2025 SENATE ENERGY AND NATURAL RESOURCES

SB 2322

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2322
1/30/2025

Relating to the revocation of common carrier status of carbon dioxide pipelines; and to repeal section 38-22-10 of the North Dakota Century Code, relating to the exercise of public domain in geological storage of carbon dioxide.

8:59 a.m. Chairman Patten opened the meeting.

Members present:
Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:
- Protecting landowners
- Limiting CO2 pipelines
- Safety risks
- Eminent domain
- ND' ethanol industry
- CO2 storage
- Economic growth

9:02 a.m. Senator Magrum introduced the bill and submitted testimony in favor #32912.

9:19 a.m. Curtis Jundt testified in favor and submitted testimony #32906.

9:25 a.m. Troy Coons, Chairman of Northwest Landowners Association, testified in favor and submitted testimony #32687.

9:27 a.m. Zachary D. Cassidy, Organizer of DRC, testified in favor and submitted testimony #32316.

9:29 a.m. Laura Locker, Executive Director of ND Ethanol Producers Association, testified in opposition.

9:29 a.m. Jeff Zueger, CEO of Harvestone Low Carbon Partners, testified in opposition and submitted testimony #32749.

9:33 a.m. Charlie Adams, AG and Stakeholder Relations Manager, Summit Carbon Solutions, testified in opposition and submitted testimony #32862.

9:39 a.m. Jonathan Fortner, VP Government Relations, Lignite Energy Council, testified in opposition and submitted testimony #32820.

9:42 a.m. Brady Pelton, Vice President of ND Petroleum Council, testified in opposition and submitted testimony #32838, #32839 and #32840.

9:47 a.m. Geoffrey M. Simon, Executive Director of Western Dakota Energy Association, testified in opposition.

9:49 a.m. Andrea Pfenning, Vice President of Government Affairs for the GNDC, testified in opposition and submitted testimony #32776.

Additional written testimony:

Doug L. Pearson submitted testimony in favor #31401.

Lon Klusmann submitted testimony in favor #31458 and #32050.

Meredith Gross submitted testimony in favor #31598.

Joe Gross submitted testimony in favor #32019.

Gordon Greenstein submitted testimony in favor #32366.

Gaylynn L. Becker, PhD, submitted testimony in favor #32494.

Robert Fried submitted testimony in favor #32498.

Jessica Tiegs, Tiegs Farm, submitted testimony in favor #32658.

Ann Bernhardt submitted testimony in favor #32701.

Julia Stramer, Kertzman Farm Trust, submitted testimony in favor #32759.

Bruce and Stephanie Doolittle submitted testimony in favor #32790.

Lanny D. Kenner submitted testimony in favor #32829.

Dave J. Nehring, Summit Carbon Solutions, submitted testimony in opposition #32872.

9:53 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

I am in favor of SB2322, co2 pipelines should not be classified as a common carrier, they don't benefit the public.

Thanks Doug

Testimony in **SUPPORT of SB2322**

I urge the committee to recommend a **“Due Pass” on SB 2322, SB 2335, SB2313**,

In regard to SB2322 No landowner should ever be subject to an **eminent domain taking** when a project is already tax payer funded (45Q) .

ND landowners should NEVER be expected to have the burden of giving up land for a NON public use project that is already funded by the taxpayer as part of the new green deal (likely to repealed by executive order)

It is without a doubt an injustice that a landowner funds the project though taxation, then that project “takes” his land too.

This committee must affirm SB 2322

Lon Klusmann

Chairman and Committee Members:

I am writing in support of SB2322 revocation of common carrier status for carbon dioxide pipelines. I feel that the carbon dioxide pipelines that are being proposed to be built in North Dakota for the sole purpose of transportation of carbon captures off ethanol plants from Iowa, Nebraska, South Dakota and Minnesota and to be stored underground in North Dakota – should not qualify for common carrier status as if they were the same as natural gas. Carbon capture and its sequestration is not being used or going to be essential for the public good. It may be that down the road the gas being stored in the ground will be used to help with the fracking of oil in the Bakken, but to me that is another discussion.

Meredith Gross

1808 Harmon Ave.

Bismarck, ND 58501

I strongly support SB2322 . Co2 does not deserve common carrier status, and it should not be classified as such! Common carrier status should only be given to oil, gas, and natural gas that are needed to heat our homes and power our lives. Dangerous co2 pipelines are certainly NOT in that category!

Joe G Gross

1808 Harmon Avenue

Bismarck, ND. 58501

Testimony in **SUPPORT of SB2322**

I urge the committee to recommend a **"Due Pass" on SB 2322, SB 2335, SB2313**,

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This committee must affirm SB 2322

Lon Klusmann

Zach Cassidy
Organizer
Dakota Resource Council

Greetings Mr. Chairman and members of the Energy and Natural Resources Committee. I am Zach Cassidy, organizer and lobbyist for DRC. We stand in support of SB 2322 which removes Common Carrier status for pipelines. We have seen Summit and other companies use common carrier status to threaten and sue landowners even before their projects are permitted. South Dakota has already denied Summit common carrier status in that state, it is time we do the same as North Dakota. Looking at the original intent for common carrier status, was meant for railroads, roads, and other projects that transferred people or goods for a fee without requiring a contract. As Summit and other carbon pipelines do enter into formal contracts with customers, they would be a private carrier.
We recommend DO PASS on this bill.

SB 2322

Senate Energy and Natural Resources

I am in support of SB 2322

Chairman Patten and Committee members, there is no justification for using Carbon Capture and storage projects to do away with Property Rights.

Despite their claims, Carbon Capture Storage and Pipelines are NOT COMMON CARRIERS, and should not be given the ability to seize private property in service of their own profits. This is nothing but a bunch of elitists ripping off the North Dakota and the United States Taxpayers, in the name of non-existent climate change. The United States is 36 Trillion Dollars in debt and this is feeding into the national debt. Carbon Capture Storage is enormously expensive and is propped up by vast amounts of Government funding and coercive mechanisms designed to control the private sector.

Carbon Capture Storage and Pipelines can and should be opposed at both the state and federal levels of government, such as barring Carbon Capture Storage companies from being able to use eminent domain, enacting stricter common carrier laws, deregulating carbon dioxide emissions, and cutting off federal funding for Carbon Capture Storage and Pipeline Projects.

Thank You, Gordon Greenstein

US Navy (Veteran)

US Army-NDNG (Retired)

Senate Energy and Natural Resources Committee

SB 2322

By Gaylynn L. Becker, PhD

January 30, 2025

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Chairman Patton and Members of the Senate Energy and Natural Resources Committee:

I am Dr. Gaylynn Becker of Bismarck, ND. I'm representing myself. I am here to testify in support of Senate Bill 2322. I am not receiving any financial or any other incentive from anyone regarding this. I'm simply writing this from a common sense perspective.

SB 2322 would not grant the power of eminent domain by the state to grant to construct infrastructure associate with:

Carbon capture; Solar energy; wind energy; Hydrogen energy;

Carbon transport for disposal in geological storage or for geological sequestration or anything under a federal 45Q tax credit as defined under title 25, United States Code, section 45Q or any similar type of tax credits.

I ask that you pass SB 2322.

Thank you

God bless you.

Robert Fried

Fried Rentals

Bismarck, ND

701-400-1326

I strongly encourage support for SB2322 for the revocation of common carrier status of carbon dioxide pipelines. After doing extensive research, I found that CO2 is not being transported for purposes of Commerce (Buy-and-Sell) public customers and for Public Good which is a requirement to be classified as a "Common Carrier Pipeline/Transporter."

Pursuant to Article 1, Section-16 of the North Dakota Constitution, it is stated:

"For purposes of this section, a public use

or a public purpose does not include public

benefits of economic development, including

an increase in tax base, tax revenues,

employment, or general economic health.

Private property shall not be taken for the

use of, or ownership by, any private

individual or entity, unless that property is

necessary for conducting a common carrier

or utility business. (emphasis supplied)"

The Summit Carbon Solutions, et, al 2,100+ PSIG high pressure supercritical 19+ million metric ton a year CO2, being proposed to be pipeline routed through North Dakota to a single destination, will be for permanent sequestration underground at the 100% expense of federal and state tax subsidies/credits. No buy-and-sell Commerce is taking place and CO2 in this pipeline does NOT qualify to be classified as a "Commodity". Instead, Summit is sequestering a gas that is an essential part of the carbon cycle that is needed in greater abundance to increase food security across the planet.

And so here we have North Dakota going along with treating it like a waste product by injecting it 1-1/2 miles below ground providing absolutely no benefit to the citizens of North Dakota while putting the costs and a litany of CO_2 pipeline and sequestration risks on the citizens of our State. The only benefits of the whole CCUS scheme will be to a private company/corporation and therefore, in accordance with our State's Constitution, it must be classified as a private carrier status and not as a "Common Carrier" pipeline no matter what the Legislature thought was appropriate in the past by putting CO_2 in the NDCC along side the true Commodities of crude oil, petroleum products and natural gas

For the same reasons stated above, I strongly encourage support to repeal section 38-22-10 of NDCC relating to the "exercise of public domain in geological storage of carbon dioxide" since it is not for the good of the public or is in the realm of "Public Convenience and Necessity!"

Testimony in Support of SB 2322
James and Jessica Tiegs

To the Honorable ND Legislators,

We are residents in Dickey County whose land has been in the crosshairs of Summit Carbon Solutions for the last 3+ years. SCS would like us to sign away rights to significant portions of our crop land so they can transport hazardous CO2 via pipeline, with the intention of gaining billions of dollars in federal tax benefits and “saving agriculture”. We assure you that agriculture’s foundation is much greater than any corporate climate-related project or opportunistic ethanol plant. Carbon pipelines should have NEVER been listed as a common carrier; it’s time to stop catering to the CO2 boondoggle.

According to actual definition, common carriers are entities that offer transportation services to the public for a fee. Some examples of common carrier services include airlines, ferries, internet service providers, guided tours, rural water, insurance companies, and utilities. Common carriers are different from private carriers; private carriers use their own vehicles and transport their own goods or goods for specific clients. Examples of private carriers include a retailer’s fleet of trucks, manufacturer’s transportation, construction companies, and landscaping companies. A private carrier does not transport goods as its primary business.

SCS is a private carrier. They are a private company of investors that enter in formal contracts with entities like ethanol plants and Gevo and only exist because of the IRA 45Q tax credits; these actions do not qualify them as service providers to the public. South Dakota has denied SCS common carrier status and it’s only logical that ND follows suit.

We urge a DO PASS on this bill.

Thank you for your consideration.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2322
Senate Energy and Natural Resources Committee
January 30, 2025

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

The Northwest Landowners Association supports SB 2322 because we do not believe that eminent domain should be used for private benefit or by private parties.

The significant power of eminent domain should not be used as a policy tool to encourage the development of specific industries. We do not support any expansion of the power and use of eminent domain. We have heard from members impacted by a flurry of new development in recent years sparked by federal incentives. Landowners should not be forced to host private development on their property. In the oil patch a great deal of development gets done with landowners through private agreements. Negotiations between willing buyers and willing sellers allow landowners to choose the development they support on their property, and responsible developers can find the land best-suited for their project, and the communities who will welcome them.

Thank you again for your time and we urge a **do pass** on SB 2322.

Thank you,

Troy Coons
Northwest Landowners Association

This testimony is in support of SB 2322

Ann Bernhardt
Linton, ND
January 28, 2025

A carbon dioxide pipeline has NO public use and should therefore never have been granted status as a common carrier in North Dakota.

