

1 HOUSE BILL 457

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; ENACTING THE GEOLOGIC CARBON
12 DIOXIDE SEQUESTRATION ACT; PROVIDING FOR UNITIZATION OF
13 FORMATIONS FOR SUBSURFACE SEQUESTRATION OF CARBON DIOXIDE;
14 CREATING THE OIL CONSERVATION DIVISION SYSTEMS AND HEARINGS
15 FUND; ESTABLISHING FEES.
16

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

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

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

22 A. "carbon dioxide" means carbon dioxide produced
23 by anthropogenic sources or captured from the atmosphere,
24 including "qualified carbon oxides" as defined pursuant to
25 applicable federal law and "carbon dioxide stream" as may be

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1 defined in federal law and regulations pertaining to class VI
2 carbon dioxide injection wells;

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

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

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

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

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

19 G. "pore space" means the empty space between rock
20 grains, fractures and voids in the earth's subsurface; "pore
21 space" is the available space within, and contained by,
22 geologic formations;

23 H. "sequestration facility" means carbon dioxide
24 injection wells, monitoring wells, science wells and any other
25 wells used for the injection of carbon dioxide in subsurface

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1 geologic formations, including underground equipment, surface
2 equipment, pipelines and buildings used for the purpose of
3 geologic sequestration of carbon dioxide. "Sequestration
4 facility" includes a facility that injects carbon dioxide for
5 secure geologic sequestration pursuant to applicable federal
6 laws, including a geologic sequestration project as may be
7 defined in federal regulations pertaining to federal
8 environmental protection agency class VI underground injection
9 control wells for carbon dioxide injection wells, but shall not
10 apply to underground injection control class II wells; and

11 I. "sequestration unit" means the geologic
12 formation or formations proposed for the injection of carbon
13 dioxide for geologic sequestration and the lands to be included
14 within the unit. "Sequestration unit" does not include oil and
15 gas units where carbon dioxide is injected for purposes of
16 enhancing oil and gas production.

17 SECTION 3. [NEW MATERIAL] APPLICABILITY--DIVISION
18 AUTHORITY--RULEMAKING.--

19 A. Geologic sequestration of carbon dioxide shall
20 be permitted pursuant to the Geologic Carbon Dioxide
21 Sequestration Act.

22 B. The Geologic Carbon Dioxide Sequestration Act
23 applies to sequestration facilities that commence injection of
24 carbon dioxide after the effective date of this 2025 act;
25 provided that sequestration facilities that commenced injection

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1 of carbon dioxide before the effective date of this 2025 act
2 may apply to the division for unitization pursuant to the
3 provisions of the Geologic Carbon Dioxide Sequestration Act.

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

7 D. The Geologic Carbon Dioxide Sequestration Act
8 does not supersede existing mineral rights, existing surface
9 rights or existing disposal rights.

10 E. The division has the jurisdiction and authority
11 necessary to enforce the provisions of the Geologic Carbon
12 Dioxide Sequestration Act and may adopt and promulgate rules
13 and issue orders for the implementation of the provisions of
14 that act.

15 SECTION 4. [NEW MATERIAL] ACQUISITION OF LANDS FOR
16 GEOLOGIC SEQUESTRATION.--

17 A. An operator that desires to form a sequestration
18 unit shall attempt to acquire by option, lease, conveyance or
19 other negotiated means the rights necessary for geologic
20 sequestration within the proposed sequestration unit prior to
21 resorting to the procedure for unitization of such interests
22 pursuant to Section 5 of the Geologic Carbon Dioxide
23 Sequestration Act.

24 B. The lands to be included shall be the reasonably
25 ascertained areal extent of migration of the sequestered carbon

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1 dioxide within the formation or formations based on known
2 geologic information available at the time of the application.
3 The sequestration unit shall also identify any necessary and
4 reasonable areal buffer and subsurface monitoring zones as
5 required by federal or state law, rule, regulation, order or
6 permit.

7 C. The commissioner of public lands or a state
8 agency may grant to an operator rights for geologic
9 sequestration on lands subject to its jurisdiction on such
10 terms as it finds are reasonable and that provide compensation
11 equal to the fair market value of the rights.

