

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 378

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO OIL AND GAS; AMENDING SECTION 47-318, IDAHO CODE, TO REVISE
2 DEFINITIONS, TO DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMEND-
3 ING SECTION 47-319, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE
4 AUTHORITY OF THE OIL AND GAS CONSERVATION COMMISSION, TO REVISE PRO-
5 VISIONS RELATING TO THE CONFIDENTIALITY OF CERTAIN EXPLORATORY AND
6 WILDCAT WELLS, TO PROVIDE FOR THE USE OF WELL LOGS AND DIRECTIONAL
7 SURVEYS IN ACTIONS TO ENFORCE SPECIFIED PROVISIONS, TO CLARIFY THAT
8 CERTAIN SPECIFIC AUTHORITY OF THE COMMISSION SHALL NOT LIMIT ITS GEN-
9 ERAL AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
10 47-325, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE ISSUANCE OF
11 ATTACHMENTS BY DISTRICT COURTS, TO PROVIDE FOR THE ASSESSMENT OF CIVIL
12 PENALTIES BY THE COMMISSION, TO PROVIDE THAT THE COMMISSION MAY BRING
13 CIVIL ACTIONS FOR CERTAIN VIOLATIONS AND THREATS TO VIOLATE, TO PROVIDE
14 FOR CERTAIN DAMAGES, TO REMOVE PROVISIONS RELATING TO THE SUBSTITUTION
15 OF THE COMMISSION FOR PERSONS WHO HAVE BROUGHT SUITS, TO PROVIDE THAT
16 CERTAIN CONDUCT SHALL CONSTITUTE A MISDEMEANOR, TO PROVIDE FOR PENAL-
17 TIES, TO PROVIDE FOR THE DISCRETION OF THE COMMISSION RELATING TO MINOR
18 VIOLATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-326,
19 IDAHO CODE, TO REMOVE PROVISIONS RELATING TO ACTIONS AGAINST THE COM-
20 MISSION AND APPEALS, TO REVISE PENALTY PROVISIONS RELATING TO THE
21 FALSIFICATION OF CERTAIN RECORDS AND TO CLARIFY APPLICABILITY RELATING
22 TO LIMITATIONS ASSOCIATED WITH THE COMMENCEMENT OF CERTAIN ACTIONS; AND
23 AMENDING SECTION 47-328, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
24 THE CONSTRUCTION OF SPECIFIED LAW AND TO MAKE A TECHNICAL CORRECTION.
25

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

27 SECTION 1. That Section 47-318, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 47-318. DEFINITIONS. Unless the context otherwise requires, the terms
30 defined in this section shall have the following meaning when used in this
31 act:

32 (a) ~~The word "Commission" shall mean~~ the oil and gas conservation com-
33 mission.

34 (b) ~~"Waste" as applied to oil means and includes underground waste;~~
35 ~~inefficient, excessive or improper use or dissipation of reservoir energy;~~
36 ~~including gas energy and water drive; surface waste, open-pit storage,~~
37 ~~and waste incident to the production of oil in excess of the producer's~~
38 ~~above-ground storage facilities and lease and contractual requirements,~~
39 ~~but excluding storage (other than open-pit storage) reasonably necessary~~
40 ~~for building up and maintaining crude stocks and products thereof for con-~~
41 ~~sumption, use and sale; the locating, drilling, equipping, operating, or~~
42 ~~producing of any well in a manner that causes, or tends to cause, reduction of~~

1 the quantity of oil or gas ultimately recoverable from a pool under prudent
2 and proper operations "Condensate" means the liquid produced by the conden-
3 sation of a vapor or gas either after it leaves the reservoir or while still
4 in the reservoir.