When private property owners are threatened with an unjust and unconstitutional law that is being exploited by a private, out-of-state company seeking private gain…we must take a stand. We must defend private property rights.

Growing up we had a cousin rivalry going between South Dakota and North Dakota. Here I am years later admitting to them that SD really is better than ND. What a sad day in my life. SD denied Summit Carbon Solutions carrier status, its time North Dakota step up to the plate and admit that a CO2 pipeline does not fall into the common carrier status. Prove to me that our leaders are just as smart as our neighbors to the south.

It is time for the ND legislature to right the wrong and amend the ND Century Code which would remove carbon dioxide pipelines from common carrier status.

Vote YES on SB 2322.

NDePA
North Dakota Ethanol Producers Association

Testimony of Jeff Zueger, CEO of Harvestone Low Carbon Partners

North Dakota Ethanol Producers Association

Opposition of SB 2322

January 30, 2025

Chairman Patten and members of the Senate Energy and Natural Resources committee,

I am Jeff Zueger, the CEO of Harvestone Low Carbon Partners (formally known as Midwest Ag Energy) which owns two plants in North Dakota, Blue Flint in Underwood and Dakota Spirit in Spiritwood. I am also a director on the North Dakota Ethanol Producers Association (NDEPA) board, which represents North Dakota's six ethanol plants, industry stakeholders and associated businesses. On behalf of NDEPA, I am here to oppose SB 2322.

This bill would be detrimental—and in some cases fatal—to the ethanol industry with respect to any future advancements in the carbon (CO_2) markets. North Dakota's legislature has diligently invested immense resources in research and development to advance the CO_2 markets and opportunities in ND, and it has spent 15 years creating a legal, tax, and regulatory regime to encourage investment in the CO_2 markets. This bill could unilaterally undo the very thoughtful and at times groundbreaking work you have invested in safe and permanent CO_2 storage.

North Dakota's ethanol industry contributes nearly $1.7 billion annually to the state's economy and provides thousands of direct and indirect jobs. Thanks to North Dakota's innovative private sector and supportive state government, the state's ethanol production capacity is 550 million gallons per year, which is fifty percent more than what it was a decade ago. The plants produce 2.4 million tons of CO_2 annually. Red Trail Energy in Richardton has been capturing and storing the CO_2 it produces for over two years. They were the first Class VI injections well approved by a state regulator with EPA primacy. Harvestone's Blue Flint plant has been working on its CO_2 project for the past several years and now has an operational CO_2 injection site. Tharaldson Ethanol signed onto the Summit Carbon Solutions pipeline which will be able to capture CO_2 from various Midwest ethanol plants and store it in central North Dakota.

There is a tremendous advantage to capturing and storing North Dakota's CO_2 emitted from the ethanol plants. There are a couple of powerful economic factors at play: (1) the ability to capture more revenue with low-carbon ethanol and (2) 45Q tax credits. The ethanol produced from these plants can be sold to developed and emerging low carbon fuels markets that are willing to pay a premium for low carbon fuel. Low carbon ethanol is often sold at a premium—around $0.20-$0.30 cents more a gallon. Assuming a $0.20 lift in every gallon ethanol, at 550 million gallons of production in the state, assuming all CO_2 from ND's ethanol plants be permanently stored, that would amount to an additional $110M (550M X $0.20) in increased annual revenue. That revenue supports North Dakota's agriculture economy. Those who permanently store carbon can also utilize the 45Q tax credit which is currently valued at $85/ton. ND ethanol plants produce 2.4 million tons CO_2 annually, the 45Q tax credit on this volume could generate $204M per year in federal tax credits taken directly to the plant's bottom line (2.4M x $85). The 45Q tax credit is available for 12 years. Also, lower carbon-intensity scores at a plant enables it to pay a higher price for corn in their area, which translates directly into a better economy for our farmers in ND. These are game-changing opportunities for ND agriculture.

SB 2322 also repeals amalgamation for CO_2 storage. NDEPA understands that amalgamation is never the first mode of action, but it is a tool that must be utilized at times to avoid property rights of the minority outweighing the property rights of the majority on project development. Again, the industry aims for 100% consent from landowners on these projects but there are instances that amalgamation is the voice of the super majority. The CCUS projects related to the ethanol industry have tremendous pore-space owner support. Our project in McLean County secured 92% of voluntary pore space owners, Gevo/Red Trail secured 96% of voluntary pore space owners, and Tharaldson Ethanol's partner, Summit Carbon Solutions, has secured 95% of voluntary pore space owners.

Addressing a carbon-constrained future is a critical public purpose. Our two major industries, agriculture and energy, cannot survive and thrive without them. Additionally, hindering projects for the ethanol industry would put the 550 million gallons of ethanol produced by home grown corn in North Dakota at a disadvantage on the national level. Thank you for your time today and on behalf of NDEPA I urge a 'Do Not Pass' on SB 2322.

From Julia Stramer, Landowner
Emmons County North Dakota

January 29, 2025

RE: Support for SB2322 for the revocation of common carrier status of carbon dioxide pipelines.

My family owns cropland in Emmons County. A proposed CO2 pipeline route cuts through our land and runs near our 4th generation farmyard.

We continue to stand our ground and have not agreed to allow a private company to steal our land, only to make millions of dollars on the backs of ND taxpayers. My great-grandfather, grandmother and father could not have dreamed that their land could be taken by others for private gain.

CO2 does not bring services or needed utility to any persons; it is a solution to a problem that doesn't exist. We must not set a precedent to allow properties to be taken in such a way. Allowing private companies to take lands will open the floodgates to any out-of-state Tom, Dick, and Harry to do the same.

It has cost our family a fortune in lawyer fees and hours upon hours of time wasted to keep our land.

For our future generations and the betterment of our state, please support SB2322 for the revocation of common carrier status of carbon dioxide pipelines.

Greater North Dakota Chamber

GREATER NORTH DAKOTA CHAMBER
SB 2322
Senate Energy & Natural Resources Committee
Chair Dale Patten
January 30, 2025

Mr. Chairman and members of the Committee, my name is Andrea Pfennig, and I am the Vice President of Government Affairs for the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **opposition** of Senate Bill 2322.

We support a business-friendly regulatory environment that is consistent, efficient, cost-effective and promotes investment in infrastructure.

This bill would remove common carrier status for carbon dioxide and the ability to utilize eminent domain. Section 5 of this bill would repeal NDCC 38-22-10 resulting in elimination of the entire section of code outlining carbon dioxide underground storage. Our state has invested incredible amounts of resources over the years to establish a regulatory, tax, and legal policy framework that positions us to be a leader when it comes to carbon capture and sequestration.

Carbon dioxide pipelines are essential to the continued growth of a variety of key industries in North Dakota. Infrastructure projects take a very long time and significant amounts of money. We are competing for investments. If we were to change the rules at this stage, it would have a chilling effect on the attraction of capital. A stable and supportive policy framework is vital in order to have a strong business climate that encourages investment from the private sector.

Now is not the time to go backwards. We have a healthy economy and a multitude of earning opportunities for our citizens. Smart approaches to infrastructure are vital to ensure that North Dakota has the infrastructure necessary to support and grow a thriving economy. We hope you will OPPOSE SB 2322.

701.222.0929 ndchamber@ndchamber.com ndchamber.com PO Box 2639 • Bismarck, ND 58502

This testimony is in support of SB 2322

Bruce and Stephanie Doolittle
Hazelton, ND
January 28, 2025

There are two constitutional limitations on the power of eminent domain:

1. Just compensation must be paid for the property condemned.
2. The property must be necessary for a public use.

Carbon dioxide pipelines do not supply or provide heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof. A carbon dioxide pipeline has no public use and should therefore never have been granted status as a common carrier in North Dakota.

As rural landowners we have signed numerous easements over the years to ensure our community has adequate power, a reliable water source, and telecommunications. We understand the "common" good that these services bring. Eminent domain was never mentioned or needed.

Summit Carbon Solutions is on record threatening property owners with eminent domain in a public commission meeting 2 years prior to their project being approved. The outpouring of concerns regarding the tactics they used should be of great concern to our leaders. When private property owners are threatened because of an unconstitutional and unjust law being exploited by a private, out-of-state company seeking private gain…we must take a stand. We must defend our private property rights!

It is time for the ND legislature to right the wrong and amend the ND Century Code removing carbon dioxide pipelines from common carrier status.

We ask for a DO PASS on SB 2322.

Lignite Energy Council
LEADING THROUGH ADVOCACY AND INNOVATION

January 30, 2025

Chairman Patten and Senate Energy and Natural Resource Committee Members,

I am submitting this testimony in opposition to Senate Bill 2322 on behalf of the Lignite Energy Council. This bill, which seeks to revoke eminent domain for projects utilizing federal tax credits under Section 45Q, would undermine North Dakota's leadership in the carbon economy and hinder critical energy development.

CO_2 pipelines are essential infrastructure, much like oil and gas pipelines, ensuring the viability of carbon capture projects that drive economic growth. Coal plants play a key role by producing CO_2 for enhanced oil recovery (EOR), creating a valuable carbon market while generating new revenue streams that help sustain North Dakota's energy strategy.

Enhanced oil recovery is vital to the state's economy, as oil revenue funds over half of North Dakota's budget, supporting roads, bridges, schools, and critical public services. The 45Q tax credits incentivize private investment in carbon capture, enabling projects that could unlock 3 to 7 billion barrels of additional oil in the Bakken and generate billions in tax revenue. However, without CO_2 pipelines to support future EOR, this revenue source will decline, putting the state's budget and economy at risk.

Eliminating the ability to build CO_2 pipelines would weaken North Dakota's economic foundation, creating instability and straining essential government functions. This is why CO_2 pipelines must retain eminent domain authority, they serve a public purpose by sustaining economic growth and ensuring stable government funding. Additionally, removing CO_2 from the list of common carriers would undermine pipeline infrastructure, limit future development, and restrict open access to critical infrastructure that supports industries driving economic security.

To maintain North Dakota's energy leadership and long-term economic growth, I urge the committee to issue a Do Not Pass recommendation on Senate Bill 2322.

Thank you for your consideration,

Jonathan Fortner
VP of Government Relations
Lignite Energy Council

1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

701.258.7117 www.lignite.com LEC@lignite.com

Lanny Kenner

Good morning chairman Patton and committee members, My name is Lanny Kenner and I'm speaking in support of Senate bill 2322. We need to remove the common carrier status of any Co2 pipeline and sequestration of Co2 which was made possible by the 45Q tax credits. Common carrier in the North Dakota century code refers to a commodity that is bought and sold which CO2 doesn't fall into that category. For that reason, I am in favor of Senate bill 2322 to remove the common carrier status of Co2 pipelines.

Please give Senate bill 2322 a DO pass vote. Thank you, Lanny Kenner

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Senate Bill 2322

Testimony of Brady Pelton

Senate Energy and Natural Resources Committee

January 30, 2025

Chairman Patten and members of the Committee, my name is Brady Pelton, vice president of the North Dakota Petroleum Council ("NDPC"). The North Dakota Petroleum Council represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline development, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, South Dakota, and the Rocky Mountain region. I appear before you today in opposition to Senate Bill 2322.

North Dakota has long been a national leader in energy innovation, recognizing the importance of carbon management technologies such as carbon capture, utilization, and storage ("CCUS") and enhanced oil recovery ("EOR"). Carbon dioxide pipelines are a fundamental part of these advancements, providing a reliable transportation network to move CO_2 from industrial sources to storage sites and oil fields where it can be used for EOR.

