

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 64

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO OIL AND GAS; AMENDING SECTION 47-320, IDAHO CODE, TO REVISE PRO-
2 VISIONS REGARDING APPLICATIONS FOR PERMITS TO DRILL OR TREAT A WELL, TO
3 PROVIDE THAT COPIES OF PERMITS TO DRILL OR TREAT A WELL SHALL BE FOR-
4 WARDERD TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES, TO UPDATE
5 THE LIST OF PERMITS THAT REQUIRE FEES AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING SECTION 47-322, IDAHO CODE, TO REVISE PROVISIONS REGARDING
7 INTEGRATION ORDER OPTIONS, TO PROVIDE FOR THE PUBLICATION OF CERTAIN
8 NOTICES IN NEWSPAPERS OF GENERAL CIRCULATION, TO REMOVE CERTAIN PRO-
9 VISIONS REGARDING THE ADEQUACY OF APPLICATIONS AND TO MAKE A TECHNICAL
10 CORRECTION; AND AMENDING SECTION 47-324, IDAHO CODE, TO PROVIDE FOR THE
11 PUBLICATION OF CERTAIN NOTICES IN NEWSPAPERS OF GENERAL CIRCULATION, TO
12 REVISE PROVISIONS REGARDING THE PROCESSING OF CERTAIN APPLICATIONS FOR
13 ORDERS, TO PROVIDE THAT REQUESTS FOR ORDERS MAY BE APPEALED TO THE OIL
14 AND GAS COMMISSION, TO REVISE PROVISIONS REGARDING RESPONSES TO APPEALS
15 BY CERTAIN PERSONS, TO REVISE PROVISIONS REGARDING HEARINGS AND WRITTEN
16 ORDERS, TO REVISE PROVISIONS REGARDING THE EXHAUSTION OF ADMINISTRATIVE
17 REMEDIES, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE TECHNICAL
18 CORRECTIONS.
19

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

21 SECTION 1. That Section 47-320, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 47-320. PERMIT TO DRILL OR TREAT A WELL -- FEES. (1) It shall be un-
24 lawful to commence operations for the drilling or treating of a well for oil
25 or gas without first giving notice to the commission of intention to drill
26 or treat and without first obtaining a permit from the commission under such
27 rules and regulations as may be reasonably prescribed by the commission and
28 by paying to the commission a filing and service fee as provided by this sec-
29 tion.

30 (a) Any request for a permit or authorization as set forth in subsection
31 (3) (a), (b), (c), (d), (e), (f), (g), (m), (n) or (o) of this section
32 shall be made by application to the department of lands, and processed
33 as provided in this section.

34 ~~(b) The department shall notify the applicant within five (5) business~~
35 ~~days of receipt of an application if the application is administra-~~
36 ~~tively incomplete, and in such notice shall identify missing items to be~~
37 ~~supplied in order to make the application complete.~~

38 ~~(c)~~ The department shall notify the director of the department of water
39 resources regarding applications for permits to drill or treat a well.
40 The director of water resources shall have ten (10) business days from
41 the date of receipt of such notification from the department of lands

1 to recommend conditions he believes necessary to protect ~~fresh water~~
2 freshwater supplies.

3 ~~(d)~~ Applications submitted under this section, except those listed in
4 subsection (3) (c) and (g) of this section, shall be posted on the de-
5 partment of lands's website for ten (10) ~~calendar~~ business days for a
6 written comment period.

7 ~~(e)~~ The department of lands shall approve or deny ~~the applications to~~
8 ~~drill or treat a well~~ in subsection (3) (a), (b), (c), (d), (f), (g),
9 (m), (n) and (o) of this section within fifteen (15) business days of re-
10 ceipt of a ~~complete an~~ application. This time frame does not apply to
11 permits submitted with an application processed under section 47-324,
12 Idaho Code.

13 ~~(f)~~ The department's decision made under this section may be appealed
14 to the commission by the applicant pursuant to the procedure in section
15 47-324(d), (e) ~~and (f) and (g),~~ Idaho Code.

