

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 488

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO PROSPECTING AND SMALL-SCALE DREDGE MINING; PROVIDING LEGISLA-
2 TIVE INTENT; AMENDING SECTION 47-1313, IDAHO CODE, TO DEFINE TERMS;
3 AMENDING CHAPTER 13, TITLE 47, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
4 TION 47-1325, IDAHO CODE, TO PROVIDE THAT SPECIFIED LAW SHALL NOT APPLY
5 TO PROSPECTING AND SMALL-SCALE DREDGE MINING, TO PROHIBIT REGULATIONS,
6 RESTRICTIONS, LIMITATIONS OR PROHIBITIONS REGARDING PROSPECTING AND
7 SMALL-SCALE DREDGE MINING AND TO PROVIDE EXCEPTIONS; AMENDING CHAPTER
8 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1734J,
9 IDAHO CODE, TO PROVIDE THAT STATE COMPREHENSIVE WATER PLANS AND RELATED
10 LAW SHALL ALLOW FOR PROSPECTING AND SMALL-SCALE DREDGE MINING, TO PRO-
11 VIDE THAT ANY REGULATIONS, RESTRICTIONS, LIMITATIONS OR PROHIBITIONS
12 UNDER SPECIFIED LAW REGARDING PROSPECTING AND SMALL-SCALE DREDGE MIN-
13 ING SHALL BE DECLARED INVALID, VOID AND UNENFORCEABLE, TO PROVIDE AN
14 EXCEPTION AND TO DEFINE TERMS; AMENDING SECTION 42-3802, IDAHO CODE,
15 TO DEFINE TERMS; AND AMENDING CHAPTER 38, TITLE 42, IDAHO CODE, BY THE
16 ADDITION OF A NEW SECTION 42-3813, IDAHO CODE, TO PROVIDE THAT SPECIFIED
17 LAW SHALL NOT BE ENFORCED WITH RESPECT TO PROSPECTING AND SMALL-SCALE
18 DREDGE MINING, TO PROHIBIT REGULATIONS, RESTRICTIONS, LIMITATIONS OR
19 PROHIBITIONS REGARDING PROSPECTING AND SMALL-SCALE DREDGE MINING AND
20 TO PROVIDE AN EXCEPTION; AND DECLARING AN EMERGENCY.
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. LEGISLATIVE INTENT. The Legislature finds that prospecting
24 and small-scale dredge mining are important parts of the heritage of the
25 state of Idaho, provide economic benefits to federal and state government,
26 local communities and prospectors and miners, and can be conducted in a
27 manner that is not harmful, and may be beneficial to, fish habitat and fish
28 propagation. Additionally, the Legislature of the state of Idaho finds
29 that prospecting and small-scale dredge mining does not discharge or add
30 pollutants into the involved waters and therefore is not in need of regula-
31 tion under the Idaho Dredge and Placer Mining Protection Act, chapter 13,
32 title 47, Idaho Code, and is not in need of regulation under the Idaho Stream
33 Channel Alteration Act, chapter 38, title 42, Idaho Code, and does not need
34 to be subject to state comprehensive water plans. The Legislature further
35 finds that prospecting and small-scale dredge mining removes lead and other
36 contaminants present in waters, which has long-lasting beneficial effects
37 on the environment.

38 SECTION 2. That Section 47-1313, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 47-1313. DEFINITIONS. As used in this chapter:

1 (a~~1~~) "Board" means the state board of land commissioners or such repre-
2 sentative as may be designated by the board.

3 (b~~2~~) "Director" means the director of the department of lands or such
4 representative as may be designated by the director.

5 (c~~3~~) "Disturbed land" means land, natural watercourses, or existing
6 stockpiles and waste piles affected by placer or dredge mining, remining,
7 exploration, stockpiling of ore or wastes from placer or dredge mining, or
8 construction of roads, tailings ponds, structures, or facilities appur-
9 tenant to placer or dredge mining operations.

10 (d~~4~~) "Mean high watermark" has the same meaning as defined in section
11 42-3802, Idaho Code.

12 (e~~5~~) "Mineral" means any ore, rock, or substance extracted from a placer
13 deposit or from an existing placer stockpile or waste pile, but does not in-
14 clude coal, clay, stone, sand, gravel, phosphate, uranium, oil, or gas.

15 (f~~6~~) "Motorized earth-moving equipment" means backhoes, bulldozers,
16 front loaders, trenchers, core drills, suction dredges with an intake diame-
17 ter exceeding eight (8) inches, and other similar equipment.

