



1 any question relating to the administration of this act, and jurisdiction is  
2 hereby conferred upon the commission to hear and determine the same and enter  
3 its rule, regulation or order with respect thereto.

4 (e3) No city, county or other political subdivision of this state shall  
5 enact or adopt any ordinance, rule, resolution, requirement or standard  
6 regulating the siting, construction or operation of facilities used in the  
7 exploration for, production or transportation of oil and gas that conflicts,  
8 either actually or operationally, with any provision of this chapter or  
9 any rule promulgated by the commission. An ordinance, rule, resolution,  
10 requirement or standard of a city, county or other political subdivision of  
11 this state shall not prohibit, either actually or operationally, and shall  
12 not frustrate the siting, construction or operation of facilities approved  
13 by the commission or its authorized agent. The provisions of this subsection  
14 shall not affect the planning and zoning authorities available to cities and  
15 counties pursuant to the provisions of chapter 65, title 67, Idaho Code.

16 (4) The commission may sue and be sued in its administration of this act  
17 in any state or federal district court in the state of Idaho having jurisdic-  
18 tion of the parties or of the subject matter.

19 (d5) The attorney general shall act as the legal advisor of the commis-  
20 sion and represent the commission in all court proceedings and in all pro-  
21 ceedings before it, and in any proceeding to which the commission may be a  
22 party before any department of the federal government.

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

25 47-319. LAND SUBJECT TO ACT -- AUTHORITY OF COMMISSION. (a1) This act  
26 shall apply to all lands located in the state, however owned, including any  
27 lands owned or administered by any government or any agency or political sub-  
28 division thereof, over which the state under its police power, has jurisdic-  
29 tion.

30 (b2) The commission is authorized and it is its duty to regulate all as-  
31 pects of the production of oil and gas and condensate, prevent waste of oil  
32 and gas and to protect correlative rights, and otherwise to administer and  
33 enforce this act. It has jurisdiction over all persons and property neces-  
34 sary for ~~that~~ such purposes. In the event of a conflict, the duty to prevent  
35 waste is paramount.

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

39 (d4) Without limiting its general authority, the commission shall have  
40 the specific authority ~~to~~ require:+

41 (1a) ~~+~~Identification of ownership of oil or gas wells, producing  
42 leases, tanks, plants, structures, and facilities for the transporta-  
43 tion or refining of oil and gas;

44 (2b) ~~+~~The taking and preservation of samples and the making and filing  
45 with the commission of true and correct copies of well logs and direc-  
46 tional surveys both in form and content as prescribed by the commission;  
47 provided, however, that logs of exploratory or wildcat wells marked  
48 confidential shall be subject to disclosure according to chapter 3, ti-

1 tle 9, Idaho Code. And provided further, that after four (4) months from  
2 the effective date of this act, the commission may require the owner of a  
3 well theretofore drilled for oil or gas to file within four (4) months of  
4 such order a true and correct copy of the log or logs of such well;

5 (3c) ~~§~~The drilling, casing, operation and plugging of wells in such  
6 manner as to prevent (a) the escape of oil or gas out of one (1) pool into  
7 another, (b) the detrimental intrusion of water into an oil or gas pool  
8 that is avoidable by efficient operations, (c) the pollution of fresh  
9 water supplies by oil, gas, or salt water, (d) blow-outs, cavings, seep-  
10 ages, and fires, and (e) waste as hereinabove defined;

11 (4d) ~~§~~The taking of tests of oil or gas wells;

12 (5e) ~~§~~The furnishing of a reasonable performance bond with good and  
13 sufficient surety, conditioned upon the performance of the duty to  
14 comply with the requirements of this law and the regulations of the  
15 commission with respect to the drilling, maintaining, operating and  
16 plugging of each well drilled for oil or gas;

17 (6f) ~~§~~That the production from wells be separated into gaseous and liq-  
18 uid hydrocarbons, and that each be measured by means and upon standards  
19 that may be prescribed by the commission;

20 (7g) ~~§~~That wells not be operated with inefficient gas-oil or water-oil  
21 ratios, and to fix these ratios, and to limit production from wells with  
22 inefficient gas-oil or water-oil ratios;

