
**CCS Pore Space Ownership
In Relation to Wyoming Legislation
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Background

Wyoming Legislation/Regulations

HB 57 - Property Rights. Establishes mineral rights primacy.

HB 58 - Property Rights. Injector owns and is legally liable for the CO2 during operations.

HB 80 - Property Rights. Allows for unitization at GS sites.

Water Quality Rules & Regulations, Chapter 24** - Permitting. Proposed permitting rules adapt Underground Injection Control (UIC) program rules for GS.

	Pore space ownership	Severance allowed?	CO ₂ ownership during operations	CO ₂ a commodity?	Liability during operations	GS in the public interest?	Eminent Domain?	Unitization	Mineral Rights Primacy?	EOR Exempt?
Wyoming 2009: HB 57, 58, 80, Water Qual. Rules & Regs. chap. 24** 2008: HB 89 . 90	surface owner	yes	Operator, by rebuttable presumption.		Operator, not the pore space or surface owner.			yes	yes	yes

CCA Policy

Eminent Domain

THEREFORE BE IT RESOLVED that the Colorado Cattlemen's Association believes that no agency having the right of eminent domain shall use this right to acquire property for uses other than that granted, such as condemnation by highway departments to acquire private land to mitigate wildlife habitat losses; and,

BE IT FURTHER RESOLVED that the Colorado Cattlemen's Association and the National Cattlemen's Association endeavor to obtain legislation and regulations to assure that land condemnation be for the specific use of the agency condemning and for no other purpose.

Property Right

THEREFORE BE IT RESOLVED that the Colorado Cattlemen's Association opposes any legislation or action at either the federal, state or local level which endangers or jeopardizes private property rights.

Property Right Takings

THEREFORE BE IT RESOLVED that the Colorado Cattlemen's Association strongly favors that the State of Colorado should pass legislation to reaffirm private property rights of Coloradoans against state regulatory conduct which may amount to prohibited takings under the United States and Colorado constitutions.

CCA Positions Related to Wyoming Carbon Capture and Sequestration (CCS) Pore Space Legislation

- **Ownership (General)** - Colorado adheres to the Ad Coelum Doctrine of ownership to the “sky” and the “depths”. This applies to pore space ownership. CCA does acknowledge that there are bodies of law that provides for clear exceptions to this property ownership.
 - Water Law – Colorado water law recognizes that the surface owner does not have inherent rights to subsurface water. CCA agrees and recognizes this. Albeit, we do not interpret the law as allowing use of that water/aquifer to sequester carbon or allowing access to any pore space by anyone other than surface owners.
 - Courts have found different conclusions with liability litigation usually characterizing ownership (Hazardous materials, natural gas storage, water storage, etc)
 - A property right not expressly conveyed is retained. Therefore, if the conveyance of the mineral or any other estate does not expressly state the pore space then it is retained with the surface ownership.
- **Ownership (Mineral)** - Colorado law does not expressly grant pore space ownership to the mineral owner, thus our interpretation is that the ownership resides with the surface property owner regardless of mineral ownership. If clarification is needed in law, CCA would support this concept only
 - A property right not expressly conveyed is retained. Therefore, if the conveyance of the mineral or any other estate does not expressly state the pore space then it is retained with the surface ownership.
 - CCA would conceptually consider a dominant volatile compound (oil and gas) mineral estate. Further discussion needed on this topic.
 - CCA acknowledges the use of carbon for enhanced oil recovery. Further discussion and clarification should take place to ensure that EOR does not equate into CCS. Likely preference of a new lease specifically addressing CCS.
- **Surface Estate Protection** – Need to address surface resource and owner protections based on the need for pipelines, pads, wells, etc needed for CCS
- **Eminent Domain** – CCA would not support an allowance of condemnation for use of CCS in pore space. But rather supports the Colorado Constitutional provisions that “private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes. Private property shall not be taken or damaged, for public or private use, without just compensation...” (Colorado Constitution, Article II, Bill of Rights)
- **Forced Pooling/Unitization** – CCA would oppose forced pooling based on our policies associated with eminent domain. Essentially forced pooling equates into forced condemnation. Wyoming legislation says that 75-80% of land has to be acquired voluntarily. Also legal aspects of forced pooling for mineral collection does not equate into the allowance of forced pooling for storage of a waste/byproduct.
- **Severance** – Still under discussion within CCA.

- **Liability** – Supportive of Wyoming’s approach but CCA has concerns over the state’s ability to legislate for ultimate protection of landowners. CCA also has concerns about migration and contiguous landowner rights.

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