

IN THE SENATE

SENATE BILL NO. 1339

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO OIL AND GAS; AMENDING SECTION 47-317, IDAHO CODE, TO REMOVE
2 PROVISIONS REGARDING EMPLOYMENT OF PERSONNEL AND CONTRACTING FOR SER-
3 VICES, TO PROVIDE FOR THE AUTHORITY OF THE DEPARTMENT OF LANDS, TO
4 REMOVE CERTAIN PROVISIONS REGARDING HEARINGS, TO REMOVE PROVISIONS
5 RELATING TO THE DESIGNATION OF HEARING OFFICERS AND CONTESTED HEARINGS
6 AND TO PROVIDE THAT THE COMMISSION SHALL FOLLOW CERTAIN PROCEDURES;
7 AMENDING SECTION 47-318, IDAHO CODE, TO REVISE DEFINITIONS AND TO DE-
8 FINE TERMS; AMENDING SECTION 47-320, IDAHO CODE, TO PROVIDE A PROCEDURE
9 REGARDING APPLICATIONS FOR PERMITS OR CERTAIN AUTHORIZATIONS TO DRILL
10 OR TREAT WELLS AND TO PROVIDE THAT THE DEPARTMENT OF LANDS SHALL COL-
11 LECT SPECIFIED FEES; AMENDING SECTION 47-321, IDAHO CODE, TO PROVIDE
12 THAT THE DEPARTMENT SHALL HAVE SPECIFIED RESPONSIBILITIES ASSOCIATED
13 WITH SPACING UNITS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION
14 47-322, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT SHALL HAVE SPEC-
15 IFIED RESPONSIBILITIES REGARDING INTEGRATION, TO REVISE PROVISIONS
16 REGARDING INTEGRATION, TO PROVIDE FOR THE DESIGNATION OF OPERATORS FOR
17 INTEGRATED UNITS, TO PROVIDE FOR OPTIONS TO BE SET FORTH IN INTEGRATION
18 ORDERS, TO PROVIDE FOR APPLICATIONS FOR ORDERS OF INTEGRATION, TO PRO-
19 VIDE FOR NOTICE TO CERTAIN OWNERS, TO PROVIDE FOR THE CONFIDENTIALITY OF
20 CERTAIN INFORMATION AND TO PROVIDE THAT APPLICATIONS SHALL BE SUBJECT
21 TO SPECIFIED PROCEDURES; AMENDING SECTION 47-323, IDAHO CODE, TO PRO-
22 VIDE THAT THE DEPARTMENT SHALL HAVE SPECIFIED RESPONSIBILITIES REGARD-
23 ING UNIT OPERATIONS AND TO REVISE PROVISIONS REGARDING APPLICATIONS FOR
24 UNIT OPERATIONS; AMENDING SECTION 47-324, IDAHO CODE, TO REVISE AND TO
25 SET FORTH PROVISIONS AND PROCEDURES ASSOCIATED WITH RULEMAKING, COM-
26 PLAINTS, APPLICATION FOR ORDERS, PETITIONS, ORDERS AND APPEALS AND TO
27 PROVIDE FOR JUDICIAL REVIEW OF ACTIONS; AND DECLARING AN EMERGENCY.
28

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

30 SECTION 1. That Section 47-317, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 47-317. OIL AND GAS CONSERVATION COMMISSION CREATED -- POWERS -- LIMIT
33 ON LOCAL RESTRICTIONS -- ATTORNEY GENERAL. (1) There is hereby created an oil
34 and gas conservation commission of the state of Idaho within the department
35 of lands. The commission shall consist of five (5) members appointed by the
36 governor with the advice and consent of the senate. The members shall serve
37 at the pleasure of the governor. One (1) member shall be knowledgeable in
38 oil and gas matters, one (1) member shall be knowledgeable in geological mat-
39 ters, one (1) member shall be knowledgeable in water matters, one (1) mem-
40 ber shall be a private landowner who owns mineral rights with the surface
41 in a county with oil and gas activity and one (1) member shall be a private
42 landowner who does not own mineral rights.

1 (2) The term of office of each member of the commission shall be four
2 (4) years, except that upon July 1, 2013, the governor shall appoint one (1)
3 member for a term of one (1) year, one (1) member for a term of two (2) years,
4 one (1) member for a term of three (3) years and two (2) members for terms of
5 four (4) years. After the initial appointment, the governor shall appoint
6 members to serve in office for a term of four (4) years commencing on July 1.
7 A vacancy shall be filled by appointment for the unexpired term in the same
8 manner provided for an appointment to the full term.

9 (3) The commission shall annually elect a chairman and a vice chairman
10 from their membership. Such officers shall hold their respective offices
11 until their successors are elected. If a vacancy occurs in either office,
12 the commission shall elect a member to fill such office for the remainder of
13 the term.

14 (4) The commission shall meet at least annually and thereafter on dates
15 set by the commission. A majority of the voting members shall constitute a
16 quorum.

17 (5) The members of the commission shall be compensated as provided in
18 section 59-509(n), Idaho Code.

19 (6) Unless the commission appoints another person to be the secretary
20 of the commission, the director of the department of lands shall be the sec-
21 retary of the commission.

22 (7) ~~The commission may employ personnel as may be deemed necessary,~~
23 ~~prescribe their duties and fix their compensation. In the alternative,~~
24 ~~the commission may contract with the department of lands for services~~ The
25 department of lands shall have the power to exercise, under the general con-
26 trol and supervision of the commission, all of the rights, powers and duties
27 vested by law in the commission, except those provided in sections 47-324 and
28 47-325(c), Idaho Code.