23 (8h) ~~§~~Metering or other measuring of oil, gas, or product;

24 (9I) ~~§~~That every person who produces oil ~~or~~ and gas in the state keep and  
25 maintain for a period of five (5) years complete and accurate records  
26 of the quantities thereof, which records, or certified copies thereof,  
27 shall be available for examination by the commission or its agents at  
28 all reasonable times within said period, and that every such person file  
29 with the commission such reasonable reports as it may prescribe with re-  
30 spect to such oil or gas production; and

31 (10j) ~~§~~The filing of reports of plats with the commission that it may  
32 prescribe.

33 (5) Without limiting its general authority, the commission shall have  
34 the specific authority to regulate:

35 (1a) ~~§~~The drilling and plugging of wells and the compression or dehy-  
36 dration of produced oil and gas and condensate, and all other operations  
37 for the production of oil ~~or~~ and gas and condensate;

38 (2b) ~~§~~The shooting and treatment of wells;

39 (3c) ~~§~~The spacing or locating of wells;

40 (4d) ~~§~~Operations to increase ultimate recovery, such as cycling of gas,  
41 the maintenance of pressure, and the introduction of gas, water, or  
42 other substances into a producing formation; and

43 (5e) ~~§~~The disposal of salt water and oil-field wastes.

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

46 (7) The commission is authorized to make and enforce rules, regula-  
47 tions, and orders reasonably necessary to prevent waste, protect correla-  
48 tive rights, to govern the practice and procedure before the commission, and  
49 otherwise to administer this act.

1 SECTION 4. That Section 47-1602, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 47-1602. "GEOHERMAL RESOURCES" DEFINED. For the purposes of this  
4 chapter, "geothermal resources" shall mean the natural heat energy of the  
5 earth, the energy, in whatever form, which may be found in any position and  
6 at any depth below the surface of the earth present in, resulting from, or  
7 created by, or which may be extracted from, such natural heat, and all min-  
8 erals in solution or other products obtained from the material medium of any  
9 geothermal resource; provided that, "geothermal resource" shall not include  
10 water produced with petroleum, oil, hydrocarbon gas or other hydrocarbon  
11 substances from a pool, as such term is defined in section 47-318(h), Idaho  
12 Code. Geothermal resources are found and hereby declared to be sui generis,  
13 being neither a mineral resource nor a water resource, but they are also  
14 found and hereby declared to be closely related to and possibly affecting and  
15 affected by water resources in many instances. No right to seek, obtain, or  
16 use geothermal resources has passed or shall pass with any existing or future  
17 lease of state or school lands, including but not limited to, mineral leases  
18 and leases issued under chapter 8, title 47, Idaho Code.

19 SECTION 5. That Section 42-223, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 42-223. EXCEPTIONS OR DEFENSES TO FORFEITURE. A right to the use of wa-  
22 ter shall not be lost by forfeiture pursuant to the provisions of section  
23 42-222, Idaho Code, for a failure to apply the water to beneficial use un-  
24 der the conditions specified in any subsection of this section. The legisla-  
25 ture does not intend through enactment of this section to diminish or impair  
26 any statutory or common law exception or defense to forfeiture existing on  
27 the date of enactment or amendment of this section, or to preclude judicial  
28 or administrative recognition of other exceptions or defenses to forfeiture  
29 recognized in Idaho case law or other provisions of the Idaho Code. No pro-  
30 vision of this section shall be construed to imply that the legislature does  
31 not recognize the existence or validity of any common law exception or de-  
32 fense to forfeiture existing on the date of enactment or amendment of this  
33 section.

34 (1) A water right appurtenant to land contracted in a federal cropland  
35 set-aside program shall not be lost or forfeited for nonuse during the con-  
36 tracted period. The running of any five (5) year period of nonuse for forfei-  
37 ture of a water right shall be tolled during the time that the land remains in  
38 the cropland set-aside program.

39 (2) A water right held by a municipal provider to meet reasonably antic-  
40 ipated future needs shall be deemed to constitute beneficial use, and such  
41 rights shall not be lost or forfeited for nonuse unless the planning horizon  
42 specified in the license has expired and the quantity of water authorized for  
43 use under the license is no longer needed to meet reasonably anticipated fu-  
44 ture needs.

