Draft Framework for Governing Agreements Pertaining to Carbon Sequestration

Prepared pursuant to Senate Bill 905 (Caballero, Chapter 359, 2022)

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CALIFORNIA NATURAL RESOURCES AGENCY

Contents

Introduction

In 2022, California enacted Senate Bill (SB) 905 (Caballero, Chapter 359, 2022), directing state agencies to establish a regulatory framework to facilitate carbon dioxide removal and carbon capture and sequestration (CCS) where appropriate. SB 905 is a critical part of California's goals to reduce greenhouse gas (GHG) emissions, including carbon dioxide, and to meet its goal of achieving carbon neutrality by 2045.[1]

Implementation of carbon sequestration projects requires careful thought and planning to ensure it's done in a transparent, efficient, and safe manner. This framework provides recommendations on the elements that should be included within a unitization agreement for geologic storage reservoirs associated with a carbon capture, removal, or sequestration project

SB 905 directs the California Natural Resources Agency (CNRA), in consultation with other state agencies, to "publish a framework for governing agreements regarding two or more tracts of land overlying the same geologic storage reservoir or reservoirs for purposes of managing, developing, and operating a carbon dioxide capture, removal, or sequestration project."[2] In other words, SB 905 directs CNRA to consider when and what level of state participation in the pore space unitization is appropriate.

Unitization is a real estate transaction that provides control over geologic storage reservoirs (e.g. aggregated pore space). Such control is needed to enable CCS project proponents to implement CCS projects. Unitization requires state oversight to ensure fair compensation to parties with property rights at stake and to ensure that CCS project proponents have a procedure to address hold-out property interests. Absent this protection, such holdouts could derail a CCS project or demand windfall compensation to proceed, contrary to the State's needs and goals. The development of such agreements is distinct from permitting CCS projects and does not commit the State to any future approval of a proposed CCS project. Rather, these agreements should facilitate the ability of prospective project proponents to develop adequate site control to implement CCS projects consistent with applicable authorities.

Given the importance of removing carbon from the atmosphere, there is a strong public interest in ensuring that property owners cannot prevent CCS projects from obtaining site control if their property would otherwise be generally unaffected by such projects. There is also a strong public interest in ensuring landowners, especially smaller landowners, have equal access to pertinent data in order to make informed decisions about the sale of their underground storage features. SB 905 recognizes that state oversight over these complex real estate unitization transactions can facilitate a more fair, efficient, and transparent process.

For this framework, the term "unitization agreement" is used in place of "governing agreement," and is defined as a real estate agreement concerning two or more tracts

[1] Health & Saf. Code § 38562.2, added by AB 1279 (Muratsuchi, Chapter 337, 2022).
[2] See Public Resources Code Section 71461

of land overlying the same geologic storage reservoir or reservoirs for purposes of managing, developing, and operating CCS projects as a unit, without regard to separate ownerships, and for the allocation of benefits and costs on a basis set forth in such agreement. California Public Resources Code sections 3630 through 3690 establish the requirements for unitization of oil and gas interests and provide an effective roadmap for unitization of geologic storage reservoirs for CCS, including consent thresholds, informational requirements, notice of hearings, and more.[3]

Under this proposed framework, it is recommended the Department of Conservation have oversight of the process and verify unitization agreements for the underlying real estate transaction necessary to support future CCS project implementation consistent with applicable authorities.

Background

CCS entails pressurizing carbon dioxide captured from emitting sources (e.g. natural gas power plants or other industrial sites) or directly from the air, and injecting it into deep, porous rock formations, called reservoirs, that trap the carbon dioxide beneath an impermeable layer of cap rock for safe and permanent storage. Injections create an underground plume of carbon dioxide and a wider area of increased pressure within the reservoir. CCS operators must have the legal right to access and use pore space, as well as surface access to the pore space. Because the larger reservoirs often exist below multiple tracts of land, acquiring rights to access and use the reservoirs may require negotiation with multiple surface and mineral rights owners. The complexity of surface and mineral estate ownership requires that project proponents have a legal structure for aggregating the necessary interests even when a minority of interested parties may be opposed.

This framework focuses on how potential CCS operators can obtain the necessary legal access to pore space to later engage in subsurface injection and storage, consistent with applicable authorities. Importantly, this framework does not set or recommend standards for CCS permits, nor does it suggest that obtaining such access is sufficient to authorize a CCS project in a particular location. Additionally, successful and timely implementation of CCS projects will require the State to prevent and/or facilitate prompt resolution of any property disputes that may arise from these unitization requests.

In California (and many other states) the unitization process provides a legal tool for aggregating the surface estates, and their related pore space, one of the steps that may be necessary to implement a CCS project. This includes the surface estates and pore space of non-consenting landowners in exchange for fair and reasonable compensation.

[3] For additional and complimentary information see Sections 1853, 1858, 1863, 1864, and 1865 of Title 14 of the California Code of Regulations.

Proposed Framework for CCS Pore Space Unitization

Public Resources Code section 71461 directs CNRA to recommend "requirements for the submission of governing agreements to, and the review, approval, or denial of these agreements by, an authorized state agency." This refers to the threshold information that must be provided to the appropriate state agency for their review and approval of a unitization agreement.

Below is a general summary of information proposed to be required for approval of a unitization agreement:

- The unitization agreement proponent provided the required public hearing notice for agreement approval.
- The proponent must ensure that enough information about the subsurface—including geologic modeling—is available to determine the location of the pore space that the injected carbon dioxide could occupy.
- The proponent must show that at least 75% of the owners of the unit area's pore space consented, in writing, to the unitization agreement and have acknowledged that, if approved by the appropriate state agency, the agreement will be recorded on their property interests.
- The proponent must show that all owners of the relevant pore space received good-faith compensation offers for any property interest covered by the agreement, as documented and submitted to the state by the proponent.
- The unitization agreement provides fair compensation for all non-consenting pore space owners.
- If mineral interests also need to be separately unitized, the proponent must show that the agreement provides fair compensation for all non-consenting owners of mineral interests.
- The proponent must show that sufficient surface access to conduct the potential CCS project has been obtained by the proponent, including a right to amend that access consistent with future permit requirements.

This draft framework provides nine categories of recommendations that should be included within a unitization agreement for the storage reservoirs that will be used by CCS projects, if permitted.

Recommendation 1a: Assign the Department of Conservation to be the Reviewing Agency, tasked with reviewing and approving unitization agreements and undertaking necessary unitization hearings, while also leveraging statewide expertise from other agencies.

Public Resources Code section 71461, subdivision (a)(1), directs CNRA to identify "the appropriate state agency for submission, review, and approval or denial of the agreements, including any legal authorization or delegation necessary."

The following core technical competencies will be needed to review unitization agreements:

- Geologic expertise to determine which areas of suitable pore space will be occupied by any future carbon dioxide plume or pressure front; and to determine whether mapping and modelling includes the full area of economically relevant pressure interference, identifies boundary conditions, and provides sufficient information for technical staff to test the model's analysis of best-case, worst-case, and most-likely scenarios. This expertise is necessary to support a finding that the unitization agreement adjudicates rights among the correct estates and owners.
- Expertise in commercial contracting to determine if the affected owners have given informed consent and are being compensated fairly after good-faith negotiations.
- Expertise in real-estate transactions to determine if the instruments are appropriately drafted and recorded to accomplish their operational purposes and ensure that future landowners will be aware of the estate's use for carbon sequestration.
- Familiarity with unitization processes and the quasi-adjudicatory hearing process that will be necessary to ensure the proper compensation of non-consenting owners.

Based on the core competencies needed to provide technical review, it is recommended that the Department of Conservation (Department) be the reviewing agency, with support from those agencies identified below, for the following reasons:

- The Department is in a strong position to develop a program that reviews and approves unitization agreements, because:
    - The Department includes the Geologic Energy Management Division (CalGEM), which has analogous experience in unitization due to existing statutory and regulatory authority over unitization in the oil and gas field, and experience with injections to the subsurface.
    - The Department includes the Geological Survey and California State Geologist, which is the state's source of scientific expertise on subsurface geology and is assigned by SB 905 to consult with the California Air Resources Board (CARB) on the development of CARB's carbon capture,

removal, utilization, and storage program (see Health and Safety Code Section 39741.1(a)(3)(D) & (d).

- The Department also includes the Division of Land Resource Protection, which has experience with real-estate transactions.

To assist the Department in evaluating the unitization agreements, additional state agency expertise should be leveraged. For example, the Department could consult with the State Lands Commission, CARB, and the California Department of Justice – all of which consulted with CNRA on developing this framework.[4]

Recommendation 1b: Unitization Proponent Shall Submit Notice of Proposed Unitization Agreement and Public Hearing to the Reviewing Agency.