29 (8) The commission shall have and is hereby given jurisdiction and
30 authority over all persons and property, public and private, necessary to
31 enforce the provisions of this act, and shall have power and authority to
32 make and enforce rules, regulations and orders, and do whatever may reason-
33 ably be necessary to carry out the provisions of this act. Any delegation
34 of authority to any other state officer, board or commission to administer
35 any and all other laws of this state relating to the conservation of oil and
36 gas is hereby rescinded and withdrawn and such authority is hereby unquali-
37 fiedly conferred upon the commission, as herein provided. ~~Any person, or the~~
38 ~~attorney general, on behalf of the state, may apply for a hearing before the~~
39 ~~commission, or the commission may initiate proceedings, upon any question~~
40 ~~relating to the administration of this act, and jurisdiction is hereby con-~~
41 ~~ferred upon the commission to hear and determine the same and enter its rule,~~
42 ~~regulation or order with respect thereto. The commission may designate~~
43 ~~hearing officers who shall have the power and authority to conduct hearings~~
44 ~~in the name of the commission at any time and place in accordance with the~~
45 ~~provisions of chapter 52, title 67, Idaho Code. Provided however, that when~~
46 ~~the commission is exercising its duties and authorities granted under this~~
47 ~~chapter, such actions shall not be considered to be contested cases as de-~~
48 ~~defined in subsection (6) of section 67-5201, Idaho Code, and section 67-5240,~~
49 ~~Idaho Code, unless the commission, in its discretion, determines that a con-~~
50 ~~tested case hearing would be of assistance to the commission in the exercise~~

1 ~~of its duties and authorities~~ The commission shall follow procedures on ap-
2 plications as provided in section 47-324, Idaho Code, except as provided in
3 sections 47-320(1) (a) and 47-325(c), Idaho Code.

4 (9) It is the intent of the legislature to occupy the field of the regu-
5 lation of oil and gas exploration and production with the limited exception
6 of the exercise of planning and zoning authority granted cities and counties
7 pursuant to chapter 65, title 67, Idaho Code.

8 (10) To implement the purpose of the oil and gas conservation act, and
9 to advance the public interest in the orderly development of the state's oil
10 and gas resources, while at the same time recognizing the responsibility of
11 local governments to protect the public health, safety and welfare, it is
12 herein provided that:

13 (a) The commission will notice the respective city or county with ju-
14 risdiction upon receipt of an application and will remit, electroni-
15 cally, a copy of all application materials.

16 (b) No ordinance, resolution, requirement or standard of a city, county
17 or political subdivision, except a state agency with authority, shall
18 actually or operationally prohibit the extraction of oil and gas; pro-
19 vided however, that extraction may be subject to reasonable local ordi-
20 nance provisions, not repugnant to law, which protect public health,
21 public safety, public order or which prevent harm to public infrastruc-
22 ture or degradation of the value, use and enjoyment of private property.
23 Any ordinance regulating extraction enacted pursuant to chapter 65,
24 title 67, Idaho Code, shall provide for administrative permitting un-
25 der conditions established by ordinance, not to exceed twenty-one (21)
26 days, unless extended by agreement of the parties or upon good cause
27 shown.

28 (c) No ordinance, resolution, requirement or standard of a city, county
29 or political subdivision, except a state agency with authority, shall
30 actually or operationally prohibit construction or operation of facil-
31 ities and infrastructure needed for the post-extraction processing and
32 transport of gas and oil. However, such facilities and infrastructure
33 shall be subject to local ordinances, regulations and permitting re-
34 quirements, not repugnant to law, as provided in chapter 65, title 67,
35 Idaho Code.

36 (11) The commission may sue and be sued in its administration of this
37 act in any state or federal district court in the state of Idaho having juris-
38 diction of the parties or of the subject matter.

39 (12) The attorney general shall act as the legal advisor of the commis-
40 sion and represent the commission in all court proceedings and in all pro-
41 ceedings before it, and in any proceeding to which the commission may be a
42 party before any department of the federal government.

43 SECTION 2. That Section 47-318, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 47-318. DEFINITIONS. Unless the context otherwise requires, the terms
46 defined in this section shall have the following meaning when used in this
47 act:

48 (a) "Commission" means the oil and gas conservation commission.

1 (b) "Condensate" means the liquid produced by the condensation of a va-
2 por or gas either after it leaves the reservoir or while still in the reser-
3 voir.

4 (c) ~~"Correlative rights" means the owners' or producers' just and equi-~~
5 ~~table share opportunity of each owner in a pool to produce his just and equi-~~
6 ~~table share of oil and gas in a pool without waste.~~

7 (d) "Department" means the Idaho department of lands.

8 (e) "Field" means the general area underlaid by one (1) or more pools.

9 (ef) "Gas" means any petroleum hydrocarbon existing in the gaseous
10 phase, including condensate because it originally existed in the gaseous
11 phase.

12 (fg) "Market value" means the price at the time of sale, in cash or on
13 terms reasonably equivalent to cash, for which the oil or gas should bring in
14 a competitive and open market under all conditions requisite to a fair sale,
15 the buyer and seller each acting prudently and knowledgeably, and assuming
16 the price is not affected by undue stimulus from either party. The costs of
17 marketing, transporting and processing oil and gas produced shall be borne
18 entirely by the producer, and such cost shall not reduce the producer's tax
19 directly or indirectly.

20 (gh) "Mineral interest" means the right to explore, drill or produce
21 oil or gas lying beneath the surface of property.

22 (i) "Oil" or "crude oil" means petroleum oil and other hydrocarbons,
23 regardless of gravity, that are produced at the well in liquid form by ordi-
24 nary production methods and are not the result of gas condensation before or
25 after it leaves the reservoir.

26 (hj) "Oil and gas" means oil or gas or both.

27 (k) "Operator" means any duly authorized person who is in charge of the
28 development of a lease, pool, or spacing or unitized area, or the operation
29 of a producing well.

