

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 44

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO WATER; AMENDING SECTION 42-238, IDAHO CODE, TO PROVIDE THAT
2 THE WATER RESOURCE BOARD MAY ADOPT CERTAIN RULES, TO REMOVE CERTAIN
3 PENALTY PROVISIONS, AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SEC-
4 TION 42-238b, IDAHO CODE, RELATING TO PROCEEDINGS COMMENCED PRIOR TO
5 A DESIGNATED DATE; REPEALING SECTION 42-247, IDAHO CODE, RELATING TO
6 NOTIFICATION OF SPECIFIED LAW; REPEALING CHAPTER 19, TITLE 42, IDAHO
7 CODE, RELATING TO DAMS AND BOOMS IN THE CLEARWATER RIVER; AMENDING
8 SECTION 42-3809, IDAHO CODE, TO REMOVE CERTAIN PENALTY PROVISIONS, TO
9 AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO ENFORCE
10 SPECIFIED PROVISIONS OF LAW, RULES, AND REGULATIONS, AND TO MAKE A TECH-
11 NICAL CORRECTION; REPEALING SECTION 42-3812, IDAHO CODE, RELATING TO
12 DIRECTOR AUTHORIZATION FOR CERTAIN ENFORCEMENT; AND AMENDING SECTION
13 42-4010, IDAHO CODE, TO REMOVE CERTAIN PENALTY PROVISIONS, TO AUTHORIZE
14 THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES TO ENFORCE SPECIFIED
15 PROVISIONS OF LAW, RULES, AND REGULATIONS, AND TO MAKE TECHNICAL COR-
16 RECTIONS.
17

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

19 SECTION 1. That Section 42-238, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 42-238. WELL DRILLERS' LICENSES AND OPERATOR PERMITS. (1) The direc-
22 tor of the department of water resources is hereby vested with the duties
23 relating to the licensing of well drillers and operators of well drilling
24 equipment as provided for in this act so as to protect the ground water re-
25 sources against waste and contamination. Qualifications for well drillers
26 and operators of well drilling equipment shall be adopted by rule of the wa-
27 ter resource board.

28 (2) It shall be unlawful for any person to drill a well in Idaho, in-
29 cluding wells excepted under sections 42-227 and 42-228, Idaho Code, without
30 first complying with the provisions of this chapter. It shall be unlawful
31 for any person to abandon a well in Idaho without first obtaining a driller's
32 license or receiving a waiver of the license requirement from the director
33 of the department of water resources. Authorization is required from the di-
34 rector prior to the abandonment and the person abandoning the well shall sub-
35 mit to the director a report describing the abandonment.

36 (3) For the purpose of this act, a "person" shall be defined as any indi-
37 vidual who drills or abandons any well for himself or another in this state;
38 it shall also be defined as any firm, copartnership, corporation or associ-
39 ation ~~which~~ that drills or abandons, or contracts to drill or abandon, any
40 well for hire or otherwise in this state.

1 (4) A driller's license shall be obtained by filing with the director
2 an application in writing on a form provided by the director accompanied by a
3 two hundred dollar (\$200) application fee.

4 (5) The director shall require that an applicant for a driller's li-
5 cense successfully pass a written or oral examination, and be required to
6 submit references and other detailed information describing past drilling
7 experience to allow the director to determine if the applicant is qualified
8 to drill wells in the state.

9 (6) The water resource board ~~shall~~ may adopt rules for licensing and
10 renewal of licenses of well drillers in compliance with chapter 52, title 67,
11 Idaho Code. The board is authorized to adopt rules on professional respon-
12 sibility and continuing education requirements, not to exceed twenty (20)
13 hours during each licensing period. Notwithstanding other provisions of
14 this chapter, the director may refuse to issue or renew a driller's license
15 permanently or for a designated period of time if the driller has previously
16 constructed wells improperly or constructed a well without a valid driller's
17 license. The rules may also allow for the director to issue a license with
18 limitations on the type, size or depth of wells the applicant is authorized
19 to construct. A copy of the proposed rules for licensing of well drillers
20 shall be furnished to each well driller holding a current license at the time
21 such proposed rules are promulgated or modified. The rules shall provide for
22 the consideration of such factors as the applicant's:

23 (a) Knowledge of Idaho water laws and the rules of the water resource
24 board in connection with the drilling of wells, including proper well
25 construction standards and procedures;

26 (b) Knowledge of the various types of drilling tools and their use;

27 (c) General knowledge of underground geology and ground water hydrol-
28 ogy and their relation to well construction;

29 (d) Ownership or access to equipment capable of adequately construct-
30 ing a well;

31 (e) Knowledge of types of well casing and their use;

32 (f) Knowledge of special well-drilling problems and their solution,
33 including additional requirements for licensing for drillers who con-
34 struct wells in areas of drilling concern or for the production of low
35 temperature geothermal resources as defined in section 42-233, Idaho
36 Code, and for the production of geothermal resources as provided in
37 chapter 40, title 42, Idaho Code;

38 (g) Previous drilling experience; and

39 (h) History of compliance with well-drilling laws and rules.

40 (7) If it is determined that the applicant for a driller's license is
41 not qualified, the director shall deny the application. If it is determined
42 that the applicant is qualified, a license shall be issued upon the filing
43 with the director of a surety bond or cash bond in the penal sum of not less
44 than five thousand dollars (\$5,000), or more than twenty thousand dollars
45 (\$20,000), as determined by the director based on the applicant's history of
46 compliance with well-drilling laws and rules, the size and depth of the wells
47 the applicant proposes to drill, the complexity of the wells, the resource to
48 be recovered, the area of operation of the applicant, and other relevant fac-
49 tors the director determines are in the public interest. The surety or cash
50 bond shall be conditioned upon the proper compliance with the provisions of

1 this chapter, chapter 40, title 42, Idaho Code, and rules promulgated pur-
2 suant thereto. Such bond shall be made payable to the director.

3 (8) Employees of drilling firms, copartnerships, corporations or asso-
4 ciations are authorized to operate drilling equipment for the driller after
5 obtaining an operator's permit from the director. Such employees shall be
6 designated as operators.

7 (a) A driller is responsible for adequate supervision of the operators
8 during the construction of each well. A driller shall be responsible
9 for the work of the operators employed by the driller.

10 (b) An operator shall ~~only~~ operate drilling equipment only for the
11 driller listed on the operator's permit.

12 (c) An operator's permit shall be obtained by filing with the director
13 an application in writing on a form provided by the director accompanied
14 by a twenty-five dollar (\$25.00) application fee.

15 (d) The applicant for an operator's permit shall successfully complete
16 a written or oral examination.

17 (e) The water resource board ~~shall~~ may adopt rules for the issuance, re-
18 vocation and renewal of an operator's permit in accordance with chapter
19 52, title 67, Idaho Code. The board is also authorized to adopt rules on
20 professional responsibility and continuing education requirements not
21 to exceed twenty (20) hours during each permitting period. The rules
22 shall consider such factors as:

23 (i) Knowledge of Idaho water laws and the rules of the water re-
24 source board in connection with the drilling of wells;

25 (ii) Demonstrated previous compliance with well_drilling laws
26 and rules including well construction standards; and

27 (iii) General understanding of well_drilling equipment, well con-
28 struction techniques, basic geology and map reading.

29 (9) Driller's licenses and operator's permits issued under this sec-
30 tion shall expire on March 31 in the second year after issuance or upon re-
31 vocation of the license by the director as provided for in this act. The
32 driller's license can be renewed effective April 1 of every other year upon
33 written application on forms provided by the director and the filing of a one
34 hundred dollar (\$100) renewal fee plus a fifteen dollar (\$15.00) renewal fee
35 for each operator employed by the licensed driller. Drillers renewing li-
36 censes in 1997 shall be assessed a licensing fee prorated monthly based upon
37 the annual fee schedule. Thereafter, driller licenses and operator permits
38 will be renewed upon expiration for a two (2) year period. Documents demon-
39 strating compliance with the continuing education requirements of the rules
40 shall be submitted to the director along with other license and permit re-
41 newal documents. The renewal request must be accompanied by a new bond or
42 evidence that the previous bond is still in effect. The renewal may then
43 be granted by the director if he determines that the driller or operator has
44 complied with the rules promulgated pursuant to this act. The fees collected
45 for the licensing of well drillers and permitting of operators are nonre-
46 fundable and shall be deposited in the water administration fund with the
47 state treasurer with other fees collected by the director.