Public hearings will be required as part of the unitization process when there is less than 100% agreement of consenting owners and will be held by the Reviewing Agency; the following should be required:

- The unitization proponent shall demonstrate notice sufficient to allow any person who may object to the unitization agreement to prepare and present their opposition at a public hearing before the Reviewing Agency.
    - The notice shall use plain language, including in the languages used in the surrounding community, and state the purpose of the hearing, describe the affected land and pore space, and provide information about how to participate in the hearing.
    - Notice should be provided to the following:
        - All persons with an interest in the surface estate or pore space to be operated as a unit under the "unit area.",
        - All owners of the surface and pore space immediately adjoining the unit area,
        - All owners of mineral interests in the unit area,
        - All residents of dwellings in the unit area,
        - Any person who has requested notice in writing, and
        - Relevant state and local agencies.
    - Notice by publication should also be required, to maximize opportunities for unidentified landowners to receive notice.
    - To ensure meaningful engagement, the public hearing should be conducted when noticed parties can reasonably attend.

[4] Section 71461, subd. (b).

- The proponent will be required to reimburse the Reviewing Agency for all costs associated with the public unitization hearings.
- The proponent must ensure that enough information about the subsurface, including geologic modeling and supporting data, is available to determine the location of the pore space that the injected carbon dioxide could occupy.

If the carbon dioxide plume migrates to pore space excluded from the unit's initial geological modeling the Reviewing Agency should be allowed to add additional landowners to a unit, subject to the terms of the corresponding unitization agreement, even if the unitization agreement has been finalized. Additional considerations for whether to approve the expansion of a unit could include a demonstration by the proponent that the change does not interfere with another sequestration project, as well as compensation for all landowners added to the unit going back to when the plume migration occurred.

Recommendation 2: Proponents must demonstrate recordable consent to use 75% of the subsurface interests to be unitized, based on injection capacity, with an option to base the calculation on associated surface acreage.

Public Resources Code section 71461, subdivision (a)(2), directs CNRA to develop recommendations for a "requirement that agreement proponents own title to at least an undivided three-fourths of the total interests subject to the proposed agreement." In most cases, the interest to be unitized is the right to inject into and store carbon dioxide in a geologic storage reservoir. However, in some cases the proponent may seek to unitize mineral interests that include the right to drill into cap rock or pore space.

It is not practicable for a project proponent to own title to an undivided three-fourths interest in the surface estate in most instances and would significantly increase the costs associated with CCS projects. Rather, more flexible options should be considered and provided that include other contractual or property right interests for the "pore space," all of which would provide for a significantly reduced impact on the surface estate, versus what is stated in subdivision (a)(2).

The following threshold should be required for a unitization agreement:

- The unitization proponent must demonstrate that it has written, recordable consent from holders of 75% of the interest to be unitized (pore space or other), which would be calculated by the total modeled storage volume of the reservoir.
    - Consent must be demonstrated by a recordable instrument.
    - The project proponent need not "own title" to pore space to meet the 75% consent threshold for unitization. Landowners need not alienate their pore space from the surface estate to consent to its use as part of a sequestration project. The operator can meet the 75% consent threshold of "total interests" subject to the proposed agreement" by an easement,

license, lease, or other interest that can be recorded on the title of the surface estate that it underlies.

- However, the unitization process should give proponents the flexibility to use calculations that are acceptable in the potentially impacted community. An alternative to the requirement above would be to allow for unitization if, at least, 75% of the surface owners (based on the modeled reservoir area instead of the total storage volume) consent in writing.
    - This flexibility addresses concerns arising from unequal information sharing. Proponents generally have access to far more information than landowners. So, for those communities where landowners have limited access to the geological mapping and modeling information needed to determine the storage volume underlying each parcel, agreements based on surface acreage may be preferred because acreage is easily verifiable by all parties.

Recommendation 3: Private market processes will generally determine fair and reasonable compensation, but oversight that ensures transactions are transparent and easily accessible will ensure fairness.

Public Resources Code section 71461, subdivision (a)(3), directs CNRA to propose "standards to determine fair and reasonable compensation for owners of surface, mineral, and subsurface rights whose use of their property will be infringed upon by the geologic storage reservoir."

The following proposed standards support a finding of "fair compensation":

- Compensation may be required even where an owner's use of their property is not "infringed upon." For example, a surface owner is entitled to compensation for the use of pore space occupied by injected carbon dioxide, even if the surface owner did not use, and had no plans to use, their subsurface.
- Compensation can take multiple forms or a combination of forms, including single payments to purchase the entire interest, rental payments based on surface acreage or estimated sequestration capacity, per-ton storage fees for injected carbon dioxide prorated by the owner's estimated share of the total reservoir, and per-ton storage fees calculated as a share of income from storage fees paid to the operator by third parties. A combination of these may also be offered.
- Rather than setting prices for pore space use, or mandating specific forms of compensation, the Reviewing Agency should have authority to determine just compensation based on a totality of factors before it, including:
    - The proponent's showing that the compensation is comparable to arms-length agreements negotiated in good faith with landowners in the same or similar reservoirs, and

    - any opposition provided by property owners arguing that the compensation is unfair.

- In cases where there is a dearth of comparable sales, or when the operator or affiliated entities own 75% or more of the pore space needed for the proposed operation, the Reviewing Agency should consider any relevant evidence presented, allowing flexibility to operators and landowners to make their best case based on information available at the time of unitization.
- Additionally, the Reviewing Agency should be authorized to publish values determined to be fair compensation for use of pore space, including whether those values were one-time payments, injection payments, cost/benefit allocations, or other methods of compensation, so that comparable market values can be available to all market participants.
    - The Reviewing Agency should be authorized to determine how best to publish compensation information so that it provides useful market information without undermining competition. For example, publishing ranges of anonymized data after a reasonable period of delay (e.g. three to six months) could provide transparency to the public, market efficiency for landowners, and accountability for the Reviewing Agency without undermining competition for pore space access.

Recommendation 4: The Reviewing Agency must verify that good faith offers of compensation were made to holders of interests to be unitized.

Public Resources Code section 71461, subdivision (a)(4) seeks CNRA's recommendation on "a requirement to make a good faith offer of compensation by project proponents to the owners of surface, mineral, and subsurface rights before submission of an agreement." To meet such a requirement, a project proponent should make a good faith offer to all holders of property interests relevant to the unitization proceeding.

A relevant interest includes a legal property interest in the subsurface whose rights could affect or be affected by any potential carbon-dioxide sequestration operation in the reservoir at issue. If an interest can be accessed without affecting the sequestration operation –for example, the right to extract from or inject into shallow formations unrelated to the CCS project—then the interest is irrelevant to the unitization proceeding.

The Reviewing Agency should develop materials to educate operators, landowners, local communities, and all members of the public on standards for fair compensation that are accessible, translated in relevant languages, and help set a baseline of information for all parties. One potential model for materials could be something akin to the Contractors State Licensing Board's information for contractors and homeowners, which includes checklists and form contracts.[5]

[5] https://www.cslb.ca.gov/About_Us/Library/Forms_And_Applications.aspx

A good-faith offer should clearly convey any information about the operation that would be important to a "reasonable landowner" considering the offer.[6] The following items would affect a reasonable landowner's deliberations about whether the compensation offered is fair:

- The total compensation and payment schedule.
- The date and duration of the offer.
- A legal description of the property rights the landowner would grant to the operator.
- The basis for calculating the amount of compensation offered, including any information known to the operator about the size and capacity of pore space underlying the landowner's surface estate, provided in terms that are easily understood by any reasonable landowner who might consider the offer.
- An accurate description of the instruments demonstrating the operator's financial responsibility (bonds, insurance, trust accounts, etc.) and ability to pay the costs of the operation and any damages consequent to it.
- An express indemnity provision (between the project proponent and the landowner) as part of the compensation and as a requirement of unitization agreement.[7]
- An accurate description of the landowner's right to terminate the agreement should the operator fail to use the pore space for carbon sequestration within a reasonable time, and
- Other information that the Reviewing Agency determines is necessary or useful to support good-faith negotiations between the operator and landowner, which may include a plain language summary of proposed use, expected storage capacity, and spatial extent of the unitized interests.

The project proponent should provide the Reviewing Agency with the information supporting the proposed good faith offer so that it can be publicly shared to better inform good faith offers in other transactions and support the carbon sequestration market's maturation.

[6] The "reasonable landowner" is a hypothetical landowner that is presented with this offer and undertakes a reasoned evaluation relative to market prices and how similarly situated landowners respond to the offer - courts often evaluate potential Tort actions by asking how a similarly situated landowner, with similar experiences and knowledge, would respond to a reasonable offer.

[7] Through this contractual obligation the property owners are generally protected. The caveat to this protection is if the operator enters bankruptcy, but there is very little the state can do to address that eventuality.

Recommendation 5: Surface-site access for post-injection monitoring should be clearly articulated in the submitted unitization agreement.

Public Resources Code section 71461, subdivision (a)(5), directs CNRA to develop "standards for the provision of surface site access, to the extent reasonably necessary for post-injection monitoring."

Unitization agreements should clearly demonstrate that:

- surface access is obtained through the unitization agreement,
- the agreements on surface access will allow for required third party monitoring, and,
- those surface-access provisions may be amended for consistency with future requirements from the US EPA and other agencies, as necessary.

