Summit Carbon Solutions Testimony on House Bill 1573 February 3, 2025, 10:00 A.M. House Finance and Tax Committee Representative Headland, Chairman Jeffrey Skaare – Director of Land Summit Carbon Solutions

Opposition to HB 1573

Thank you, Chairman Headland, and fellow Committee Members. My name is Jeffrey Skaare. I am the Director of Land for Summit Carbon Solutions (SCS). I am here today to ask for you opposition to HB 1573.

HB 1573 proposes a new tax of \$5/ton on all substances injected into ground for permanent storage. This proposed law would have significant negative impacts on North Dakota's energy industry, including carbon capture, enhance oil recovery (EOR), and saltwater injection.

The proposed law contradicts established policy

The legislature has worked for many years to create a legal, tax, and regulatory framework to lead the world in CO_2 development, including the definition of pore space, granting the ND Industrial Commission authority to regulate CO_2 injection and storage, establishing the fee structure at the ND Industrial Commission, the long-term accountability for CO_2 storage, establishing tax incentives for commercial deployment of carbon capture, storage and utilization, and funding for research and development. This bill intends to impose a specific and punitive tax contrary to the policies that were put in place through the wisdom of prior legislative action to promote the development of our important industries. The future of agriculture and energy – our two most important industries – depend on stable and predictable CO_2 policies.

The proposed law is unclear

As written the law states, "there is imposed upon a person that transports a substance for the purpose of injection and permanent underground storage of the substance in pore space located in the state a tax as provided in this section." This language would include produced water (saltwater) that is generated from oil and gas, if the gathering system is longer that 25 miles. Saltwater injection locations

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1	typically measure by volume not weight. It is not clear whether this law would apply to enhance oil
2	recovery projects using natural gas connected to large gathering systems. As written the tax is on all
3	pipelines "in service after July 31, 2025." While I suspect the drafters were trying to create an exception
4	for existing pipelines in service prior to that date, the bill language is all inclusive and misleading. The
5	bill seeks to create a new disaster fund without taking into consideration the currently existing
6	protections under North Dakota law. The North Dakota Industrial Commission exercises its authority
7	over injection wells and the North Dakota Public Service Commission exercises its authority over
8	pipelines. In the case of Summit Carbon Solutions, both have instituted safeguards making the need for
9	a disaster fund unnecessary.
10	The proposed law is unconstitutional
11	The North Dakota Supreme Court has held in the case <u>D.D.I., Inc., v. State of North Dakota</u> 2003
12	ND 32 as follows:
13	"The Commerce Clause, U.S. Const. art. I, § 8, cl. 3, grants Congress the power "[t]o regulate
14	commerce among the several States." Although the Commerce Clause is phrased as a grant of power
15	to Congress, it has long been understood to have a "negative" or "dormant" aspect that denies states
16	the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." A
17	Commerce Clause challenge to a state tax is subject to a four-part test. (1) the tax was applied to an
18	activity with a substantial nexus with the taxing state, (2) the tax was fairly apportioned, (3) the tax did
19	not discriminate against interstate commerce, and (4) the tax was fairly related to the services provided
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HB 1573, if enacted would be in violation of multiple parts of this four-part test. The proposed tax discriminates against interstate commerce by imposing a financial burden solely on CO₂ imported into North Dakota, thereby favoring in-state economic interests over out-of-state competitors. This creates an uneven playing field, discouraging external entities from engaging in CO₂ storage within the state due to increased costs. Such protectionist measures are precisely what the Dormant Commerce Clause aims to prevent, as they hinder the free flow of commerce among states.

HB 1573 lacks a legitimate local purpose under the Dormant Commerce Clause. For the state to justify this discriminatory tax, it must demonstrate a legitimate local purpose that cannot be achieved through less discriminatory means. However, there appears to be no substantial evidence suggesting that imported CO₂ poses unique risks or incurs additional costs that would necessitate such a tax. The distinction between in-state and out-of-state CO₂ seems arbitrary and primarily protectionist, lacking a sound basis in environmental or public policy considerations.

13 CONCLUSION

HB 1573 is unconstitutional legislation intended to punitively tax carbon capture storage and utilization projects effectively reversing decades of diligent and thoughtful policy development by this legislative body. It would impose approximately \$90 to \$100 million per year tax on Summit's project alone at a time when markets are demanding lower carbon fuels. If we choose not to participate in these markets, then we must accept the economic consequences of lower demand for our energy and agricultural products. It is for these reasons that we ask for your opposition to House bill number 1573. This concludes my testimony, and I will gladly answer any questions you may have. Thank you.