48 (10) The licensed driller and permitted operators shall have a card
49 on hand, provided by the director to indicate that the driller or operator
50 is presently licensed or permitted at all times when he is operating the

1 drilling equipment. The director may also require other identification to
2 be posted on the drilling equipment as he deems helpful in the administration
3 of this act.

4 (11) Well driller's report. In order to enable a comprehensive survey
5 of the extent and occurrence of the state's ground water resource, every well
6 driller is hereby required to keep available for inspection at the well site
7 a daily well log and pertinent data concerning each well, and its construc-
8 tion or abandonment, that is constructed or abandoned under the driller's
9 direction in Idaho, including wells excepted under sections 42-227 and
10 42-228, Idaho Code, and to complete a report on forms furnished by the direc-
11 tor. These reports shall be properly prepared and signed by the driller and
12 deposited with the director within thirty (30) days following the completion
13 of the well. When the driller signs the report, the driller shall attest
14 that all information on the report is accurate to the best of the driller's
15 knowledge and that the driller has met all minimum well construction stan-
16 dards, low temperature geothermal resource well construction standards,
17 geothermal resource well construction standards and area of drilling con-
18 cern standards as adopted by the water resource board. The reports shall
19 become a permanent record in the office of the director for hydrologic and
20 geologic analysis and research, and shall be available for public use. The
21 report shall include such data as the director deems necessary to provide the
22 information that will be valuable for future reference and study.

23 (12) Well construction standards. The water resource board shall adopt
24 minimum standards for new well construction, modification and abandonment
25 of existing wells, low temperature geothermal resource well construction
26 and geothermal well construction in this state under the provisions of chap-
27 ter 52, title 67, Idaho Code. Such standards shall require each well to be
28 so constructed as to protect the ground water of the state from waste and
29 contamination and may include additional requirements for wells drilled in
30 "areas of drilling concern" as designated in accordance with subsection (15)
31 of this section. Every licensed well driller will be furnished a copy of
32 the adopted standards by the director, and will be required to construct or
33 abandon each well in compliance with the adopted standards.

34 (13) ~~Penalties for violation. Drilling of a well without first obtain-~~
35 ~~ing a license as required in this section shall be a criminal misdemeanor,~~
36 ~~and the employees of the department of water resources are hereby empowered~~
37 ~~to issue Idaho uniform citations, as provided by the rules of the court for~~
38 ~~magistrate's division of the district court, to any person who drills a well~~
39 ~~without first obtaining the required license. Violations. When the direc-~~
40 ~~tor of the department of water resources determines that any person is in~~
41 ~~substantial violation of any provision of this section or any rule, permit,~~
42 ~~condition of approval or order issued or promulgated pursuant to this sec-~~
43 ~~tion, the director may commence an administrative enforcement action by is-~~
44 ~~ssuing a written notice of violation in accordance with the provisions of sec-~~
45 ~~tion 42-1701B, Idaho Code. Failure of the driller to comply with the pro-~~
46 ~~visions of section 42-238(11), Idaho Code, will allow the director to pro-~~
47 ~~ceed to collect the necessary data on the well or wells in any manner avail-~~
48 ~~able to him, and the cost of this data collection may be charged against the~~
49 ~~driller's bond in the amount of the expenses incurred up to the total amount~~
50 ~~of the bond.~~

1 (a) Failure of the driller to comply with the provisions of section
2 42-238(11), Idaho Code, is also cause for the director to revoke an ac-
3 tive license, or refuse to renew a license, until such time as the well
4 driller's report or reports are properly completed and on file in the
5 office of the director. If it is found that a driller has intentionally
6 submitted inaccurate or false information in the signed well driller's
7 report as provided in subsection (11) of this section, or has failed
8 to file a report within the time frame required, the driller shall be
9 liable for a civil penalty as provided in section 42-1701B, Idaho Code.
10 In addition, this shall be cause for the director to suspend an active
11 license for a period not in excess of one (1) year or to not renew a li-
12 cense.