Recommendation 6: Unitization agreements should clearly allocate a potential operation's liability between the operator and the surface estate and require that all financial instruments name surface estate owners as third-party beneficiaries if an operator ceases to exist or becomes unable to fulfill its duties.

Public Resources Code section 71461, subsection (a)(6), requires CNRA to recommend "standards for the allocation of liability related to the geologic storage reservoir, and associated injection wells, including, but not limited to, standards regarding the liability of a surface landowner who has sold or leased all interests in the geologic storage reservoir to a carbon dioxide capture, removal, or sequestration project operator."

SB 905 states that the operator of a geologic carbon sequestration operation is liable for "any damages caused by the operation"[8] and must provide financial assurances to cover its responsibilities for at least 100 years after the last injection of carbon dioxide.[9] SB 905 asks CNRA to help landowners clearly allocate any liability in their agreements to avoid future liability issues.

To reduce or limit potential liability, unitization agreements should:

- Clearly articulate what damages may, directly or indirectly, be "caused by the operation" thus identifying which can be assigned to the operation, or not. The parts of the agreements that assign these liabilities should be express, intentional, and detailed, to the extent detail is known.
- Require that any financial instruments paid for by operators also name surface owners as third-party beneficiaries.
- Require financial assurances or instruments to be held in independent trusts and managed by third party trustees to ensure long-term maintenance of those financial instruments independently of the operator. These financial instruments

[8] Pub. Res. Code § 71462, subd. (f).
[9] Public Res. Code § 71464, subd. (a).

should be treated as outside of the operator's personal assets, so as not to be considered part of any future bankruptcy estate.

- Require regular meet-and-confer processes between the operator and landowners when lawful activities are planned to take place, either on the surface or subsurface, within certain boundaries or buffers of the pore space or its injection well, to ensure work is coordinated and accidents are avoided.
- Require the unitization agreements, and any amendments thereto, be recorded against the appropriate legal estate (generally the surface estate) so that future owners understand the rights and obligations running with the pore space and the agreements.

The Reviewing Agency should be allowed to add additional landowners to a unit, even after a unitization agreement has been finalized, if the carbon dioxide plume migrates to pore space excluded from the unit's initial geological modeling. Additional considerations for whether to expand a unit, could include a demonstration by the proponent that the change does not interfere with another sequestration project, as well as compensation for all landowners added to the unit going back to when the plume migration occurred.

Recommendation 7: Unitization agreements should incorporate and/or reference applicable regulatory and/or permitting requirements for financial assurances.

Public Resources Code section 71461, subsection (a)(7), directs CNRA to recommend "standards for imposing sufficient financial responsibility requirements on carbon dioxide capture, removal, or sequestration project operators, including, but not limited to, the short-term costs of corrective actions, the cost of any liability associated with damage to drinking water supplies or seismic activity triggered by the geologic storage reservoir or damage to public and environmental health and safety, and long-term costs associated with well plugging and abandonment, ongoing site care and monitoring, and site closure of the geologic storage reservoir."

Liability and financial assurance are an important aspect of determining fair compensation for the use of pore space because state and federal law could also hold landowners responsible for damages caused by the operator. The unitization process will be simpler if state and federal law holds landowners harmless from loss and damage caused by the operator's activities.

CARB's current CCS Protocol, under the Low Carbon Fuel Standard, requires the operator to continue monitoring and site care for at least 100 years after injections stop, to assess and reduce the risk of leakage and other emergencies, and to demonstrate

financial responsibility.[10, 11] SB 905, through Health and Safety Code Section 39741.5, directed CARB to adopt regulations for financial responsibility for CCS projects. Those regulations must require an operator of a CCS project to maintain financial responsibility for long enough to demonstrate that the risk of carbon dioxide leakage poses no material threat, that advances net zero greenhouse gas emissions in California, and that terminates no earlier than 100 years after the last date of injection of carbon dioxide into a geologic storage reservoir.

Recommendation 8: Injection payments to non-consenting owners should be comparable to those negotiated in arms-length agreements.

Public Resources Code section 71461, subdivision (a)(8), directs CNRA to consider "standards for allocating royalty payments associated with the leasing of a geologic storage reservoir." In fulfilling this element, CNRA aims for transparency of compensation methods and fairness between consenting and non-consenting owners.

- Proponents of unitization must provide non-consenting owners with the same type and amount of compensation that is offered and accepted by 75% of consenting owners.
- The unitization agreement should expressly identify the full offer accepted by 75% of consenting owners and require identification of non-consenting owners and their compensation program.
- The Reviewing Agency should be authorized to prioritize the review of proposals that include injection payments as part of the compensation to all landowners.
- The Reviewing Agency should be authorized to publish the fair compensation offers to the public after a reasonable delay to catalyze the market's maturity and provide landowners with more information to negotiate with.

Recommendation 9: Other considerations

Public Resources Code section 71461, subdivision (a)(9), asks CNRA to recommend "any other requirements necessary to comply with state or federal legal or constitutional standards." CCS projects should consider the following state standards, which may pose barriers or additional legal considerations in their development.

- Property owners should consider the requirements of the Subdivision Map Act and the Civil Code when developing projects or entering into unitization agreements. The Subdivision Map Act includes Government Code section 66412, which provides a long list of exemptions from the Subdivision Map Act. Leases, easements, and grants of land for energy projects including solar power, energy storage, biogas, and wind generation are exempt from the Subdivision Map Act.

[10] CARB, CCS Protocol Under the Low Carbon Fuel Standard, Section C.7.

[11] Similarly, US EPA requires the operator to demonstrate financial responsibility for all costs of all phases of the project, including post-injection monitoring for 50 years or until the injected carbon dioxide is demonstrated to be mineralized [40 C.C.R. §§ 146.82, 146.85,]

Unitization agreements and related pore space leases, licenses, easements, and grants of subsurface storage reservoirs for carbon sequestration are not included in the list of exemptions from the Subdivision Map Act.

- CCS projects could be subject to the imposition of legal remedies for subsurface trespass and related torts to inclusion in the unit. California courts have allowed recovery for subsurface trespass based on Civil Code section 3334. Under the Civil Code, migration of fluids within the storage complex from lawful geologic carbon sequestration operations could be considered wrongful occupation or a trespass and subject to various legal remedies, even if it has not caused damage or does not interfere with another sequestration operation.
- Permitting standards do not consider pore space utilization, potentially leading to wasted storage capacity, or interference with other projects, or stranding unusable patches of pore space in outer "buffer" zones.
- Unitization agreements may be subject to a lengthy review by the Reviewing Agency as it is subject to CEQA and potential legal challenges.

If implemented, these recommendations should help to create a robust system to fairly and swiftly address the property rights challenges that CCS will face.

Other States' Standards

Section 71461, subdivision (b), requires the Secretary to review other states' legal standards related to carbon capture, utilization, and storage operations. Appendix A summarizes the standards reviewed.