Enhanced oil recovery using carbon dioxide has been identified as a key strategy for increasing oil production in North Dakota while also reducing emissions through permanent sequestration. The North Dakota CO_2-EOR Financial Analysis, recently prepared by the Office of the State Tax Commissioner, underscores the immense economic potential of enhanced oil recovery using carbon dioxide. The key economic benefits outlined in the study are billions of dollars in additional oil tax revenue, ensuring long-term oil production stability, and strengthening North Dakota's position as a leader in responsible energy development.

By revoking common carrier status for carbon dioxide pipelines, Senate Bill 2322 significantly hinders future investment in pipeline infrastructure, directly threatening North Dakota's ability to advance CCUS and EOR initiatives. Specifically, this legislation would:

- **Create Barriers to Infrastructure Development** – Common carrier status allows pipelines to operate as public utilities, ensuring fair and open access while enabling projects to secure necessary right-of-way agreements. Removing this status would discourage investment in CO_2 pipeline projects by increasing legal and financial uncertainty.
- **Restrict the Use of Eminent Domain** – Eminent domain is used sparingly and only as a last resort after extensive negotiation with landowners. However, it is a critical tool for completing pipeline networks that serve a broad public benefit. Without this authority, obtaining the necessary land for pipeline projects would become significantly more difficult, if not impossible.
- **Harm North Dakota's Oil and Gas Industry** – Carbon dioxide pipelines are essential for delivering the carbon dioxide needed for enhanced oil recovery. Without a reliable supply, North Dakota risks losing billions of dollars in potential oil recovery, tax revenue, and job creation. Restricting the ability of CO_2 pipelines to operate as common carriers effectively limits the expansion of this vital technology.
- **Undermine North Dakota's Business-Friendly Climate** – The state has historically embraced policies that attract investment in energy infrastructure. Revoking common carrier status for CO_2 pipelines would send a strong anti-business signal, discouraging companies from investing in the state's energy future.

Senate Bill 2322 represents a step backward in North Dakota's efforts to remain at the forefront of energy production and innovation. Carbon dioxide pipelines are critical to the future of enhanced oil recovery and carbon sequestration efforts, both of which support job creation, economic growth, and responsible resource development. Limiting the ability of CO_2 pipelines to operate as common carriers and restricting their ability to use eminent domain would stall progress, discourage investment, and significantly impact North Dakota's economy. NDPC strongly opposes this bill, and we urge a **Do Not Pass recommendation** for Senate Bill 2322.

Thank you, and I would be happy to answer any questions.

North Dakota CO_2-EOR Financial Analysis

November 15, 2024

Summary

The following document explores and evaluates various financial considerations related to CO2-EOR in North Dakota, potential synergies across multiple energy-sectors, and the influence policy will have on future CO2-based tertiary efforts in the state.

The U.S. Geological Survey estimates that up to 3.3 billion barrels of undiscovered, technically recoverable oil are in the Bakken formation, with much of that oil in North Dakota. CO2-EOR can play a central role in the recovery of these untapped resources.

By: Brian Kroshus
North Dakota Tax Commissioner

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Introduction

Enhanced oil recovery (EOR) development in North Dakota utilizing CO_2, particularly from CO_2 feedstocks sourced from in-state coal conversion facilities, biofuel plants and synfuels production, represents a significant economic opportunity.

Supporting and further enhancing an already favorable economic and regulatory environment to encourage CO_2-EOR versus CO_2 sequestration and permanent, geologic storage, will require evaluating both existing and new policy offerings to mitigate the current $25 differential between two of the three primary 45Q tax credit incentives currently available.

These incentives and economics on the surface favor sequestration over enhanced oil recovery. However, state policy from both a tax and regulatory perspective at least in part, holds the potential to offset the monetary gap and positively influence adoption of CO_2-EOR within our borders, promoting new, long-term capital investment in North Dakota.

From an industry perspective, beyond production-related economics, CO_2-EOR can play a key role in addressing and meeting corporate sustainability objectives, serving as a valuable extension of existing ecocentric practices.

Both internal and external factors will invariably influence CO_2 usage patterns. They include commodity pricing, other investment and capital deployment opportunities, and the regulatory and tax policy environment at the federal, state and local levels.

Further, recognizing the importance of fostering an environment that supports effective public-private partnerships and working collaboratively with tribal interests, is essential.

Arguably, CO_2-EOR in conjunction with existing energy resources in the state signifies the next chapter of oil production in North Dakota. For industry and public sector alike, there exists the potential to further monetize current oil, lignite, and biofuel energy infrastructure.

As North Dakota evaluates a path forward, it is important to recognize other oil and gas producing states including Texas, Oklahoma, New Mexico, and in proximity to North Dakota, Wyoming, are also actively positioning and competing to attract the same CO_2 supplies and capital investment dollars necessary to advance CO_2-EOR projects within their respective geographies.

To counter that reality, new incentive opportunities from a tax policy perspective to complement existing mechanisms and encourage CO_2-EOR and supporting infrastructure development, may be required to attract in-state capital investment for conventional and unconventional oil production alike, where CO_2-EOR is deemed economically viable and applied.

Further, supporting the development of critical CO_2 transportation infrastructure necessary to move feedstock from point-of-capture to application in North Dakota oil fields, will also play an important role in advancing CO_2-EOR efforts in the state.

The ability to establish greater CO_2 supply assurances necessary for industry to justify capital investment within and outside the Bakken, will be an essential element in the level of success experienced. Potential in-state supplies of CO_2 are optimal in the sense they support multiple industrial energy segments including oil, lignite, and agriculture, each playing an important role in the state's economy.

In essence, state regulatory and tax policy as previously mentioned will play a key role in advancing CO_2-EOR in what can best be described as a rapidly developing and highly competitive landscape.

It is important to emphasis that the benefits of CO_2-EOR are not exclusive to the production of oil. North Dakota's fleet of coal-fired plants in proximity to the Bakken and lone synfuels plant, Dakota Gasification, are also strategically positioned to benefit from the application of CO_2-EOR as suppliers and sellers of CO_2. That in turn supports the advancement of carbon capture technology and ultimately, implementation of CO_2-EOR.

North Dakota, with its diverse energy resource portfolio, is arguably more strategically positioned to implement CO_2-EOR in comparison to other oil-producing states, again in large part due to proximity and volume of interrelated energy resources.

While CO_2 transport challenges from an infrastructure placement standpoint currently exist, the ability to move feedstock from point-of-capture to actual use, while not entirely removed, is arguably less pronounced due to the relatively short distance between in-state supplies of CO_2 and oil field application.

North Dakota is in a unique position in that it also has very favorable geology for the sequestration and permanent storage of CO_2. Still, an equally compelling if not stronger argument to support CO_2-EOR can be made, the latter providing a broader and in effect, more favorable long-term economic platform to support incremental production in the Bakken. That in turn provides an attractive return on investment not only in the state, but nation from an energy production and security perspective.

Ultimately, the potential to sustain and increase oil production in North Dakota and subsequently, support and bolster associated revenue collections resulting from carbon capture and EOR, is significant. However, for that to become a reality, it is essential that the economic potential of CO_2-EOR exceeds sequestration.

Conversely, the opportunity cost and loss in potential revenue if sequestration instead displaces CO_2-EOR, particularly in oil-producing states like North Dakota, cannot be overlooked as the following analysis explains.

CO_2 EOR Incentives and Infrastructure by State

As previously noted, effectively competing for investment dollars targeted for carbon capture and transportation, whether from existing industry reserves or venture capital groups, will be paramount in determining the level of success experienced in North Dakota.

In many respects, North Dakota already heavily incentivizes utilizing CO_2 for EOR development. Numerous tax incentives currently exist to support CO_2-EOR, including as specified in NDCC § 57-51.1-02:

- Incremental production from a qualifying tertiary recovery project is exempt for a period of 10 years.
- Incremental production from a qualifying tertiary recovery project located outside the Bakken or Three Forks formations and that injects more than fifty percent carbon dioxide produced from coal, is exempt for twenty years from the date incremental production begins.
- Incremental production from a qualifying tertiary recovery project located within the Bakken or Three Forks formations and that injects more than fifty percent carbon dioxide produced from coal, is exempt for ten years from the date incremental production begins.

Beyond CO_2-EOR incentives, North Dakota exempts low-producing or marginal wells from the oil extraction tax. These wells, often referred to as "stripper wells," can qualify for tax-reduction incentives based on production and location criteria and then be exempt from the state's oil extraction tax for the remaining life of the well, once designated as a stripper well by the North Dakota Industrial Commission. While not necessarily a direct CO_2-EOR incentive, the net effect is still the same through elimination of the extraction tax obligation.

Additionally in North Dakota, the oil extraction tax rate for restimulated wells, identified as previously completed and producing oil and subsequently treated with an application of fluid under pressure for the purpose of creating additional fractures in a targeted geological formation outside the Bakken and Three Forks formations, is reduced from 5% to 2%, effective for the first 75,000 barrels (bbl) or 18 months, whichever occurs first, after restimulation is complete.

To encourage carbon capture projects and development of infrastructure to support EOR, state policy provides a sales and use tax exemption for materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for secure geological storage or use in enhanced recovery of oil or natural gas (NDCC § 57-39.2-04.14) The incentive is broad-based in nature, applying not only to primary pipeline transportation projects but oilfield distribution networks as well.

For projects to be exempt under NDCC § 57-39.2-04.14, tangible personal property must be incorporated into a system used to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas.

Tangible personal property to replace an existing system to compress, gather, collect, store, transport, or inject carbon dioxide for secure geologic storage or use in enhanced recovery of oil or natural gas qualifies as sales tax exempt if the replacement creates an expansion of the original system.

Additionally, a CO_2 pipeline project exemption as specified in NDCC § 57-06-17.1, exempts property, not including land, from taxation during construction and for the first 10 full taxable years following initial operation. Associated equipment necessary for the transportation or storage of CO_2 for secure geological storage or for use in enhanced recovery of oil or natural gas, is also exempt.

Finally, under NDCC § 57-39.2-04.49, Gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas, or secure geologic storage, are exempt from sales tax.

Similarly, other oil-producing states in the U.S. are also aggressively positioning and engaging in policy discussions to incentivize CO_2-EOR within their borders and capture market share.

Virtually all oil producing states in the U.S. currently have mechanisms in place to address low-price cycles for crude oil, similar to previous North Dakota statute which established a low-price trigger and subsequent suspension of the oil extraction tax during market downturns to protect oil producers in the state. While the low-price trigger protection was repealed by North Dakota lawmakers in exchange for a permanent reduction in the extraction tax rate, from 6% to 5%, that same concept is still applicable in other states.

In Texas, the Texas Railroad Commission, the counterpart to North Dakota Public Service Commission, has the authority to incentivize CO_2-EOR projects. Under their current incentive, the producer of oil recovered through a CO_2-EOR project that qualifies, is entitled to an additional 50% reduction in the oil tax rate in Texas if in the recovery of the oil the EOR project uses CO_2 that:

- Is captured from an anthropogenic source in this state;
- Would otherwise be released into the atmosphere as industrial emissions;
- Is measurable at the source of capture; and
- Is sequestered in one or more geological formations as part of the enhanced oil recovery process

Other states, like Wyoming, continue to actively pursue new legislation to support CO_2-EOR development, to effectively compete for regional supplies of CO_2.

In some cases, CO_2 transportation infrastructure designated for CO_2-EOR is already operational, including the Kinder Morgan Cortez Pipeline, delivering approximately 800 million cubic feet or 22,654 metric tonnes of naturally occurring CO_2 daily from the McElmo Dome site in southwest Colorado to oil fields in the Permian Basin in New Mexico and West Texas. Incremental oil production attributed to that project is approximately 50,000 barrels per day (bbl/d).