13 (b) Failure of the driller to comply with the provisions of section
14 42-238(12), Idaho Code, will allow the director to proceed to repair,
15 reconstruct or abandon a well so that it complies with the adopted min-
16 imum standards of well construction and abandonment, and the costs of
17 this work may be charged against the driller's bond in the amount of the
18 expenses incurred up to the total amount of the bond.

19 (c) Failure of the driller to comply with the provisions of section
20 42-238(12), Idaho Code, is also cause for the director to revoke an
21 active license or refuse to renew a license until such time as the well
22 driller has repaired or reconstructed the well or wells so that they
23 meet the adopted minimum standards. Any driller, well owner or well
24 pump installer causing a well to be altered or modified so as to not
25 meet the construction standards provided for under this section, shall
26 be deemed to have violated the provisions of this section and shall be
27 subject to the enforcement provisions of section 42-1701B, Idaho Code.
28 The director may also require that the well driller present evidence to
29 show that he and his equipment are now capable of constructing a well in
30 a proper manner, before the license is renewed.

31 (14) Appeals. Refusal to issue, refusal to renew, or revocation of a
32 well driller's license or operator's permit by the director shall be cause
33 for the well driller to seek a public hearing before the water resource
34 board. No formal petition shall be required from the affected driller or
35 operator, but a simple statement, in writing, requesting a hearing shall be
36 sufficient. The board shall notify the driller or operator, and the direc-
37 tor, of the date set for the hearing, which shall be at least fifteen (15)
38 days after the notice is sent by certified mail to the well driller or oper-
39 ator at his address of record with the department. A certified transcript
40 of the proceedings and the evidence received at such hearing shall be main-
41 tained by the board. The board shall affirm, modify or reject the director's
42 decision, and make its decision in the form of an order to the director. The
43 hearing shall be conducted in accordance with chapter 52, title 67, Idaho
44 Code, and rules of practice and procedure adopted by the water resource
45 board. Any party to the hearing may seek judicial review of any final order
46 of the water resource board pursuant to chapter 52, title 67, Idaho Code.

47 (15) Drilling in a designated "area of drilling concern." The director
48 of the department of water resources may designate, as he determines nec-
49 essary, "areas of drilling concern" on an aquifer-by-aquifer basis within
50 which drillers must comply with the additional requirements of this section.

1 The director shall designate "areas of drilling concern" to protect public
 2 health and to prevent waste or contamination of ground or surface water be-
 3 cause of factors such as aquifer pressure, vertical depth of the aquifer,
 4 warm or hot ground water, or contaminated ground or surface waters. It is
 5 unlawful for any person not meeting the requirements of this subsection to
 6 drill a well for any purpose in a designated "area of drilling concern." Any
 7 person drilling a new well or deepening or modifying an existing well for
 8 any purpose in an "area of drilling concern" as designated by the director as
 9 herein provided shall comply with the following additional requirements:

10 (a) Additional bonding requirements, as determined by the director, to
 11 ~~insure~~ ensure that the well is constructed or abandoned in compliance
 12 with the adopted standards for well construction.

13 (b) Additional experience and knowledge in drilling wells encountering
 14 warm water or pressurized aquifers as required by rules adopted by the
 15 water resource board.

16 (c) Document that specialized equipment needed to drill wells in "ar-
 17 eas of drilling concern," as determined by the director, is or will be
 18 available to the driller.

19 (d) Provide a notice of intent to drill, deepen or modify a well; and
 20 submit plans and specifications for the well and a description of the
 21 drilling methods that will be used, as required by the director; and
 22 receive the written approval of the director before commencing to
 23 drill, deepen, or modify any well in a designated "area of drilling con-
 24 cern."

