

1 SENATE BILL 215

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 William E. Sharer and Leo Jaramillo and Meredith A. Dixon and
5 Jack Chatfield

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; ENACTING THE GEOLOGIC CARBON
12 DIOXIDE SEQUESTRATION ACT; PROVIDING FOR THE UNITIZATION OF
13 FORMATIONS FOR SUBSURFACE SEQUESTRATION OF CARBON DIOXIDE;
14 LIMITING LIABILITY OF OWNERS OF SEQUESTRATION FACILITIES
15 FOLLOWING TRANSFER OF INTERESTS TO THE STATE; ESTABLISHING
16 FEES.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
20 cited as the "Geologic Carbon Dioxide Sequestration Act".

21 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
22 Geologic Carbon Dioxide Sequestration Act:

23 A. "carbon dioxide" means carbon dioxide produced
24 by anthropogenic sources or captured from the atmosphere,
25 including "qualified carbon oxide" as defined pursuant to

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1 applicable federal law and "carbon dioxide stream" as may be
2 defined in federal law and regulations pertaining to class VI
3 carbon dioxide injection wells;

4 B. "commission" means the oil conservation
5 commission;

6 C. "director" means the director of the division;

7 D. "division" means the oil conservation division
8 of the energy, minerals and natural resources department;

9 E. "geologic sequestration" means the long- or
10 short-term underground sequestration of carbon dioxide within a
11 geologic stratum, formation, aquifer, cavity or void, whether
12 naturally or artificially created, including deep saline
13 aquifers, oil and gas reservoirs and unminable coal seams, such
14 that carbon dioxide does not escape to the atmosphere;

15 F. "operator" means a person who has the right to
16 inject carbon dioxide for geologic sequestration into a
17 sequestration facility, whether for the person's own account or
18 for the account of others;

19 G. "sequestration facility" means carbon dioxide
20 injection wells, monitoring wells, science wells and any other
21 wells used for the injection of carbon dioxide in subsurface
22 geologic formations, including the underground equipment,
23 pipelines, roads and surface equipment and buildings used for
24 the purpose of geologic sequestration of carbon dioxide.

25 "Sequestration facility" includes a facility that injects

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1 carbon dioxide for secure geologic sequestration pursuant to
2 applicable federal laws, including a geologic sequestration
3 project as may be defined in federal regulations pertaining to
4 federal environmental protection agency class VI underground
5 injection control wells for carbon dioxide injection wells; and

6 H. "sequestration unit" means the geologic
7 formation or formations proposed for the injection of carbon
8 dioxide for geologic sequestration and the lands to be included
9 within the unit. "Sequestration unit" does not include oil and
10 gas units where carbon dioxide is injected for purposes of
11 enhancing oil and gas production.

12 SECTION 3. [NEW MATERIAL] APPLICABILITY--DIVISION
13 AUTHORITY--RULEMAKING.--

14 A. Geologic sequestration of carbon dioxide shall
15 be permitted pursuant to the Geologic Carbon Dioxide
16 Sequestration Act.

17 B. The Geologic Carbon Dioxide Sequestration Act
18 applies to sequestration facilities that commence injection of
19 carbon dioxide after the effective date of this 2024 act;
20 provided that sequestration facilities that commenced injection
21 of carbon dioxide before the effective date of this 2024 act
22 may apply to the division for unitization and a certificate of
23 completion of injection operations and release of liability
24 pursuant to the provisions of the Geologic Carbon Dioxide
25 Sequestration Act.

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1 C. The Geologic Carbon Dioxide Sequestration Act
2 does not apply to the injection of the carbon dioxide in
3 connection with the enhanced oil and gas production operations.

4 D. The division has the jurisdiction and authority
5 necessary to enforce the provisions of the Geologic Carbon
6 Dioxide Sequestration Act and may adopt and promulgate rules
7 and issue orders for the implementation of the provisions of
8 that act.

9 SECTION 4. [NEW MATERIAL] ACQUISITION OF LANDS FOR
10 GEOLOGIC SEQUESTRATION.--

11 A. An operator that desires to form a sequestration
12 unit shall attempt to acquire by option, lease, conveyance or
13 other negotiated means the rights necessary for geologic
14 sequestration within the proposed sequestration unit prior to
15 resorting to the procedure for compulsory unitization of such
16 interests pursuant to Section 5 of the Geologic Carbon Dioxide
17 Sequestration Act.