45 (3) A water right shall not be lost or forfeited by a failure to divert  
46 and apply the water to beneficial use if the water is not needed to maintain  
47 full beneficial use under the right because of land application of waste for

1 disposal purposes including, but not limited to, discharge from dairy la-  
2 goons used in combination with or substituted for water diverted under the  
3 water right.

4 (4) A water right shall not be lost or forfeited by a failure to divert  
5 and apply the water to beneficial use if the reason for the nonuse of the wa-  
6 ter is to comply with the provisions of a ground water management plan ap-  
7 proved by the director of the department of water resources pursuant to sec-  
8 tion 42-233a or 42-233b, Idaho Code.

9 (5) A water right shall not be lost or forfeited by a failure of the  
10 owner of the right to divert and apply the water to beneficial use while the  
11 water right is placed in the water supply bank or is retained in or rented  
12 from the water supply bank pursuant to sections 42-1761 through 42-1765A,  
13 Idaho Code, or while the water right is leased pursuant to sections 43-335  
14 through 43-342, Idaho Code, or sections 42-2501 through 42-2509, Idaho Code,  
15 or while use of the water is made under any other provision of law authorizing  
16 the rental or lease of water rights.

17 (6) No portion of any water right shall be lost or forfeited for nonuse  
18 if the nonuse results from circumstances over which the water right owner has  
19 no control. Whether the water right owner has control over nonuse of water  
20 shall be determined on a case-by-case basis.

21 (7) No portion of a water right held by an irrigation district, a Carey  
22 Act operating company, or any other company, corporation, association, or  
23 entity which holds water rights for distribution to its landowners, share-  
24 holders or members shall be lost or forfeited due to nonuse by such landown-  
25 ers, shareholders or members, unless the nonuse is subject to the control of  
26 such entity.

27 (8) No portion of a water right held by an irrigation district shall be  
28 lost, forfeited or subject to forfeiture as a result of the exclusion of land  
29 from the district pursuant to chapter 11, title 43, Idaho Code, so long as any  
30 five (5) year period of nonuse following the exclusion does not result from  
31 circumstances over which the district has control.

32 (9) No portion of any water right shall be lost or forfeited for nonuse  
33 if the nonuse results from a water conservation practice, which maintains  
34 the full beneficial use authorized by the water right, as defined in section  
35 42-250, Idaho Code.

36 (10) No portion of any water right shall be lost or forfeited for nonuse  
37 if the nonuse results from the water right being used for mitigation purposes  
38 approved by the director of the department of water resources including as a  
39 condition of approval for a new water right appropriation approved pursuant  
40 to section 42-203A, Idaho Code, a water right transfer approved pursuant to  
41 section 42-222, Idaho Code, a water exchange approved pursuant to section  
42 42-240, Idaho Code, or a mitigation plan approved in accordance with rules  
43 promulgated pursuant to section 42-603, Idaho Code.

44 (11) No portion of any water right with a beneficial use related to min-  
45 ing, mineral processing, ~~or~~ milling or the production of oil, natural gas  
46 or hydrocarbon condensate shall be lost or forfeited for nonuse, so long as  
47 the nonuse results from a closure, suspension or reduced production of the  
48 mine, processing facility, ~~or~~ mill or well due in whole or in part to mineral  
49 or hydrocarbon prices, if, with respect to solid minerals, the mining prop-  
50 erty has a valuable mineral, as defined in section 47-1205, Idaho Code, and

1 the water right owner has maintained the property and mineral rights for po-  
2 tential future mineral production, and if, with respect to oil, natural gas  
3 or hydrocarbon condensate, the water right owner has maintained the property  
4 and mineral rights for potential future production of oil, natural gas or hy-  
5 drocarbon condensate.

6 SECTION 6. That Section 42-230, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 42-230. DEFINITIONS. (a) "Ground water" is all water under the surface  
9 of the ground whatever may be the geological structure in which it is stand-  
10 ing or moving.

