

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 464

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO OIL AND GAS; AMENDING SECTION 47-315, IDAHO CODE, TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE PUBLIC INTEREST; AMENDING SECTION 47-317, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT TO OCCUPY THE FIELD OF THE REGULATION OF OIL AND GAS EXPLORATION AND PRODUCTION, TO PROVIDE AN EXCEPTION, TO PROVIDE PROVISIONS LIMITING LOCAL RESTRICTIONS RELATING TO OIL AND GAS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-319, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AUTHORITY OF THE OIL AND GAS CONSERVATION COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-233, IDAHO CODE, TO PROVIDE THAT CERTAIN USES OF LOW TEMPERATURE GEOTHERMAL RESOURCES ARE NOT SUBJECT TO THE PROVISIONS OF A CERTAIN IDAHO CODE CHAPTER AND TO GRANT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO INITIATE A CONTESTED CASE UPON CERTAIN CONDITIONS; AMENDING SECTION 42-3902, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-4003, IDAHO CODE, TO PROVIDE THAT CERTAIN USES OF GROUND WATER CLASSIFIED AS A GEOTHERMAL RESOURCE OR MATERIAL MEDIUM ARE NOT SUBJECT TO THE PROVISIONS OF A CERTAIN IDAHO CODE CHAPTER, TO GRANT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO INITIATE A CONTESTED CASE UPON CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 47-315, Idaho Code, be, and the same is hereby amended to read as follows:

47-315. PUBLIC INTEREST. It is declared to be in the public interest to foster, encourage and promote the development, production and utilization of natural resources of oil and gas in the state of Idaho in such a manner as will prevent waste; to provide for uniformity and consistency in the regulation of the production of oil and gas throughout the state of Idaho; to authorize and to provide for the operations and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected; to encourage, authorize and provide for voluntary agreements for cycling, recycling, pressure maintenance and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers and the general public may realize and enjoy the greatest possible good from these vital natural resources.

SECTION 2. That Section 47-317, Idaho Code, be, and the same is hereby amended to read as follows:

1 47-317. OIL AND GAS CONSERVATION COMMISSION CREATED -- POWERS -- LIMIT
 2 ON LOCAL RESTRICTIONS -- ATTORNEY GENERAL. (a1) There is hereby created an
 3 oil and gas conservation commission of the state of Idaho which shall consist
 4 of the state board of land commissioners.

5 (b2) The commission shall have and is hereby given jurisdiction and au-
 6 thority over all persons and property, public and private, necessary to en-
 7 force the provisions of this act, and shall have power and authority to make
 8 and enforce rules, regulations and orders, and do whatever may reasonably be
 9 necessary to carry out the provisions of this act. Any delegation of author-
 10 ity to any other state officer, board or commission to administer any and all
 11 other laws of this state relating to the conservation of oil and gas, ~~or ei-~~
 12 ~~ther of them~~ is hereby rescinded and withdrawn and such authority is hereby
 13 unqualifiedly conferred upon the commission, as herein provided. Any per-
 14 son, or the attorney general, on behalf of the state, may apply for a hear-
 15 ing before the commission, or the commission may initiate proceedings, upon
 16 any question relating to the administration of this act, and jurisdiction is
 17 hereby conferred upon the commission to hear and determine the same and enter
 18 its rule, regulation or order with respect thereto.

19 (3) It is the intent of the legislature to occupy the field of the regu-
 20 lation of oil and gas exploration and production with the limited exception
 21 of the exercise of planning and zoning authority granted cities and counties
 22 pursuant to chapter 65, title 67, Idaho Code.

23 (4) To implement the purpose of the oil and gas conservation act, and
 24 to advance the public interest in the orderly development of the state's oil
 25 and gas resources, while at the same time recognizing the responsibility of
 26 local governments to protect the public health, safety and welfare, it is
 27 herein provided that:

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

31 (b) No ordinance, resolution, requirement or standard of a city, county
 32 or political subdivision, except a state agency with authority, shall
 33 actually or operationally prohibit the extraction of oil and gas; pro-
 34 vided however, that extraction may be subject to reasonable local or-
 35 dinance provisions, not repugnant to law, which protect public health,
 36 public safety, public order or which prevent harm to public infrastruc-
 37 ture or degradation of the value, use and enjoyment of private property.
 38 Any ordinance regulating extraction enacted pursuant to chapter 65,
 39 title 67, Idaho Code, shall provide for administrative permitting un-
 40 der conditions established by ordinance, not to exceed twenty-one (21)
 41 days, unless extended by agreement of the parties or upon good cause
 42 shown.

