricultural operations in Columbia County, as defined in Section 3 above, approved by the Board. The Board shall adopt, by order, criteria for the approval of agricultural operations under this section. Such criteria shall include, but not be limited to, whether the subject property is in an exclusive farm use zone, and whether the property is currently qualified for a farm use special assessment. This exemption is retroactive to July 1, 1998.

[En.Ord.00-02.]

SECTION 17. DISQUALIFICATION FROM EXEMPTION.

The exemptions authorized by Section 16 of this ordinance shall no longer apply, and the depletion or transportation fees that would have otherwise been payable, shall be immediately payable and due if, within five years after approval of the exemption, the natural resources are no longer used for the purpose for which the exemption was granted, or the reclamation plan or agricultural operation no longer qualifies for approval under the criteria adopted by the Board and in effect at the time approval was granted.

[En.Ord.00-02.]

SECTION 18. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this ordinance invalid, such portion shall be deemed a separate, distinct and independent portion, and any such holdings shall not affect the validity of the remaining portions thereof.

[En.Ord.00-02.]

SECTION 19. EFFECTIVE DATE OF ORDINANCE.

The amendments to this ordinance adopted pursuant to Ordinance No. 2001-1 shall become effective on July 1, 2001.

[En.Ord.00-02.]

EXHIBIT "B"

SEL 801 REV 8/00	NOTICE OF COUNTY MEASURE ELECTION	ORS 250.035 ORS 250.041 ORS 250.175 ORS 254.103 ORS 254.465
(Name of County)		

Notice is hereby given that on Tuesday, May 15, 2001
(Date of Election)

A measure election will be held in Columbia
County, Oregon.
(Name of County)

The following shall be the ballot title of the measure to be submitted to the county's voters on this date:

CAPTION (10 Words) Amendments to Natural Resources Depletion Fee Ordinance

QUESTION (20 Words) Shall reclamation and agricultural exemptions be allowed and housekeeping amendments be adopted?

SUMMARY (175 Words) Columbia County currently imposes a 15 cents per ton fee on natural resources severed and depleted in, or transported into, the county. The fee also applies to dredge spoils. The fee applies even if the minerals are used for reclaiming other surface mines or in agricultural operations. This measure would exempt natural resources used to reclaim other surface mines and in agricultural operations from the depletion fee. In addition, minor housekeeping amendments would be adopted.

The following authorized county official hereby certifies the above ballot title is true and complete.

Signature of authorized county official (not required to be notarized)		Date signed
Printed name of authorized county official		Title