30 (l) "Owner" means the person who has the right to drill into and pro-
31 duce from a pool and to appropriate the oil or gas that he produces therefrom,
32 either for himself or for himself and others.

33 (m) "Person" means any natural person, corporation, association,
34 partnership, receiver, trustee, executor, administrator, guardian, fidu-
35 ciary or other representatives of any kind, and includes any government or
36 any political subdivision of any agency thereof. The masculine gender, in
37 referring to a person, includes the feminine and the neuter genders.

38 (n) "Pool" means an underground reservoir containing a common accumu-
39 lation of oil or gas or both; each zone of a structure that is completely sep-
40 arated from any other zone in the same structure is a pool.

41 (o) "Producer" means the owner of a well or wells capable of producing
42 oil or gas or both.

43 (p) "Reservoir" means a subsurface volume of porous and permeable rock
44 in which oil or gas has accumulated.

45 (q) "Uncommitted owner" means one who is not leased or otherwise con-
46 tractually obligated to the operator.

47 (r) "Waste" as applied to gas shall include the escape, blowing or re-
48 leasing, directly or indirectly, into the open air of gas from wells produc-
49 tive of gas only, or gas in an excessive or unreasonable amount from wells
50 producing oil or both oil and gas; and the production of gas in quantities or

1 in such manner as will unreasonably reduce reservoir pressure or unreason-
 2 ably diminish the quantity of oil or gas that might ultimately be produced;
 3 excepting gas that is reasonably necessary in the drilling, completing and
 4 testing of wells and in furnishing power for the production of wells.

5 (es) "Waste" as applied to oil means and includes underground waste;
 6 inefficient, excessive or improper use or dissipation of reservoir en-
 7 ergy, including gas energy and water drive; surface waste, open-pit storage
 8 and waste incident to the production of oil in excess of the producer's
 9 above-ground storage facilities and lease and contractual requirements,
 10 but excluding storage (other than open-pit storage) reasonably necessary
 11 for building up and maintaining crude stocks and products thereof for con-
 12 sumption, use and sale; the locating, drilling, equipping, operating or
 13 producing of any well in a manner that causes, or tends to cause, reduction of
 14 the quantity of oil or gas ultimately recoverable from a pool under prudent
 15 and proper operations.

16 (pt) The use of the plural includes the singular, and the use of the sin-
 17 gular includes the plural.

18 SECTION 3. That Section 47-320, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 47-320. PERMIT TO DRILL OR TREAT A WELL -- FEES. (1) It shall be un-
 21 lawful to commence operations for the drilling or treating of a well for oil
 22 or gas without first giving notice to the commission of intention to drill
 23 or treat and without first obtaining a permit from the commission under such
 24 rules and regulations as may be reasonably prescribed by the commission and
 25 by paying to the commission a filing and service fee as provided by this sec-
 26 tion. ~~No permit may be issued by the commission until the commission shall~~
 27 ~~notify the director of the department of water resources and said director~~
 28 ~~shall have fifteen (15) days from the date of receipt of such notification~~
 29 ~~from the commission to recommend conditions he believes necessary to protect~~
 30 ~~fresh water supplies.~~

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

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

39 (c) The department shall notify the director of the department of wa-
 40 ter resources regarding permits to drill or treat a well. The director
 41 of water resources shall have ten (10) business days from the date of
 42 receipt of such notification from the department of lands to recommend
 43 conditions he believes necessary to protect fresh water supplies.

44 (d) Applications submitted under this section shall be posted on the
 45 department of lands's website for ten (10) calendar days for a written
 46 comment period.

47 (e) The department of lands shall approve or deny the application to
 48 drill or treat a well within fifteen (15) business days of receipt of a
 49 complete application.

1 (f) The department's decision made under this section may be appealed
2 to the commission by the applicant pursuant to the procedure in section
3 47-324(d), (e), (f) and (g), Idaho Code.

4 (2) Upon issuance of any permit, a copy thereof, including any limi-
5 tations, conditions, controls, rules or regulations attached thereto for
6 the protection of fresh water supplies as required in section 47-319, Idaho
7 Code, shall be forwarded to the director of the department of water re-
8 sources.

9 (23) The ~~commission~~ department shall collect the following fees, which
10 shall be remitted to the state treasurer for deposit in the oil and gas con-
11 servations fund and shall be used exclusively to pay the costs and expenses
12 incurred in connection with the administration and enforcement of this chap-
13 ter:

- 14 (a) Application for a permit to drill a well\$2,000
- 15 (b) Application to deepen a well500
- 16 (c) Application to plug and abandon a well, if not completed within one
- 17 (1) year from issuance of permit to drill a well500
- 18 (d) Application to treat a well, if separate from an application for a
- 19 permit to drill a well1,000
- 20 (e) Application to construct a pit, if separate from an application for
- 21 a permit to drill a well1,500
- 22 (f) Application to directionally drill a well, if separate from an ap-
- 23 plication for a permit to drill a well1,000
- 24 (g) Application for a multiple zone completion, if separate from an ap-
- 25 plication for a permit to drill a well1,000
- 26 (h) Application for an exceptional well location, if separate from an
- 27 application for a permit to drill a well1,300
- 28 (i) Application to change the size or shape of a spacing unit1,300
- 29 (j) Application to establish or amend a field-wide spacing order .1,300
- 30 (k) Application for an integration order1,300
- 31 (l) Application for a unitization order1,300
- 32 (m) Application for a seismic operations permit covering less than
- 33 twelve (12) miles of a 2D survey800
- 34 (n) Application for a seismic operations permit covering between
- 35 twelve (12) miles and twenty-four (24) miles of a 2D survey, or up to
- 36 seventy-two (72) square miles of a 3D survey2,000
- 37 (o) Application for a seismic operations permit covering more than
- 38 twenty-four (24) miles of a 2D survey, or more than seventy-two (72)
- 39 square miles of a 3D survey2,500

40 SECTION 4. That Section 47-321, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 47-321. SPACING UNITS. (1) The ~~commission~~ department shall promptly
43 establish spacing units for each pool except in those pools that have been
44 developed to such an extent that it would be impracticable or unreasonable to
45 establish spacing units at the existing stage of development.