Active CO_2-EOR projects in North Dakota include the Denbury CO_2 pipeline, stretching 105 miles from Wyoming to Southeast Montana and Southwest North Dakota, targeting the Cedar Creek Anticline.

Additionally, Dakota Gasification Company, a subsidiary of Basin Electric Power Cooperative, has been transporting CO_2 since October 2000 from the Great Plains Synfuels Plant through a 205-mile pipeline operated by Souris Valley Pipeline, Ltd. to the Weyburn-Midale oil fields in Canada, currently shipping up to 155 million cubic feet, or 4,389 tonnes of CO_2 daily for EOR.

In 2022, Red Trail Energy located outside of Richardton began operating North Dakota's first CO_2 storage well in June of 2022. Preceding that effort, test wells were drilled in Mercer and Oliver counties located in North Dakota, in 2018 to study the geologic potential for CO_2 sequestration sourced from North Dakota coal-conversion facilities.

While CO_2-EOR production accounts for only a small fraction of oil currently produced in the U.S. and even globally, new CO_2-EOR policy and projects as previously mentioned continue to be actively explored both in North Dakota and throughout the U.S.

While advancements in carbon capture technology and associated capital investment are rightfully at the forefront of the discussion, the ability to secure, transport and distribute economically viable volumes of CO_2 necessary to support large-scale CO_2-EOR is equally important, particularly from a North Dakota perspective given the opportunity to link multiple energy industry segments to one another.

In summary, North Dakota energy resources and current policy, will serve as a benchmark for future discussions supporting the advancement and application of CO_2-EOR in the state.

Economic Analysis – Current Oil and Gas Collections

Economic estimates are often constructed from a direct or linear, incremental gains' perspective, with limited focus placed on opportunity cost. In evaluating the application and potential economic benefit of CO_2-EOR in North Dakota, it not only has the potential to provide incremental benefits to the state as referenced, but equally important, help preserve existing production levels and associated revenue streams.

That latter aspect or preservation will be particularly evident during periods of oil price declines, whether cyclical or due to unanticipated market conditions, unfavorable supply and demand dynamics, or consequential geopolitical events.

The North Dakota Legislature, recognizing the finite nature of oil resources in the state, has established various reserve funds, most notably the Legacy Fund, intended to benefit future generations by protecting revenue streams should production levels drop below the current range.

Until that time, however, oil production and associated revenue collections in the state can be better optimized through strategic initiatives intended to improve recovery rates in western North Dakota, including CO_2-EOR.

As an energy producing state, North Dakota relies heavily on oil-related revenue to fund state and local government both within and beyond oil producing counties. Oil production and extraction tax collections alone are substantial, most recently exceeding $3 billion in FY2023 and FY2024 respectively, as illustrated in Figure 1. Beyond those collections, associated economic activity plays a vital role in supporting the state's economy, covered later in this document.

As shown on the following graph, oil revenue collections in aggregate over just the past decade, equate to $23 billion.

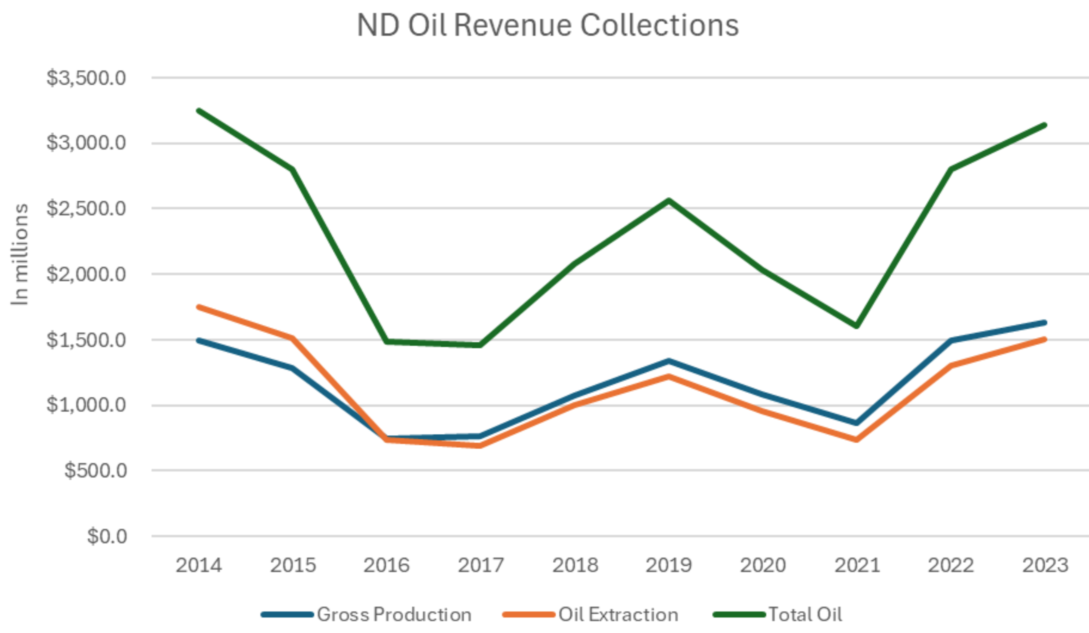


Figure 1

Figure 1 underscores the financial significance associated with oil production in North Dakota and illustrates the impact cyclical pricing, particularly price spikes and declines at various times (Figure 2), predictably has on revenue collections. This is most pronounced during the 2016-2017, 2020 and 2022 timeframes.

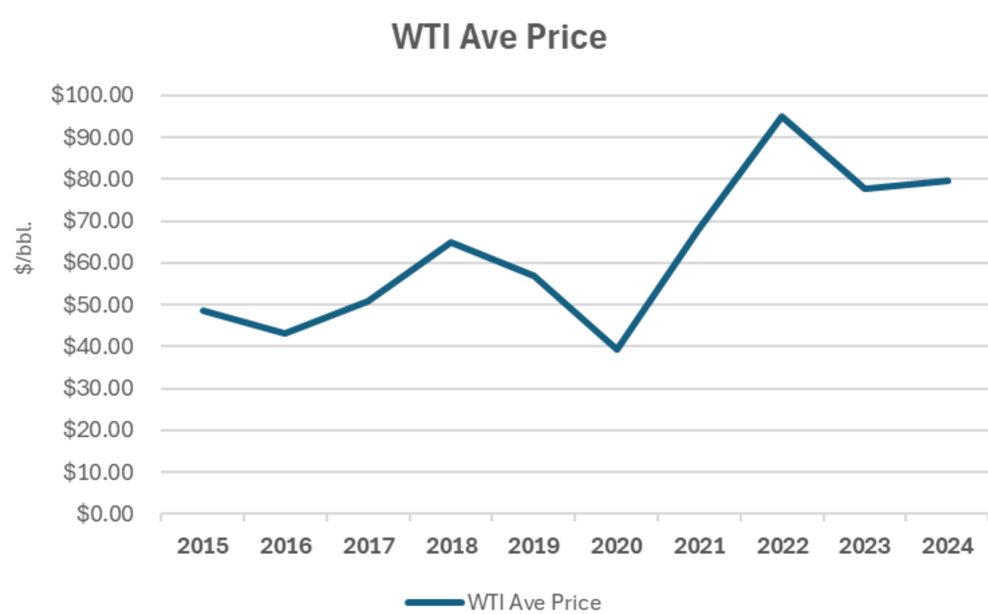


Figure 2

As noted, CO_2-EOR efforts have the potential to increase revenue collections, but equally importantly, preserve existing revenue streams by mitigating market-influenced price declines that inhibit drilling activity and subsequently, negatively impact production.

Historically, the ability to increase or maintain oil production levels in North Dakota has predominately correlated to drilling activity and the introduction of new wells. Absent that, output predictably declines due to high depletion rates experienced by wells drilled in shale plays like the Bakken, often exceeding 50% during the first year of production and falling below 10% of initial production, within 5 to 7 years.

Figure 3 illustrates shifts in economic value or revenue collected from a production and extraction tax standpoint, between 2014 and 2023, for every 100,000 bbl produced. The economic impact shown underscores the importance of maintaining production, particularly when oil prices are depressed over prolonged periods of time.

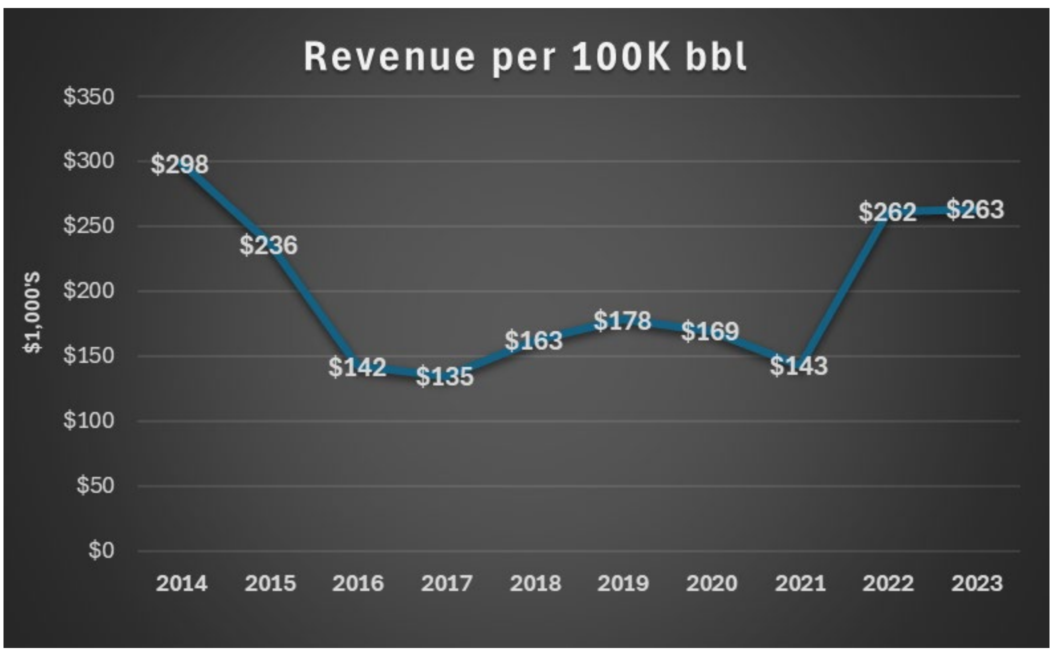


Figure 3

CO_2-EOR Fiscal Impact

Future commodity pricing combined with input costs including the cost of CO_2 itself, will significantly influence the degree of opportunity producers have to pursue CO_2-EOR. Unlocking additional crude oil from existing wells in inventory, reflected in the CO_2-EOR single well revenue models shown in Tables 2-5 to follow, demonstrate the revenue potential to the state, primarily from oil production tax collected on incremental barrels produced, based on different incentive scenarios including:

- 5-year extraction tax exempt models
- 10-year extraction tax exempt models

Models are formulated using the same, single well production estimates over the first 10 years following initiation of CO_2-EOR. Twenty-year and low producing, or stripper well models, are not calculated due to relatively immaterial, residual oil output and respective collections beyond the 10-year mark, resulting from rapid depletion rates associated with and prevalent in shale plays.

The following calculations (Tables 2-5) are based on oil pricing estimates over both 5-year and 10-year timeframes, using the U.S. Energy Information Administration (EIA) price outlook for Brent Crude as of June 2024 (Table 1) for the years 2028-2037 and for comparative purposes, applying an average net price of $80.00/bbl for Bakken crude.