5 (c) "Waste" as applied to gas shall include the escape, blowing or
6 releasing, directly or indirectly, into the open air of gas from wells pro-
7 ductive of gas only, or gas in an excessive or unreasonable amount from wells
8 producing oil or both oil and gas; and the production of gas in quantities or
9 in such manner as will unreasonably reduce reservoir pressure or unreason-
10 ably diminish the quantity of oil or gas that might ultimately be produced;
11 excepting gas that is reasonably necessary in the drilling, completing
12 and testing of wells and in furnishing power for the production of wells
13 "Correlative rights" means the owners' or producers' just and equitable
14 share in a pool.

15 (d) "Person" means any natural person, corporation, association, part-
16 nership, receiver, trustee, executor, administrator, guardian, fiduciary,
17 or other representatives of any kind, and includes any government or any po-
18 litical subdivision of any agency thereof. The masculine gender, in refer-
19 ring to a person, includes the feminine and the neuter genders "Field" means
20 the general area underlaid by one (1) or more pools.

21 (e) "Oil" means crude petroleum oil and all other hydrocarbons, re-
22 gardless of gravity, that are produced in liquid form by ordinary production
23 methods, but does not include liquid hydrocarbons that were originally in a
24 gaseous phase in the reservoir "Gas" means any petroleum hydrocarbon exist-
25 ing in the gaseous phase.

26 (f) "Gas" means all natural gas and all other fluid hydrocarbons not
27 hereinabove defined as oil, including condensate because it originally was
28 in the gaseous phase in the reservoir "Market value" means the price at the
29 time of sale, in cash or on terms reasonably equivalent to cash, for which
30 the oil or gas should bring in a competitive and open market under all con-
31 ditions requisite to a fair sale, the buyer and seller each acting prudently
32 and knowledgeably, and assuming the price is not affected by undue stimulus
33 from either party. The costs of marketing, transporting and processing oil
34 and gas produced shall be borne entirely by the producer, and such cost shall
35 not reduce the producer's tax directly or indirectly.

36 (g) "Condensate" means liquid hydrocarbons that were originally in the
37 gaseous phase in the reservoir "Oil" or "crude oil" means petroleum oil and
38 other hydrocarbons, regardless of gravity, that are produced at the well in
39 liquid form by ordinary production methods and are not the result of gas con-
40 densation before or after it leaves the reservoir.

41 (h) "Pool" means an underground reservoir containing a common accumu-
42 lation of oil or gas or both; each zone of a structure that is completely sep-
43 arated from any other zone in the same structure is a pool "Oil and gas" means
44 oil or gas or both.

45 (i) "Field" means the general area underlaid by one or more pools
46 "Owner" means the person who has the right to drill into and produce from a
47 pool and to appropriate the oil or gas that he produces therefrom, either for
48 himself or for himself and others.

49 (j) "Owner" means the person who has the right to drill into and produce
50 from a pool and to appropriate the oil or gas that he produces therefrom, ei-

1 ~~ther for himself or for himself and others~~ "Person" means any natural person,
 2 corporation, association, partnership, receiver, trustee, executor, admin-
 3 ~~istrator, guardian, fiduciary or other representatives of any kind, and in-~~
 4 ~~cludes any government or any political subdivision of any agency thereof.~~
 5 ~~The masculine gender, in referring to a person, includes the feminine and the~~
 6 ~~neuter genders.~~

7 (k) ~~"Producer" means the owner of a well or wells capable of producing~~
 8 ~~oil or gas or both~~ "Pool" means an underground reservoir containing a com-
 9 mon accumulation of oil or gas or both; each zone of a structure that is com-
 10 pletely separated from any other zone in the same structure is a pool.

11 (l) ~~"Just and equitable share of the production" means, as to each per-~~
 12 ~~son, that part of the production from the pool that is substantially in the~~
 13 ~~proportion that the amount of recoverable oil or gas or both in the developed~~
 14 ~~area of his tract or tracts in the pool bears to the recoverable oil or gas~~
 15 ~~or both in the total of the developed areas in the pool~~ "Producer" means the
 16 owner of a well or wells capable of producing oil or gas or both.