46 (2) An order establishing spacing units shall specify the size and
47 shape of the units, which shall be such as will, in the opinion of the
48 ~~commission~~ department, result in the efficient and economical development
49 of the pool as a whole. Any unit established by the ~~commission~~ department

1 shall be geographic. The geographic boundaries of the unit shall be de-
2 scribed in accordance with the public land survey system. Except where
3 circumstances, geologic or otherwise, affecting the orderly development of
4 a pool reasonably require, or as provided in paragraph (b) of this subsec-
5 tion, the size of the spacing units shall not be smaller than the maximum area
6 that can be efficiently and economically drained by one (1) well; provided:

7 (a) If, at the time of a hearing to establish spacing units, there is
8 not sufficient evidence from which to determine the area that can be
9 efficiently and economically drained by one (1) well, the ~~commission~~
10 department may make an order establishing temporary spacing units for
11 the orderly development of the pool pending the obtaining of the infor-
12 mation required to determine what the ultimate spacing should be.

13 (b) Where the federal agency administering federal minerals that would
14 otherwise be included in a spacing unit has not leased or has failed to
15 offer such federal minerals for lease in accordance with 30 U.S.C. sec-
16 tion 226 and 43 CFR 3120.1-2(a), such federal minerals may be excluded
17 from the unit upon application or upon the ~~commission's~~ department's
18 own ~~motion~~ determination.

19 (3) Except where circumstances, geologic or otherwise, affecting the
20 orderly development of a pool reasonably require, spacing units shall be of
21 approximately uniform size and shape for the entire pool. The ~~commission~~
22 department may establish spacing units of different sizes or shapes for dif-
23 ferent parts of a pool or may grant exceptions to the size or shape of any
24 spacing unit or units or may change the sizes or shape of one (1) or more ex-
25 isting spacing units.

26 (4) An order establishing spacing units shall direct that no more than
27 one (1) well shall be drilled to and produced from the common source of sup-
28 ply on any unit, and shall specify the location for the drilling of a well
29 thereon, in accordance with a reasonably uniform spacing pattern, with nec-
30 essary exceptions for wells drilled or drilling at the time of the filing of
31 the application. If the ~~commission~~ department finds that a well drilled at
32 the prescribed location would not be likely to produce in paying quantities,
33 or that surface conditions would substantially add to the burden or hazard of
34 drilling such well, or for other good cause shown, the ~~commission~~ department
35 is authorized to make an order permitting the well to be drilled at a loca-
36 tion other than that prescribed by such spacing order. Application for an
37 exception shall be filed with the ~~commission~~ department and may be granted
38 where it is shown that good cause for such exception exists and that consent
39 to such exception has been given by the operators of all drilling units di-
40 rectly or diagonally offsetting the drilling unit for which an exception is
41 requested, and, as to the lands upon which drilling units have not been es-
42 tablished, by the majority of mineral interest owners of those lands which
43 would be included in directly or diagonally offsetting drilling units under
44 said order, if said order were extended to include such additional lands.

45 (5) An order establishing spacing units for a pool shall cover all lands
46 determined or believed to be underlaid by such pool, and may be modified by
47 the ~~commission~~ department from time to time to include additional lands de-
48 termined to be underlaid by such pool or to exclude lands determined not to be
49 underlaid by such pool.

1 (6) An order establishing spacing units may be modified by the
 2 ~~commission department~~ to change the size or shape of one (1) or more spacing
 3 units, or to permit the drilling of additional wells on a reasonably uniform
 4 pattern.

5 (7) Upon the filing of an application to establish spacing units, no ad-
 6 ditional well shall be commenced for production from the pool until the or-
 7 der establishing spacing units has been made, unless the commencement of the
 8 well is authorized by order of the ~~commission~~ department.

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

11 47-322. INTEGRATION OF TRACTS -- ORDERS OF ~~COMMISSION~~ DEPARTMENT. (a)
 12 When two (2) or more separately owned tracts are embraced within a spacing
 13 unit, or when there are separately owned interests in all or a part of a spac-
 14 ing unit, the interested persons may integrate their tracts or interests for
 15 the development and operation of the spacing unit. In the absence of vol-
 16 untary integration, the ~~commission department~~, upon the application of any
 17 ~~interested person owner in that proposed spacing unit~~, shall ~~make an order~~
 18 ~~integrating integration of all tracts or interests in the spacing unit for~~
 19 ~~the drilling of a well or wells~~, development and operation thereof and for
 20 the sharing of production therefrom. The ~~commission department~~, as a part of
 21 the order establishing a spacing unit or units, may prescribe the terms and
 22 conditions upon which the royalty interests in the unit or units shall, in
 23 the absence of voluntary agreement, be deemed to be integrated without the
 24 necessity of a subsequent separate order integrating the royalty interests.
 25 Each such integration order shall be upon terms and conditions that are just
 26 and reasonable.