18 B. The lands to be included shall be the reasonably
19 ascertained areal extent of migration of the sequestered carbon
20 dioxide within the formation or formations based on known
21 geologic information available at the time of the application.
22 The sequestration unit shall also identify any necessary and
23 reasonable areal buffer and subsurface monitoring zones as
24 required by federal or state law, rules, regulation, order or
25 permit.

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1 C. The commissioner of public lands and any state
2 agency may grant to an operator rights for geologic
3 sequestration on lands subject to its jurisdiction on such
4 terms as it finds are reasonable and that provide compensation
5 equal to the fair market value of the rights.

6 D. The division may grant to an operator the right
7 to form and to commence operations for the geologic
8 sequestration of carbon dioxide in accordance with the Geologic
9 Carbon Dioxide Sequestration Act.

10 SECTION 5. [NEW MATERIAL] COMPULSORY UNITIZATION OF
11 SEQUESTRATION FACILITIES--CONTENTS OF APPLICATION.--

12 A. An operator may apply to the division for an
13 order unitizing a geologic formation or formations for geologic
14 sequestration of carbon dioxide to be included within the
15 proposed sequestration unit. The division shall issue the
16 order upon finding the requirements of this section and Section
17 6 of the Geologic Carbon Dioxide Sequestration Act have been
18 satisfied.

19 B. An application filed pursuant to this section
20 shall contain:

21 (1) if required by the federal government, a
22 copy of a permit or draft permit for injection of carbon
23 dioxide pursuant to any applicable federal law;

24 (2) a description of the proposed geologic
25 formation or formations and a plat of the surface lands

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1 proposed to be included in the proposed sequestration unit,
2 including identification of the buffer and subsurface
3 monitoring zones;

4 (3) the names and addresses of the owners of
5 the surface estate within the proposed sequestration unit and
6 of lands within one-half mile of the exterior boundary of the
7 proposed sequestration unit as disclosed by:

8 (a) the records of the county assessor
9 of each county in which the proposed sequestration unit is to
10 be located with respect to privately owned land; and

11 (b) the bureau of land management with
12 respect to federal lands, the commissioner of public lands with
13 respect to state trust lands and the applicable state agency
14 owning the surface estate with respect to lands owned by the
15 state but not subject to the jurisdiction of the commissioner
16 of public lands;

17 (4) the names and addresses of the owners of
18 the mineral estate and mineral lessees within the proposed
19 sequestration unit and for all lands within one-half mile of
20 the exterior boundary of the proposed sequestration unit;

21 (5) evidence of the following:

22 (a) geologic evidence establishing the
23 capability of the formation to accept and sequester carbon
24 dioxide;

25 (b) an estimate of the quantity and

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1 volume of carbon dioxide that is reasonably believed to be
2 capable of being sequestered in the sequestration unit;

3 (c) the anticipated pressure of each
4 formation proposed for sequestration and the anticipated
5 pressure required to inject carbon dioxide into the
6 sequestration unit;

7 (d) if available, the proposed locations
8 of wells, types of wells, anticipated total depth of the wells,
9 the casing program for the wells and the proposed locations of
10 sequestration facilities;

11 (e) the depth of all fresh water
12 aquifers and location of any water wells within the
13 sequestration unit and buffer zone;

14 (f) the date the proposed plan is
15 desired to become effective;

16 (g) the anticipated date of the
17 commencement of development of sequestration facilities;

18 (h) the anticipated date of the
19 commencement of injection operations;

20 (i) the estimated period of time it will
21 take to complete the construction of the sequestration
22 facility;

23 (j) the estimated life of the injection
24 operations; and

25 (k) the estimated pressure in the

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1 formation at the end of the injection operations;

2 (6) information on each of the facts required
3 to be found by the division pursuant to Section 6 of the
4 Geologic Carbon Dioxide Sequestration Act;

5 (7) the amount per acre or the amount per
6 volume of carbon dioxide injected that the operator proposes to
7 pay to compensate the owners of the surface estate and, if
8 severed, the owners of the subsurface formation or formations
9 within the sequestration unit in which the carbon dioxide is to
10 be injected for sequestration. Each owner of the formation or
11 formations shall be deemed for all purposes to have an equal
12 amount of capacity to store sequestered carbon dioxide and
13 shall be compensated on a surface acreage basis for such
14 injection and storage; and

15 (8) the amount per acre that the operator
16 proposes to pay to compensate the surface owners or, if
17 severed, the owners of the formation or formations within the
18 buffer and monitoring zones.