17 (m) ~~"Developed area" means a spacing unit on which a well has been com-~~
 18 ~~pleted that is capable of producing oil or gas, or the acreage that is oth-~~
 19 ~~erwise attributed to a well by the commission~~ "Reservoir" means a subsurface
 20 volume of porous and permeable rock in which oil or gas has accumulated.

21 (n) ~~"Correlative rights" means the owners' or producers' just and eq-~~
 22 ~~uitable share in a pool~~ "Waste" as applied to gas shall include the escape,
 23 blowing or releasing, directly or indirectly, into the open air of gas from
 24 wells productive of gas only, or gas in an excessive or unreasonable amount
 25 from wells producing oil or both oil and gas; and the production of gas in
 26 quantities or in such manner as will unreasonably reduce reservoir pressure
 27 or unreasonably diminish the quantity of oil or gas that might ultimately be
 28 produced; excepting gas that is reasonably necessary in the drilling, com-
 29 pleting and testing of wells and in furnishing power for the production of
 30 wells.

31 (o) ~~"Oil and gas" means oil or gas or both~~ "Waste" as applied to oil
 32 means and includes underground waste; inefficient, excessive or improper
 33 use or dissipation of reservoir energy, including gas energy and water
 34 drive; surface waste, open-pit storage and waste incident to the production
 35 of oil in excess of the producer's above-ground storage facilities and lease
 36 and contractual requirements, but excluding storage (other than open-pit
 37 storage) reasonably necessary for building up and maintaining crude stocks
 38 and products thereof for consumption, use and sale; the locating, drilling,
 39 equipping, operating or producing of any well in a manner that causes, or
 40 tends to cause, reduction of the quantity of oil or gas ultimately recover-
 41 able from a pool under prudent and proper operations.

42 (p) The use of the plural includes the singular, and the use of the sin-
 43 gular includes the plural.

44 SECTION 2. That Section 47-319, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 47-319. LAND SUBJECT TO ACT -- AUTHORITY OF COMMISSION. (a) This act
 47 shall apply to all lands located in the state, however owned, including any
 48 lands owned or administered by any government or any agency or political sub-

1 division thereof, over which the state under its police power, has jurisdic-
2 tion.

3 (b) The commission is authorized and it is its duty to prevent waste
4 of oil and gas and to protect correlative rights, and otherwise to adminis-
5 ter and enforce this act. It has jurisdiction over all persons and property
6 necessary for that purpose. In the event of a conflict, the duty to prevent
7 waste is paramount.

8 (c) The commission is authorized to make such investigations as it
9 deems proper to determine whether action by the commission in discharging
10 its duties is necessary.

11 (d) Without limiting its general authority, the commission shall have
12 the specific authority to require:

13 ~~To require:~~

14 (1) ~~Identification of ownership of oil or gas wells, producing leases,~~
15 ~~tanks, plants, structures, and facilities for the transportation or re-~~
16 ~~fining of oil and gas;~~

17 (2) ~~The taking and preservation of samples and the making and filing~~
18 ~~with the commission of true and correct copies of well logs and direc-~~
19 ~~tional surveys both in form and content as prescribed by the commission;~~
20 ~~provided, however, that logs of exploratory or wildcat wells marked~~
21 ~~confidential shall be subject to disclosure according to chapter 3,~~
22 ~~title 9, Idaho Code, and shall be kept confidential by the commission~~
23 ~~for a period of one (1) year from the date of filing the log with the~~
24 ~~commission. And provided that the commission may use any well logs and~~
25 ~~directional surveys in any action to enforce the provisions of this~~
26 ~~chapter or any order or rule adopted hereunder. And provided further,~~
27 ~~that after four (4) months from the effective date of this act, the com-~~
28 ~~mission may require the owner of a well theretofore drilled for oil or~~
29 ~~gas to file within four (4) months of such order a true and correct copy~~
30 ~~of the log or logs of such well;~~