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

35 (c) Each such integration order shall authorize the drilling, equip-
 36 ping, and operation, or operation, of a well on the spacing unit; shall
 37 ~~provide who may drill and operate the well designate an operator for the~~
 38 ~~integrated unit~~; shall prescribe the time and manner in which all the owners
 39 in the spacing unit may elect to participate therein; and shall make provi-
 40 sion for the payment by all those who elect to participate therein; of the
 41 reasonable actual cost thereof, plus a reasonable charge for supervision
 42 and interest. ~~If requested, e~~Each such integration order shall provide for
 43 ~~one or more just and equitable alternatives whereby an owner who does not~~
 44 ~~elect to participate in the risk and cost of the drilling and operation, or~~
 45 ~~operation, of a well may elect to surrender his leasehold interest to the~~
 46 ~~participating owners on some reasonable basis and for a reasonable consid-~~
 47 ~~eration which, if not agreed upon, shall be determined by the commission, or~~
 48 ~~may elect to participate in the drilling and operation, or operation, of the~~

1 well, on a limited or carried basis upon terms and conditions determined by
2 the commission to be just and reasonable the five following options:

3 (i) Working interest owner. An owner who elects to participate as a
4 working interest owner shall pay the proportionate share of the actual
5 costs of drilling and operating a well allocated to the owner's interest
6 in the spacing unit. Working interest owners who share in the costs of
7 drilling and operating the well are entitled to their respective shares
8 of the production of the well. The operator of the integrated spacing
9 unit and working interest owners shall enter into a joint operating
10 agreement approved by the department in the integration order.

11 (ii) Nonconsenting working interest owner. An owner who refuses to
12 share in the risk and actual costs of drilling and operating the well,
13 but desires to participate as a working interest owner, is a non-
14 consenting working interest owner. Nonconsenting working interest
15 owners are entitled to their respective shares of the production of the
16 well, not to exceed one-eighth (1/8) royalty, until the operator of
17 the integrated spacing unit has recovered up to three hundred percent
18 (300%) of the nonconsenting working interest owner's share of the cost
19 of drilling and operating the well under the terms set forth in the
20 integration order. After all the costs have been recovered by the con-
21 senting owners in the spacing unit, the nonconsenting owner is entitled
22 to his respective shares of the production of the well, and shall be
23 liable for his pro rata share of costs as if the nonconsenting owner had
24 originally agreed to pay the costs of drilling and operating the well.
25 The operator of the integrated spacing unit and nonconsenting working
26 interest owners shall enter into a joint operating agreement approved
27 by the department in the integration order.

28 (iii) Leased. An owner may enter into a lease with the operator of the
29 integrated spacing unit 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 bonus payment per acre as the operator originally paid to other owners
33 in the spacing unit prior to the issuance of the integration order.

34 (iv) Objector. If an owner objects to any participation or involvement
35 of any kind in the unit, such owner may elect to be an objector. An ob-
36 jecting owner's interest will be deemed leased under the terms and con-
37 ditions in the integration order. The owner shall receive one-eighth
38 (1/8) royalty. Provided however, an objecting owner may elect to have
39 any funds to which he would otherwise be entitled transferred to the
40 STEM action center.

41 (v) Deemed leased. If an owner fails to make an election within the
42 election period set forth in the integration order, such owner's inter-
43 est will be deemed leased under the terms and conditions in the integra-
44 tion order. The owner shall receive one-eighth (1/8) royalty. The op-
45 erator of an integrated spacing unit shall pay a leasing owner the same
46 bonus payment per acre as the operator originally paid to other owners
47 in the spacing unit prior to the issuance of the integration order.

48 If one or more of the owners shall drill, equip, and operate, or operate, or
49 pay the costs of drilling, equipping, and operating, or operating, a well
50 for the benefit of another person as provided for in an order of integration,

1 then such owners or owner shall be entitled to the share of production from
2 the spacing unit accruing to the interest of such other person, exclusive of
3 a royalty not to exceed one-eighth (1/8) of the production, until the mar-
4 ket value of such other person's share of the production, exclusive of such
5 royalty, equals the sums payable by or charged to the interest of such other
6 person. If there is a dispute as to the costs of drilling, equipping, or op-
7 erating a well, the ~~commission~~ department shall determine such costs. In in-
8 stances where a well is completed prior to the integration of interests in a
9 spacing unit, the sharing of production shall be from the effective date of
10 the integration, except that, in calculating costs, credit shall be given
11 for the value of the owner's share of any prior production from the well.

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

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

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

17 (iii) A geologic statement concerning the likely presence of hydrocar-
18 bons;

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

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

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

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

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

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

32 (x) A resume of efforts documenting the applicant's good faith efforts
33 on at least two (2) separate occasions within a period of time no less
34 than sixty (60) days to inform uncommitted owners of the applicant's in-
35 tervention to develop the mineral resources in the proposed spacing unit
36 and desire to reach an agreement with uncommitted owners in the proposed
37 spacing unit. Provided however, if any owner requests no further con-
38 tact from the applicant, the applicant will be relieved of further obli-
39 gation to attempt contact to reach agreement with that owner. At least
40 one (1) contact must be by certified U.S. mail sent to an owner's last
41 known address. If an owner is unknown or cannot be found, the appli-
42 cant must publish a legal notice of its intention to develop and request
43 that the owner contact the applicant in a newspaper in the county where
44 the proposed spacing unit is located. The resume of efforts should in-
45 dicade the applicant has made reasonable efforts to reach an agreement
46 with all uncommitted owners in the proposed spacing unit. Reasonable
47 efforts are met by complying with this subsection.

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

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

8 (f) The information supplied by the applicant pursuant to subsection
 9 (d) (vii) of this section and the names and addresses of the uncommitted own-
 10 ers pursuant to subsection (d) (x) of this section shall be deemed trade se-
 11 crets and kept confidential by the department until the well is producing
 12 in the proposed spacing unit, and thereafter shall be subject to disclosure
 13 pursuant to chapter 1, title 74, Idaho Code, provided that the information
 14 regarding an uncommitted owner shall be subject to disclosure to that owner.