18 (g~~7~~) "Natural watercourse" means any stream in the state of Idaho hav-
19 ing definite bed and banks, and which confines and conducts continuously
20 flowing water.

21 (h~~8~~) "Permit area" means that area designated under section 47-1317,
22 Idaho Code, as the site of a proposed placer or dredge mining operation, in-
23 cluding all lands to be disturbed by the operation.

24 (i~~9~~) "Person" means any person, corporation, partnership, associa-
25 tion, or public or governmental agency engaged in placer or dredge mining,
26 whether individually, jointly, or through subsidiaries, agents, employees,
27 or contractors.

28 (j~~10~~) "Placer deposit" means naturally occurring unconsolidated surfi-
29 cial detritus containing valuable minerals, whether located inside or out-
30 side the confines of a natural watercourse.

31 (k~~11~~) "Placer or dredge exploration operation" means activities in-
32 cluding, but not limited to, the construction of roads, trenches, and test
33 holes, performed on a placer deposit for the purpose of locating and deter-
34 mining the economic feasibility of extracting minerals by placer or dredge
35 mining.

36 (l~~12~~) "Placer or dredge mining" or "dredge or other placer mining" means
37 the extraction of minerals from a placer deposit, including remining for
38 sale, processing, or other disposition of earth material excavated from
39 previous placer or dredge mining. The term "dredge or other placer mining,"
40 wherever used in this chapter, is subject to this definition and all provi-
41 sions regarding it.

42 (m~~13~~) "Placer or dredge mining operation" means placer or dredge mining
43 which disturbs in excess of one-half (1/2) acre of land.

44 (n~~14~~) "Prospecting" means the following when conducted or occurring at
45 or below the mean high watermark of a stream channel: (i) hand panning for
46 the location and extraction of valuable minerals; (ii) hand shoveling for
47 the location and extraction of valuable minerals; (iii) locating and ex-
48 tracting valuable minerals through the use of a nonmotorized sluice box; or
49 (iv) locating and extracting valuable minerals through the use of a nonmo-
50 torized rocker box.

1 (15) "Road" means a way, including bed, slopes, and shoulders, (1)
2 constructed within the circular tract circumscribed by a placer or dredge
3 mining operation, or (2) constructed solely for access to a placer or dredge
4 mining operation or placer or dredge exploration operation, provided, that
5 a way dedicated to public multiple use or being used by a governmental land
6 manager or private landowner at the time of cessation of operations, and
7 not constructed solely for access to a placer or dredge mining operation or
8 placer or dredge exploration operation, shall not be considered a road for
9 purposes of this act.

10 (16) "Small-scale dredge mining" means the location and extraction
11 of valuable minerals through the use of a dredge unit at or below the mean
12 high watermark of a stream channel, provided that the dredge unit is: (i)
13 equipped with a subsurface hose of eight (8) inches or less in diameter; (ii)
14 powered by an engine, natural siphon or natural gravity pressure; and (iii)
15 used to draw up mineral material, in a quantity of no greater than five (5)
16 cubic yards per hour, to a sluice portion of the dredge unit.

17 (17) "Stream channel" has the same meaning as defined in section
18 42-3802, Idaho Code.

19 SECTION 3. That Chapter 13, Title 47, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 47-1325, Idaho Code, and to read as follows:

22 47-1325. INAPPLICABILITY TO PROSPECTING AND SMALL-SCALE DREDGE MIN-
23 ING. (1) The provisions of sections 47-1314 through 47-1320, Idaho Code,
24 are not applicable to, and may not be enforced with respect to, prospecting
25 and small-scale dredge mining, provided that small-scale dredge mining may
26 be prohibited on national wild and scenic rivers as designated in section
27 47-1323, Idaho Code.

28 (2) The board, director, any agency of the state of Idaho and any po-
29 litical subdivision of the state of Idaho shall not adopt, enact or promul-
30 gate any rule, regulation, ordinance, order, standard or other policy with
31 the force and effect of law that would in any way regulate, restrict, limit or
32 prohibit prospecting or small-scale dredge mining with the exception of pro-
33 hibitions of small-scale dredge mining on national wild and scenic rivers as
34 designated in section 47-1323, Idaho Code.

35 (3) Notwithstanding the foregoing, this section shall not be construed
36 or interpreted to prohibit or restrict the board, director, any agency of the
37 state of Idaho and any political subdivision of the state of Idaho from en-
38 forcing or implementing any provisions of law or regulations of the United
39 States relating to prospecting or small-scale dredge mining.