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

1 (e5) The commission may sue and be sued in its administration of this
 2 act in any state or federal district court in the state of Idaho having juris-
 3 diction of the parties or of the subject matter.

4 (d6) The attorney general shall act as the legal advisor of the commis-
 5 sion and represent the commission in all court proceedings and in all pro-
 6 ceedings before it, and in any proceeding to which the commission may be a
 7 party before any department of the federal government.

8 SECTION 3. That Section 47-319, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 47-319. LAND SUBJECT TO ACT -- AUTHORITY OF COMMISSION. (a1) This act
 11 shall apply to all lands located in the state, however owned, including any
 12 lands owned or administered by any government or any agency or political sub-
 13 division thereof, over which the state under its police power, has jurisdic-
 14 tion.

15 (b2) The commission is authorized and it is its duty to regulate the ex-
 16 ploration for and production of oil and gas, prevent waste of oil and gas and
 17 to protect correlative rights, and otherwise to administer and enforce this
 18 act. It has jurisdiction over all persons and property necessary for ~~that~~
 19 such purposes. In the event of a conflict, the duty to prevent waste is para-
 20 mount.

21 (e3) The commission is authorized to make such investigations as it
 22 deems proper to determine whether action by the commission in discharging
 23 its duties is necessary.

24 (d4) Without limiting its general authority, the commission shall have
 25 the specific authority: ~~To~~ require:

26 (1a) ~~i~~Identification of ownership of oil or gas wells, producing
 27 leases, tanks, plants, structures, and facilities for the transporta-
 28 tion or refining of oil and gas;

29 (2b) ~~t~~The taking and preservation of samples and the making and filing
 30 with the commission of true and correct copies of well logs and direc-
 31 tional surveys both in form and content as prescribed by the commission;
 32 provided, however, that logs of exploratory or wildcat wells marked
 33 confidential shall be subject to disclosure according to chapter 3, ti-
 34 tle 9, Idaho Code. And provided further, that after four (4) months from
 35 the effective date of this act, the commission may require the owner of a
 36 well theretofore drilled for oil or gas to file within four (4) months of
 37 such order a true and correct copy of the log or logs of such well;

38 (3c) ~~t~~The drilling, casing, operation and plugging of wells in such
 39 manner as to prevent: (a1) the escape of oil or gas out of one (1) pool
 40 into another; ~~(bii)~~ the detrimental intrusion of water into an oil
 41 or gas pool that is avoidable by efficient operations; ~~(eiii)~~ the
 42 pollution of fresh water supplies by oil, gas, or salt water; ~~(div)~~
 43 blow-outs, cavings, seepages, and fires; ~~(v)~~ waste as hereinabove
 44 defined;

45 (4d) ~~t~~The taking of tests of oil or gas wells;

46 (5e) ~~t~~The furnishing of a reasonable performance bond with good and
 47 sufficient surety, conditioned upon the performance of the duty to
 48 comply with the requirements of this law and the regulations of the

commission with respect to the drilling, maintaining, operating and plugging of each well drilled for oil or gas;

(6f) ~~That~~ the production from wells be separated into gaseous and liquid hydrocarbons, and that each be measured by means and upon standards that may be prescribed by the commission;

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

(8h) ~~M~~etering or other measuring of oil, gas, or product;

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

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

(5) Without limiting its general authority, and without limiting the authority of other state agencies or local government as provided by law, the commission shall have the specific authority to regulate:

(1a) ~~The~~ drilling and plugging of wells and the compression or dehydration of produced oil and gas, and all other operations for the production of oil ~~or~~ and gas;

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

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

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

(5e) ~~The~~ disposal of salt water and oil-field wastes.

(6) The commission is authorized to classify and reclassify pools as oil, gas, or condensate pools, or wells as oil, gas, or condensate wells.

(7) The commission is authorized to make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.

SECTION 4. That Section 42-233, Idaho Code, be, and the same is hereby amended to read as follows:

42-233. LOW TEMPERATURE GEOTHERMAL RESOURCE. (1) The right to the use of low temperature geothermal resources of this state shall be acquired by appropriation, except as provided in subsection (2) of this section. The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for ground water, provided that low temperature geothermal resources shall be utilized primarily for heat value and secondarily for the value as water. Usage of a low temperature geothermal resource primarily for reasons other than heat value is not a beneficial use of the resource, unless the director of the department of water resources exempts the proposed use. The director may exempt a proposed use if the director finds that the proposed use satisfies the following crite-

ria: (i) there is no feasible alternative use of the resource; (ii) there is no economically viable source of water having a bottom hole temperature of eighty-five (85) degrees or less in a well available; and (iii) the exemption is in the public interest.