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

17 SECTION 6. That Section 47-323, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 47-323. UNIT OPERATIONS. (1) An agreement for the unit or cooperative
 20 development or operation of a field, pool, or part thereof, may be submitted
 21 to the ~~commission~~ department for approval as being in the public interest or
 22 reasonably necessary to prevent waste or protect correlative rights. Such
 23 approval shall constitute a complete defense to any suit charging violation
 24 of any statute of the state relating to trusts and monopolies on account
 25 thereof or on account of operations conducted pursuant thereto. The failure
 26 to submit such an agreement to the ~~commission~~ department for approval shall
 27 not for that reason imply or constitute evidence that the agreement or opera-
 28 tions conducted pursuant thereto are in violation of laws relating to trusts
 29 and monopolies.

30 (2) The ~~commission~~ department, upon its own ~~motion~~ determination or
 31 upon application of an owner, shall conduct a hearing to consider the need
 32 for unit operation of an entire pool or portion thereof, to increase ultimate
 33 recovery of oil and gas from that pool or portion thereof. The ~~commission~~
 34 department shall issue an order requiring unit operation if it finds that:

35 (a) Unit operation of the pool or portion thereof is reasonably neces-
 36 sary to prevent waste or to protect correlative rights;

37 (b) Unit operation of the pool or portion thereof is reasonably nec-
 38 essary for maintaining or restoring reservoir pressure, or to imple-
 39 ment cycling, water flooding, enhanced recovery, horizontal drilling,
 40 de-watering or a combination of these operations or other operations or
 41 objectives to be cooperatively pursued with the goal of increasing the
 42 ultimate recovery of oil and gas; and

43 (c) The estimated cost to conduct the unit operation will not exceed the
 44 value of the estimated recovery of additional oil and gas resulting from
 45 unit operation.

46 (3) An application for requesting an order providing for the operation
 47 as a unit of one (1) or more pools or parts thereof in a field shall contain:

48 (a) A plat map showing the proposed unit, the existing spacing units,
 49 and well(s) within the units;

1 (b) The names and addresses of all persons owning mineral interests and
2 working interests in the proposed unit;

3 (c) An affidavit that the applicant, by certified mail, notified all
4 persons owning unleased mineral interests and working interests in the
5 proposed unit at least sixty (60) days prior to filing the application
6 with the ~~commission~~ department of the applicant's intention to make the
7 application;

8 (d) A proposed plan of unit operations for the proposed unit that con-
9 tains the information in subsection (5) of this section; and

10 (e) A proposed operating agreement that is consistent with the proposed
11 plan of unit operations.

12 (4) ~~At the time the An application for unit operations is filed with the~~
13 ~~commission, the applicant shall certify that a copy of the application was~~
14 ~~served on all unleased mineral interest and working interest owners in the~~
15 ~~proposed unit. The application may be served by personal delivery or cer-~~
16 ~~tified U.S. mail, return receipt requested; provided however, if an owner~~
17 ~~cannot be located, the application may be served by publishing a notice in~~
18 ~~a newspaper of general circulation reasonably likely to give notice to the~~
19 ~~owner once a week for two (2) consecutive weeks and mailing the application~~
20 ~~to the last known address of the owner. The unleased mineral interest and~~
21 ~~working interest owners shall have twenty-one (21) days from the date of ser-~~
22 ~~vice of the application to file a response to the application with the com-~~
23 ~~mission. The commission will schedule a hearing on the application for unit~~
24 ~~operations and will give notice of the hearing to the applicant and all own-~~
25 ~~ers who file a response to the application with the commission shall be sub-~~
26 ~~ject to the procedures set forth in section 47-324, Idaho Code.~~

27 (5) An order for a unit operation must be upon just and reasonable terms
28 and conditions and shall prescribe a plan for unit operations that include
29 all of the following:

30 (a) A description of the vertical and horizontal limits of the unit
31 area;

32 (b) A statement of the nature of the operation contemplated;

33 (c) A provision for the supervision and conduct of the unit operation
34 that designates an operator of the unit and provides a means to remove
35 the operator and designate a successor operator;

36 (d) A provision to protect correlative rights, allocating to each sep-
37 arately owned tract in the unit area a just and equitable share of the
38 production that is produced and saved from the unit area, other than
39 production used or unavoidably lost in the conduct of the unit opera-
40 tion;

41 (e) A provision for credits and charges to adjust among working inter-
42 est owners in the unit area for their interest in wells, tanks, pumps,
43 machinery, materials and equipment that contribute to the unit opera-
44 tion;

45 (f) A provision establishing how the costs of unit operation, including
46 capital investments and costs of terminating the unit operation, shall
47 be determined and charged to each working interest owner or the inter-
48 est of each owner, including a provision establishing how, when and by
49 whom the share of unit production allocated to an owner who does not pay
50 the share of those costs charged to that owner or to the interest of that

1 owner may be sold and the proceeds applied to the payment of that owner's
2 share of those costs, and how accounts will be settled upon termination
3 of the unit;

4 (g) A provision, if necessary, for carrying or otherwise financing an
5 owner who elects to be carried or otherwise financed, which allows own-
6 ers who carry or otherwise finance to recover up to three hundred per-
7 cent (300%) of the unit costs attributed to an owner who elects to be
8 carried or otherwise financed payable out of that owner's share of the
9 production;

10 (h) A time when the unit operation is to commence and the manner in
11 which, and the circumstances under which, the unit operation is to ter-
12minate and the unit is to be dissolved; and

13 (i) Additional provisions found to be appropriate to carry on the unit
14 operation, to prevent waste and to protect correlative rights.

15 (6) An order for a unit operation may provide for a unit operation of
16 less than the whole of a pool so long as the unit area is of size and shape rea-
17sonably required for that purpose and the conduct thereof will have no sig-
18nificant adverse effect upon other portions of the pool.

19 (7) The ~~commission~~ department, upon its own ~~motion~~ determination or
20 upon the application of an owner, may for good cause terminate a unit oper-
21ation and dissolve the unit on just and equitable terms. If not terminated
22earlier, the unit operation shall terminate upon final cessation of produc-
23tion from the pool or unitized portion thereof, the plugging and abandonment
24of unit wells and facilities, and reclamation of the surface.