31 (3) ~~The drilling, casing, operation and plugging of wells in such man-~~
32 ~~ner as to prevent (a) the escape of oil or gas out of one (1) pool into~~
33 ~~another, (b) the detrimental intrusion of water into an oil or gas pool~~
34 ~~that is avoidable by efficient operations, (c) the pollution of fresh~~
35 ~~water supplies by oil, gas, or salt water, (d) blow-outs, cavings, seep-~~
36 ~~ages, and fires, and (e) waste as hereinabove defined;~~

37 (4) ~~The taking of tests of oil or gas wells;~~

38 (5) ~~The furnishing of a reasonable performance bond with good and suf-~~
39 ~~ficient surety, conditioned upon the performance of the duty to comply~~
40 ~~with the requirements of this law and the regulations of the commission~~
41 ~~with respect to the drilling, maintaining, operating and plugging of~~
42 ~~each well drilled for oil or gas;~~

43 (6) ~~That the production from wells be separated into gaseous and liq-~~
44 ~~uid hydrocarbons, and that each be measured by means and upon standards~~
45 ~~that may be prescribed by the commission;~~

46 (7) ~~That wells not be operated with inefficient gas-oil or water-oil~~
47 ~~ratios, and to fix these ratios, and to limit production from wells with~~
48 ~~inefficient gas-oil or water-oil ratios;~~

49 (8) ~~Metering or other measuring of oil, gas, or product;~~

1 (9) ~~That~~ every person who produces oil or gas in the state keep and
 2 maintain for a period of five (5) years complete and accurate records
 3 of the quantities thereof, which records, or certified copies thereof,
 4 shall be available for examination by the commission or its agents at
 5 all reasonable times within said period, and that every such person file
 6 with the commission such reasonable reports as it may prescribe with re-
 7 spect to such oil or gas production;

8 (10) ~~The~~ filing of reports of plats with the commission that it may
 9 prescribe.

10 (e) Without limiting its general authority, the commission shall have
 11 the specific authority to regulate:

12 (1) ~~The~~ drilling and plugging of wells and all other operations for the
 13 production of oil or gas;

14 (2) ~~The~~ shooting and treatment of wells;

15 (3) ~~The~~ spacing or locating of wells;

16 (4) ~~Operations~~ to increase ultimate recovery, such as cycling of gas,
 17 the maintenance of pressure, and the introduction of gas, water, or
 18 other substances into a producing formation; and

19 (5) ~~The~~ disposal of salt water and oil-field wastes. To classify and
 20 reclassify pools as oil, gas, or condensate pools, or wells as oil, gas,
 21 or condensate wells. To make and enforce rules, regulations, and orders
 22 reasonably necessary to prevent waste, protect correlative rights, to
 23 govern the practice and procedure before the commission, and otherwise
 24 to administer this act.

25 SECTION 3. That Section 47-325, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 47-325. POWERS OF COMMISSION -- WITNESSES -- PENALTY. (a) The commis-
 28 sion shall have the power to summon witnesses, to administer oaths, and to
 29 require the production of records, books, and documents for examination at
 30 any hearing or investigation conducted by it.

31 (b) In case of failure or refusal on the part of any person to comply
 32 with a subpoena issued by the commission, or in case of refusal of any witness
 33 to testify as to any matter regarding which he may be interrogated, any dis-
 34 trict court in the state, upon the application of the commission, may ~~in term~~
 35 ~~time or vacation~~ issue an attachment for such person and compel him to com-
 36 ply with such subpoena, and to attend before the commission and produce such
 37 records, books, and documents for examination, and to give his testimony.
 38 Such court shall have the power to punish for contempt as in the case of dis-
 39 obedience to a like subpoena issued by the court, or for refusal to testify
 40 therein.