40 SECTION 4. That Chapter 17, Title 42, Idaho Code, be, and the same is
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
42 ignated as Section 42-1734J, Idaho Code, and to read as follows:

43 42-1734J. INAPPLICABILITY TO PROSPECTING AND SMALL-SCALE DREDGE
44 MINING. (1) All state comprehensive water plans, and related rules, regula-
45 tions, ordinances, orders, standards or other policies adopted pursuant to
46 sections 42-1734A through 42-1734I, Idaho Code, shall allow for prospecting

1 and small-scale dredge mining without regulation, restriction, limitation
2 or prohibition.

3 (2) Any regulations, restrictions, limitations or prohibitions cur-
4 rently in effect through any action pursuant to sections 42-1734A through
5 42-1734I, Idaho Code, with respect to prospecting and small-scale dredge
6 mining are hereby declared invalid, void and unenforceable.

7 (3) Notwithstanding the foregoing, this section shall not be construed
8 or interpreted to prohibit or restrict a state comprehensive water plans, or
9 related rules, regulations, ordinances, orders, standards or other policies
10 adopted pursuant to sections 42-1734A through 42-1734I, Idaho Code, from en-
11 forcing or implementing any provisions of law or regulations of the United
12 States relating to prospecting or small-scale dredge mining.

13 (4) For purposes of this section, "prospecting" and "small-scale
14 dredge mining" has the meaning set forth in section 42-3802, Idaho Code.

15 SECTION 5. That Section 42-3802, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 42-3802. DEFINITIONS. Whenever used in this act, the term:

18 (a1) "Person" means any individual, partnership, company, corpo-
19 ration, municipality, county, state or federal agency, or other entity
20 proposing to alter a stream channel.

21 (b2) "Alter" means to obstruct, diminish, destroy, alter, modify, re-
22 locate, or change the natural existing shape or direction of water flow of
23 any stream channel within or below the mean high watermark thereof.

24 (c3) "Board" means the Idaho water resource board.

25 (d4) "Stream channel" means a natural watercourse of perceptible ex-
26 tent, with definite bed and banks, which confines and conducts continuously
27 flowing water. Ditches, canals, laterals and drains that are constructed
28 and used for irrigation or drainage purposes are not stream channels.

29 (e5) "Department" means the Idaho department of water resources.

30 (f6) "Director" means the director of the Idaho department of water re-
31 sources.

32 (g7) "Plans" means maps, sketches, engineering drawings, word descrip-
33 tions and specifications sufficient to describe the extent, nature and lo-
34 cation of the proposed stream channel alteration and the proposed method of
35 accomplishing same.

36 (h8) "Mean high watermark" means a water level corresponding to the
37 natural or ordinary high watermark and is the line which the water impresses
38 on the soil by covering it for sufficient periods of time to deprive the soil
39 of its terrestrial vegetation and destroy its value for commonly accepted
40 agricultural purposes.

41 (9) "Prospecting" has the same meaning as defined in section 47-1313,
42 Idaho Code.

43 (10) "Small-scale dredge mining" has the same meaning as defined in sec-
44 tion 47-1313, Idaho Code.

45 SECTION 6. That Chapter 38, Title 42, Idaho Code, be, and the same is
46 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
47 ignated as Section 42-3813, Idaho Code, and to read as follows:

1 42-3813. INAPPLICABILITY TO PROSPECTING AND SMALL-SCALE DREDGE MIN-
2 ING. (1) The provisions of sections 42-3802 through 42-3812, Idaho Code, are
3 not applicable to, and may not be enforced with respect to, prospecting and
4 small-scale dredge mining.

5 (2) The board, department, director, any agency of the state of Idaho
6 and any political subdivision of the state of Idaho shall not adopt, enact or
7 promulgate any rule, regulation, ordinance, order, standard or other policy
8 with the force and effect of law that would in any way regulate, restrict,
9 limit or prohibit prospecting or small-scale dredge mining.

10 (3) Notwithstanding the foregoing, this section shall not be construed
11 or interpreted to prohibit or restrict the board, director, any agency of the
12 state of Idaho and any political subdivision of the state of Idaho from en-
13 forcing or implementing any provisions of law or regulations of the United
14 States relating to prospecting or small-scale dredge mining.

15 SECTION 7. An emergency existing therefor, which emergency is hereby
16 declared to exist, this act shall be in full force and effect on and after its
17 passage and approval.