12 D. The division may grant to an operator the right
13 to form and to commence operations for the geologic
14 sequestration of carbon dioxide in accordance with the Geologic
15 Carbon Dioxide Sequestration Act.

16 SECTION 5. [NEW MATERIAL] UNITIZATION OF SEQUESTRATION
17 FACILITIES--CONTENTS OF APPLICATION.--

18 A. An operator may apply to the division for an
19 order unitizing a geologic formation or formations for geologic
20 sequestration of carbon dioxide to be included within the
21 proposed sequestration unit. The division shall issue the
22 order upon finding that the requirements of this section and
23 Section 6 of the Geologic Carbon Dioxide Sequestration Act have
24 been satisfied.

25 B. An application filed pursuant to this section

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1 shall contain:

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

5 (2) a description of the proposed geologic
6 formation or formations and a plat of the surface lands
7 proposed to be included in the proposed sequestration unit,
8 including identification of the buffer and subsurface
9 monitoring zones;

10 (3) the names and addresses of the owners of
11 the surface estate within the proposed sequestration unit and
12 of lands within one-half mile of the exterior boundary of the
13 proposed sequestration unit as disclosed by:

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

17 (b) the bureau of land management with
18 respect to federal lands, the commissioner of public lands with
19 respect to state trust lands and the applicable state agency
20 owning the surface estate with respect to lands owned by the
21 state but not subject to the jurisdiction of the commissioner
22 of public lands;

23 (4) the names and addresses of the owners of
24 the mineral estate and mineral lessees within the proposed
25 sequestration unit and for all lands within one-half mile of

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1 the exterior boundary of the proposed sequestration unit;

2 (5) the names and addresses of the owners of
3 the pore space estate within the proposed sequestration unit
4 and for all lands within one-half mile of the exterior boundary
5 of the proposed sequestration unit;

6 (6) evidence of the following:

7 (a) geologic evidence establishing the
8 capability of the formation to accept and sequester carbon
9 dioxide;

10 (b) an estimate of the quantity and
11 volume of carbon dioxide that is reasonably believed to be
12 capable of being sequestered in the sequestration unit;

13 (c) the anticipated pressure of each
14 formation proposed for sequestration and the anticipated
15 pressure required to inject carbon dioxide into the
16 sequestration unit;

17 (d) if available, the proposed locations
18 of wells, types of wells, anticipated total depth of the wells,
19 the casing program for the wells and the proposed locations of
20 sequestration facilities;

21 (e) the depth of all fresh water
22 aquifers and location of any water wells within the
23 sequestration unit and buffer zone;

24 (f) the date the proposed plan is
25 desired to become effective;

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1 (g) the anticipated date of the
2 commencement of development of sequestration facilities;

3 (h) the anticipated date of the
4 commencement of injection operations;

5 (i) the estimated period of time it will
6 take to complete the construction of the sequestration
7 facility;

8 (j) the estimated life of the injection
9 operations; and

10 (k) the estimated pressure in the
11 formation at the end of the injection operations;

12 (7) information on each of the facts required
13 to be found by the division pursuant to Section 6 of the
14 Geologic Carbon Dioxide Sequestration Act;

15 (8) the amount per acre or the amount per
16 volume of carbon dioxide injected that the operator proposes to
17 pay to compensate the owners of the surface estate, including
18 owners in the designated buffer area and, if severed, the
19 owners of the subsurface formation or formations containing
20 pore space within the sequestration unit in which the carbon
21 dioxide is to be injected for sequestration. Each owner of the
22 formation or formations shall be deemed for all purposes to
23 have an equal amount of capacity to store sequestered carbon
24 dioxide and shall be compensated on a surface acreage basis for
25 such injection and storage; and

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1 (9) the amount per acre that the operator
2 proposes to pay to compensate the surface owners or, if
3 severed, the owners of the formation or formations within the
4 buffer and monitoring zones.