(2) The use of low temperature geothermal resources for the development and operation of oil and gas wells permitted under section 47-320, Idaho Code, shall not be subject to the provisions of this chapter. However, the director of the department of water resources may initiate a contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, and the rules of procedure promulgated by the department, if the department has reason to believe that an oil and gas well will cause, is causing or has caused, significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to water rights existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used. The evidence of causation must come from the department or be credible information from a water right or a geothermal resource permit holder existing at the time of the development of the oil and gas well. It shall be the burden of the entity operating the oil and gas well to establish that it will not cause, is not causing and has not caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to existing water rights existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used. If the director determines that the well will cause, is causing or has caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to a water right existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used, the director may order the operator to take measures to mitigate those impacts.

(3) Any owner of a well who engages in the drilling, redrilling, modifying or deepening of any low temperature geothermal well shall file with the director of the department of water resources a surety bond or cash bond in the penal sum of not less than five thousand dollars (\$5,000) or more than twenty thousand dollars (\$20,000) as determined by the director of the department of water resources based on the temperature, depth and pressure of the resource, the size and depth of the well, and any other relevant factors. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter and chapter 40, title 42, Idaho Code, and rules and regulations promulgated pursuant thereto. The bond shall remain in effect for one (1) year following completion of drilling, redrilling, modifying or deepening of the well or until released in writing by the director, whichever occurs first.

(34) All permits, licenses, decreed rights and valid claims to a right to the use of ground water which would be classified as a low temperature geothermal resource having a priority date prior to July 1, 1987, remain valid and the bond provisions of subsection (23) of this section are not applicable unless the well from which the right diverts water is modified or deepened. The provisions of this section shall not be applicable to all permits, licenses and rights to the use of geothermal resources as defined in chapter 40, title 42, Idaho Code, which would be classified as a low temper-

ature geothermal resource under this section, issued or proclaimed prior to July 1, 1987, and the bond provisions of subsection (23) of this section are not applicable to such wells.

SECTION 5. That Section 42-3902, Idaho Code, be, and the same is hereby amended to read as follows:

42-3902. DEFINITIONS. Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a deep or shallow injection well.

(2) "Deep injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

(3) "Director" means the director of the department of water resources.

(4) "Drinking water source" means an aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has not been exempted from this designation by the director of the department of water resources.

(5) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(6) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(7) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(8) "Injection" means the subsurface emplacement of fluids through an injection well, but excludes the following:

(a) The underground injection of natural gas for purposes of storage; and

(b) The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas or geothermal production activities.

(9) "Injection well" means any feature that is operated to allow injection which also meets at least one (1) of the following criteria:

(a) A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;

(b) A dug hole whose depth is greater than the largest surface dimension;

(c) An improved sinkhole; or

(d) A subsurface fluid distribution system.
Provided however, that "injection well" does not mean or include any well drilled for oil, gas or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations.

(10) "Irrigation waste water" means excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tailwater, as well as natural drainage resulting from precipitation, snowmelt and floodwaters.

(11) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.

(12) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.

(13) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.

(14) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.

(15) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.

(16) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water by 10 CFR 20.

(17) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.

(18) "Sanitary waste" means any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. The term does not include industrial, municipal, commercial or other nonresidential process fluids.

(19) "Surface runoff water" means runoff water from the natural ground surface and cropland. Runoff from urbanized areas, such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities are not included within the scope of this term.

SECTION 6. That Section 42-4003, Idaho Code, be, and the same is hereby amended to read as follows:

42-4003. PERMITS -- APPLICATION -- FEE -- EXCEPTIONS. (a~~1~~) Any person who, as owner or operator, proposes to construct a well or to alter a well or to construct or to alter an injection well shall first apply to the director for a geothermal resource well permit, except as provided in subsection (2) of this section.

(2) The use of ground water classified as a geothermal resource or material medium for the development and operation of oil and gas wells permitted under section 47-320, Idaho Code, shall not be subject to the provisions of this chapter. However, the director of the department of water resources

may initiate a contested case in accordance with the provisions of chapter 52, title 67, Idaho Code, and the rules of procedure promulgated by the department, if the department has reason to believe that an oil and gas well will cause, is causing or has caused, significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to water rights existing at the time of the development of the oil and gas well or to a geothermal resource that can be beneficially used. The evidence of causation must come from the department or be credible information from a water right holder or a geothermal resource permit holder existing at the time of the development of the oil and gas well. It shall be the burden of the entity operating the oil and gas well to establish that it will not cause, is not causing and has not caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to existing water rights existing at the time of the development of the oil and gas well or to geothermal resource that can be beneficially used. If the director determines that the well will cause, is causing or has caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to a water right existing at the time of the development of the oil and gas well or to a geothermal resource that can be beneficially used, the director may order the operator to take measures to mitigate those impacts.