25 Prior to designating an "area of drilling concern," the director shall con-
 26 duct a public hearing in or near the area to determine the public interest
 27 concerning the designation. Notice of the hearing shall be published in two
 28 (2) consecutive weekly issues of a newspaper of general circulation in the
 29 area prior to the date set for hearing.

30 In the event an area has been designated as an "area of drilling concern" and
 31 the director of the department of water resources desires to remove such des-
 32 ignation or modify the boundaries thereof, he shall likewise conduct a pub-
 33 lic hearing following similar publication of notice prior to taking such ac-
 34 tion.

35 SECTION 2. That Section [42-238b](#), Idaho Code, be, and the same is hereby
 36 repealed.

37 SECTION 3. That Section [42-247](#), Idaho Code, be, and the same is hereby
 38 repealed.

39 SECTION 4. That Chapter 19, Title 42, Idaho Code, be, and the same is
 40 hereby repealed.

41 SECTION 5. That Section 42-3809, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 42-3809. ~~PENALTY FOR VIOLATION -- ENFORCEMENT PROCEDURE -- INJUNCTIVE~~
 44 ~~RELIEF. (1) Any person who violates any of the provisions of this chapter,~~
 45 ~~any regulation, rule, order or standard of the board promulgated pursuant to~~
 46 ~~section 42-3803, Idaho Code, or of any order or condition of approval of the~~

1 ~~director issued pursuant thereto, where a copy of the order has been served~~
2 ~~upon said person in person or by certified mail and said person fails to com-~~
3 ~~ply therewith within the time therein provided, or within ten (10) days of~~
4 ~~such service if not otherwise provided, shall be guilty of a misdemeanor and~~
5 ~~upon conviction shall be punished by a fine of not less than one hundred fifty~~
6 ~~dollars (\$150) nor more than five hundred dollars (\$500); provided further,~~
7 ~~that each day such violation of an order or condition of approval has taken~~
8 ~~place shall constitute a separate offense punishable by a fine of not less~~
9 ~~than one hundred fifty dollars (\$150) for each day until such activity is~~
10 ~~abated or voluntarily ceased. Any stream channel alteration engaged in by~~
11 ~~any person without approval having been obtained therefor as prescribed in~~
12 ~~this act is hereby declared to be a public nuisance and shall be subject to~~
13 ~~proceedings for immediate abatement.~~

14 (2) The director of the department of water resources is hereby vested
15 with the power and authority to enforce the provisions of this chapter and
16 rules and regulations promulgated pursuant to it. When the director of the
17 department of water resources determines that any person is in substantial
18 violation of any provision of this chapter or any rule, permit, certificate,
19 condition of approval or order issued or promulgated pursuant to this chap-
20 ter, the director may commence an administrative enforcement action by issu-
21 ing a written notice of violation in accordance with the provisions of sec-
22 tion 42-1701B, Idaho Code. Provided however, that no civil or administra-
23 tive proceeding may be brought to recover for a violation of any provision
24 of this chapter or a violation of any rule, permit or order issued or pro-
25 mulgated pursuant to this chapter, more than two (2) years after the direc-
26 tor had knowledge or ought reasonably to have had knowledge of the violation.
27 The director shall have authority and it shall be his duty to seek a temporary
28 injunction from the appropriate district court to restrain a person from al-
29 tering a stream channel until approval therefor has been obtained by the per-
30 son as provided in this act.

31 SECTION 6. That Section [42-3812](#), Idaho Code, be, and the same is hereby
32 repealed.

33 SECTION 7. That Section 42-4010, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 42-4010. POWERS AND DUTIES -- PENALTIES -- ENFORCEMENT PROCEDURE. (a)
36 The water resource board may adopt, amend, or rescind reasonable rules,
37 regulations, and construction standards necessary to the administration of
38 this chapter in accordance with chapter 52, title 67, Idaho Code.