11 (1) All ground water having a temperature of greater than eighty-five  
12 (85) degrees Fahrenheit and less than two hundred twelve (212) degrees  
13 Fahrenheit in the bottom of a well shall be classified and administered  
14 as a low temperature geothermal resource pursuant to section 42-233,  
15 Idaho Code; provided that, "geothermal resource" shall not include wa-  
16 ter produced with petroleum, oil, hydrocarbon gas or other hydrocarbon  
17 substances from a pool, as such term is defined in section 47-318(h),  
18 Idaho Code.

19 (2) All ground water having a temperature of two hundred twelve (212)  
20 degrees Fahrenheit or more in the bottom of a well shall be classified  
21 as a geothermal resource pursuant to section 42-4002, Idaho Code, and  
22 shall be administered as a geothermal resource pursuant to chapter 40,  
23 title 42, Idaho Code; provided that, "geothermal resource" shall not  
24 include water produced with petroleum, oil, hydrocarbon gas or other  
25 hydrocarbon substances from a pool, as such term is defined in section  
26 47-318(h), Idaho Code.

27 (b) "Well" is an artificial excavation or opening in the ground more  
28 than eighteen (18) feet in vertical depth below land surface by which ground  
29 water of any temperature is sought or obtained, except for a well drilled for  
30 the production of petroleum, oil, hydrocarbon gas or other hydrocarbon sub-  
31 stances.

32 (c) "Well driller" is any person or group of persons who excavate or  
33 open a well or wells for compensation or otherwise upon the land of the well  
34 driller or upon other land. Well driller does not include those persons who  
35 construct a well on their own property for their own use without the aid of  
36 any power driven mechanical equipment.

37 (d) "Well drilling" or "drilling" for purposes of this chapter is the  
38 act of constructing a new well or deepening or modifying an existing well by  
39 any percussion, rotary, boring, digging, jetting, or augering method.

40 (e) "Water right" is the legal right, however acquired, to the use of  
41 water for beneficial purposes.

42 (f) "Operator" is the employee of the well driller who, through his work  
43 at the drilling site, causes the well to be drilled.

44 (g) "Low temperature geothermal resource well" means a well which is  
45 capable of producing a low temperature geothermal resource from which fluids  
46 can be produced which have value by virtue of the heat contained therein.

1 SECTION 7. That Section 42-3902, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 42-3902. DEFINITIONS. Whenever used in this chapter:

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

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

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

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

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

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

19 (7) "Hazardous waste" means any fluid or combination of fluids, exclud-  
20 ing radioactive wastes, which because of quantity, concentration or charac-  
21 teristics (physical, chemical or biological) may:

22 (a) Cause or significantly contribute to an increase in deaths or an in-  
23 crease in serious, irreversible or incapacitating reversible illness;  
24 or

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

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

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

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

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

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

43 (b) A dug hole whose depth is greater than the largest surface dimen-  
44 sion;

45 (c) An improved sinkhole; or

46 (d) A subsurface fluid distribution system.

47 Provided, however, that "injection well" does not mean or include any well  
48 drilled for oil, gas or geothermal production activities, other than one

1 into which diesel fuels are injected pursuant to hydraulic fracturing opera-  
2 tions.

3 (10) "Irrigation waste water" means excess surface water from agricul-  
4 tural fields generated during any agricultural operation, including runoff  
5 of irrigation tailwater, as well as natural drainage resulting from precipi-  
6 tation, snowmelt and floodwaters.

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

10 (12) "Operate" means to allow fluids to enter an injection well by ac-  
11 tion or by inaction of the operator.

12 (13) "Operator" means any individual, group of individuals, partner-  
13 ship, company, corporation, municipality, county, state agency, taxing dis-  
14 trict or federal agency who operates or proposes to operate any injection  
15 well.

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

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

22 (16) "Radioactive waste" means any fluid which contains radioactive ma-  
23 terial in concentrations which exceed those established for discharges to  
24 water by 10 CFR 20.

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

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

31 (19) "Surface runoff water" means runoff water from the natural ground  
32 surface and cropland. Runoff from urbanized areas, such as streets, park-  
33 ing lots, airports, and runoff from animal feedlots, agricultural process-  
34 ing facilities and similar facilities are not included within the scope of  
35 this term.