(3) Such application required pursuant to subsection (1) of this section shall set out the following information on a form or forms prescribed by the department:

(1a) The name of any person making the application; if such person is a partnership, joint-venture, association, or other unincorporated group of corporate or natural persons, the names and places of domicile of each of the constituent persons who have general partnership responsibility and authority for and in such unincorporated group of persons; if any person named on a permit application is a corporation, its place of domicile, the names and places of domicile of its principal executive officers, and the names and places of domicile of any person or persons owning a thirty percent (30%) or greater interest, whether legal, beneficial, or a combined legal and beneficial interest, in such corporate person; if the applicant is making an application as an agent for any other person, it shall be clearly so stated and any person who is the applicant's principal shall be subject to each and all of the disclosure requirements of this subsection; for purposes of this subsection, the domicile of a corporation is at all of the following:

~~a.~~(i) The place of incorporation;

~~b.~~(ii) The principal place of business;

~~c.~~(iii) The place, by city and state, of the home office, and in any instance where domicile is required to be disclosed all of these places shall be specified.

(2b) The location of the proposed well; and/or the injection well described particularly by the quarter-quarter section according to the township and range system of the United States public lands survey.

(3c) The length, size, type, and thickness of casing proposed to be used in such well and/or such injection well and any other devices or techniques to be used in the drilling, operation, and maintenance of such

well and/or injection well for the purpose of conserving geothermal resources and their availability, avoiding waste and for the protection of other subsurface natural resources.

(4d) The character and composition of the material expected to be derived from such well.

(5e) The means proposed to be used to contain and manage the material expected to be derived from such well or injected into such injection well in order to avoid unreasonable damage to life, property, or surface and atmospheric natural resources.

(6f) Whether such well or such injection well is proposed to be constructed as a part of a program for exploration or for development of an already explored geothermal resource area.

(7g) Such other information as the director may determine to be necessary for the administration of this chapter.

(b4) Any application for a permit to construct a well which is made pursuant to this section, if the construction or operation of such well will involve the use of water, or if such well may be expected to yield water to be used, for any beneficial purpose, other than as a mineral source, an energy source, or otherwise as a material medium, shall be accompanied by an application to appropriate the public waters of this state in the form prescribed in chapter 2, title 42, Idaho Code, and by rules adopted pursuant thereto, and such application to appropriate the public waters shall be governed in all respects by that chapter.

(e5) Any application for a permit made pursuant to this section shall be accompanied by a filing fee of:

(1a) Two hundred dollars (\$200) if for a well; or

(2b) One hundred dollars (\$100) for an injection well;

and no application shall be accepted and filed by the director until such filing fee has been deposited with him. All moneys received under the provisions of this chapter shall be deposited with the state treasurer in the water administration fund as provided in section 42-238a, Idaho Code.

(d6) No person shall construct or alter a well or an injection well without having first secured a permit therefor; provided however, that the director may, by general rule adopted pursuant to chapter 52, title 67, Idaho Code, exempt specific categories of wells or injection wells otherwise embraced by this chapter upon a finding that the purposes of this chapter do not require that such wells be subject to the permit requirement of this section.

(e7) Nothing in this chapter shall be construed as affecting any valid, vested water rights for water in use on or before July 1, 1987.

(f8) The director shall have the authority to and may designate any area of the state a "geothermal area" when the director finds or has reason to believe that such designation is necessary to protect the geothermal resource from waste and to protect other resources of the state from contamination or waste.

(g9) No person shall drill a well for any purpose to a depth of three thousand (3,000) feet or more below land surface in a designated "geothermal area" without first obtaining a permit under the provisions of this section. Such permit shall be in addition to any permit required by other provisions of law.

1 (~~h10~~) The owner of any well constructed or being constructed pursuant
2 to section 47-320, Idaho Code, who encounters a geothermal resource, and who
3 intends or desires to utilize such resource, shall make application for a
4 geothermal permit as required under this section, provided however, that no
5 additional filing fee shall be required.

6 (~~h11~~) A geothermal resource shall be utilized primarily for its heat
7 value. Usage of a geothermal resource primarily for some reason other than
8 its heat value shall not be deemed a beneficial use of the resource.

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