39 (b) The board may require that owners or operators of wells or injection
40 wells keep or cause to be kept well logs, core records, and drilling histo-
41 ries of such wells or injection wells. It may require that copies of such
42 logs, records, and/or histories be filed with the director within a reason-
43 able time after well completion. It may further require such other geologic,
44 geochemical, or engineering plans, reports, or records as necessary for the
45 administration of this chapter. Any reports, logs, records, or histories
46 filed with the director shall be available for public inspection subject to
47 disclosure according to chapter 1, title 74, Idaho Code, and shall be kept
48 as confidential by the director for a period of one (1) year from well com-

1 pletion, provided however, that the director may use any such reports, logs,
2 records, or histories in any action in any court to enforce the provisions of
3 this chapter or any order or regulation adopted hereunder.

4 (c) The director may enter onto private land at any time to inspect any
5 well or geothermal resource development project to determine if such well or
6 project is being constructed, operated, or maintained according to any ap-
7 plicable permits or to determine if the construction, operation, or mainte-
8 nance of such well or project may involve a threat to life or property or an
9 unreasonable risk to subsurface, surface, or atmospheric resources.

10 (d) If the director finds that any person is constructing, operating or
11 maintaining any well or injection well not in accordance with any applicable
12 permit or in a fashion so as to involve an unreasonable risk of, or so as to
13 cause, damage to life or property or subsurface, surface, or atmospheric re-
14 sources, the director may issue an order to such person to correct or to stop
15 such practices ~~as are~~ found to be improper and to mitigate any injury of any
16 sort caused by such practices.

17 (e) The director may enforce any provision of this chapter or any order
18 or regulation issued or adopted pursuant hereto by an appropriate action in
19 the district court. The director may bring an action in the district court to
20 have enjoined any threatened noncompliance with any provision of this chap-
21 ter, regulations, or orders of the director, or any threatened harm to life,
22 property, or surface, subsurface, or atmospheric resources ~~which~~ that would
23 be caused by such noncompliance. It shall be the duty of the attorney gen-
24 eral to institute and prosecute civil enforcement actions or injunctive ac-
25 tions as provided in this chapter, and to prosecute actions or proceedings
26 for the enforcement of any criminal provisions of this chapter. The attorney
27 general may delegate the authority and duty under this section to prosecute
28 criminal actions to the prosecuting attorney of the county in which such a
29 criminal action may arise.

30 (f) ~~Any willful violation of or failure to comply with any provision~~
31 ~~of this chapter, or regulation adopted or order issued pursuant to the chap-~~
32 ~~ter, shall be a misdemeanor punishable by a fine of up to ten thousand dollars~~
33 ~~(\$10,000) for each offense or a sentence of up to six (6) months in a county~~
34 ~~jail or both; each day of a continuing violation shall be a separate offense~~
35 ~~under this subdivision.~~ The director of the department of water resources
36 is hereby vested with the power and authority to enforce the provisions of
37 chapter 40, title 42, Idaho Code, and rules and regulations promulgated pur-
38 suant to it. When the director of the department of water resources deter-
39 mines that any person is in substantial violation of any provision of this
40 chapter or any rule, permit, certificate, condition of approval or order is-
41 sued or promulgated pursuant to this chapter, the director may commence an
42 administrative enforcement action by issuing a written notice of violation
43 in accordance with the provisions of section 42-1701B, Idaho Code. A respon-
44 sible or principal executive officer of any corporate person may be liable
45 under this ~~subdivision~~ subsection if such corporate person is not in compli-
46 ance with any provision of this chapter or with any valid order or regulation
47 adopted pursuant hereto.

48 (g) The director shall undertake such studies, investigations, or re-
49 search programs as necessary for the proper administration of this chapter
50 and in order to develop experience in and understanding of the entire field

1 of geothermal resource exploration and development in both its technical and
2 regulatory aspects. The director and board shall cooperate with other Idaho
3 state agencies, the state institutions of higher learning, agencies of other
4 states, and agencies of the federal government in the preparation of such
5 investigations, studies, or research projects. The director and board may
6 cooperate with the scientists at the Idaho national ~~engineering~~ laboratory
7 in their research, development, engineering and demonstration of geothermal
8 projects.

9 (h) The director may enter into cooperative agreements and memoranda of
10 understanding with agencies of other states for the purpose of the adminis-
11 tration of geothermal areas ~~which~~ that are partially in Idaho and partially
12 in one (1) or more other states.