16 (2) Upon issuance of any permit to drill or treat a well, a copy thereof,
17 including any limitations, conditions, controls, rules or regulations at-
18 tached thereto for the protection of ~~fresh water~~ freshwater supplies as re-
19 quired in section 47-319, Idaho Code, shall be forwarded to the director of
20 the department of water resources.

21 (3) The department shall collect the following fees, which shall be
22 remitted to the state treasurer for deposit in the oil and gas conservation
23 fund and shall be used exclusively to pay the costs and expenses incurred in
24 connection with the administration and enforcement of this chapter:

- 25 (a) Application for a permit to drill a well\$2,000
- 26 (b) Application to deepen a well 500
- 27 (c) Application to plug and abandon a well, if not completed within one
- 28 (1) year from issuance of permit to drill a well 500
- 29 (d) Application to treat a well, if separate from an application for a
- 30 permit to drill a well1,000
- 31 (e) Application to construct a pit, if separate from an application for
- 32 a permit to drill a well1,500
- 33 (f) Application to directionally drill a well, if separate from an ap-
- 34 plication for a permit to drill a well1,000
- 35 (g) Application for a recompletion, modified blow out prevention stan-
- 36 dards, using a vacuum for oil or gas recovery, removing casing, or mul-
- 37 ti-ple zone completion, if separate from an application for a permit to
- 38 drill or plug and abandon a well1,000
- 39 (h) Application for an exceptional well location, if separate from an
- 40 application for a permit to drill a well1,300
- 41 (i) Application to change the size or shape of a spacing unit1,300
- 42 (j) Application to establish or amend a ~~field-wide~~ fieldwide spacing
- 43 order1,300
- 44 (k) Application for an integration order1,300
- 45 (l) Application for a unitization order1,300
- 46 (m) Application for a seismic operations permit covering less than
- 47 twelve (12) miles of a 2D survey 800
- 48 (n) Application for a seismic operations permit covering between
- 49 twelve (12) miles and twenty-four (24) miles of a 2D survey, or up to
- 50 seventy-two (72) square miles of a 3D survey2,000

1 (o) Application for a seismic operations permit covering more than
 2 twenty-four (24) miles of a 2D survey, or more than seventy-two (72)
 3 square miles of a 3D survey.....2,500

4 SECTION 2. That Section 47-322, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 47-322. INTEGRATION OF TRACTS -- ORDERS OF DEPARTMENT. (a) When two
 7 (2) or more separately owned tracts are embraced within a spacing unit, or
 8 when there are separately owned interests in all or a part of a spacing unit,
 9 the interested persons may integrate their tracts or interests for the de-
 10 velopment and operation of the spacing unit. In the absence of voluntary
 11 integration, the department, upon the application of any owner in that pro-
 12 posed spacing unit, shall order integration of all tracts or interests in
 13 the spacing unit for drilling of a well or wells, development and operation
 14 thereof and for the sharing of production therefrom. The department, as a
 15 part of the order establishing a spacing unit or units, may prescribe the
 16 terms and conditions upon which the royalty interests in the unit or units
 17 shall, in the absence of voluntary agreement, be deemed to be integrated
 18 without the necessity of a subsequent separate order integrating the royalty
 19 interests. Each such integration order shall be upon terms and conditions
 20 that are just and reasonable.

21 (b) All operations, including, but not limited to, the commencement,
 22 drilling, or operation of a well upon any portion of a spacing unit for which
 23 an integration order has been entered, shall be deemed for all purposes the
 24 conduct of such operations upon each separately owned tract in the spacing
 25 unit by the several owners thereof. That portion of the production allocated
 26 to a separately owned tract included in a spacing unit shall, when produced,
 27 be deemed, for all purposes, to have been actually produced from such tract
 28 by a well drilled thereon.

