

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 372

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO MINERAL RIGHTS IN STATE LANDS; AMENDING SECTION 47-703A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO MOTORIZED EXPLORATION ON STATE LANDS, TO REVISE AND TO PROVIDE BOND AMOUNT PROVISIONS ASSOCIATED WITH CERTAIN RECLAMATION ACTIVITIES, TO REQUIRE OPERATOR COMPLIANCE WITH THE SURFACE MINING ACT, TO REVISE VERBIAGE, TO LIMIT BOND AMOUNTS, TO PROVIDE AN EXCEPTION TO BOND LIMITATION PROVISIONS AND TO PROVIDE CONDITIONS, TO PROVIDE A PROCEDURE FOLLOWING COMPLETION OF ALL RECLAMATION ACTIVITIES, TO PROVIDE FOR RELEASE OF THE BOND, TO PROVIDE FOR EXTENSION OF TIME FOR THE BOARD TO OBTAIN CERTAIN INFORMATION DUE TO WEATHER CONDITIONS, TO PROVIDE FOR APPEAL UPON NOTICE THAT THE BOND WILL NOT BE RELEASED, TO REVISE DEFINITIONS AND TO DEFINE A TERM; AND AMENDING SECTION 47-718, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

SECTION 1. That Section 47-703A, Idaho Code, be, and the same is hereby amended to read as follows:

47-703A. EXPLORATION ON STATE LANDS -- BOND. (1) With the exception of casual exploration as defined in ~~section 47-703A(4)(a), Idaho Code subsection (6)(a) of this section~~, prior to ~~any entry or motorized exploration with motorized equipment~~ on state lands, an operator shall first submit to the director of the department of lands, an exploration and reclamation plan and a bond in such form as prescribed by the board ~~not to exceed seven hundred and fifty dollars (\$750) per affected acre~~. The bond shall be in an amount determined by the board to be the estimated reasonable costs to perform the reclamation activities described in the exploration and reclamation plan in the event of the failure of the operator to complete those activities, plus ten percent (10%) of such costs, and conditioned on the payment of all damages to the land and resources thereon caused by the entry and/or motorized exploration, with motorized equipment; provided, that where applicable, an operator shall also comply with the dredge and placer mining act, chapter 13, title 47, Idaho Code, and the surface mining act, chapter 15, title 47, Idaho Code, where applicable. Written approval by the board is required prior to entry for motorized exploration prior to entry.

(2) Except as provided in this subsection, no bond for exploration reclamation submitted pursuant to this chapter shall exceed two thousand five hundred dollars (\$2,500) for any given acre of affected land. The board may require a bond in excess of two thousand five hundred dollars (\$2,500) for any given acre of affected land only when the following conditions have been met:

(a) The board has determined that such bond is necessary to meet the requirements of this chapter;

1 (b) The board has delivered to the operator, in writing, a notice set-
 2 ting forth the reasons it believes such bond is necessary; and

3 (c) The board has conducted a hearing where the operator is allowed to
 4 give testimony to the board concerning the amount of the proposed bond.
 5 The hearing shall be held under such rules as promulgated by the board.
 6 This requirement for hearing may be waived, in writing, by the operator.
 7 Any hearing that is held shall, at the discretion of the director, ex-
 8 extend the time up to thirty (30) days in which the board must act on a sub-
 9 mitted plan.

10 (3) Weather permitting, the board shall deliver to the operator within
 11 sixty (60) days after the receipt of any exploration and reclamation plan
 12 a notice of rejection or notice of approval of said plan, as the case may
 13 be; provided, however, that if the board fails to deliver a notice of ap-
 14 proval or notice of rejection within said time period, the plan submitted
 15 shall be deemed approved under subsection (1) of this section, and the op-
 16 erator may, upon furnishing a bond to the board that meets the requirements
 17 of subsection (1) of this section, commence and conduct his motorized explo-
 18 ration operations with motorized equipment on the lands covered by such plan
 19 as if a notice of approval of said plan had been received from the board; pro-
 20 vided, however, that if weather conditions prevent the board from inspecting
 21 the lands to obtain information needed to approve or reject a submitted plan,
 22 it may, in writing to the operator, extend the time not to exceed thirty (30)
 23 days after weather conditions permit such inspection. Any notice of rejec-
 24 tion issued by the director of the department of lands or his properly autho-
 25 rized designated officer may be appealed by the operator to the board.