Appendix A: Other States' Standards

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Colorado	No. Phase III of primacy application	Energy and Carbon Management Commission (ECMC)	75%	Negotiated Terms: Payments for pore space are typically negotiated privately and can include signing bonuses, annual rentals, or per-ton injection fees. State Lands: For projects on state trust lands, the Colorado State Land Board charges a minimum of $12 per acre for exploration, with long-term sequestration charges negotiated based on market value.	If a landowner rejects a "fair offer" but is later unitized (because the 75% threshold was met by others), the ECMC ensures they are not penalized. Just and Reasonable Terms: The ECMC will mandate that non-consenting owners receive terms at least as favorable as those voluntarily accepted by the 75% majority. No "Risk Penalty": Unlike oil and gas forced pooling, where non-consenting owners might face a "risk penalty" (deductions for drilling costs), carbon sequestration rules typically require immediate, equitable compensation for the use of the pore space.	Siting Restrictions: Colorado rules are more stringent than federal standards, generally requiring Class VI wells to be sited at least 2,000 feet from residences, schools, or commercial buildings. Mineral Dominance: The mineral estate remains dominant over the sequestration estate; however, CCS projects must be designed to avoid interfering with commercially valuable minerals.	Active Liability: The operator holds full responsibility for the CO2 and any environmental impacts during the injection and post-injection monitoring phases. Transfer to State: Upon a formal determination of site closure by the ECMC, regulatory liability is released, and ownership of the facility and the stored CO2 transfers to the state. Stewardship: Following the transfer, the Geologic Storage Stewardship Enterprise assumes responsibility for long-term monitoring and management.	Mechanisms: Acceptable forms include surety bonds, trust funds, or letters of credit to cover well plugging, site closure, and post-injection monitoring. Geologic Storage Stewardship Enterprise Fund: Established in 2025, this fund is supported by fees paid by operators to finance the state's long-term stewardship of closed facilities.	Administrative Fees: The ECMC is authorized to collect regulatory and permitting fees from operators to cover the costs of oversight. Stewardship Fees: Operators pay into the stewardship fund based on injection volumes to ensure long-term site stability after closure.	Consent Threshold CRS § 34-60-140(2) Compensation CRS § 34-60-140(1) Fair Offer ECMC Rule 1307 Surface Access CRS § 34-60-140(3) Allocation of Liability CRS § 34-60-140(7) Financial Assurances ECMC Rule 1312 Injection Payments CRS § 34-60-141 HB24-1346: The primary 2024/2025 legislative vehicle that expanded the ECMC's jurisdiction to include direct air capture and geologic storage, and formalized the 75% consent threshold for unitization. ECMC 1300 Series Rules: The specific administrative code adopted in late 2024/early 2025 to secure federal Class VI Primacy; includes technical requirements for site characterization and monitoring. SB23-285: Renamed the agency from the Oil and Gas Conservation Commission to the Energy and Carbon Management Commission and laid the groundwork for carbon regulatory authority. CRS § 34-60-141: Established the Carbon Management Stewardship Fund, which is funded by per-ton injection fees to support the state's long-term management of closed facilities. CRS § 38-1-101.5: Clarifies property rights, ensuring that the sequestration estate (pore space) is vested in the surface owner unless explicitly severed.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Indiana	No. State seeking Class VI primacy	Department of Natural Resources (DNR)	Standard Consent Threshold: To receive a state permit, a storage operator must typically obtain consent from owners representing at least 70% of the surface area above the proposed facility. Proposed Increase (2026): HB 1104 (introduced for the 2025-2026 session) proposes increasing this threshold to 85% and requiring additional consent from the county executive of each affected county. Pilot Project Exception: The designated "pilot project" in Vigo and Vermillion counties (Wabash Valley Resources) operates under distinct rules that do not require prior landowner consent.	Equitable compensation for non-consenting owners	Good faith effort to obtain consent of all pore space owners	DNR Oversight: The Department of Natural Resources (DNR) requires annual proof of financial responsibility, including coverage for well plugging and site closure. Public Liability Insurance: Operators of associated CO2 pipelines must maintain insurance of at least $5 million in the aggregate.	Active Operator Liability: The storage operator holds title to the injected CO2 and is strictly liable for any subsurface trespass that causes direct physical injury or essentially interferes with the use of property. Liability Transfer: After injection ends, an operator can apply for a Certificate of Completion. State Responsibility: Once issued, title and responsibility for the stored CO2 transfer to the State of Indiana, releasing the operator from further liability.	DNR Oversight: The Department of Natural Resources (DNR) requires annual proof of financial responsibility, including coverage for well plugging and site closure. Public Liability Insurance: Operators of associated CO2 pipelines must maintain insurance of at least $5 million in the aggregate.	Carbon Dioxide Storage Facility Trust Fund: Operators pay into this fund to cover long-term monitoring by the state. Fee Schedule: The current fee is $0.08 per metric ton of CO2 injected, though HB 1104 (2026) proposes increasing this to $0.15 per ton. Administration Fee: Operators also pay an annual fee to the DNR based on the previous year's injection volume to cover regulatory costs.	Consent Threshold IC 14-39-2-4 (70% standard; HB 1104 proposes 85%) Compensation IC 14-39-2-4(c)(4) Fair Offer IC 14-39-2-4(c)(2) Surface Access IC 14-39-2-4(d) Allocation of Liability IC 14-39-2-13 Financial Assurances 312 IAC 30-6-3 Injection Payments IC 14-39-2-9 ($0.15 per ton proposed in 2026) IC 14-39-2-1 et seq.: The foundational state code for carbon sequestration projects. 312 IAC 30 (2025): New administrative rules providing the comprehensive permitting and operational framework for Indiana storage sites. HB 1368 (2026): Current 2026 legislation that would require the DNR to seek Class VI Primacy from the EPA to accelerate local permitting. HB 1104 (2025-2026): Proposed amendment to increase the integration consent threshold to 85%, require county executive consent, and nearly double the annual injection fee to $0.15 per metric ton. SB 7 (2026): 2026 bill granting local county commissioners the right to veto projects built after July 2026 that transport carbon dioxide across county lines. IC 14-39-1-17 (SEA 451): Specific rules for the Wabash Valley Resources pilot project, including the mandatory compensation offer based on Purdue University Farmland Values.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Kansas	No.	Kansas Corporation Commission (KCC)	Consent Requirements: Unlike some neighbors, Kansas has not yet codified a specific statutory "amalgamation" percentage (like Nebraska's 60%) to force unitization for carbon storage. Developers currently prioritize voluntary agreements to avoid claims of subsurface trespass.	Negotiated Terms: Compensation is largely a private matter. Landowners typically negotiate per-ton injection fees or annual acreage rentals.	Fair Offer Principles: While not explicitly mandated by a specific "fair offer" statute for CCS, Kansas general property law requires "just compensation" if property is acquired via eminent domain for public use infrastructure.	Negotiated Easements: Surface access for injection sites and monitoring equipment is typically secured through voluntary easements.	No Transfer to State: Unlike Oklahoma or Utah, Kansas law explicitly prohibits the transfer of liability to the state.	Carbon Dioxide Injection Well and Underground Storage Fund: Created by the KCC in 2019, this fund is supported by fees from operators to cover expenses related to permitting, monitoring, and remediating adverse environmental impacts. Required Bonds: Operators must post financial security (bonds or letters of credit) to ensure funds are available for proper well plugging and site closure.	Property Tax Exemption: Kansas offers a significant incentive: carbon capture and sequestration property is exempt from all state property taxes for five years following the completion of construction.	Consent Threshold N/A (Relies on voluntary negotiations; no statutory forced unitization) Compensation Private contract law Fair Offer N/A (Standardized "fair offer" not codified for CCS) Surface Access Negotiated Easements or Surface Use Agreements Allocation of Liability K.S.A. § 55-1637(h) (State assumes no liability for damages/leaks) Financial Assurances K.S.A. § 55-1638 Injection Payments K.S.A. § 55-1638(a) (Carbon Dioxide Injection Well and Underground Storage Fund) K.S.A. § 55-1637: Defines carbon dioxide injection wells and explicitly limits the state's liability for underground storage. K.S.A. § 55-1638: Establishes the Carbon Dioxide Injection Well and Underground Storage Fund to cover permitting, monitoring, and remediation expenses. K.S.A. § 79-233: Provides a five-year property tax exemption for carbon sequestration machinery and equipment. K.S.A. § 79-32,256: Authorizes a 10-year accelerated depreciation deduction for carbon capture and utilization equipment. HB 2233 (2025-2026): Recent legislation narrowing tax incentives to exclude animal manure injection from CCS benefits. PureField Ingredients Draft Permit (2025): The first tentatively approved Class VI permit in Kansas, with a public comment deadline of February 1, 2026.