29 (c) Each such integration order shall authorize the drilling, equip-
 30 ping, and operation, or operation, of a well on the spacing unit; shall
 31 designate an operator for the integrated unit; shall prescribe the time and
 32 manner in which all the owners in the spacing unit may elect to participate
 33 therein; and shall make provision for the payment by all those who elect to
 34 participate therein, of the reasonable actual cost thereof, plus a reason-
 35 able charge for supervision and interest. Each such integration order shall
 36 provide for the ~~five~~ four (4) following options:

37 (i) Working interest owner. An owner who elects to participate as a
 38 working interest owner shall pay the proportionate share of the actual
 39 costs of drilling and operating a well allocated to the owner's interest
 40 in the spacing unit. Working interest owners who share in the costs of
 41 drilling and operating the well are entitled to their respective shares
 42 of the production of the well. The operator of the integrated spacing
 43 unit and working interest owners shall enter into a joint operating
 44 agreement approved by the department in the integration order.

45 (ii) Nonconsenting working interest owner. An owner who refuses to
 46 share in the risk and actual costs of drilling and operating the well,
 47 but desires to participate as a working interest owner, is a non-
 48 consenting working interest owner. Nonconsenting working interest
 49 owners are entitled to their respective shares of the production of the

1 well, not to exceed one-eighth (1/8) royalty, until the operator of
2 the integrated spacing unit has recovered up to three hundred percent
3 (300%) of the nonconsenting working interest owner's share of the cost
4 of drilling and operating the well under the terms set forth in the
5 integration order. After all the costs have been recovered by the con-
6 senting owners in the spacing unit, the nonconsenting owner is entitled
7 to his respective shares of the production of the well, and shall be
8 liable for his pro rata share of costs as if the nonconsenting owner had
9 originally agreed to pay the costs of drilling and operating the well.
10 The operator of the integrated spacing unit and nonconsenting working
11 interest owners shall enter into a joint operating agreement approved
12 by the department in the integration order.

13 (iii) Leased. An owner may enter into a lease with the operator of the
14 integrated spacing unit under the terms and conditions in the inte-
15 gration order. The owner shall receive no less than one-eighth (1/8)
16 royalty. The operator of an integrated spacing unit shall pay a leas-
17 ing owner the ~~same~~ highest bonus payment per acre as that the operator
18 originally paid to ~~other~~ another owners in the spacing unit prior to the
19 issuance filing of the integration order application.

20 (iv) Objector. ~~If an owner objects to any participation or involvement~~
21 ~~of any kind in the unit, such owner may elect to be an objector. An ob-~~
22 ~~jecting owner's interest will be deemed leased under the terms and con-~~
23 ~~ditions in the integration order. The owner shall receive one-eighth~~
24 ~~(1/8) royalty. Provided however, an objecting owner may elect to have~~
25 ~~any funds to which he would otherwise be entitled transferred to the~~
26 ~~STEM action center.~~

27 ~~(v) Deemed leased. If an owner fails to make an election within the~~
28 ~~election period set forth in the integration order, such owner's inter-~~
29 ~~est will be deemed leased under the terms and conditions in the integra-~~
30 ~~tion order. The owner shall receive one-eighth (1/8) royalty. The op-~~
31 ~~erator of an integrated spacing unit shall pay a leasing owner the same~~
32 ~~highest~~ bonus payment per acre as that the operator originally paid to
33 ~~other~~ another owners in the spacing unit prior to the issuance filing of
34 the integration order application.

35 ~~If one or more of the owners shall drill, equip, and operate, or operate, or~~
36 ~~pay the costs of drilling, equipping, and operating, or operating, a well~~
37 ~~for the benefit of another person as provided for in an order of integration,~~
38 ~~then such owners or owner shall be entitled to the share of production from~~
39 ~~the spacing unit accruing to the interest of such other person, exclusive of~~
40 ~~a royalty not to exceed one-eighth (1/8) of the production, until the market~~
41 ~~value of such other person's share of the production, exclusive of such roy-~~
42 ~~alty, equals the sums payable by or charged to the interest of such other per-~~
43 ~~son. If there is a dispute as to the costs of drilling, equipping, or oper-~~
44 ~~ating a well, the department shall determine such costs. In instances where~~
45 ~~a well is completed prior to the integration of interests in a spacing unit,~~
46 ~~the sharing of production shall be from the effective date of the integra-~~
47 ~~tion, except that, in calculating costs, credit shall be given for the value~~
48 ~~of the owner's share of any prior production from the well.~~