U.S EIA Price Estimates/bbl – June 2024

Year range	Brent crude price projections (ave.)*	WTI after discount to Brent (3%)	Bakken discount to WTI ($3.75-$2.65)	Net price to Bakken producers
2025-2029	$61.00	$59.17	$3.20	$55.97
2030-2034	$73.00	$70.81	$3.20	$67.61
2035-2039	$80.00	$77.60	$3.20	$74.40
2040-2044	$87.00	$84.39	$3.20	$81.19
2045-2049	$91.00	$88.27	$3.20	$85.07
2050	$95.00	$92.15	$3.20	$88.95

Table 1

Net prices reflected in Table 1 and received by Bakken producers are extrapolated from EIA Brent price projections, applying a 3% discount to approximate the price for West Texas Intermediate and assuming an additional average discount rate of $3.20/bbl for Bakken crude, to determine net price.

Single Well CO_2-EOR – 10 yr. extraction tax exempt

Based on EIA 2028-2037 Price Estimates (Table 1)

	Total Annual Production bbl	Legacy Production bbl	Incremental Production bbl	Ave. price Bakken Crude	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total Incremental Revenue
yr 1	71,781	9,211	62,570	$55.97	$175,102	$0	$175,102
yr 2	45,192	7,375	37,817	$55.97	$105,831	$0	$105,831
yr 3	33,222	5,905	27,317	$67.61	$92,345	$0	$92,345
yr 4	20,043	4,728	15,315	$67.61	$51,772	$0	$51,772
yr 5	12,911	3,785	9,126	$67.61	$30,850	$0	$30,850
yr 6	8,719	3,030	5,689	$67.61	$19,232	$0	$19,232
yr 7	6,016	2,426	3,590	$67.61	$12,136	$0	$12,136
yr 8	4,148	1,943	2,205	$74.40	$8,203	$0	$8,203
yr 9	3,010	1,555	1,455	$74.40	$5,413	$0	$5,413
yr 10	1,732	1,392	340	$74.40	$1,265	$0	$1,265
Total	**206,774**	**41,350**	**165,424**		**$502,149**	**$0**	**$502,149**

Table 2

Single Well CO_2-EOR - 10-yr. extraction tax exempt

Based on 10 yr. average price of $80

	Legacy Production bbl	Incremental Production bbl	Total Annual Production bbl	Ave. price Bakken Crude	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total Incremental Revenue
yr 1	9,211	62,570	71,781	$80.00	$250,280	$0	$250,280
yr 2	7,375	37,817	45,192	$80.00	$151,268	$0	$151,268
yr 3	5,905	27,317	33,222	$80.00	$109,268	$0	$109,268
yr 4	4,728	15,315	20,043	$80.00	$61,260	$0	$61,260
yr 5	3,785	9,126	12,911	$80.00	$36,504	$0	$36,504
yr 6	3,030	5,689	8,719	$80.00	$22,756	$0	$22,756
yr 7	2,426	3,590	6,016	$80.00	$14,360	$0	$14,360
yr 8	1,943	2,205	4,148	$80.00	$8,820	$0	$8,820
yr 9	1,555	1,455	3,010	$80.00	$5,820	$0	$5,820
yr 10	1,392	340	1,732	$80.00	$1,360	$0	$1,360
Total	**41,350**	**165,424**	**206,774**		**$661,696**	**$0**	**$661,696**

Table 3

Single Well – CO_2-EOR – 5 yr. extraction tax exempt

Based on EIA 2028-2037 Price Estimates (Table 1)

	Total Annual Production bbl	Legacy Production bbl	Incremental Production bbl	Ave. price Bakken Crude	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total Incremental Revenue
yr 1	71,781	9,211	62,570	$55.97	$175,102	$0	$175,102
yr 2	45,192	7,375	37,817	$55.97	$105,831	$0	$105,831
yr 3	33,222	5,905	27,317	$67.61	$92,345	$0	$92,345
yr 4	20,043	4,728	15,315	$67.61	$51,772	$0	$51,772
yr 5	12,911	3,785	9,126	$67.61	$30,850	$0	$30,850
yr 6	8,719	3,030	5,689	$67.61	$19,232	$19,232	$38,463
yr 7	6,016	2,426	3,590	$67.61	$12,136	$12,136	$24,272
yr 8	4,148	1,943	2,205	$74.40	$8,203	$8,203	$16,405
yr 9	3,010	1,555	1,455	$74.40	$5,413	$5,413	$10,825
yr 10	1,732	1,392	340	$74.40	$1,265	$1,265	$2,530
Total	**206,774**	**41,350**	**165,424**		**$502,149**	**$46,248**	**$548,396**

Table 4

Single Well CO_2-EOR– 5-yr. extraction tax exempt

Based on 10 yr. average price of $80.00

	Total Annual Production bbl	Legacy Production bbl	Incremental Production bbl	Ave. price Bakken Crude	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total Incremental Revenue
yr 1	71,781	9,211	62,570	$80.00	$250,280	$0	$250,280
yr 2	45,192	7,375	37,817	$80.00	$151,268	$0	$151,268
yr 3	33,222	5,905	27,317	$80.00	$109,268	$0	$109,268
yr 4	20,043	4,728	15,315	$80.00	$61,260	$0	$61,260
yr 5	12,911	3,785	9,126	$80.00	$36,504	$0	$36,504
yr 6	8,719	3,030	5,689	$80.00	$22,756	$22,756	$45,512
yr 7	6,016	2,426	3,590	$80.00	$14,360	$14,360	$28,720
yr 8	4,148	1,943	2,205	$80.00	$8,820	$8,820	$17,640
yr 9	3,010	1,555	1,455	$80.00	$5,820	$5,820	$11,640
yr 10	1,732	1,392	340	$80.00	$1,360	$1,360	$2,720
Total	**206,774**	**41,350**	**165,424**		**$661,696**	**$53,116**	**$714,812**

Table 5

Using the single well production model provided by the Energy & Environmental Research Center (EERC) North Dakota 20-year CO_2-EOR Forecast, incremental tax revenues generated on a per well basis range from $502,149 to $714,812 (Table 6) over the initial 10-year period of production following commencement of CO_2-EOR, depending on various pricing scenarios for crude oil.

Single Well CO_2-EOR - Revenue Model Comparisons

Single Well Revenue Model	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total - Single Well
EOR 10-year model - EIA Pricing	$502,149	$0	$502,149
EOR 10-year model - $80.00 WTI	$661,696	$0	$661,696
EOR 5-year model - EIA Pricing	$502,149	$46,248	$548,396
EOR 5-year model - $80.00 WTI	$661,696	$53,116	$714,812

Table 6

Applying the single well model to the estimated 271 grids and 5,744 associated EOR wells targeted in the EERC study, under the high-case scenario and current stripper well count in North Dakota as of July 2024 (12,515), in conjunction with EIA price estimates for Brent crude as illustrated in Tables 2 and 4 and average price of $80/bbl (Tables 3 and 5), generates approximately $2.9 to $9 billion in incremental revenue (Table 7) to the state, alone.

It's worth noting that high-end estimates exceed the available supply of CO_2 required to achieve production estimates, but nonetheless demonstrate the economic potential of CO_2-EOR from an incremental oil production and associated tax revenue perspective.

Overall CO_2-EOR Incremental Revenue Model - North Dakota

Single Well Revenue Model	Total - 5,744 Wells	Total - 12,515 Wells* (*Stripper Well Count - 7-24)
EOR 10-year model - EIA Pricing	$2,884,341,547	$6,284,389,704
EOR 10-year model - $80.00 WTI	$3,800,781,824	$8,281,125,440
EOR 5-year model - EIA Pricing	$3,149,988,103	$6,863,179,163
EOR 5-year model - $80.00 WTI	$4,105,880,128	$8,945,872,180

Table 7

As indicated, if every certified, low-producing or stripper well currently identified in North Dakota is targeted for CO_2-EOR, the economic benefit is significantly higher in comparison to the low estimate, even with low-producing wells in the state being exempted from extraction tax for the life of the well under current statute. Conversely, the opportunity cost or potential revenue loss absent CO_2-EOR as demonstrated, equates to billions of dollars in unrealized collections.

Associated Fiscal Impact – Oil Producing Counties in North Dakota

Beyond direct benefits resulting from incremental oil production, associated economic impacts for CO_2-EOR extend exponentially beyond revenues generated from production and oil extraction tax levied on oil produced in North Dakota.

Target energy sectors including oil and coal, support state and local economies through employment opportunities, sales and use tax collections, property tax or equivalent of, and a plethora of other economic benefits.

Over the most recent five-year period roughly $10 billion in purchases, with associated state sales tax collections totaling approximately $500 million, can be attributed to oil-induced economic activity in the state's four largest oil and gas producing counties comprised of McKenzie, Dunn, Mountrail and Williams.

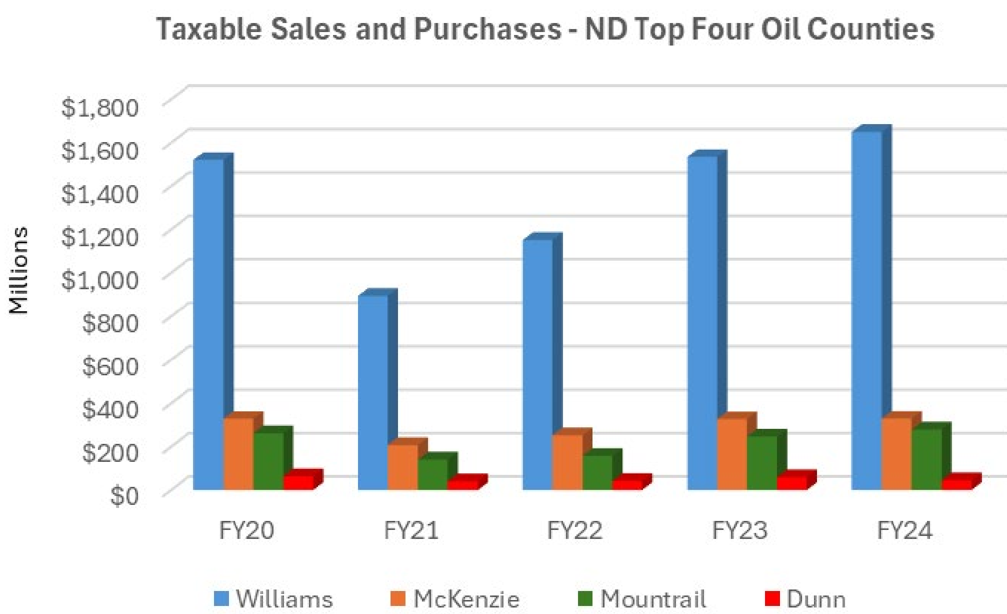


Figure 4

As shown in Figure 4, Williams County, including the city of Williston, continues to be an economic powerhouse in the region with approximately $7 billion in taxable purchases taking place over the past five fiscal years (FY20-FY24). While seemingly overshadowed by their larger economic cousin, the counties of McKenzie, Mountrail and Dunn combined still represent significant economic activity, approaching $3 billion in taxable sales and purchases over the same timeframe.

In addition to the 5% state sales and use tax rate, both cities and counties can levy and collect local sales and use tax in addition to the state requirement, with funds collected channeling directly back to the respective political subdivision.

While rates vary depending on location, the additional local options tax on qualifying purchases yields incremental collections equal to approximately one-third of the amount collected by the state, or $160-$170 million during the same 5-year period.