5 SECTION 6. [NEW MATERIAL] UNITIZATION OF A SEQUESTRATION
6 UNIT--FINDINGS--RATIFICATION--AMENDMENTS--PETITIONS FOR
7 INCLUSION--RECORDING--LIEN FOR COSTS.--

8 A. Upon receipt of an application pursuant to
9 Section 5 of the Geologic Carbon Dioxide Sequestration Act, the
10 division shall set the matter for hearing and, in addition to
11 notice otherwise required by law or the division's rules, shall
12 cause the applicant to give notice of the hearing, specifying
13 the time and place of the hearing and describing briefly its
14 purpose and the land and formations affected, to be mailed by
15 certified mail at least thirty days prior to the hearing to all
16 persons whose names and addresses are required to be listed in
17 the application.

18 B. If the proposed unitization order concerns
19 unknown or non-locatable owners and interest holders, the
20 applicant shall publish notice once a week for two consecutive
21 weeks in the newspaper of the largest circulation in each
22 county in which the proposed sequestration unit is located and
23 shall file proof of notice with the division concurrently with
24 the application. The first notice shall appear at least thirty
25 days prior to, and the second notice no more than twenty-five

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1 days from, the hearing on the application for a sequestration
2 unit order. The notice shall:

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

5 (2) describe the formation or formations and
6 land proposed to be unitized and the buffer area and any
7 monitoring area;

8 (3) in the case of an unknown owner or
9 interest holder, indicate the name of the last known owner or
10 interest holder;

11 (4) in the case of a non-locatable owner or
12 interest holder, identify the name of the owner or interest
13 holder and the owner's or interest holder's last known address;
14 and

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

20 C. After considering the application and hearing
21 the evidence offered regarding the application, the division
22 may enter an order setting forth the following findings if
23 established by the evidence presented:

24 (1) the underground stratum or formation
25 sought to be unitized is suitable for the geologic

1 sequestration of carbon dioxide and its use for such purposes
2 is in the public interest;

3 (2) the use of the underground stratum or
4 formation sought to be unitized will contain the carbon dioxide
5 and will not contaminate fresh water;

6 (3) the use of the underground stratum or
7 formation sought to be unitized will contain the carbon dioxide
8 and will not contaminate oil, gas, condensate, potash or other
9 commercial mineral deposits capable of being produced in paying
10 quantities, unless all the owners, mineral lessees and other
11 parties owning interests in such oil, gas, condensate, potash
12 or other commercial mineral deposits have consented to the
13 sequestration unit;

14 (4) the use of the underground stratum or
15 formation sought to be unitized will contain the carbon dioxide
16 and will not interfere with existing or planned injection of
17 produced water, carbon dioxide or other fluids from ongoing oil
18 and gas or mineral operations;

19 (5) the application denotes the areal extent
20 of migration of the injected carbon dioxide within the
21 underground stratum or formation and that all lands reasonably
22 determined to be within the migration zone are included within
23 the sequestration unit;

24 (6) the anticipated volume or quantity of
25 carbon dioxide capable of being sequestered in the

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1 sequestration unit;

2 (7) the compensation to be paid by the
3 operator to the owners of the surface or, if severed, the
4 owners of the formation or formations within the sequestration
5 unit is fair, just and equitable;

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

10 (9) the compensation to be paid by the
11 operator to the owners of the surface where sequestration
12 facilities are to be built on the surface, including roads and
13 pipelines, is fair, just and equitable;

14 (10) no portion of the formation or stratum
15 sought to be unitized is being used, or is currently being
16 proposed to be used, for production of oil, natural gas, potash
17 or any other mineral capable of being mined and marketed in
18 paying quantities or for the geologic sequestration of carbon
19 dioxide by others within the proposed sequestration unit,
20 including its buffer;

21 (11) the sequestration unit does not include
22 unleased state land without an agreement with the state land
23 office;

24 (12) the applicant has made a good faith
25 effort to secure voluntary unitization and has secured

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1 voluntary agreements from owners of at least eighty-five
2 percent of the lands within the proposed sequestration unit;

3 (13) the application sets forth the following
4 information:

5 (a) the approximate anticipated date
6 geologic sequestration would commence within the sequestration
7 unit if approved;

8 (b) the approximate date of commencement
9 of the sequestration facilities if approved;

10 (c) the anticipated pressures
11 encountered within the formation or formations in which the
12 sequestration is to occur;

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

15 (e) the estimated duration of the
16 sequestration operations; and

17 (f) the areal extent of the migration of
18 carbon dioxide sequestered into the sequestration unit; and

19 (14) the application includes additional
20 provisions found to be appropriate for the operation of the
21 sequestration facility and does not violate stipulations within
22 the Oil and Gas Act for the prevention of waste and
23 preservation of correlative rights.