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Louisiana	Yes.	The Department of Natural Resources' Commissioner of Conservation	Unitization Threshold: To create a storage unit, an operator must now obtain consent from owners of 85% of the pore space. This was increased from the previous 75% threshold to ensure broader landowner agreement. Forced Pooling: Once the 85% threshold is met, the Commissioner of Conservation can unitize the remaining interests, provided it is for a "public and necessary purpose".	Highest Payment Parity: Under recent legislation, any owner in a unitized agreement must receive compensation per acre that is at least as high as the highest per-acre rate paid to any other owner in that unit.	Not specified. Appraisal or valuation required for initial offer for land taken by eminent domain power; good faith attempt required	Setback Requirements: Under Act 702 (2024), new Class VI wellheads and associated storage facilities are prohibited from being located within 500 feet of a residential dwelling, commercial building, or school. Surface Use Agreements (SUA): Operators are strongly encouraged to enter into voluntary SUAs. These contracts define where well pads, roads, and monitoring equipment can be placed and set the schedule for damage payments. 2026 Legislative Threat: Currently, HB 7 (2026) seeks to completely repeal expropriation authority for private CCS developers, which would force all surface access to be negotiated purely on a voluntary basis.	Long-Term Transfer: The default period for liability transfer from the operator to the state has been extended from 10 years to 50 years after the cessation of injection. State Assumption: After 50 years and a showing of reservoir stability, the Office of Conservation issues a Certificate of Completion, at which point title to the stored CO2 and all associated liability transfer to the state. Damage Caps: Civil liability for non-economic losses is limited to $250,000 per person ($500,000 for wrongful death) for operators and generators.	Trust Funds: The gold standard, where cash is held by a third-party trustee. Surety Bonds: A guarantee from a highly rated insurance company. Letters of Credit: Irrevocable bank guarantees. Self-Insurance: Only permitted if the operator meets extremely high financial ratios (rarely used for CCS due to high risk).	Injection Fees: Operators must pay into the Carbon Dioxide Geologic Storage Trust Fund based on the volume of CO2 injected. Revenue Sharing: A portion of revenue from state-owned lands is redistributed, with 30% of collections remitted back to the parish governing authority where the injection site is located.	Consent Threshold La. Rev. Stat. § 30:1108 Compensation La. Rev. Stat. § 30:1108(B) Fair Offer La. Rev. Stat. § 30:1107 Surface Access Act 702 (2024) Allocation of Liability La. Rev. Stat. § 30:1109 Financial Assurances LAC 43:XVII.3601-3615 Injection Payments La. Rev. Stat. § 30:1110 La. Rev. Stat. § 30:1108: Mandates an 85% consent threshold for pore space unitization and establishes "highest payment parity" for all owners within a unit. Act 702 (2024): Imposes a mandatory 500-foot setback for injection wellheads from residential dwellings, schools, and commercial buildings. La. Rev. Stat. § 30:1109: Sets the liability transfer period at 50 years post-injection and establishes civil damage caps for non-economic losses. HB 7 (2026): Pending 2026 legislation aiming to repeal expropriation authority for private carbon sequestration projects. La. Rev. Stat. § 30:1110: Authorizes the Carbon Dioxide Geologic Storage Trust Fund and requires 30% of state-collected revenue to be remitted to the local parish. LAC 43:XVII.Chapter 36: Comprehensive administrative rules governing Class VI well construction, monitoring, and financial responsibility.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Montana	No.	Montana Board of Oil and Gas Conservation (MBOGC)	60% of the storage capacity ownership of subsurface storage rights. No apparent compulsory unitization	Negotiated Royalties: For consenting owners, payments are typically structured as annual rental fees or per-ton injection royalties.	Equitable Compensation: In unitized areas, the board ensures that all owners, including non-consenting ones, receive "just and reasonable" compensation for the use of their pore space.	Voluntary Agreements: Access for well pads, pipelines, and monitoring equipment must be secured via easements or surface use agreements with the surface owner. Eminent Domain: Montana generally prohibits private CCS operators from using eminent domain to acquire property for storage facilities, emphasizing the need for voluntary negotiation.	Multi-Step Transfer: A Certificate of Completion can be issued 15 years after injection ends, provided there is no leakage. Long-Term Transfer: The state may assume full title and liability for the site 30 to 50 years after the injection operations have ceased, depending on the operator's ability to demonstrate reservoir stability.	Bonds and Sureties: Operators must maintain an adequate bond or other surety covering well plugging and site reclamation. Geologic Storage Reservoir Administrative Fee: Operators pay a per-ton fee for every ton of CO2 injected. This money is deposited into a state fund dedicated to the long-term monitoring and management of storage reservoirs.	State Fees: The MBOGC sets a per-ton fee for injection that can be remitted back to the operator if they choose to accept liability indefinitely. Property Tax Abatements: Carbon sequestration equipment may qualify for significant property tax abatements under MCA § 15-24-3111. Coal Plant Mandate: To incentivize CCS, new coal plants in Montana must capture at least 50% of their carbon emissions to receive operational approval.	Consent Threshold MCA § 82-11-181 Compensation MCA § 82-11-181(4) Fair Offer MCA § 82-11-181(2) Surface Access MCA § 82-11-180 Allocation of Liability MCA § 82-11-183 Financial Assurances MCA § 82-11-181(1) Injection Payments MCA § 82-11-181(5) MCA § 82-11-180: Codifies that the pore space belongs to the surface owner unless explicitly severed, and establishes mineral primacy over sequestration. MCA § 82-11-181: Sets the 60% consent threshold for unitization and mandates the collection of per-ton fees for the administrative and stewardship funds. MCA § 82-11-183: Outlines the multi-stage liability transfer process, allowing the state to assume title after a minimum 15-year monitoring period post-injection. MCA § 15-24-3111: Provides for property tax abatements for carbon sequestration equipment and pipelines. Administrative Rules of Montana (ARM) 36.22.1801: Detailed technical regulations regarding Class VI well construction and seismic monitoring.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
North Dakota	Yes.	North Dakota Industrial Commission (NDIC)	North Dakota's legal landscape for consent was drastically altered by a December 2, 2025, court ruling: Amalgamation Rule Struck Down: Previously, operators could force non-consenting landowners into a storage unit if 60% of the affected owners agreed. 2026 Ruling Effect: A district court judge ruled this "amalgamation" law unconstitutional, finding it allowed for a physical invasion of property without "just compensation" as determined by a jury. Current Status: As of early 2026, developers can no longer rely on state-forced pooling. They must secure voluntary agreements or risk litigation, as the state works to appeal or amend the statute.	Fair Market Compensation: While "just compensation" typically refers to jury-determined rates in eminent domain, market rates for pore space are privately negotiated. For state-owned land, North Dakota recently negotiated rates requiring a $5 million pollution insurance policy from operators.	Surface Protections: Operators are liable for all surface damages. In 2025, legislative efforts (like HB 1341) were introduced to further restrict the use of eminent domain for pipelines and storage, shifting leverage back to landowners.	The Consent Shift: Because the state's forced-pooling (amalgamation) law was ruled unconstitutional in late 2025, developers in 2026 can no longer use state orders to gain surface access for non-consenting owners. Surface access must now be achieved through voluntary Surface Use Agreements (SUAs). No Automatic Right: Owning a permit from the North Dakota Industrial Commission (NDIC) does not grant an automatic right to enter the surface. Developers must negotiate for every well pad, access road, and monitoring sensor.	Monitoring Period: Operators must monitor the site for at least 10 years after injection ends—or until it is proven the CO2 has stopped moving. Liability Transfer: Once a Certificate of Project Completion is issued by the NDIC, the title to the stored CO2 and the facility transfers to the state. State Responsibility: Post-transfer, the state assumes responsibility for long-term monitoring using the trust fund reserves.	Operators must provide surety bonds, trust funds, or letters of credit covering all costs for well plugging, facility closure, and emergency response.	Per-Ton Fee Schedule: Operators pay a fee on each ton of CO2 injected for storage. Trust Fund: Revenue is deposited into the Carbon Dioxide Storage Facility Trust Fund for long-term state monitoring. Administrative Fund: A separate fee covers the NDIC's immediate oversight and technical review costs. 2026 Adjustments: For large-scale projects like Coal Creek, the state expects permitting fees around $50,000 and annual administrative fees of roughly $90,000.	Consent Threshold NDCC § 38-22-08 (Currently suspended by Court Order) Compensation NDCC § 38-22-10 Fair Offer NDCC § 38-22-08 Surface Access NDCC § 38-11.1 Allocation of Liability NDCC § 38-22-17 Financial Assurances NDAC § 43-05-01-15 Injection Payments NDCC § 38-22-14 NDCC § 38-22-01 et seq.: The primary Carbon Dioxide Storage Facility act governing the geologic sequestration of CO2. NDCC § 47-31-03: Legally defines pore space as a property interest belonging to the surface owner that cannot be severed. NDCC § 38-22-17: Outlines the 10-year monitoring period and the requirements for the Certificate of Project Completion to transfer liability to the state. NDAC Chapter 43-05-01: Detailed administrative rules for Class VI injection wells, including technical standards for well construction and seismic monitoring. NDCC § 38-22-15: Establishes the Carbon Dioxide Storage Facility Trust Fund for long-term state monitoring post-transfer. NDCC § 57-60-06: Provides for the Coal Conversion Tax reduction based on the percentage of CO2 captured and sequestered.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Texas (onshore)	Yes.	Railroad Commission of Texas	Texas relies primarily on voluntary negotiations and private contracts between developers and landowners.	Compensation is a matter of private contracts. Surface owners (who typically own the pore space) negotiate signing bonuses, annual surface damages, and per-ton injection royalties. There is no state-mandated minimum payment for private land.	While Texas does not have a specific "fair offer" statute for CCS, the RRC requires a detailed property interest map in the permit application. Operators generally follow the "good faith negotiation" standards found in the Texas Property Code to mitigate future "subsurface trespass" claims.	Access is governed by Surface Use Agreements (SUA). Under the Accommodation Doctrine, the operator must accommodate existing surface uses where reasonable. However, for pipelines, developers may exercise eminent domain if they qualify as "common carriers" under the Texas Natural Resources Code	Texas law does not provide for a transfer of liability to the state. The operator retains title to the CO2 and remains liable for the facility and the plume indefinitely. Current rules establish a default 50-year post-injection site care (PISC) period before a site can be officially "closed," but the operator's legal responsibility continues post-closure.	Under 16 TAC § 5.205, operators must provide the RRC with annual evidence of financial responsibility. Acceptable mechanisms include performance bonds, letters of credit, or trust funds. These must cover 100% of the costs for well plugging, site closure, and emergency response.	Application Fee: $50,000 per storage facility. Annual Fee: $0.025permetricton of CO2 injected. Monitoring Fee: Additional fees may be assessed to cover the RRC's actual costs of technical monitoring and site inspections.	Consent Threshold 16 Tex. Admin. Code § 5.203 Compensation Myers-Woodward, LLC v. Underground Services Markham, LLC (2025) Fair Offer Texas Property Code § 21.0113 Surface Access Tex. Nat. Res. Code § 111.019 Allocation of Liability Tex. Nat. Res. Code § 121.003 Financial Assurances 16 Tex. Admin. Code § 5.205 Injection Payments 16 Tex. Admin. Code § 5.205 16 Tex. Admin. Code Chapter 5: The primary administrative code governing the RRC's Class VI program. House Bill 1284 (2021): Consolidated jurisdiction for carbon storage wells solely under the RRC. Senate Bill 1387 (2009): Established the Anthropogenic Carbon Dioxide Storage Trust Fund and confirmed the operator owns the CO2. Myers-Woodward, LLC v. Underground Services Markham, LLC (2025): Texas Supreme Court holding that surface owners, not mineral lessees, own possessory rights to underground pore space absent an agreement. Safe Drinking Water Act (SDWA) Final Rule: The EPA's final rule granting Texas primacy, effective December 15, 2025.
Wyoming	Yes.	Wyoming Oil and Gas Conservation Commission Non-EOR projects under jurisdiction of Department of Environmental Quality	Under W.S. § 35-11-314, Wyoming allows for the unitization of a storage reservoir if an operator obtains consent from owners representing at least 80% of the pore space. Once this threshold is met, the state can "pool" the remaining 20% to prevent "holdouts" from blocking a project.	Compensation is primarily determined through private negotiations. However, in cases of unitization, the WOGCC ensures that non-consenting owners receive a just and equitable share of the project proceeds or rental value.	Wyoming law requires that an operator make a good-faith effort to reach a voluntary agreement with all owners before seeking a unitization order. This includes presenting a written offer based on the fair market rental value of the pore space.	Wyoming adheres to the Accommodation Doctrine. Under W.S. § 34-1-153, pore space is legally tied to the surface estate. Operators must negotiate Surface Use Agreements (SUA) for well pads and infrastructure. If an agreement cannot be reached, the operator must secure a surety bond to cover potential damages before entering the land	20 years after last CO2 injections, title, “responsibility” and “liability” for storage facility may be transferred to state upon issuance of certificate of completion if conditions are met. Liability limited to amount of funds in Special Revenue Account	Operators must provide the WDEQ with a financial guarantee (bond, letter of credit, or trust fund) that covers the full cost of well plugging, site closure, and post-injection monitoring. These amounts are reviewed every five years to account for inflation or technical changes.	Administrative Fee: A fee per ton of CO2 injected to cover WDEQ’s ongoing regulatory costs. Special Medical & Technical Fund: A per-ton fee used to fund long-term stewardship and potential state-level liability costs after the 20-year transfer period.	Pore Space Ownership Wyo. Stat. § 34-1-152 Consent Threshold Wyo. Stat. § 35-11-314 Compensation Wyo. Stat. § 35-11-316 Fair Offer Wyo. Stat. § 35-11-315 Surface Access Wyo. Stat. § 34-1-153 Allocation of Liability Wyo. Stat. § 35-11-318 Financial Assurances WDEQ WQD Rules Chapter 24, Section 18 Injection Payments Wyo. Stat. § 35-11-319 Wyo. Stat. § 34-1-152 Wyo. Stat. § 35-11-313 through 35-11-320 WDEQ Water Quality Rules Chapter 24 Wyo. Stat. § 30-5-501