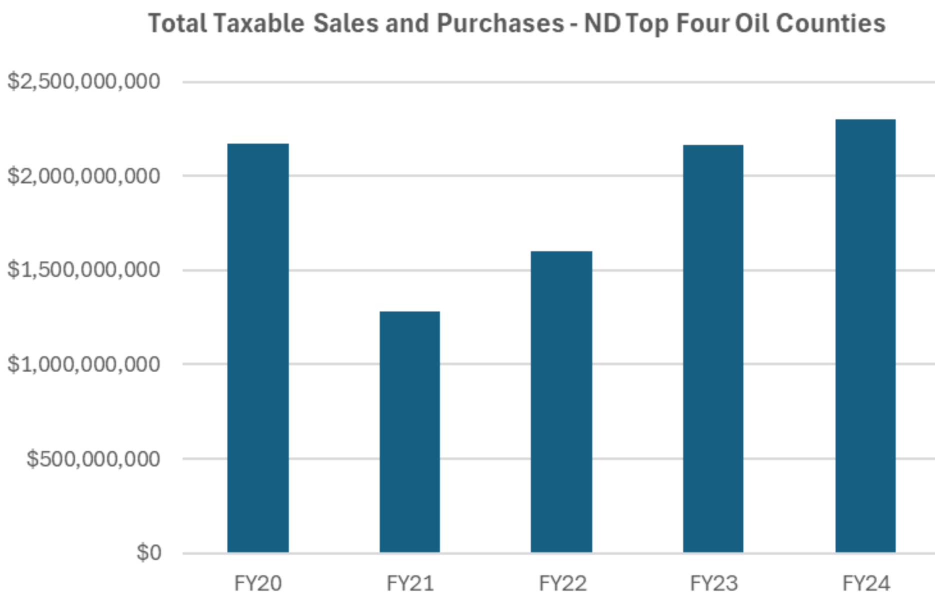


Figure 5

In aggregate, economic activity for North Dakota's four largest oil producing counties (Figures 4 and 5) is significant, despite challenges within the reflected period due to the effects of the pandemic, negatively impacting purchasing activity in FY20, FY21 and FY22.

While the agriculture sector throughout the state including in northwestern North Dakota continues to serve as the foundation of the state's economy, a predominant driver of the forementioned economic activity in the referenced region is energy, or more specifically oil-related, further supporting the case to advance CO_2-EOR in North Dakota.

Addressing the 45Q Incentive Gap

Given the significant economic opportunity related to CO_2-EOR development in North Dakota, ongoing discussions to evaluate and where applicable, improve upon existing policies and incentives to accentuate their influence on pricing models, are warranted.

Gaining a better understanding of the plethora of financial considerations and decisions industry is faced with, including addressing the $25 tax credit incentive differential between CO_2-EOR and permanent sequestration, and how policy-driven incentives and offsets can reduce the 45Q delta, will also be an important part of the conversation.

Production and infrastructure costs associated with CO_2-EOR and incurred by industry should also be recognized as key points of discussion, as prominent expense categories.

Specifically, primary expense centers include CO_2 acquisition cost, associated transportation and distribution costs, and well surface costs to support effective, large-scale implementation of CO_2-EOR, each an equally important factor in determining the financial outlook for tertiary recovery projects utilizing CO_2.

The cost model estimate below (Table 8) is based on the following criteria:

- Well development and surface costs represent approximately two-thirds of total project cost
- CO_2 supply expense equaling approximately one-third of total project cost
- No additional CO_2 compression costs
- Limited cost associated with filtration systems, waste fluid injection and electricity

CO_2-EOR Production Cost Model (Single Well)

Expense/Savings Centers	Cost per bbl	Tax savings/bbl	Tax savings/tonne CO_2	Net Cost/bbl
CO_2 Transportation [1,2]	$5.00	$0	$0	$5.00
CO_2 price/bbl ($30/t = 3 bbl) [2]	$10.00	$0.50	$1.50	$9.50
Royalty payment est. (19% of $80/bbl)	$15.20	$0	$0	$15.20
Well and surface (taxable) [3]	$17.50	$0.88	$2.63	$16.63
Well and surface (non-taxable) [4]	$7.50	$0	$0	$7.50
Extraction tax savings - $80/bbl*5%	$0	$4.00	$12.00	($4.00)
Totals	**$55.20**	**$5.375**	**$16.13**	**$49.83**

Table 8

[1] *Primary distribution delivery cost est. = $15/tonne*
[2] *Per bbl based on $30/tonne CO2 and 3:1 bbl oil/tonne CO_2*
[3] *Includes well, distribution infrastructure & production costs*
[4] *Labor cost*

Numerous price projection models for CO_2 exist with some in the $10-20 per tonne range. However, like other commodities, CO_2 pricing will vary by region and be influenced by a variety of factors including transportation capacity, available supply, industry demand, and proximity to end use whether geological storage or oil fields targeted for CO_2-EOR. Based on what is anticipated to be a highly competitive landscape for CO_2 acquisition in North Dakota, a $30/tonne estimate is used and reflected in Table 8.

Compression costs as previously noted are determined to be relatively inconsequential based on the assumption that CO_2 transportation projects, i.e. pipelines required to move CO_2 from point-of-origin to oil field distribution networks and ultimately targeted wells, will be accomplished with new infrastructure placement and not through the repurposing of existing facilities, which may be pressure limited.

A high percentage of project cost impacting economic performance is expected to originate from three primary areas including well and surface costs, royalty payments, and CO_2 acquisition costs. While not absent from the equation, filtration system, waste fluid injection, and electricity costs are anticipated to be relatively limited in scope compared to overall project costs and embedded in the "well and surface" cost category.

As demonstrated, tax savings resulting from various state-supported incentives are reflected in the cost model, representing an estimated savings of $5.375 per bbl of incremental oil produced, and based on a bbl of oil produced per tonne CO_2 ratio of 3:1, $16.13 in tax-related incentives per tonne of CO_2 acquired and deployed.

While the $25 credit differential for 45Q as described is not entirely removed through available North Dakota state tax incentives, current exemptions whether direct or indirect are nevertheless material from an economic standpoint, in the sense they offset approximately 64.5%, or almost two-thirds, of the 45Q tax credit differential per tonne of CO_2.

In aggregate, the model (Table 8) equates to $889,000 in tax-related savings, on a per well basis, assuming 165,424 bbl in incremental production over the immediate 10-year period following commencement of CO_2-EOR.

From a state revenue collection perspective using the same production estimates, taxes levied on incremental oil production generate an additional $502,000 to $715,000 (Table 6) in new revenue per well through production and extraction taxes levied, funds that would otherwise not materialize.

Summary

Encouraging industry to pursue CO_2-EOR, sets the stage to further monetize North Dakota energy resources in the Bakken and southwestern portion of the state, well into the future.

From a state perspective, CO_2-EOR certainly provides a considerably greater economic return in comparison to permanent geological storage, with no incremental oil production and associated benefits. Mineral owners, shareholders, and North Dakota citizens benefit as well whether in the form of royalty payments, dividends, or tax-related collections used to fund state priorities.

Similar to the introduction of new wells in unconventional shale plays like the Bakken, CO_2-EOR can serve as a profit center and help mitigate risk for producers, particularly during an oil price downturn, if large volumes of CO_2 can be effectively secured and transported to distribution networks and targeted oil plays.

Producers, in order to justify significant upfront capital investment needed to support CO_2-EOR, will require long-term CO_2 supply contracts structured in a manner that ensures acceptable pricing, whether pricing is fixed or as a percentage of WTI, and the reliable delivery of economic viable quantities of CO_2.

Effectively addressing the 45Q incentive gap between CO_2-EOR and sequestration or permanent storage, will again require adequately incentivizing industry to pursue CO_2-EOR by:

- Funding research to advance technology
- Supporting the development of new energy infrastructure
- Maintaining a reasonable and consistent regulatory environment
- Promoting existing and exploring new CO_2-EOR tax-related policy deemed mutually beneficial to industry and state alike

As emphasized, CO_2-EOR development in states like North Dakota can assist energy producers in addressing increasingly rigid social and environmental standards, challenging federal emissions requirements and aggressive, self-identified sustainability targets.

Even though a federal carbon tax is not currently in place, discussion surrounding that topic will undoubtedly continue but even absent that, a growing number of states have either adopted or are considering cap-and-trade systems and regulations. California has a cap-and-trade program and Washington, a cap-and-invest program.

Eleven northeastern states have organized and participate in a program referred to as the Regional Greenhouse Gas Initiative (RGGI) including Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia.

Under RGGI, which was established in 2005 as the first market-based regulatory program in the United States, CO_2 emissions from power plants operating in that region are capped and the regulated power plants, participate in a program to auction or trade emission allowances, with each "allowance" permitting the holder to emit one short ton (2,000 lbs.) of CO_2.

Although these programs are beyond North Dakota's borders, state-driven greenhouse gas reduction initiatives arguably pose a future challenge from a trade standpoint. Subsequently, if not effectively countered, they create long-term risk to both industry and the state's ability to continue as a major exporter of energy and agriculture products, key contributors to the North Dakota economy.

CO_2-EOR as a mechanism to permanently store CO_2 in the reservoir, does not entirely remove those concerns, but holds the potential to certainly lessen the potential impact and reduce CO_2 intensity levels across multiple energy sectors operating in North Dakota.

Despite sequestration appearing to hold an economic advantage over CO_2-EOR due to the $25 dollar tax credit differential, CO_2-EOR nonetheless presents a unique and attractive opportunity for industry to further monetize existing holdings and more effectively distribute previously established costs over new, incremental barrels produced within the same geographic footprint.

While a degree of uncertainty exists regarding the direction federal policy will take long-term and future of the 45Q tax credit program, there remains an exceptional opportunity to pursue CO_2-EOR in North Dakota, given a current construction deadline date of January 1, 2033, and subsequent 12-year timeframe in which tax credits can be received under the program.

In closing, CO_2-EOR presents a significant opportunity to monetize existing resources, create new synergies among critical energy sectors in the state, and act as a catalyst to effectively enhance and extend the life of the Bakken for decades to come.