25 (8) An order requiring a unit operation shall not become effective un-
26til the plan for unit operations approved by the ~~commission~~ department has
27been signed and approved in writing by the owners who, under the ~~commission's~~
28department's order, will be required to pay at least fifty-five percent
29(55%) of the costs of the unit operation, and also signed and approved in
30writing by the working interest owners of at least fifty-five percent (55%)
31of the production of the unit operations, and the ~~commission~~ department has
32made a finding in the order that the plan for unit operations has been so
33approved.

34 (9) An order providing for unit operation may be amended by an order of
35the ~~commission~~ department in the same manner and subject to the same condi-
36tions as an original order providing for the unit operation.

37 (10) The ~~commission~~ department may issue an order for the unit operation
38of a pool or pools or parts thereof that include a unit created by a prior or-
39der of the ~~commission~~ department or by voluntary agreement. This subsequent
40order, in providing for the allocation of the unit's production, must treat
41first the unit area previously created as a single tract and then allocate,
42in the same proportions as those specified in the prior order, the portion
43of the new unit's production allocated to the previous unit among the sepa-
44rately owned tracts included in the previously created unit area.

45 (11) The ~~commission~~ department may approve additions to the unit of por-
46tions of a pool not previously included within the unit and may extend the
47unit area as reasonably necessary to prevent waste or to protect correlative
48rights. The ~~commission~~ department may approve exclusions from the unit area
49as reasonably necessary to prevent waste or to protect correlative rights.

1 An order adding to or excluding from a unit area must be upon just and reason-
2 able terms.

3 (a) An order that amends a plan of unit operations and adds an area
4 to a previously established unit shall not become effective until the
5 amended plan of unit operations has been signed and approved in writing
6 by the owners who will be required to pay at least fifty-five percent
7 (55%) of the costs of the unit operation in the area to be added, and
8 also signed and approved in writing by the working interest owners of
9 at least fifty-five percent (55%) of the production of the unit oper-
10 ations, and the ~~commission~~ department has made a finding in the order
11 that the plan for unit operations has been so approved.

12 (b) An order providing for an exclusion from a unit area may not become
13 effective until an amended plan of unit operations excluding an area
14 from the unit has been approved in writing by the owners in the original
15 unit area that are required to pay at least fifty-five percent (55%) of
16 the costs of unit operations, and also approved in writing by the work-
17 ing interest owners in the original unit area required to pay at least
18 fifty-five percent (55%) of the production of the unit operations, and
19 the ~~commission~~ department has made a finding in the order that the plan
20 for unit operations has been so approved.

21 (12) Operations, including the commencement, drilling or operation of a
22 well upon a portion of a unit area, are deemed conducted on each separately
23 owned tract in the unit area by the owner or owners thereof. That portion of a
24 unit's production allocated to a separately owned tract in a unit area, when
25 produced, is deemed produced from a well drilled on that tract. Operations
26 conducted under an order of the ~~commission~~ department providing for a unit
27 operation shall constitute fulfillment of expressed or implied obligations
28 of a lease or contract covering lands within the unit area to the extent that
29 compliance with those obligations is not possible without a further order of
30 the ~~commission~~ department.

31 (13) That portion of unit production allocated to a tract and the pro-
32 ceeds of sale for that portion are deemed the property and income of the sev-
33 eral persons to whom or to whose credit that portion is allocated or payable
34 under the order providing for unit operation.

35 (14) A division order or other contract relating to a sale or purchase of
36 production from a separately owned tract or combination of tracts remains in
37 force and applies to oil and gas allocated to the tract until terminated in
38 accordance with provisions of the order providing for unit operation, or in
39 accordance with the terms of such division order or other contract.

40 (15) Except to the extent that all affected parties agree, an order pro-
41 viding for unit operation does not result in a transfer of all or part of a
42 person's title to the oil and gas rights in a tract in the unit area.

43 (16) Except to the extent that all affected parties agree, all property,
44 whether real or personal, that may be acquired in the conduct of a unit oper-
45 ation hereunder is deemed acquired for the account of the owners within the
46 unit area and is deemed the property of the owners in the proportion that the
47 expenses of the unit operation are charged.

48 (17) The formation of a unit and the operation of the unit under an or-
49 der of the ~~commission~~ department shall not be in violation of any statute of

1 this state relating to trusts, monopolies, contracts or combinations in the
2 restraint of trade.

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

5 47-324. RULES FOR COMMISSION -- ADMINISTRATIVE PROCEDURES. (a) The
6 commission shall have authority to hear rulemaking proceedings, complaints
7 filed with it pursuant to this chapter and appeals from the director's deci-
8 sion on an application filed pursuant to this chapter. The commission may
9 prescribe rules governing the procedure before it, subject to the provisions
10 of the administrative procedure act, chapter 52, title 67, Idaho Code.