19 SECTION 6. [NEW MATERIAL] COMPULSORY UNITIZATION OF A
20 SEQUESTRATION UNIT--FINDINGS--RATIFICATION--AMENDMENTS--
21 PETITIONS FOR INCLUSION--RECORDING--LIEN FOR COSTS.--

22 A. Upon receipt of an application pursuant to
23 Section 5 of the Geologic Carbon Dioxide Sequestration Act, the
24 division shall set the matter for hearing and, in addition to
25 notice otherwise required by law or the division's rules, shall

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1 cause the applicant to give notice of the hearing, specifying
2 the time and place of the hearing and describing briefly its
3 purpose and the land and formations affected, to be mailed by
4 certified mail at least thirty days prior to the hearing to all
5 persons whose names and addresses are required to be listed in
6 the application.

7 B. If the proposed unitization order concerns
8 unknown or non-locatable owners and interest holders, the
9 applicant shall publish notice once a week for two consecutive
10 weeks in the newspaper of the largest circulation in each
11 county in which the proposed sequestration unit is located and
12 shall file proof of notice with the division concurrently with
13 the application. The first notice shall appear at least thirty
14 days prior to, and the second notice no more than twenty-five
15 days from, the hearing on the application for a sequestration
16 unit order. The notice shall:

17 (1) state that an application for a
18 sequestration unit has been filed with the division;

19 (2) describe the formation or formations and
20 land proposed to be unitized and the buffer area and any
21 monitoring area;

22 (3) in the case of an unknown owner or
23 interest holder, indicate the name of the last known owner or
24 interest holder;

25 (4) in the case of a non-locatable owner or

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1 interest holder, identify the name of the owner or interest
2 holder and their last known address; and

3 (5) state that any person claiming an interest
4 in the formations or lands proposed to be unitized should
5 notify the director and the operator of the proposed
6 sequestration facility at the published address within twenty
7 days of the publication date of the most recent notice.

8 C. After considering the application and hearing
9 the evidence offered regarding the application, the division
10 may enter an order setting forth the following findings if
11 established by the evidence presented:

12 (1) the underground stratum or formation
13 sought to be unitized is suitable for the geologic
14 sequestration of carbon dioxide and its use for such purposes
15 is in the public interest;

16 (2) the use of the underground stratum or
17 formation sought to be unitized will contain the carbon dioxide
18 and will not contaminate fresh water or oil, gas, condensate,
19 potash or other commercial mineral deposits capable of being
20 produced in paying quantities, unless all the owners, mineral
21 lessees and other parties owning interests in such oil, gas,
22 condensate, potash or other commercial mineral deposits have
23 consented to the sequestration unit;

24 (3) the use of the underground stratum or
25 formation sought to be unitized will contain the carbon dioxide

1 and will not interfere with existing or planned injection of
2 produced water, carbon dioxide or other fluids from ongoing oil
3 and gas or mineral operations;

4 (4) the application denotes the areal extent
5 of migration of the injected carbon dioxide within the
6 underground stratum or formation and that all lands reasonably
7 determined to be within the migration zone are included within
8 the sequestration unit;

9 (5) the anticipated volume or quantity of
10 carbon dioxide capable of being sequestered in the
11 sequestration unit;

12 (6) the compensation to be paid by the
13 operator to the owners of the surface or, if severed, the
14 owners of the formation or formations within the sequestration
15 unit is fair, just and equitable;

16 (7) the compensation to be paid by the
17 operator to the owners of the surface or, if severed, the
18 owners of the formation or formations within the buffer area or
19 any monitoring area is fair, just and equitable;

20 (8) the compensation to be paid by the
21 operator to the owners of the surface where sequestration
22 facilities are to be built on the surface, including roads and
23 pipelines, is fair, just and equitable;