1 (d) An application for an order integrating the tracts or interests in a
2 spacing unit shall substantially contain and be limited to only the follow-
3 ing:

4 (i) The applicant's name and address;

5 (ii) A description of the spacing unit to be integrated;

6 (iii) A geologic statement concerning the likely presence of hydrocar-
7 bons;

8 (iv) A statement that the proposed drill site is leased;

9 (v) A statement of the proposed operations for the spacing unit, in-
10 cluding the name and address of the proposed operator;

11 (vi) A proposed joint operating agreement and a proposed lease form;

12 (vii) A list of all uncommitted owners in the spacing unit to be inte-
13 grated under the application, including names and addresses;

14 (viii) An affidavit indicating that at least fifty-five percent (55%)
15 of the mineral interest acres in the spacing unit support the inte-
16 gration application by leasing or participating as a working interest
17 owner;

18 (ix) An affidavit stating the highest bonus payment paid to a leased
19 owner in the spacing unit being integrated prior to filing the integra-
20 tion application; and

21 (x) A resume of efforts documenting the applicant's good faith efforts
22 on at least two (2) separate occasions within a period of time no less
23 than sixty (60) days to inform uncommitted owners of the applicant's in-
24 tention to develop the mineral resources in the proposed spacing unit
25 and desire to reach an agreement with uncommitted owners in the proposed
26 spacing unit. Provided however, if any owner requests no further con-
27 tact from the applicant, the applicant will be relieved of further obli-
28 gation to attempt contact to reach agreement with that owner. At least
29 one (1) contact must be by certified U.S. mail sent to an owner's last
30 known address. If an owner is unknown or cannot be found, the applicant
31 must publish a legal notice of its intention to develop and request that
32 the owner contact the applicant in a newspaper of general circulation
33 in the county where the proposed spacing unit is located. The resume
34 of efforts should indicate the applicant has made reasonable efforts to
35 reach an agreement with all uncommitted owners in the proposed spacing
36 unit. Reasonable efforts are met by complying with this subsection.

37 ~~An application shall not be required to be in any particular format. An ap-~~
38 ~~plication shall not be denied or refused for incompleteness if it complies~~
39 ~~substantially with the foregoing informational requirements.~~

40 (e) At the time the integration application is filed with the depart-
41 ment, the applicant shall certify that, for uncommitted owners who are un-
42 known or cannot be found, a notice of the application was published in a news-
43 paper in the county where the proposed spacing unit is located. Each pub-
44 lished notice shall include notice to the affected uncommitted owner of the
45 opportunity to respond to the application, and the deadline by which a re-
46 sponse must be filed with the department.

47 (f) The information supplied by the applicant pursuant to subsection
48 (d) (vii) of this section and the names and addresses of the uncommitted own-
49 ers pursuant to subsection (d) (x) of this section shall be deemed trade se-
50 crets and kept confidential by the department until the well is producing

1 in the proposed spacing unit, and thereafter shall be subject to disclosure
 2 pursuant to chapter 1, title 74, Idaho Code, provided that the information
 3 regarding an uncommitted owner shall be subject to disclosure to that owner.

4 (g) An application for integration shall be subject to the procedures
 5 set forth in section 47-324, Idaho Code.

6 SECTION 3. That Section 47-324, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 47-324. RULES FOR COMMISSION -- ADMINISTRATIVE PROCEDURES. (a) The
 9 commission shall have authority to hear rulemaking proceedings, complaints
 10 filed with it pursuant to this chapter and appeals from the director's deci-
 11 sion on an application filed pursuant to this chapter. The commission may
 12 prescribe rules governing the procedure before it, subject to the provisions
 13 of the administrative procedure act, chapter 52, title 67, Idaho Code.