11 (b) ~~In all cases where (1) there is an application for the entry of a~~
12 ~~pooling order or (2) there is an application for an exception from an estab-~~
13 ~~lished well spacing pattern or (3) a complaint is made by the commission or~~
14 ~~any party person that any provision of this act, or any rule or order of the~~
15 ~~commission is being violated, notice of the any hearing to be held on such~~
16 ~~application or complaint, the commission shall be served notice on the in-~~
17 ~~terested parties by certified mail, return receipt requested, or in the same~~
18 ~~manner as is provided in the rules of civil procedure for the service of sum-~~
19 ~~mons in civil actions. Where the interested party is unknown or cannot be~~
20 ~~located, the commission shall serve notice by publishing at least one (1) no-~~
21 ~~tice of the hearing to such person in a newspaper in the county where the af-~~
22 ~~ected tract is located. Such notice must be sent, delivered or published,~~
23 ~~as appropriate, at least five (5) business days before the date of the hear-~~
24 ~~ing.~~

25 (c) ~~The commission may act upon its own motion, or upon the petition of~~
26 ~~any interested person. On the filing of a petition for a hearing concern-~~
27 ~~ing any matter within the jurisdiction of the commission, it shall promptly~~
28 ~~fix a date for a hearing thereon and shall cause notice of the hearing to be~~
29 ~~given. The hearing shall be held without undue delay after the filing of the~~
30 ~~petition. Proceedings before the commission and judicial review of actions~~
31 ~~taken by the commission pursuant thereto shall be governed by the provisions~~
32 ~~of chapter 52, title 67, Idaho Code. Any person affected by an order of the~~
33 ~~commission shall have the right at any time to apply to the commission to re-~~
34 ~~peal, amend, modify, or supplement the same Except as provided in section~~
35 ~~47-320(1) (a), Idaho Code, and subsection (b) of this section, any request~~
36 ~~for an order related to oil and gas activities within the commission's juris-~~
37 ~~isdiction, other than a civil penalty proceeding pursuant to section 47-325,~~
38 ~~Idaho Code, or other enforcement action by the department of lands or the~~
39 ~~commission, shall be made by application to the department of lands.~~

40 (i) The department shall notify the applicant within five (5) busi-
41 ness days of receipt of an application if the application is administra-
42 tively incomplete, and in such notice shall identify the missing item or
43 items to be supplied in order to make the application complete.

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

48 (iii) For applications involving an order regarding unit operations or
49 integration of a drilling unit, the department shall send a copy of the

1 application and supporting documents to all known and located uncommit-
2 ted owners, to all working interest owners within the unit, and to the
3 respective city or county where the proposed unit is located. The mail-
4 ing shall include notice of the hearing date on which the director will
5 consider the application. The application shall be redacted pursuant
6 to section 47-322(f), Idaho Code, and sent by certified mail. Upon re-
7 quest, the applicant shall reimburse the department for actual mailing
8 costs incurred under this subsection. For any uncommitted owners and
9 working interest owners who cannot be located, an applicant shall pub-
10 lish notice of any application for an order once in a newspaper in the
11 county in which the affected property is located, and request the de-
12 partment publish notice on its website, within seven (7) calendar days
13 of filing of the complete application. Only an uncommitted owner in the
14 affected unit may file an objection or other response to the applica-
15 tion, and the uncommitted owner shall file seven (7) calendar days be-
16 fore the hearing date provided in the notice.

17 (iv) For applications not involving paragraph (iii) of this subsec-
18 tion, including exceptional locations, any uncommitted owner within
19 the area defined in the application may file an objection or other re-
20 sponse to the application, and the uncommitted owner shall file seven
21 (7) calendar days before the hearing date provided in the notice.

22 (v) The director shall hear an application within thirty (30) calendar
23 days of the filing of a complete application. Discovery is not permit-
24 ted. The director shall issue a written decision on any such applica-
25 tion within thirty (30) calendar days of the hearing.

26 (d) The director's decision on an application for an order may be ap-
27 pealed to the commission by the applicant or any owner who filed an objec-
28 tion or other response to the application within the time required. An ap-
29 peal must be filed with the director within fourteen (14) calendar days of
30 the date of issuance of the director's written decision. The date of is-
31 suance shall be three (3) calendar days after the director deposits the de-
32 cision in the U.S. mail, or the date on which he remits a decision electron-
33 ically. Such appeal shall include the reasons and authority for the appeal,
34 and shall identify any facts in the record supporting the appeal. Any per-
35 son appealing shall serve a copy of the appeal materials on any other person
36 who participated in the proceedings below, by certified mail, or by personal
37 service. Any person who participated in the proceeding below may file a re-
38 sponse to the appeal within five (5) calendar days of service of a copy of
39 the appeal materials. The appellant shall provide the director with proof of
40 service of the appeal materials on other persons as required in this section.
41 The commission shall make a decision based on the record below as set forth
42 in the written submittals of only the appellant and any other participating
43 qualified person, the director's decision, and any oral argument taken by
44 the commission at an appeal hearing.

45 (e) Appeals to the commission shall be heard at the next regularly
46 scheduled commission hearing, or at a special meeting of the commission if
47 determined by the commission. In no case will a hearing be later than thirty
48 (30) days after the filing of an appeal. The commission may take argument
49 from, but not new testimony of, the appellant and other qualified partici-
50 pating persons at the hearing. The commission shall make a decision on the

1 appeal at the hearing and direct the department to issue a written order
2 within five (5) business days of the hearing. The prevailing party shall
3 draft a proposed written order and submit it to the department within two (2)
4 business days. The final order of the commission shall not be subject to any
5 motion for reconsideration.

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

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

13 (h) Each order shall include a reasoned statement in support of the
14 decision, including a concise statement of facts supporting any findings,
15 a statement of available procedures and time limits for appeals. Findings
16 must be based exclusively on materials in the record. The applicant and any
17 participating qualified person shall be served with a copy of the order. The
18 order shall include or be accompanied by a certificate of service.

19 (i) Every application shall be signed by the applicant or his represen-
20 tative, and his address shall be stated thereon. The signature of the ap-
21 plicant or his representative constitutes a certificate by him that he has
22 read the application and that to the best of his knowledge, information and
23 belief there is good ground to support the same. Each application shall be
24 of such form and content and accompanied by the number of copies required by
25 rule of the commission. Each application shall be accompanied by a fee as es-
26 tablished in statute or rule.

27 SECTION 8. An emergency existing therefor, which emergency is hereby
28 declared to exist, this act shall be in full force and effect on and after its
29 passage and approval.