41 (c) Any person who violates or fails to comply with any of the provi-
 42 sions of this chapter or any rules promulgated hereunder may be assessed a
 43 civil penalty by the commission or its duly authorized agent of not more than
 44 ten thousand dollars (\$10,000) for each violation and shall be liable for
 45 reasonable attorney's fees. Each day the violation continues shall consti-
 46 tute a separate and additional violation, punishable by separate and addi-
 47 tional civil penalties in like amount or other civil penalties as determined
 48 by the commission.

1 (1) Assessment of a civil penalty may be made in conjunction with any
2 other commission administrative action.

3 (2) No civil penalty may be assessed unless the person charged was given
4 notice and opportunity for a hearing pursuant to chapter 52, title 67,
5 Idaho Code.

6 (3) If the commission is unable to collect such penalty or if any person
7 fails to pay all or a set portion of the civil penalty as determined by
8 the commission, it may recover such amount by action in the appropriate
9 district court.

10 (4) Any person against whom the commission has assessed a civil penalty
11 under the provisions of this section may, within twenty-eight (28) days
12 of the final action by the agency making the assessment, appeal the as-
13 essment to the district court of the county in which the violation is
14 alleged by the commission to have occurred pursuant to chapter 52, title
15 67, Idaho Code.

16 (5) All civil penalties collected pursuant to this section shall be re-
17 mitted to the oil and gas conservation fund.

18 (d) Whenever it shall appear that any person is violating or threaten-
19 ing to violate any provision of this act or any rule, regulation, or order
20 made hereunder, the commission shall may bring suit a civil action in the
21 name of the state against such person in the district court in the county
22 of the residence of the defendant, or in the county of the residence of any
23 defendant, if there be more than one (1) defendant, or in the county where the
24 violation is alleged to have occurred, to restrain such person from contin-
25 uing such violation or from carrying out the threat of violation. In such
26 suit, the court may grant injunctions, prohibitory and mandatory, includ-
27 ing temporary restraining orders and temporary injunctions. In such suit,
28 the commission may seek damages to recover costs caused by such violation
29 including, but not limited to, costs of well control, spill response and
30 cleanup, restoration of fresh waters, well plugging and abandonment, and
31 reclamation of surface disturbance.

32 (de) Nothing in this act, and no suit by or against the commission, and
33 no violation charged or asserted against any person under any provisions of
34 this act, or any rule, regulation or order issued hereunder, shall impair or
35 abridge or delay any cause of action for damages which any person may have or
36 assert against any person violating any provision of this act, or any rule,
37 regulation, or order issued thereunder. Any person so damaged by the viola-
38 tion may sue for and recover such damages as he otherwise may be entitled to
39 receive. In the event the commission shall fail to bring suit to enjoin any
40 actual or threatened violation of this act, or of any rule, regulation or or-
41 der made hereunder, then any person or party in interest adversely affected
42 and who has, ten (10) days or more prior thereto, notified the commission in
43 writing of such violation or threat thereof and has requested the commis-
44 sion to sue, may, to prevent any or further violation, bring suit for that
45 purpose in the district court of any county in which the commission could
46 have brought suit. If, in such suit, the court holds that injunctive relief
47 should be granted, then the commission shall be made a party and shall be sub-
48 stituted for the person who brought the suit, and the injunction shall be is-
49 sued as if the commission had at all times been the complaining party.

1 (f) Any person who knowingly violates any provision of this chapter,
 2 or any of the rules promulgated hereunder for carrying out the provisions of
 3 this chapter, or who fails or refuses to comply with any requirements herein
 4 specified, or who interferes with the commission, its agents, designees or
 5 employees in the execution or on account of the execution of its or their du-
 6 ties under this chapter or rules promulgated hereunder, shall be guilty of
 7 a misdemeanor and upon conviction thereof, shall be fined not more than five
 8 thousand dollars (\$5,000) or be imprisoned in a county jail for not more than
 9 twelve (12) months, or be subject to both such fine and imprisonment.