14 (b) In all cases where ~~a~~ a complaint is made by the commission or any
 15 person that any provision of this act~~7~~, or any rule or order of the commis-
 16 sion is being violated, notice of any hearing to be held on such application
 17 or complaint, the commission shall serve notice on the interested parties by
 18 certified mail, return receipt requested, or in the same manner as is pro-
 19 vided in the rules of civil procedure for the service of summons in civil ac-
 20 tions. Where the interested party is unknown or cannot be located, the com-
 21 mission shall serve notice by publishing at least one (1) notice of the hear-
 22 ing to such person in a newspaper of general circulation in the county where
 23 the affected tract is located. Such notice must be sent, delivered or pub-
 24 lished, as appropriate, at least five (5) business days before the date of
 25 the hearing.

26 (c) Except as provided in section 47-320(1)(a), Idaho Code, and sub-
 27 section (b) of this section, any request for an order related to oil and gas
 28 activities within the commission's jurisdiction, other than a civil penalty
 29 proceeding pursuant to section 47-325, Idaho Code, or other enforcement ac-
 30 tion by the department of lands or the commission, shall be made by applica-
 31 tion to the department of lands and processed as provided in this section.

32 (i) The department shall notify the applicant within five (5) business
 33 days of receipt of an application if ~~the application is administra-~~
 34 ~~tively incomplete, and in such notice shall identify the missing item~~
 35 ~~or items to be supplied in order to make the application complete~~
 36 additional information is required for the department to evaluate the
 37 application.

38 (ii) ~~A decision on the merits of the application shall be made by the di-~~
 39 ~~rector. The director's decision shall not be subject to any motion for~~
 40 ~~reconsideration or further review, except for appeal to the commission~~
 41 ~~provided in subsection (d) of this section.~~

42 ~~(iii)~~ For applications involving an order regarding unit operations
 43 or integration of a drilling unit, the ~~department~~ applicant shall send
 44 a copy of the application and supporting documents to all known and
 45 located uncommitted owners, to all working interest owners within the
 46 unit, and to the respective city or county where the proposed unit
 47 is located. The mailing shall be sent by certified mail within seven
 48 (7) calendar days of filing the application and include notice of the
 49 hearing date on which the director will consider the application. The

1 application ~~shall~~ may be redacted pursuant to section 47-322(f), Idaho
2 Code, ~~and sent by certified mail. Upon request, the applicant shall~~
3 ~~reimburse the department for actual mailing costs incurred under this~~
4 ~~subsection.~~ For any uncommitted owners and working interest owners who
5 cannot be located, an applicant shall publish notice of any application
6 for an order, notice of hearing and response deadline once in a newspa-
7 per of general circulation in the county in which the affected property
8 is located, ~~and request the department publish notice on its website,~~
9 within seven (7) calendar days of filing of the ~~complete~~ application.
10 Only an uncommitted owner in the affected unit may file an objection or
11 other response to the application, and the uncommitted owner shall file
12 ~~seven (7)~~ at least fourteen (14) calendar days before the hearing date
13 provided in the notice.

14 ~~(iviii)~~ For applications not involving paragraph ~~(iiiii)~~ of this sub-
15 section, ~~including exceptional locations,~~ the department and any un-
16 committed owner within the area defined in the application may file an
17 objections or other responses to the application, ~~and the uncommitted~~
18 ~~owner shall file seven (7)~~ at least fourteen (14) calendar days before
19 the hearing date provided in the notice.

20 (iv) The director shall hear the application and make a decision on the
21 application's merits. The director shall set regular hearing dates.
22 Applications shall be filed at least forty-five (45) calendar days be-
23 fore a desired hearing date. Untimely applications shall be continued
24 until the next hearing. The director may for good cause continue any
25 hearing. The director may appoint a hearing officer, who shall have the
26 power and authority to conduct hearings. Discovery is not permitted.
27 The department may appear and testify at the hearing. When applications
28 are uncontested, the applicant may request, and the director may allow,
29 approval without a hearing based on review of the merits of a verified
30 application and the supporting exhibits.