24 (9) no portion of the formation or stratum
25 sought to be unitized is being used, or is currently being

1 proposed to be used, for production of oil, natural gas, potash
2 or any other mineral capable of being mined and marketed in
3 paying quantities or for the geologic sequestration of carbon
4 dioxide by others within three miles of the proposed
5 sequestration unit, including its buffer and any monitoring
6 area;

7 (10) the applicant has made a good faith
8 effort to secure voluntary unitization and has secured
9 voluntary agreements from owners of at least sixty percent of
10 the lands within the proposed sequestration unit;

11 (11) the application sets forth the following
12 information:

13 (a) the approximate anticipated date
14 geologic sequestration would commence within the sequestration
15 unit if approved;

16 (b) the approximate date of commencement
17 of the sequestration facilities if approved;

18 (c) the anticipated pressures
19 encountered within the formation or formations in which the
20 sequestration is to occur;

21 (d) the anticipated pressure required to
22 sequester the carbon dioxide into the formation or formations;

23 (e) the estimated duration of the
24 sequestration operations; and

25 (f) the areal extent of the migration of

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1 carbon dioxide sequestered into the sequestration unit; and

2 (12) the application includes additional
3 provisions found to be appropriate for the operation of the
4 sequestration facility and the prevention of waste.

5 D. The division shall not issue an order approving
6 the application until the applicant has received agreements in
7 writing by persons owning at least sixty percent of the lands
8 within the proposed sequestration unit. When the persons
9 owning the required percentage of interest have approved the
10 sequestration unit, the division may enter an order approving
11 the application and unitizing the interests of all persons
12 within the sequestration unit whether or not the persons have
13 voluntarily agreed to the sequestration unit. If the required
14 percentage of interest for a proposed sequestration facility
15 does not approve the sequestration unit within a period of six
16 months from the date of filing the application, the application
17 shall be revoked by the division unless the division, for good
18 cause shown, extends the time for ratification; provided that
19 the time for ratification shall not be extended for more than
20 six months.

21 E. An order entered by the division pursuant to
22 this section may be amended by the division after notice and a
23 hearing as follows:

24 (1) for amendments concerning an expansion of
25 the sequestration unit, notice shall be in the same manner and

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1 subject to the same conditions as notice provided in
2 Subsections A and B of this section and to include all the
3 interests in the area in which the additional lands considered
4 for expansion are located;

5 (2) for amendments dealing only with a
6 modification of operations of the sequestration facility or
7 sequestration unit, notice shall be sent to all owners of
8 interests within the sequestration unit at the owners' last
9 known address on file with the operator; and

10 (3) for all other amendments, notice shall be
11 in the same manner and subject to the same conditions as notice
12 provided in Subsections A and B of this section.

13 F. A certified copy of any order of the division
14 entered pursuant to this section shall be recorded in the land
15 records of the counties where a portion of the sequestration
16 unit and attendant buffer and monitoring zones are located.

17 SECTION 7. [NEW MATERIAL] COMPULSORY UNITIZATION OF
18 SEQUESTRATION UNIT--EFFECTS OF UNITIZATION ORDER.--

19 A. Except to the extent that the parties affected
20 agree, no order providing for a sequestration unit shall be
21 construed to result in a transfer of all or any part of the
22 title or other rights in any tract in the sequestration unit,
23 except for the right to inject carbon dioxide into the
24 formation or formations subject to the sequestration unit, to
25 sequester carbon dioxide in the formation or formations and the

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1 reasonable use of the surface for sequestration facilities. No
2 agreement or order shall operate to violate the terms and
3 requirements of any permit applicable to the formation or
4 formations or the wells within the sequestration unit.

5 B. No order of the division issued pursuant to the
6 Geologic Carbon Dioxide Sequestration Act shall be construed to
7 confer on any person the right of eminent domain, beyond the
8 forced unitization of the sequestration unit.

9 C. Each of the tracts of land within the
10 sequestration unit shall be allocated a pro rata share of the
11 proceeds for the sequestration of carbon dioxide on an acreage
12 basis, with the numerator being the number of acres within the
13 tract divided by the total number of acres in the sequestration
14 unit. Upon an expansion or contraction of the sequestration
15 unit, the tract allocation percentages shall change based on
16 the new acreage in the expanded or contracted sequestration
17 unit, effective the first day of the month following approval
18 by the division of the expansion or contraction.