10 (g) Nothing in this chapter shall be construed as requiring the com-
 11 mission to report minor violations for prosecution when it believes that the
 12 public interest will be best served by suitable warnings or other adminis-
 13 trative action.

14 SECTION 4. That Section 47-326, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 ~~47-326. ACTIONS AGAINST THE COMMISSION -- APPEALS -- FALSIFICATION OF~~
 17 ~~RECORDS -- LIMITATION OF ACTIONS. (a) Any person adversely affected by any~~
 18 ~~rule, regulation or order made or issued under this act, may within ninety~~
 19 ~~(90) days after the entry thereof bring a civil suit or action against the~~
 20 ~~commission in the district court of Ada county, or in the district court of~~
 21 ~~the county in which the complaining person resides, or in the U.S. district~~
 22 ~~court for Idaho (if it otherwise has jurisdiction), and not elsewhere, to~~
 23 ~~test the validity of any provision of this act, or rule, regulation or order,~~
 24 ~~or to secure an injunction or to obtain other appropriate relief, including~~
 25 ~~all rights of appeal.~~

26 ~~(b) An action or appeal involving any provision of this act, or a rule,~~
 27 ~~regulation or order shall be determined as expeditiously as feasible. The~~
 28 ~~trial court shall determine the issues on both questions of law and fact and~~
 29 ~~shall affirm or set aside such rule, regulation or order, or remand the cause~~
 30 ~~to the commission for further proceedings. Such court is hereby authorized~~
 31 ~~to enjoin permanently the enforcement by the commission of this act, or any~~
 32 ~~part thereof, or any act done or threatened thereunder, if the plaintiff~~
 33 ~~shall show that as to him the act or conduct complained of is unreasonable,~~
 34 ~~unjust, arbitrary or capricious, or violates any constitutional right of~~
 35 ~~the plaintiff or if the plaintiff shows that the act complained of does not~~
 36 ~~constitute or result in waste, or does not in a reasonable manner accomplish~~
 37 ~~an end that is the subject matter of this act.~~

38 ~~(c) Any person who, for the purpose of evading this act or any rule, reg-~~
 39 ~~ulation or order of the commission shall make or cause to be made any false~~
 40 ~~entry in any report, record, account, or memorandum required by this act, or~~
 41 ~~by any such rule, regulation or order, or shall omit, or cause to be omitted,~~
 42 ~~from any such report, record, account, or memorandum, full, true and correct~~
 43 ~~entries as required by this act, or by any such rule, regulation or order, or~~
 44 ~~shall remove from this state or destroy, mutilate, alter or falsify any such~~
 45 ~~record, account, or memorandum, shall be guilty of a misdemeanor and, upon~~
 46 ~~conviction, shall be subject to a fine of not more than five thousand dollars~~
 47 ~~(\$5,000) or imprisonment for a term not exceeding ~~six~~ twelve (~~6~~12) months, or~~
 48 ~~to both such fine and imprisonment.~~

1 (d**b**) No suit, action or other proceeding based upon a violation of this
2 act or any rule, regulation or order of the commission hereunder shall be
3 commenced or maintained unless same shall have been commenced within one (1)
4 year from date of the alleged violation. Provided however, the provisions
5 of this subsection shall not apply to actions governed by the provisions of
6 chapter 52, title 67, Idaho Code.

7 SECTION 5. That Section 47-328, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 47-328. ACT NOT CONSTRUED TO RESTRICT PRODUCTION. It is not the intent
10 or purpose of this law to require the proration or distribution or the pro-
11 duction of oil and gas among the fields of Idaho on the basis of market de-
12 mand. This act shall never be construed to require, permit, or authorize the
13 commission or any court to make, enter, or enforce any order, rule, regula-
14 tion or judgment requiring restriction of production due to market demand of
15 any pool or of any well (except as provided in section 47-319, Idaho Code,
16 hereof) to an amount less than the well or pool can produce without waste in
17 accordance with sound engineering practices.