31 ~~(v) The director shall hear an application within thirty (30) calen-~~
32 ~~dar days of the filing of a complete application. Discovery is not per-~~
33 ~~mitted.~~ The director shall issue a written decision on any such appli-
34 cation within thirty (30) calendar days of the hearing. The director's
35 decision shall not be subject to any motion for reconsideration or fur-
36 ther review, except for appeal to the commission provided in subsection
37 (d) of this section.

38 (d) The director's decision on an application or a request for an or-
39 der may be appealed to the commission by the applicant or any owner who filed
40 an objection or other response to the application within the time required.
41 An appeal must be filed with the director within fourteen (14) calendar days
42 of the date of issuance of the director's written decision. The date of is-
43 suance shall be three (3) calendar days after the director deposits the de-
44 cision in the U.S. mail, or the date on which he remits a decision electron-
45 ically. Such appeal shall include the reasons and authority for the appeal,
46 and shall identify any facts in the record supporting the appeal. Any per-
47 son appealing shall serve a copy of the appeal materials on any other person
48 who participated in the proceedings below, by certified mail, or by personal
49 service. Any person who participated in the proceeding below may file a re-
50 sponse to the appeal within five (5) calendar business days of service of a

1 copy of the appeal materials. The appellant shall provide the director with
2 proof of service of the appeal materials on other persons as required in this
3 section. The commission shall make a decision based on the record below as
4 set forth in the written submittals of only the appellant and any other par-
5 ticipating qualified person, the director's decision, and any oral argument
6 taken by the commission at an appeal hearing.

7 (e) Appeals to the commission shall be heard at the next regularly
8 scheduled commission hearing, or at a special meeting of the commission if
9 determined by the commission. In no case will a hearing be later than thirty
10 (30) calendar days after the filing of an appeal. The commission may take
11 argument from, but not new testimony of, the appellant and other qualified
12 participating persons at the hearing. The commission shall make a decision
13 on the appeal at the hearing and ~~direct the department to~~ issue a written or-
14 der within five (5) business days of the hearing. The prevailing party shall
15 draft a proposed written order and submit it ~~to the department~~ within two (2)
16 business days. The final order of the commission shall not be subject to any
17 motion for reconsideration.

18 (f) If no appeal is filed with the commission within the required time,
19 the decision of the director shall become the final order.

20 (g) Judicial review of actions taken by the commission shall be gov-
21 erned by the provisions of chapter 52, title 67, Idaho Code. ~~Only a person~~
22 ~~qualified under subsection (d) of this section who has completed the appeal~~
23 ~~procedures set forth in this section shall be considered to have exhausted~~
24 ~~administrative remedies as required in section 67-5271, Idaho Code.~~

25 (h) For an application or request for an order submitted under subsec-
26 tion (c) of this section, only a person qualified under subsection (d) of
27 this section who has completed the appeal procedures set forth in this sec-
28 tion shall be considered to have exhausted administrative remedies as re-
29 quired in section 67-5271, Idaho Code.

30 (i) Each order shall include a reasoned statement in support of the
31 decision, including a concise statement of facts supporting any findings,
32 a statement of available procedures and time limits for appeals. Findings
33 must be based exclusively on materials in the record. The applicant and any
34 participating qualified person shall be served with a copy of the order. The
35 order shall include or be accompanied by a certificate of service.

36 (±j) Every application shall be signed by the applicant or his repre-
37 sentative, and his address shall be stated thereon. The signature of the ap-
38 plicant or his representative constitutes a certificate by him that he has
39 read the application and that to the best of his knowledge, information and
40 belief there is good ground to support the same. Each application shall be
41 of such form and content and accompanied by the number of copies required by
42 rule of the commission. Each application shall be accompanied by a fee as es-
43 tablished in statute or rule.