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Arizona	Yes.	Arizona Department of Environmental Quality (ADEQ)	While some states have specific laws (e.g., Alabama and Indiana require 75% or 70% consent to "unitize" or combine multiple land parcels for a project), Arizona currently relies on negotiated agreements with landowners for the Area of Review (AoR).	Developers must typically demonstrate a good-faith effort to obtain consent from all affected surface owners whose land sits above the projected CO2 plume.		Easements and Leases: Operators must negotiate voluntary easements or leases with surface owners for all surface activities, including drilling injection wells, laying pipelines, and constructing compressor sites or monitoring facilities. Monitoring Rights: Under Class VI permit requirements now managed by the ADEQ, developers must obtain rights to access the surface within the Area of Review (AoR) for ongoing monitoring of the CO2 plume and to perform corrective actions on old wells if necessary.	The operator holds full responsibility for the CO2 plume during the active injection phase and for a specified closure period (usually 10 years after injection ends). ADEQ has issued a "certificate of project completion," confirming the site is stable and the CO2 plume is secure	Trust Fund Surety Bond Irrevocable Standby Letter of Credit Insurance Policy Financial Test / Corporate Guarantee Alternative Financial Mechanism	Annual Waste Disposal Fee: Operators of Class VI wells must pay a fee of $0.0833perton of CO2 injected. Minimum Annual Fee: Regardless of the volume injected, the minimum annual fee for a Class VI permit is $10,410. Hourly Review Fees: ADEQ assesses hourly fees for technical reviews and permit processing, currently set at $150 to $180 per hour, depending on the specific water quality protection service. Flat Fees: New "Permitted Area" or multiple well authorizations may carry a flat fee of approximately $1,400 per well.	Consent Threshold N/A (Relies on voluntary negotiation) Compensation Private contract law Fair Offer A.A.C. R18-9-A202 Surface Access Voluntary easements or Surface Use Agreements Allocation of Liability SB 1396 Financial Assurances A.R.S. § 49-243(N), A.A.C. R18-9-A203 Injection Payments A.R.S. § 49-203(A)(6) A.R.S. Title 49, Chapter 2 Ariz. Admin. Code (A.A.C.) R18, Article 9 SB 1396 (2022) Federal Register (2025) - Arizona UIC Class VI Primacy
Alaska	No. Phase I of primacy application	Alaska Oil and Gas Conservation Commission (AOGCC) and Alaska Department of Natural Resources (DNR)	75% of the pore space owners	If an operator unitizes an area (combining parcels), they must provide a plan detailing how all affected owners within the unit will be compensated.	Alaska Native Regional Corporations, which hold significant fee-simple estates including both surface and subsurface rights, negotiate their own private compensation terms for CCS projects on their lands. These entities have already generated over $370 million from carbon markets as of recent years.	Non-Interference: Before receiving a storage permit, an operator must demonstrate that their activities will not interfere with existing water, oil, gas, or other mineral interests. Two-Step Licensing: Developers must first obtain an exploration license for public lands before advancing to a storage facility permit. Land Use Agreements: Access to surface facilities and pipelines is determined by private agreements with both the surface and subsurface owners.	50 years.	Bonding Mechanisms: Requirements include surety bonds, insurance, or letters of credit to cover well plugging, site closure, and potential remediation for CO2 leaks. Carbon Storage Closure Trust Fund: Operators pay into this state fund based on the volume of injected carbon. This fund is dedicated to long-term monitoring and maintenance after a site is officially closed.	Royalty Rates: Once operations begin, injection fees similar to royalties are charged at a rate of at least $2.50 per ton. Permanent Fund Distribution: By statute, 50% of the revenue generated from carbon storage leasing on state land must be deposited into the Alaska Permanent Fund. Administrative Fees: The AOGCC assesses fees to fund oversight during the drilling, operation, and closure phases through the Carbon Dioxide Storage Facility Administrative Fund.	HB 50 Consent Threshold AS 41.06.140 (Requires 75% consent for unitization) Compensation AS 38.05.745 Fair Offer AS 41.06.140(b) (Requires a plan for "equitable compensation" in unit orders) Surface Access AS 38.05.740 (Requires exploration licenses and non-interference agreements) Allocation of Liability AS 41.06.160 (State assumes title and liability 50 years after injection ends) Financial Assurances AS 41.06.130 (Requires bonds/insurance for closure and remediation) Injection Payments AS 38.05.760 (Minimum $2.50 per ton royalty for state land) AS 41.06.105 - 41.06.210 (Alaska Carbon Storage Act) AS 38.05.700 - 38.05.795 (Leasing and licensing of state land) House Bill 50 (2024) (Enabling legislation effective July 31, 2024) Draft AOGCC Regulations (2026)