26 (34) The operator shall reclaim the surface damaged by the entry and/or
 27 motorized exploration with motorized equipment to the approximate previous
 28 contour and condition insofar as is reasonably possible.

29 (5) When all reclamation activities described in the exploration and
 30 reclamation plan have been completed, the operator shall notify the board.
 31 Within thirty (30) days after the receipt of such notice, weather permit-
 32 ting, the board shall notify the operator as to whether or not the reclama-
 33 tion activities have been satisfactorily completed. Upon the determina-
 34 tion by the board that the reclamation activities in question have been sat-
 35 isfactorily completed, the board shall release the bond. If weather condi-
 36 tions prevent the board from obtaining information needed to determine if
 37 the reclamation activities have been satisfactorily completed, it may, in
 38 writing to the operator, extend the time not to exceed thirty (30) days after
 39 weather conditions permit such inspection. Any notice issued by the direc-
 40 tor of the department of lands or his properly authorized designated officer
 41 to not release the bond may be appealed by the operator to the board.

42 (46) The following definitions shall apply to this chapter:

43 (a) "Casual exploration" means entry and/or exploration which does not
 44 appreciably disturb or damage the land or resources thereon. Casual
 45 exploration includes, but is not limited to, geochemical and/or geo-
 46 physical exploration techniques, sampling with hand tools, and entry
 47 using wheeled vehicles for transportation to conduct such exploration.
 48 Exploration using suction dredges having an intake diameter of two (2)
 49 inches or less shall be considered casual exploration when operated
 50 on endowment lands in a perennial stream and authorized under. Ex-

1 ploration using suction dredges having an intake diameter of five (5)
 2 inches or less shall be considered casual exploration when operated in
 3 a navigable river. All suction dredging on state lands must follow the
 4 requirements of the stream protection act, chapter 38, title 42, Idaho
 5 Code.

6 (b) "Motorized exploration" means exploration which may appreciably
 7 disturb or damage the land or resources thereon. Motorized exploration
 8 includes, but is not limited to, drilling, trenching, dredging, or
 9 other techniques which employ the use of earth moving or other motorized
 10 equipment, seismic operations using explosives, and sampling with suc-
 11 tion dredges having an intake diameter greater than two (2) inches when
 12 operated on endowment land in a perennial stream, and sampling with suc-
 13 tion dredges having an intake diameter greater than five (5) inches when
 14 operated in a navigable river. When operated in an intermittent stream,
 15 suction dredges shall be considered motorized exploration regardless
 16 of the intake size.

17 (c) "Exploration and reclamation plan" means, for this section only,
 18 a written plan and maps with sufficient detail to accurately describe
 19 all of the activities associated with motorized exploration on state
 20 lands and the activities associated with reclamation. Reclamation ac-
 21 tivities may include, but are not limited to, regrading to resemble the
 22 original contour, plugging drill holes and revegetation. An estimate
 23 of third party reclamation costs, acceptable to the board, shall be in-
 24 cluded in the plan and will be used to determine the bond amount.

25 SECTION 2. That Section 47-718, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 47-718. VIOLATIONS -- REMEDIES -- PENALTIES. (1) In addition to any
 28 other penalties and remedies of this chapter and at law, any person, firm,
 29 or corporation who violates any provisions of this chapter or rules adopted
 30 pursuant thereto, or who fails to perform the duties imposed thereby, or who
 31 violates any determination or order thereunder or any violation of a lease
 32 granted under this chapter, the director of the department of lands may:

33 (a) Proceed by legal action in the name of the state of Idaho to enjoin
 34 the violation, by temporary restraining order, preliminary injunction
 35 and/or permanent injunction.