24 D. The division shall not issue an order approving
25 the application until the applicant has received agreements in

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1 writing by persons owning at least eighty-five percent of the
2 lands within the proposed sequestration unit. When the persons
3 owning the required percentage of interest have approved the
4 sequestration unit, the division may enter an order approving
5 the application and unitizing the interests of all persons
6 within the sequestration unit whether or not the persons have
7 voluntarily agreed to the sequestration unit. If the required
8 percentage of interest for a proposed sequestration facility
9 does not approve the sequestration unit within a period of six
10 months from the date of filing the application, the application
11 shall be revoked by the division unless the division, for good
12 cause shown, extends the time for ratification; provided that
13 the time for ratification shall not be extended for more than
14 six months.

15 E. An order entered by the division pursuant to
16 this section may be amended by the division after notice and a
17 hearing as follows:

18 (1) for amendments concerning an expansion of
19 the sequestration unit, notice shall be in the same manner and
20 subject to the same conditions as notice provided in
21 Subsections A and B of this section and to include all the
22 interests in the area in which the additional lands considered
23 for expansion are located;

24 (2) for amendments dealing only with a
25 modification of operations of the sequestration facility or

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1 sequestration unit, notice shall be sent to all owners of
2 interests within the sequestration unit at the owners' last
3 known address on file with the operator; and

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

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

11 SECTION 7. ~~[NEW MATERIAL]~~ UNITIZATION OF SEQUESTRATION
12 UNIT--EFFECTS OF UNITIZATION ORDER.--

13 A. Except to the extent that the parties affected
14 agree, no order providing for a sequestration unit shall be
15 construed to result in a transfer of all or any part of the
16 title or other rights in any tract in the sequestration unit,
17 except for the right to inject carbon dioxide into the
18 formation or formations subject to the sequestration unit. The
19 rights to use the surface for access and sequestration
20 facilities requires a separate agreement between the surface
21 owner and operator, and the terms of surface agreements shall
22 treat all surface owners fairly. No agreement or order shall
23 operate to violate the terms and requirements of any permit
24 applicable to the formation or formations or the wells within
25 the sequestration unit.

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1 B. No order of the division issued pursuant to the
2 Geologic Carbon Dioxide Sequestration Act shall be construed to
3 confer on any person the right of eminent domain, beyond the
4 unitization of the sequestration unit.

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

15 D. Each tract's share shall be allocated and paid
16 to the surface owners or, if previously severed, the owners of
17 the subsurface formation or formations or the voids within the
18 formations within the sequestration unit into which the carbon
19 dioxide is to be injected for sequestration, the operator and
20 any other persons owning interests in the sequestration of
21 carbon dioxide within the tract on the basis of the agreement
22 or agreements.

23 E. With respect to the interest of any party who
24 cannot be located or whose identity cannot be ascertained, the
25 operator shall deposit the unlocatable or unknown owner's share

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1 in an interest-bearing account in a national or state-chartered
2 bank with deposits insured by the federal deposit insurance
3 corporation for a period of five years or until the owner is
4 located and the share distributed to the owner, whichever is
5 less. If the share is not distributed to the owner in five
6 years, on the anniversary of the fifth year, as provided in
7 Paragraph (15) of Subsection A of Section 7-8A-2 NMSA 1978,
8 such sum shall be paid to the taxation and revenue department
9 to be distributed pursuant to Section 7-1-6.43 NMSA 1978.

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

24 SECTION 9. [NEW MATERIAL] EFFECT OF CERTIFICATES AND
25 ORDERS OF THE DIVISION.--A person acting pursuant to a

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1 certificate or order issued by the division pursuant to the
2 Geologic Carbon Dioxide Sequestration Act, in compliance with
3 the provisions of that act or with rules or orders issued by
4 the division pursuant to that act, shall not be deemed to be a
5 public utility subject to the provisions of the Public Utility
6 Act or a common carrier as that term is used in the Oil and Gas
7 Act solely because the person owns, controls or operates all or
8 part of a carbon sequestration unit or carbon sequestration
9 facility.

