

**73-22-7 Cooperative or unit operation of geothermal area -- Order -- Plan of operation -- Approval of owners -- Amendment.**

- (1) The agency or any affected person may commence an adjudicative proceeding to consider the need for cooperative or unit operation of a geothermal area.
- (2) The division shall order the cooperative or unit operation of part or all of a geothermal area if the division finds that:
  - (a) a developable resource exists; and
  - (b) that this operation is reasonably necessary to prevent waste, to protect correlative rights, or to prevent the drilling of unnecessary wells and will not reduce the ultimate economic recovery of geothermal resources.
- (3) The division's order for cooperative or unit operations shall be upon terms and conditions that are just and reasonable and satisfy the requirements of Subsection (2).
- (4) An order by the division for unit operations shall prescribe a plan, including:
  - (a) a description of the geothermal area to be unit operated, termed the unit area;
  - (b) a statement of the nature of the operations contemplated, the time they will commence, and the manner and circumstances under which unit operations shall terminate;
  - (c) an allocation to the separately-owned tracts in the unit area of the geothermal resources produced and of the costs incurred in unit operations. The allocations shall be in accord with the agreement, if any, of the affected parties. If there is no agreement, the division shall determine the allocations from evidence introduced at a hearing before the division. Production shall be allocated in proportion to the relative value that each tract bears to the value of all tracts in the unit area. The acreage of each tract in proportion to the total unit acreage shall be the measure of relative value, unless the division finds after public hearing that another method is likely to result in a more equitable allocation and protection of correlative rights. Resource temperature, pressure, fluid quality, geological conditions, distance to place of use, and productivity are among the factors that may be considered in evaluating other methods. The method for allocating production in unit operations shall be revised, if, after a hearing, the division finds that the revised method is likely to result in a more equitable allocation and protection of correlative rights. Any affected person may file a request for agency action to consider adoption of a revised allocation method, but the request may not be made until three years after the initial order by the division or at less than two-year intervals after that. Upon receipt of a request for consideration of a revised allocation method, the division shall hold a hearing;
  - (d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for each item shall be determined by the owners of the unit area (not including royalty owners). If the owners of the unit area are unable to agree upon the amount of the charges or to agree upon the correctness of the charges, any affected party may file a request for agency action. Upon receipt of the request, the division shall hold a hearing to determine them. The net amount charged against the owner of a separately-owned tract shall be considered an expense of unit operation chargeable against that tract. The adjustments provided for in this subsection may be treated separately and handled by agreements separate from the unitization agreement;
  - (e) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately-owned tracts and how these costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operation charged to that owner,

or the interest of that owner, may be sold and the proceeds applied to the payment of the costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's geothermal rights and his share of unitized production to secure the payment of the owner's proportionate part of the cost of developing and operating the unit area. This lien may be enforced in the same manner as provided by Title 38, Chapter 1a, Part 7, Enforcement of Preconstruction and Construction Liens. For these purposes any nonconsenting owner is considered to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, does not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations;

- (f) a provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for this service payable out of that person's share of the production;
  - (g) a provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of that person;
  - (h) any additional provisions that are necessary to carry on the unit operations.
- (5)
- (a) No order of the division providing for unit operations is effective unless and until the division finds that the plan for unit operations prescribed by the division has been approved in writing by:
    - (i) those persons, who under the division's order, will be required to pay 66% of the costs of the unit operation; and
    - (ii) the owners of 66% of the production or proceeds of the unit operation that are free of costs, such as royalties, overriding royalties, and production payments.
  - (b) If the persons owning the required percentage of interest in the unit area do not approve the plan within six months from the date on which the order is made, the order is ineffective and shall be revoked by the division unless for good cause shown the division extends this time.
- (6)
- (a) An order providing for unit operations may be amended by an order of the division in the same manner and subject to the same conditions as an original order for unit operations.
  - (b) If this amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments, and other interests that are free of costs is required.
  - (c) Production allocation may be amended only by following the procedures of Subsection (4)(c).
- (7)
- (a) All operations, including the commencement, drilling, or operation of a well upon any portion of the unit area are considered for all purposes to be the conduct of those operations upon each separately-owned tract in the unit by the several owners of tracts in the unit.
  - (b) The portions of the unit production allocated to a separately-owned tract in a unit area are, when produced, considered for all purposes to have been actually produced from that tract by a well drilled on it. Good faith operations conducted pursuant to an order of the division providing for unit operations constitutes a complete defense to any suit alleging breach of lease or of contractual obligations covering lands in the unit area to the extent that compliance with these obligations cannot be had because of the order of the division.

- (8) The portion of the unit production allocated to any tract, and the proceeds from the sale of this production, are the property and income of the several persons to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.
- (9)
  - (a) Except to the extent that the parties affected so agree, and as provided in Subsection (4)(e), no order providing for unit operations may be construed to result in a transfer of all or any part of the title of any person to the geothermal resource rights in any tract in the unit area.
  - (b) All property, whether real or personal, that is acquired in the conduct of unit operations, is acquired for the account of the owners within the unit area and is the property of those owners in the proportion that the expenses of unit operations are charged.

Amended by Chapter 278, 2012 General Session