36 SECTION 8. That Section 42-4002, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 42-4002. DEFINITIONS. Whenever used in this act the term:

39 (a~~1~~) "Department" means the Idaho department of water resources.

40 (b~~2~~) "Director" means the director of the Idaho department of water re-  
41 sources.

42 (e~~3~~) "Geothermal resource" means the natural heat energy of the earth,  
43 the energy, in whatever form, which may be found in any position and at any  
44 depth below the surface of the earth present in, resulting from, or created  
45 by, or which may be extracted from such natural heat, and all minerals in so-  
46 lution or other products obtained from the material medium of any geother-  
47 mal resource. Ground water having a temperature of two hundred twelve (212)  
48 degrees Fahrenheit or more in the bottom of a well shall be classified as

1 a geothermal resource; provided that, "geothermal resource" shall not in-  
2 clude water produced with petroleum, oil, hydrocarbon gas or other hydro-  
3 carbon substances from a pool, as such term is defined in section 47-318(h),  
4 Idaho Code. Geothermal resources are found and hereby declared to be sui  
5 generis, being neither a mineral resource nor a water resource, but they are  
6 also found and hereby declared to be closely related to and possibly affect-  
7 ing and affected by water and mineral resources in many instances.

8 (d4) "Geothermal area" means the same general land area which, in its  
9 subsurface, is underlaid or reasonably appears to be underlaid by geother-  
10 mal resources from or in a single reservoir, pool, or other source or inter-  
11 related sources, as such area or areas may be from time to time designated by  
12 the director.

13 (e5) "Material medium" means any substance, including, but not limited  
14 to, naturally heated fluids, brines, associated gases, and steam, in what-  
15 ever form, found at any depth and in any position below the surface of the  
16 earth, which contains or transmits the natural heat energy of the earth, but  
17 excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances,  
18 or water produced with petroleum, oil, hydrocarbon gas or other hydrocarbon  
19 substances from a pool, as such term is defined in section 47-318(h), Idaho  
20 Code.

21 (f6) "Permit" means a permit issued pursuant to this act for the con-  
22 struction and operation of any well or injection well.

23 (g7) "Person" means any individual, natural person, general or limited  
24 partnership, joint venture, association, cooperative organization, cor-  
25 poration whether domestic or foreign, agency or subdivision of this or any  
26 other state, or any municipal or quasi-municipal entity whether or not it is  
27 incorporated.

28 (h8) "Waste" means any physical waste including, but not limited to:

29 (1a) Underground waste resulting from the inefficient, excessive or  
30 improper use or dissipation of geothermal energy in or of any geothermal  
31 resource pool, reservoir, or other source; or the locating, spac-  
32 ing, construction, equipping, operating, or producing of any well in  
33 a manner which results, or tends to result, in reducing the quantity  
34 of geothermal energy to be recovered from any geothermal area in this  
35 state;

36 (2b) The inefficient above-ground transporting and storage of geother-  
37 mal energy; and the locating, spacing, equipping, operating, or pro-  
38 ducing of any well or injection well in a manner causing, or tending to  
39 cause, unnecessary or excessive surface loss or destruction of geother-  
40 mal energy;

41 (3c) The escape into the open air, from a well, of steam or hot water in  
42 excess of what is reasonably necessary in the efficient development or  
43 production of a well.

44 (i9) "Well" means any excavation or other alteration in the earth's  
45 surface or crust by means of which the energy of any geothermal resource  
46 and/or its material medium is sought or obtained, except for a well drilled  
47 for the production of petroleum, oil, hydrocarbon gas or other hydrocarbon  
48 substances.

49 (j10) "Injection well" means any special well, converted producing well  
50 or reactivated or converted abandoned well employed for injecting material

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1 into a geothermal area to maintain pressures in a geothermal reservoir,  
2 pool, or other source, or to provide new material or to serve as a mate-  
3 rial medium therein, or for reinjecting any material medium or the residue  
4 thereof or any by-product of geothermal resource exploration or development  
5 into the earth.

6 (\*11) "Board" means the Idaho water resource board.