19 D. As to the tracts or persons where a private
20 agreement is in place, each tract's share shall be allocated
21 and paid to the surface owners or, if previously severed, the
22 owners of the subsurface formation or formations or the voids
23 within the formations within the sequestration unit into which
24 the carbon dioxide is to be injected for sequestration, the
25 operator and any other persons owning interests in the

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1 sequestration of carbon dioxide within the tract on the basis
2 of the agreement or agreements.

3 E. With respect to the interest of any party who
4 cannot be located or whose identity cannot be ascertained, the
5 operator shall deposit the unlocatable or unknown owner's share
6 in an interest-bearing account in a national or state-chartered
7 bank with deposits insured by the federal deposit insurance
8 corporation for a period of five years or until the owner is
9 located and the share distributed to the owner, whichever is
10 less. If the share is not distributed to the owner in five
11 years, on the anniversary of the fifth year, as provided in
12 Paragraph (15) of Subsection A of Section 7-8A-2 NMSA 1978,
13 such sum shall be paid to the taxation and revenue department
14 to be distributed pursuant to Section 7-1-6.43 NMSA 1978.

15 SECTION 8. [NEW MATERIAL] OWNERSHIP OF INJECTED CARBON
16 DIOXIDE.--All carbon dioxide injected into geologic
17 sequestration in a sequestration unit shall be deemed the
18 property of the operator. During the term of the sequestration
19 unit and for so long as the sequestration unit agreement
20 remains in force and effect, no surface or mineral interest
21 owner or lessee shall have the right to produce, capture, take,
22 reduce to possession, waste or otherwise interfere with or
23 exercise any control over such carbon dioxide within the
24 sequestration unit unless approved by the operator and the
25 division or except as to drilling operations through the

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1 formation subject to the sequestration unit for purposes of
2 drilling to deeper depths and horizons for the extraction of
3 oil, gas and other minerals.

4 SECTION 9. [NEW MATERIAL] CERTIFICATE OF COMPLETION OF
5 INJECTION OPERATIONS--LIABILITY RELEASE.--

6 A. The division shall issue a certificate of
7 completion of injection operations upon a showing by the
8 operator of a sequestration facility that the requirements of
9 Subsection D of this section have been satisfied.

10 B. Upon the issuance of a certificate of completion
11 of injection operations:

12 (1) any right, title and interest in and to,
13 and liability for, the sequestration facility, including the
14 stored carbon dioxide, shall transfer to the state;

15 (2) the operator, owners and all persons who
16 generated, transported or injected any carbon dioxide into the
17 sequestration unit and all owners otherwise having any interest
18 in the sequestration unit and sequestration facility or the
19 injected carbon dioxide shall be released from any and all
20 duties or obligations pursuant to the Geologic Carbon Dioxide
21 Sequestration Act and all liability associated with or related
22 to the sequestration unit and sequestration facility;

23 (3) any bonds posted by or on behalf of the
24 operator shall be released; and

25 (4) the state shall succeed and be subject to

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1 the terms of all agreements, permits, rules, regulations and
2 orders applicable to the operator and its successors and the
3 sequestration facility, and any monitoring, repair and
4 remediation required by law shall become the state's
5 responsibility to be overseen by the division, unless and until
6 the federal government assumes responsibility for the long-term
7 monitoring and management of the sequestration unit and
8 sequestration facility.

9 C. The release from liability provided pursuant to
10 this section shall not apply to an operator or generators or
11 transporters of injected carbon dioxide if it is demonstrated
12 that such person knowingly concealed or misrepresented material
13 facts relating to the mechanical integrity of the sequestration
14 facility or the chemical composition of any injected carbon
15 dioxide.