36 (i) The court, or a judge thereof at chambers, if satisfied from a
 37 verified complaint or by affidavit that the alleged violation has
 38 been or is being committed, may issue a temporary restraining or-
 39 der, without notice or bond, enjoining the defendant, his agents,
 40 employees, contractors and assigns from further violation, or
 41 from conducting exploration or mining on the state lands affected
 42 by the violation.

43 (ii) The verified complaint or affidavit that the alleged viola-
 44 tion has been or is being committed shall constitute prima facie
 45 evidence of great or irreparable injury and/or great waste suffi-
 46 cient to support the temporary restraining order.

47 (iii) The action shall thereafter proceed as in other cases for
 48 injunctions. If at the trial the violation is established, the
 49 court shall enter a decree perpetually enjoining said defendant,

his agents, employees, contractors and assigns from thereafter committing said or similar violations.

(b) Proceed by legal action in the name of the state of Idaho to obtain an order requiring the operator to promptly repair the damage and reclaim the state lands in accordance with the requirements of section 47-703A, Idaho Code, and rules adopted pursuant thereto. If thereafter the court finds that the operator is not promptly complying with such order, the court shall order the operator to immediately pay an amount determined by the department to be the anticipated cost of reasonable repair and reclamation in accordance with section 47-703A(24), Idaho Code, and rules adopted pursuant thereto.

(c) Proceed to forfeit the operator's bond required by section 47-703A(1), 47-704(6) or 47-708, Idaho Code. The board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which includes a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the lessee, an officer of a corporate lessee, or the designated agent of the lessee shall constitute service. The lessee shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the lessee fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the lessee, and the board may proceed to forfeit the bond in the amount necessary to reclaim affected lands and pay for any outstanding royalties and related administrative costs. The director of the department of lands is empowered to issue subpoenas. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall enter an order in accordance with chapter 52, title 67, Idaho Code. Appeal to a district court shall be in accordance with chapter 52, title 67, Idaho Code.

(d) Cancel the lease in accordance with section 47-707, Idaho Code.

(2) In addition to the injunctive remedies of subsection (1) (a) of this section:

(a) Proceed in the first instance by legal action in the name of the state of Idaho to recover from an operator who without bond has conducted or is conducting exploration with heavy equipment on state lands, including lands between the ordinary high watermarks of navigable rivers, the cost of repairing damage to and reclaiming the affected state lands in accordance with section 47-703A(24), Idaho Code, and rules adopted pursuant thereto; or if the bond on file with the department of lands is not sufficient to adequately reclaim the affected state lands, to recover the cost in excess of the bond to reclaim the affected state lands in accordance with section 47-703A(24), Idaho Code, and rules adopted pursuant thereto.

(b) Proceed by legal action in the name of the state of Idaho to recover from an operator who has removed minerals in commercial quantities from state lands, including lands between the ordinary high watermarks of navigable rivers, in violation of the provisions of section 47-717,

1 Idaho Code, damages in the amount of the prevailing royalty rate set by
2 the board of land commissioners for the particular mineral removed plus
3 interest from the date of removal at the legal rate of interest due on
4 money judgments set by the Idaho state treasurer pursuant to section
5 28-22-104, Idaho Code, from the date of removal to judgment.

6 (3) In addition to any other penalties or injunctive remedies of this
7 chapter, any person, firm, or corporation who violates any of the provisions
8 of this chapter or rules adopted pursuant thereto, or who fails to perform
9 the duties imposed by these provisions, or who violates any determination or
10 order promulgated pursuant to the provisions of this chapter, shall be li-
11 able to a civil penalty of not less than one hundred dollars (\$100) nor more
12 than one thousand dollars (\$1,000) for each day during which any provision of
13 this chapter, rule or order has been or is being violated. All sums recovered
14 shall be credited to the general fund.

15 (4) An appeal from a final judgment of the district court shall be taken
16 in the manner provided by law for appeals in civil cases.