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Mississippi	No. Phase I of primacy application	Mississippi Oil and Gas Board (MSOGB)	To establish a storage facility, an operator must obtain consent from a majority (over 50%) of the ownership interests	Mississippi law ensures that both consenting and non-consenting owners are compensated for the use of their property: Surface and Mineral Owners: Both groups are eligible for compensation under the state's CCS program. Equitable Compensation: For non-consenting owners within a unitized area, the operator is legally required to provide "equitable compensation" for the use of their pore space. Negotiated Rates: While many payments are private, state lawmakers have expressed a goal for landowners to receive royalties for carbon storage, similar to oil and gas production.	The MSOGB can issue a preliminary order even without majority consent if the operator demonstrates a "good-faith effort" to reach the threshold. The operator then has 24 months to secure majority approval before the order is revoked	Surface access is primarily managed through private negotiation: Eminent Domain Restrictions: While eminent domain is generally restricted in Mississippi for private projects, some legislative updates grant the right of eminent domain specifically to entities transporting CO2 for sequestration. Protection of Rights: The MSOGB is tasked with preventing damage to the surface and ensuring that CO2 operations do not infringe on the "co-equal and correlative rights" of other subsurface owners.	10 years	Financial Safeguards: Operators are required to set aside funds (Financial Assurance) to cover potential remediation and environmental damages, such as unforeseen CO2 leakage. Trust Funds: The state utilizes trust funds to manage long-term liability and monitoring once a project is closed	Severance Tax (2026): Starting July 1, 2026, carbon dioxide extracted for sequestration is subject to state gas severance taxes at a rate of 1.3% of its value. Regulatory Fees: Operators pay fees to the MSOGB for permit processing and oversight, which are used to fund the state's regulatory activities	Consent Threshold Miss. Code Ann. § 53-11-11(3) Compensation Miss. Code Ann. § 53-11-11(3) Fair Offer Miss. Code Ann. § 53-11-9(1)(b) Surface Access Miss. Code Ann. § 53-11-31 Allocation of Liability Miss. Code Ann. § 53-11-15 Financial Assurances Miss. Code Ann. § 53-11-21 Injection Payments Miss. Code Ann. § 53-11-23 SB 2028 (2026): Mandates the recording of carbon sequestration interests in county land records. Miss. Code Ann. § 53-11-1 et seq.: The foundational Geologic Sequestration of Carbon Dioxide Act. HB 1214 (2022): Amendments allowing preliminary technical orders with a 24-month window for majority consent and defining "interested person" for appeals. SB 2028 (2026): New 2026 legislation requiring the official recording of carbon sequestration interests as an interest in land to ensure public notice. Miss. Code Ann. § 53-11-23: Establishes the Carbon Dioxide Storage Fund and the $2.5 million per-facility fee abatement threshold. SB 2858 (2026): 2026 bill amending tax laws to include carbon dioxide within the definition of "gas" for severance tax purposes.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Nebraska	No. Phase I of primacy application	Nebraska Oil and Gas Conservation Commission	To proceed with a storage project, an operator must obtain consent from owners of at least 60% of the storage reservoir. Proposed legislation (LB 916) introduced in early 2026 seeks to increase this threshold, potentially requiring 100% consent from all affected property owners before a facility can be built	Payments are typically negotiated privately and may include signing bonuses, annual rental fees, or per-ton injection royalties.	Under unitization (if the 60% threshold is met), non-consenting owners must be "equitably compensated" for the use of their pore space as determined by the commission.	Surface rights are distinct but highly protected in Nebraska: Severed Estates: While the mineral estate is dominant, CCS operators must negotiate surface access for injection wells and pipelines with the surface owner. Eminent Domain Restrictions: Current 2026 legislative trends (LB 916) aim to prohibit the use of eminent domain for acquiring right-of-way for CO2 pipelines. Public Utility Status: Pipelines must demonstrate an "economic benefit" to Nebraska and a "compelling need" to reduce emissions to receive construction approval.	After a minimum monitoring period (typically 10 to 15 years after injection ceases) and a finding that the reservoir is stable, the state acquires title to the storage reservoir and all associated stored CO2	Acceptable forms include surety bonds, trust funds, letters of credit, or insurance policies. Carbon Dioxide Storage Facility Administrative Fund: Operators pay per-ton fees into this state fund to cover the costs of ongoing regulatory oversight and long-term site management.	Under Neb. Rev. Stat. § 57-1615, the commission assesses a per-ton fee on all CO2 injected. As of 2026, this rate is typically set at $0.05 to $0.10 per metric ton. Permit Application Fee: Operators must pay a nonrefundable fee of $5,000 per well for a Class VI injection permit. Negotiated Royalties: For consenting owners, payments are often structured as a per-ton injection fee, typically ranging from $0.50 to $2.50 per ton depending on the proximity to the injection well. Equitable Compensation: For non-consenting owners who are "amalgamated" into a project (once the 60% threshold is met), the NOGCC determines an "equitable" payment rate to ensure the owner is fairly compensated for the subsurface use, even if they did not sign a voluntary agreement.	Pore Space Ownership Neb. Rev. Stat. § 57-1604 Consent (60% Rule) Neb. Rev. Stat. § 57-1610 New 2026 Consent Proposals LB 916 (2026) Liability Transfer Neb. Rev. Stat. § 57-1619 Administrative & Trust Fees NOGCC Rules Chapter 7, Section 007 Updated Civil Penalties LB 1076 (2026) Pipeline Eminent Domain Neb. Rev. Stat. § 57-1101
Alabama	No. Phase I of primacy application	Alabama Oil and Gas Board	An operator must obtain consent from at least 66 and two-thirds percent (66 2/3%) of the pore space owners within the proposed storage facility area.	Compensation for consenting owners is negotiated privately and can include lease payments, annual rentals, or per-ton royalties.	Non-consenting owners who are pooled into a project are entitled to "fair and equitable compensation" for the use of their pore space.	Negotiation Required: Access for wells, pipelines, and facilities must be secured through voluntary agreements with surface owners. Mineral Rights: Operators must demonstrate that their CO2 operations will not interfere with existing or future mineral extraction operations.	After at least 10 years of monitoring following cessation of injection, the operator can apply for a "Certificate of Project Closure and Completion."	Mechanisms: Acceptable mechanisms include surety bonds, trust funds, letters of credit, or insurance policies. Third-Party Estimate: The cost estimate for closure must be based on what a third party would charge to perform the work at its most expensive point.	Administrative Fee: Operators pay the OGB a fee of $0.03perton of CO2 injected into the Underground Carbon Dioxide Storage Facility Administrative Fund. Trust Fund Fee: A separate fee of $0.04 per ton is paid into the Underground Carbon Dioxide Storage Facility Trust Fund, which is used for long-term monitoring after site closure. Filing Fees: Various flat fees apply, including $100,000 to petition for approval of a storage facility and $3,000 for a well drilling permit.	Consent Threshold Ala. Code § 9-17-162 Compensation Ala. Code § 9-17-162 Fair Offer Ala. Code § 9-17-161 Surface Access Ala. Code § 9-17-161(e) Allocation of Liability Ala. Code § 9-17-164 Financial Assurances Ala. Code § 9-17-163 Injection Payments Ala. Code § 9-17-165 Ala. Code § 9-17-150 et seq.: The primary statutory framework for geologic storage of carbon dioxide. Rule 400-8-1-.01 et seq.: Alabama Administrative Code governing practice and procedure for CO2 storage. HB 61 (2026): Proposed 2026 legislation to prohibit CO2 storage in Covington County and allow for local voter referendums. Ala. Code § 9-17-161: Explicitly vests ownership of subsurface pore space in the surface estate owner. Rule 335-6-8-.22: Environmental regulations for Class VI well testing and monitoring.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
New Mexico	No. Phase I of primacy application	New Mexico Energy, Minerals and Natural Resources Department (EMNRD) The New Mexico Oil Conservation Division (OCD) is the lead regulatory agency.	To form a "sequestration unit," an operator must first attempt to acquire rights through negotiated leases or conveyances. If full consent cannot be reached, the OCD has the authority to order compulsory unitization (pooling) of interests, though it requires a finding that the operator made a good-faith effort to secure voluntary agreements.	Compensation is typically calculated on a surface acreage basis or based on the volume of CO2 injected.	State Lands: The Commissioner of Public Lands may grant sequestration rights on state trust lands provided the operator pays compensation equal to fair market value.	Negotiated Rights: Operators must attempt to acquire surface access rights through negotiated options or leases prior to pursuing unitization. Accommodation: While the OCD can grant the right to commence operations, the operator must still address the rights of both surface and mineral owners, as mineral owners retain the right of "reasonable use" for extraction	Active Phase Liability: During the injection and immediate post-closure period (typically 10 years after wells are plugged), the operator is fully liable for monitoring and remediation. Transfer to State: Once a "Certificate of Completion of Injection Operations" is issued, all stewardship and legal responsibilities—including ownership of the stored CO2—transfer to the State of New Mexico. Release of Operator: Upon this transfer, the operator and associated transporters are released from further stewardship responsibilities.	Class VI Requirements: Because Class VI wells involve long-term storage, operators must demonstrate strong financial commitment across four phases: pre-construction, pre-injection, operation, and post-injection. Closing Fund: Operators are required to contribute to the Oil Conservation Division Systems and Hearings Fund through various fees to ensure the state has resources for oversight and long-term stewardship.	Regulatory Fees: Operators must pay application fees for certificates and orders, which are set by the OCD based on the cost of processing. Stewardship Fee: The Geologic Carbon Dioxide Storage Stewardship Act establishes fees for long-term monitoring, often set at a minimum of $0.10permetricton of CO2 injected. Clean Fuel Incentives: Under the Clean Transportation Fuel Standard (CTFS), which enters into force on April 1, 2026, CCS is recognized as a "Tier 2" pathway, allowing projects to generate credits that can be sold or traded.	Consent Threshold SB 215 (2024) Compensation NMSA § 19-7-1 Fair Offer SB 215 (2024) Surface Access SB 215 (2024) Allocation of Liability NMSA § 71-11-5 Financial Assurances NMSA § 71-11-4 Injection Payments NMSA § 71-11-7 NMSA § 71-11-1 et seq. (Geologic Carbon Dioxide Storage Stewardship Act) SB 215 (2024) NMSA § 19-7-1 et seq. NMAC 19.15.26
Oklahoma	No. Phase I of primacy application	Oklahoma Corporation Commission (OCC)	Consent Threshold: To create a formal CO2 storage unit, an operator must secure the agreement of at least 63% of the land ownership in the proposed area. Unitization: Once the 63% threshold is met, the OCC can order the creation of a unit, allowing the project to proceed while including non-consenting owners.	Surface Rights: The law explicitly defines the rights of surface owners, ensuring they are notified and compensated for surface-level disturbances like well pads or pipelines.	Equitable Compensation: Landowners within a storage unit, including non-consenting owners, must be compensated on a "just and reasonable" basis for the use of their pore space.	Notice Requirements: Applicants must provide notice to all surface and mineral owners (including royalty owners) at least 30 days before a commission hearing. Agreements: Access is generally secured through voluntary surface use agreements, though the unitization process can define access rights for approved storage facilities.	The OCC can issue a Certificate of Completion no sooner than 50 years after injection ends.	Operator Responsibility: Operators are required to provide financial sureties or bonds to cover drilling, injection, and well-plugging costs. Class VI Revolving Fund: SB 269 established the Class VI Carbon Sequestration Storage Facility Revolving Fund to support the long-term monitoring and maintenance of sequestration sites.	State Injection Fees: The OCC levies fees for each ton of CO2 injected, which are deposited into the Class VI Revolving Fund. Fee Ceiling: Assessments pause once a specific facility has deposited $5 million into the fund, resuming only if the balance falls below $4 million. Verification Fees: Separate fees apply for state-certified sequestration practices, such as $0.10 per metric ton for the first 50,000 tons.	Consent Threshold 52 O.S. § 1603 Compensation 52 O.S. § 1603(C) Fair Offer 52 O.S. § 1603 Surface Access 52 O.S. § 1603(B) Allocation of Liability 52 O.S. § 1605 Financial Assurances OAC 165:5-1-10 Injection Payments 52 O.S. § 1604 Oklahoma Geologic Sequestration of Carbon Dioxide Act (52 O.S. § 1601 et seq.): The foundational state law. OAC 165:5-1-10 (Oklahoma Admin. Code): Detailed administrative rules for permitting and financial security. HB 2513 (2022): Major amendments to the act, establishing the liability transfer and 63% consent rule. OAC 165:5-11-20: Addresses the certification of completion and transfer of responsibility to the state. HB 3426 (2024): Clarifies that pore space is a property right of the surface owner, strengthening negotiation leverage.