16 D. The certification of completion of injection
17 operations shall be issued upon a showing by the operator that:

18 (1) it is in full compliance with all laws
19 governing the sequestration unit and sequestration facility;

20 (2) it has resolved all pending claims
21 regarding the sequestration unit and sequestration facility;

22 (3) the sequestration unit is reasonably
23 expected to retain the carbon dioxide stored in it;

24 (4) the carbon dioxide in the sequestration
25 unit has become stable;

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1 (5) all wells, equipment and facilities to be
2 used following the cessation of injection are in good condition
3 and retain mechanical integrity; and

4 (6) it has plugged all wells and removed all
5 equipment and facilities, unless such are needed for use
6 following the cessation of injection, and has completed all
7 reclamation work required by law.

8 SECTION 10. [NEW MATERIAL] EFFECT OF CERTIFICATES AND
9 ORDERS OF THE DIVISION.--A person acting pursuant to a
10 certificate or order issued by the division pursuant to the
11 Geologic Carbon Dioxide Sequestration Act, in compliance with
12 the provisions of that act or with rules or orders issued by
13 the division pursuant to that act, shall not be deemed to be a
14 public utility subject to the provisions of the Public Utility
15 Act or a common carrier as that term is used in the Oil and Gas
16 Act solely because the person owns, controls or operates all or
17 part of a carbon sequestration unit or carbon sequestration
18 facility.

19 SECTION 11. [NEW MATERIAL] PRESERVATION OF RIGHTS.--
20 Nothing in the Geologic Carbon Dioxide Sequestration Act shall:
21 A. prevent a mineral owner or lessee from drilling
22 through the sequestration unit or near a sequestration facility
23 so long as it uses reasonable measures to protect the facility
24 against the escape of the carbon dioxide being stored and the
25 drilling operations are conducted in accordance with all

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1 applicable drilling and casing rules; or

2 B. affect or limit any enhanced oil recovery or
3 enhanced gas recovery project permitted by the division or
4 commission or prohibit use of anthropogenic or naturally
5 occurring carbon dioxide in such projects.

6 SECTION 12. [NEW MATERIAL] FEES.--The division may levy
7 on operators the following fees, which shall be paid to the
8 division and deposited in the general fund:

9 A. an annual regulatory fee for sequestration
10 facilities approved and those that have not received a
11 certificate of completion of injection operations. The annual
12 regulatory fee shall be in an amount set by division rule, and
13 the amount of the fee shall be based on the annual projected
14 costs to the division for oversight and regulation of
15 sequestration facilities; and

16 B. application fees for applications for
17 certificates or orders pursuant to the Geologic Carbon Dioxide
18 Sequestration Act, the amounts of which shall be set by
19 division rule; provided that the amount of the fee shall be
20 based on the anticipated cost of processing the application for
21 which the fee is levied.

22 SECTION 13. [NEW MATERIAL] OWNERSHIP OF VOIDS WITHIN THE
23 EARTH.--

24 A. Absent specific language in a severing
25 instrument to the contrary, the surface estate includes the

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1 pore space, and the ownership of all pore space in all strata
2 below the surface lands and waters of this state is declared to
3 be vested in the several owners of the surface above the strata
4 or formations.

5 B. To the extent the dominant mineral estate is
6 reasonably utilizing the surface estate for the production of
7 minerals located thereon and therein, the formations so used
8 shall not be interfered with and are excluded from the
9 provisions of the Geologic Carbon Dioxide Sequestration Act.

10 C. A conveyance of the surface ownership of real
11 property shall be a conveyance of the pore space in all
12 formations and strata below the surface of such real property
13 unless the ownership interest in such pore space was previously
14 severed from the surface ownership or is explicitly excluded in
15 the conveyance.

16 D. The ownership of pore space in any formations or
17 strata may be conveyed in the manner provided by law for the
18 transfer of interests in real property. No agreement conveying
19 minerals or other interests underlying the surface shall act to
20 convey ownership of any pore space in the formations or stratum
21 unless the agreement explicitly conveys that ownership
22 interest.

23 E. No provision of law, including a lawfully
24 adopted rule or regulation, requiring notice to be given to a
25 surface owner, to an owner of the mineral interest or to both

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1 shall be construed to require notice to persons holding
2 ownership interests in any pore space in the underlying
3 formations or strata unless the law specifies notice to the
4 persons is required.

5 F. As used in this section, "pore space" means
6 subsurface space that can be used as storage space for carbon
7 dioxide or other substances and includes the voids, microscopic
8 or otherwise, in the earth.

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