#32840

North Dakota CO_2-EOR Financial Analysis

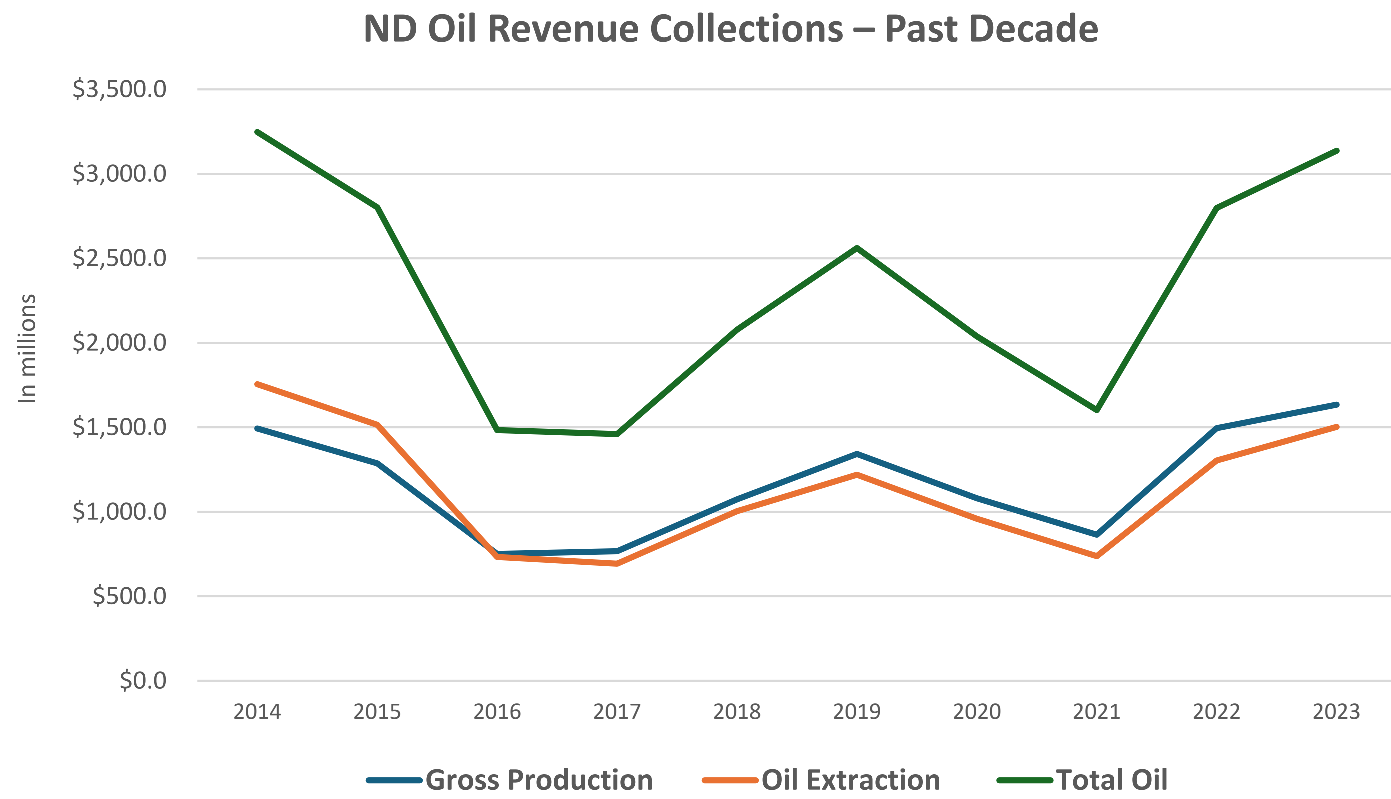
By: Brian Kroshus
Tax Commissioner
January 28, 2025

CO_2-EOR in North Dakota

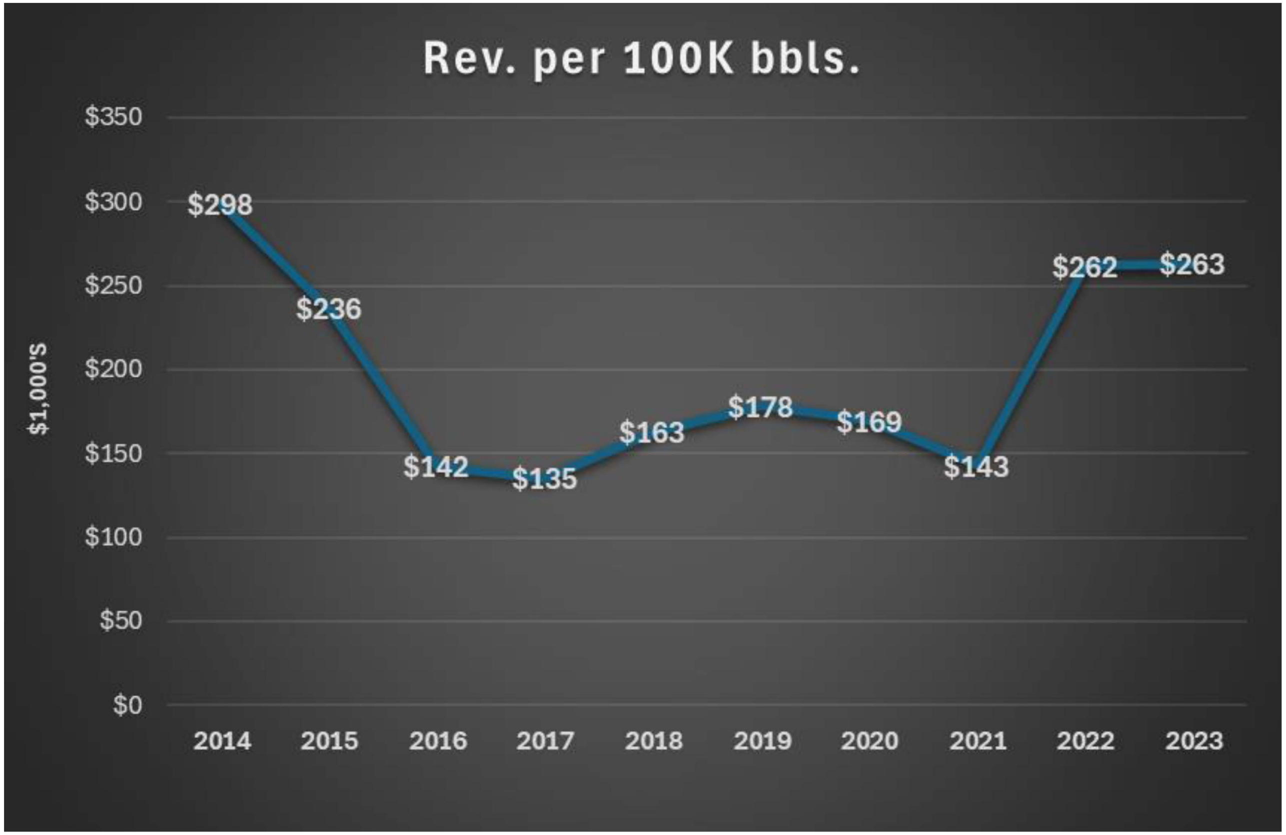
- CO_2-EOR represents a significant opportunity for North Dakota
- The CO_2-EOR landscape is becoming increasingly competitive – being “next to market” is critical
- North Dakota is strategically positioned to implement CO_2-EOR
  - Size and scope of interrelated industry resources
  - Reasonable, fair and consistent regulatory framework
  - Favorable tax policy to incentivize investment
- CO_2-EOR further monetizes existing assets, minimizing surface disturbance
- The U.S. Geological Survey estimates that up to 3.3 billion barrels of undiscovered, technically recoverable oil are in the Bakken Formation
  - This equates to **$33 billion dollars** in additional oil production and extraction tax revenues, alone

Oil and gas production helps drive the North Dakota economy

- Oil production and extraction tax collections have generated more than **$23 billion in revenue** to the state over the past decade
- Beyond oil production and extraction tax, billions more in both direct and indirect revenue collections from:
  - Sales and use tax
  - Corporate income tax
  - Individual income tax
- Oil-driven, legacy fund contributions and associated earnings, support important state priorities including providing property tax relief to citizens
- Oil and gas activity plays an integral role in directly supporting communities and main street businesses in western North Dakota
- North Dakota oil production plays a vital role in funding state priorities

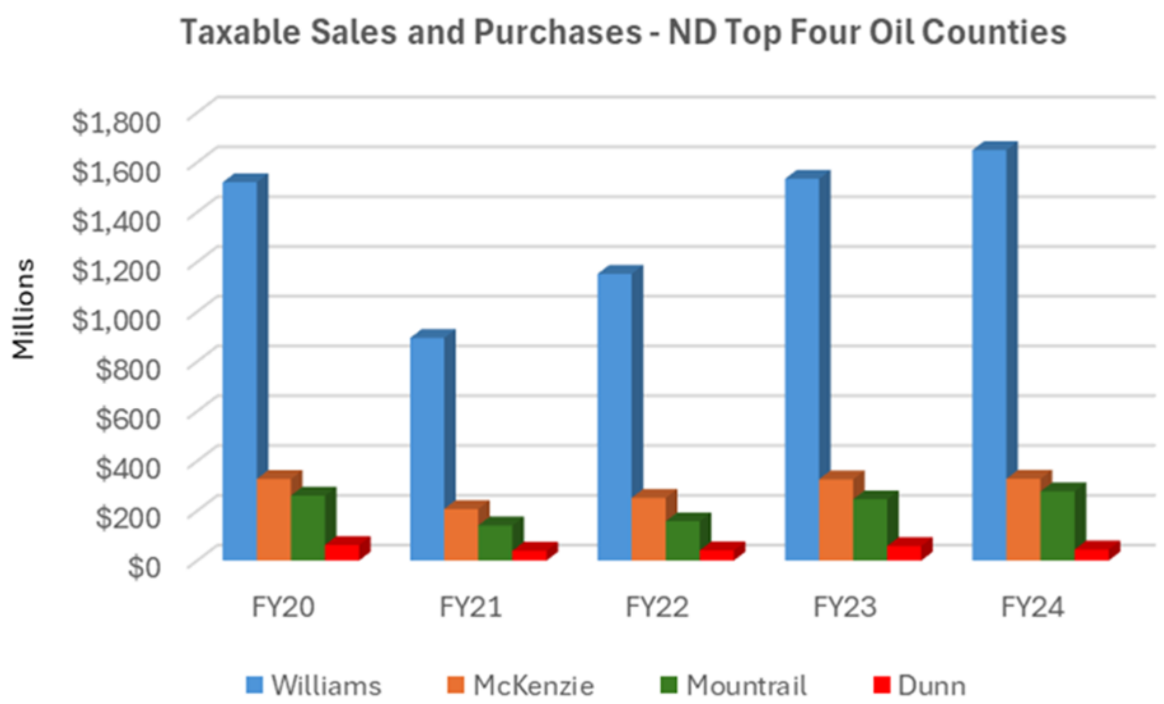


ND Oil Revenue Collections – Past Decade
In millions
$3,500.0
$3,000.0
$2,500.0
$2,000.0
$1,500.0
$1,000.0
$500.0
$0.0
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
Gross Production
Oil Extraction
Total Oil



Rev. per 100K bbls.
$1,000'S
$350
$300
$250
$200
$150
$100
$50
$0
$298
$236
$142
$135
$163
$178
$169
$143
$262
$263
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023

ND Oil Producing Counties "Big Four"