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
Utah	No. Phase I of primacy application	Utah Division of Oil, Gas and Mining (DOGM)	Consent Threshold: To obtain a permit for a storage facility, an operator must demonstrate that owners of at least 70% of the reservoir's pore space have provided written consent. Good-Faith Requirement: Before seeking to unitize non-consenting owners, the operator must prove they made a good-faith effort to get consent from all pore space owners.	Negotiated Terms: Consenting landowners typically negotiate private agreements, such as annual rental fees or per-ton injection royalties. Liability Protection: By statute, pore space owners do not incur liability for sequestration activities simply by virtue of their ownership or by leasing the space.	Unitization Payments: For non-consenting owners who are "pooled" into a project, OGM may determine a "fair allocation" of injection fees to ensure they are equitably compensated.	Right of Entry: Operators must secure surface access through voluntary easements or leases for all infrastructure, including injection wells and pipelines. Mineral Non-Interference: Applicants must demonstrate that storage activities will not negatively impact commercially valuable minerals within the storage reservoir.	Operator Phase: The storage operator holds title to the CO2 and is strictly liable for any damage or leaks until a certificate of project completion is issued. Transfer to State: Ownership of the stored CO2 and associated liability transfers to the State of Utah once OGM issues a Certificate of Project Completion. Post-Closure Window: While specific minimum timeframes can vary by site stability, many similar western frameworks require a default monitoring period of 15 to 50 years before this certificate is issued.	Operator Requirements: Operators must provide financial guarantees (bonds, letters of credit, or trust funds) to cover well plugging, site closure, and monitoring. Carbon Dioxide Storage Fund: Established by HB 452, this special revenue fund finances the state's regulatory expenses for monitoring, remediation, and long-term stewardship of facilities.	Administrative Fees: DOGM assesses fees on operators to fund the permitting, inspection, and long-term monitoring of injection activities.	Consent Threshold Utah Code Ann. § 40-11-204 Compensation Utah Code Ann. § 40-11-204(4) Fair Offer Utah Code Ann. § 40-11-204(2) Surface Access Utah Code Ann. § 40-11-203(5) Allocation of Liability Utah Code Ann. § 40-11-206 Financial Assurances Utah Admin. Code R649-13-5 Injection Payments Utah Code Ann. § 40-11-208 Utah Code Ann. § 40-11-101 et seq. (Geologic Carbon Dioxide Sequestration Act) Utah Admin. Code R649-13 (Geologic Sequestration of Carbon Dioxide Rules) Utah Code Ann. § 72-14-101 et seq. (Pipeline and Pore Space Amendments) HB 349 (2024) (Amendments addressing pipeline siting and pore space rights clarification)

State	Class VI Primacy	Responsible Agency	Consent Threshold	Compensation	Fair Offer	Surface Access	Allocation of Liability	Financial Assurances	Injection Payments	Referenced Code
West Virginia	Yes.	West Virginia Department of Environmental Protection (WVDEP)	Consent Threshold: To receive a permit, an operator must demonstrate that the owners of at least 75% of the pore space acreage within the proposed storage reservoir have consented to the project. Mineral Interest Protections: Under SB 15 (2026), recently passed by the Senate, operators must design projects to isolate CO2 plumes from any existing or future production of "commercially valuable minerals," including coal, oil, and natural gas storage.	Negotiated Royalties: Consenting landowners typically negotiate private lease payments or per-ton injection royalties.	Non-Consenting Owners: For the remaining 25% of owners who may be pooled into a unit, the Oil and Gas Conservation Commission (OGCC) ensures they receive "just and reasonable" compensation for their contribution.	Surface Disturbance: The state generally prohibits surface disturbance on tracts belonging to non-consenting owners, except for temporary access for seismic studies or in cases of emergency. Seismic Access: If an operator cannot reach an agreement for necessary seismic surveys, the state can grant access if certain criteria are met.	Liability Transfer: An operator can apply for a Certificate of Completion no sooner than 10 years after injection ceases. State Assumption: Once the certificate is issued, ownership of the stored CO2 and all associated long-term liability transfers to the State of West Virginia.	Operators must provide financial guarantees for every stage of the project: Scope: Assurances must cover well plugging, site closure, and post-injection site care (PISC). Mechanisms: These can include surety bonds, trust funds, or other instruments approved by the WVDEP to ensure no public funds are required for remediation.	Administrative Fund Fee: Operators pay permit application fees into the Carbon Dioxide Storage Facility Administrative Fund to cover regulatory costs. Trust Fund Fee: A per-ton fee on all injected CO2 is paid into the Carbon Dioxide Storage Facility Trust Fund to finance long-term monitoring by the state after the liability transfer. Excise Tax: West Virginia levies a carbon offset excise tax (15% to 50% of gross payments) on carbon sequestration agreements, depending on whether they restrict economic development or mineral severance. Storage operators must pay $0.13 per metric ton of carbon dioxide injected for storage. While the state-mandated fee is $0.13/ton, private landowners often negotiate much higher rates for the use of their pore space. Market Benchmarks: Recent state leases (e.g., under the Kanawha State Forest) have set a precedent for annual royalties around $3.35 per metric ton, significantly higher than the state's regulatory fee.	Consent Threshold W. Va. Code § 22-11B-19 Compensation W. Va. Code § 22-11B-1 Fair Offer W. Va. Code § 22-11B-19 Surface Access W. Va. Code § 22-11B-19 Allocation of Liability W. Va. Code § 22-11B-12 Financial Assurances W. Va. Code § 22-11B-12(e)(4) Injection Payments 47 CSR 09B (WV HB 4214) 47 CSR 09B (2026): Finalized legislative rule establishing a uniform injection fee of $0.13permetricton, regardless of the CO2 source. W. Va. Code § 22-11B-1 et seq.: The foundational Carbon Dioxide Sequestration Pilot Program and regulatory framework. Senate Bill 15 (2026): New legislation requiring permit applicants to provide a plan isolating carbon plume from commercially valuable minerals like coal, oil, and gas. W. Va. Code § 22-11B-16: Authorizes the Carbon Dioxide Storage Facility Trust Fund for long-term monitoring, funded by the $0.13/ton injection fee. W. Va. Code § 22-11B-14: Establishes the Administrative Fund for application and completion certificate fees. W. Va. Code § 22-11B-12: Outlines the transfer of liability to the state following the issuance of a Certificate of Project Completion.