10 SECTION 10. [NEW MATERIAL] PRESERVATION OF RIGHTS.--

11 Nothing in the Geologic Carbon Dioxide Sequestration Act shall:

12 A. prevent a mineral owner or lessee from drilling
13 through the sequestration unit or near a sequestration facility
14 so long as it uses reasonable measures to protect the facility
15 against the escape of the carbon dioxide being stored and the
16 drilling operations are conducted in accordance with all
17 applicable drilling and casing rules; or

18 B. affect or limit any enhanced oil recovery or
19 enhanced gas recovery project permitted by the division or
20 commission or prohibit use of anthropogenic or naturally
21 occurring carbon dioxide in such projects.

22 SECTION 11. [NEW MATERIAL] FEES.--The division may levy

23 on operators the following fees, which shall be paid to the
24 division and deposited in the oil conservation division systems
25 and hearings fund:

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1 A. an annual regulatory fee for sequestration
2 facilities approved. The annual regulatory fee shall be in an
3 amount set by division rule, and the amount of the fee shall be
4 based on the annual projected costs to the division for
5 oversight and regulation of sequestration facilities; and

6 B. application fees for applications for
7 certificates or orders pursuant to the Geologic Carbon Dioxide
8 Sequestration Act, the amounts of which shall be set by
9 division rule; provided that the amount of the fee shall be
10 based on the anticipated cost of processing the application for
11 which the fee is levied.

12 SECTION 12. [NEW MATERIAL] OIL CONSERVATION DIVISION
13 SYSTEMS AND HEARINGS FUND--CREATED.--The "oil conservation
14 division systems and hearings fund" is created as a
15 nonreverting fund in the state treasury. The fund consists of
16 all funds received by the oil conservation division from fees
17 imposed pursuant to Section 11 of the Geologic Carbon Dioxide
18 Sequestration Act, appropriations, gifts, grants, donations,
19 income from investment of the fund and any other money
20 distributed or otherwise allocated to the fund. Disbursements
21 from the fund shall be made upon warrants drawn by the
22 secretary of finance and administration pursuant to vouchers
23 signed by the secretary of energy, minerals and natural
24 resources or the secretary's authorized representative. Money
25 in the fund is subject to appropriation by the legislature to
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1 the division to develop and modernize the division's online
2 application processing system, online case management system
3 and online case file system and for other technical upgrades
4 and hearing administration costs needed to support an
5 underground injection control class VI program, including
6 programmatic personnel. Money in the fund may be expended by
7 the division for the purposes of the fund.

8 SECTION 13. [NEW MATERIAL] OWNERSHIP OF PORE SPACE WITHIN
9 THE EARTH.--

10 A. Absent specific language in a severing
11 instrument to the contrary, the surface estate includes the
12 pore space, and the ownership of all pore space in all strata
13 below the surface lands and waters of this state is declared to
14 be vested in the several owners of the surface above the strata
15 or formations.

16 B. To the extent the dominant mineral estate is
17 reasonably utilizing the surface estate for the production of
18 minerals located thereon and therein, the formations so used
19 shall not be interfered with and are excluded from the
20 provisions of the Geologic Carbon Dioxide Sequestration Act.

21 C. A conveyance of the surface ownership of real
22 property shall be a conveyance of the pore space in all
23 formations and strata below the surface of such real property
24 unless the ownership interest in such pore space was previously
25 severed from the surface ownership or is explicitly excluded in

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1 the conveyance.

2 D. The ownership of pore space in any formations or
3 strata may be conveyed in the manner provided by law for the
4 transfer of interests in real property. No agreement conveying
5 minerals or other interests underlying the surface shall act to
6 convey ownership of any pore space in the formations or stratum
7 unless the agreement explicitly conveys that ownership
8 interest.

9 E. No provision of law, including a lawfully
10 adopted rule or regulation, requiring notice to be given to a
11 surface owner, to an owner of the mineral interest or to both
12 shall be construed to require notice to persons holding
13 ownership interests in any pore space in the underlying
14 formations or strata unless the law specifies notice to the
15 persons is required.