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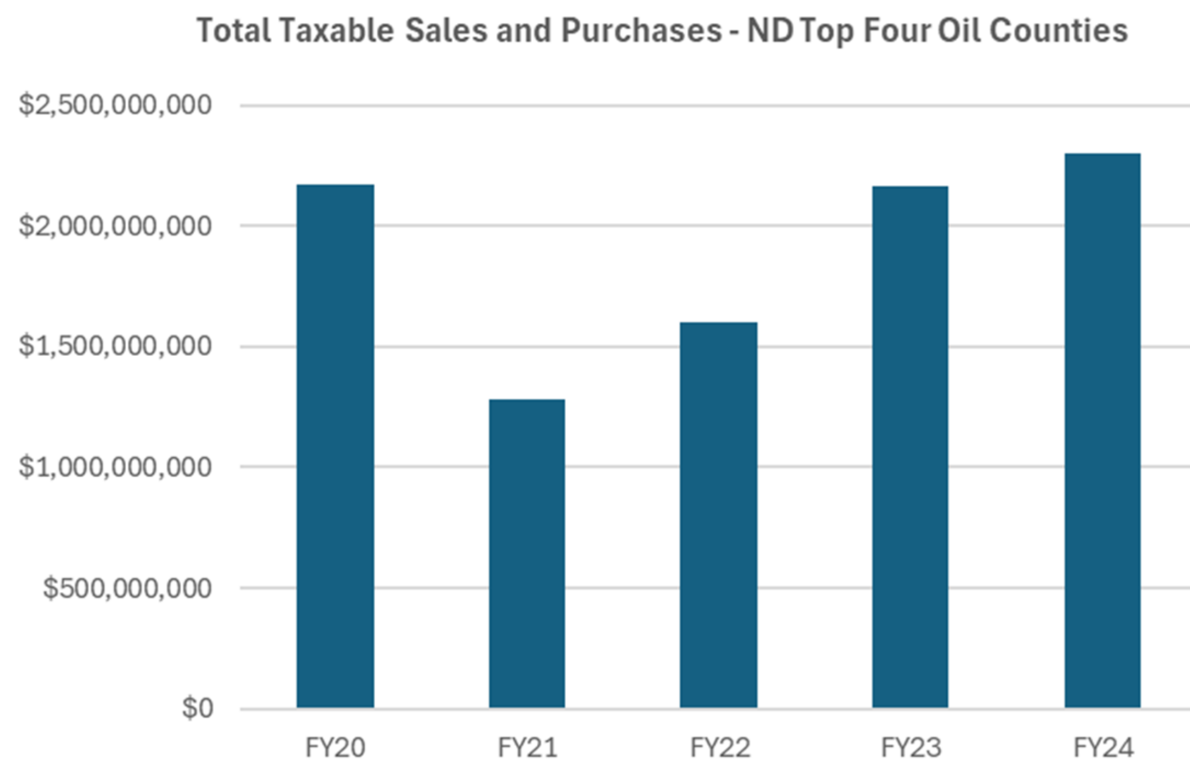
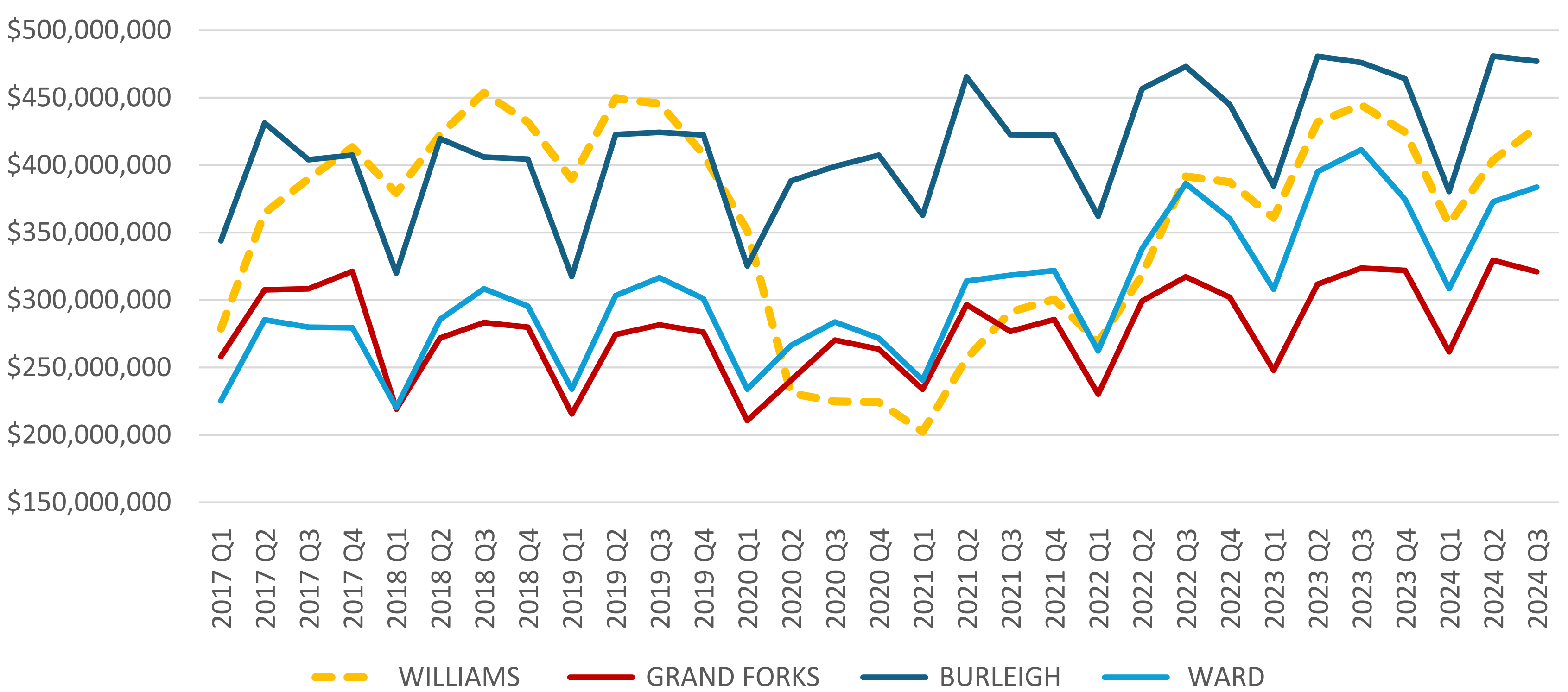
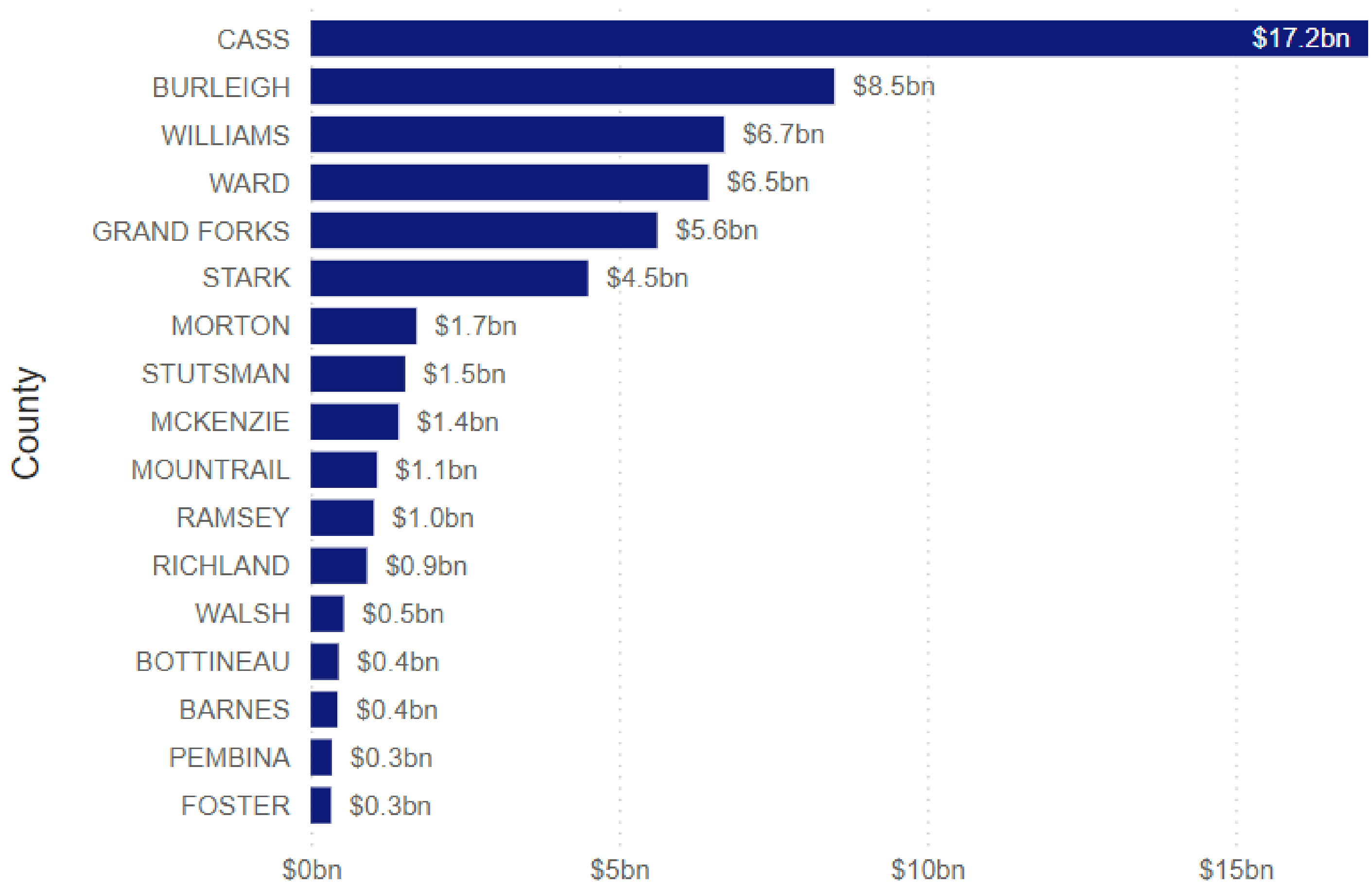


Taxable Sales and Purchases by ND County



Taxable Sales and Purchases by ND County[1]



[1]Taxable Sales and Purchases – past five years, 2020-2024 (Q4, 2019 through Q3, 2024)

Single Well CO_2-EOR– 5-yr. extraction tax exempt[1]

		Total Annual Production bbls.	Legacy Production bbls.	Incremental Production bbls.	Ave. price Bakken Crude	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total Incremental Revenue
2028	yr 1	71,781	9,211	62,570	$80.00	$250,280	$0	$250,280
2029	yr 2	45,192	7,375	37,817	$80.00	$151,268	$0	$151,268
2030	yr 3	33,222	5,905	27,317	$80.00	$109,268	$0	$109,268
2031	yr 4	20,043	4,728	15,315	$80.00	$61,260	$0	$61,260
2032	yr 5	12,911	3,785	9,126	$80.00	$36,504	$0	$36,504
2033	yr 6	8,719	3,030	5,689	$80.00	$22,756	$22,756	$45,512
2034	yr 7	6,016	2,426	3,590	$80.00	$14,360	$14,360	$28,720
2035	yr 8	4,148	1,943	2,205	$80.00	$8,820	$8,820	$17,640
2036	yr 9	3,010	1,555	1,455	$80.00	$5,820	$5,820	$11,640
2037	yr 10	1,732	1,392	340	$80.00	$1,360	$1,360	$2,720
	Total	**206,774**	**41,350**	**165,424**		**$661,696**	**$53,116**	**$714,812**

[1]*Based on 10 yr. average price of $80.00*

Single Well Revenue Model	Incremental Production Tax Revenue	Incremental Extraction Tax Revenue	Total - Single Well
EOR 10-year model - EIA Pricing	$502,149	$0	$502,149
EOR 10-year model - $80.00 WTI	$661,696	$0	$661,696
EOR 5-year model - EIA Pricing	$502,149	$46,248	$548,396
EOR 5-year model - $80.00 WTI	$661,696	$53,116	$714,812

CO_2-EOR Incremental Revenue Models North Dakota

**As indicated, if every certified, low-producing or stripper well currently identified in North Dakota is targeted for CO_2-EOR, the economic benefit is significantly higher in comparison to the low estimate, even with low-producing wells in the state being exempted from extraction tax for the life of the well under current statute. Conversely, the opportunity cost or potential revenue loss absent CO_2-EOR as demonstrated, equates to billions of dollars in unrealized collections.*

Single Well Revenue Model	Total - 5,744 Wells	Total - 12,515 Wells* (*Stripper Well Count - 7-24)
EOR 10-year model - EIA Pricing	$2,884,341,547	$6,284,389,704
EOR 10-year model - $80.00 WTI	$3,800,781,824	$8,281,125,440
EOR 5-year model - EIA Pricing	$3,149,988,103	$6,863,179,163
EOR 5-year model - $80.00 WTI	$4,105,880,128	$8,945,872,180

CO_2-EOR Incremental Revenue Models North Dakota

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CO_2-EOR Production Cost Model (single well)

Expense/Savings Centers	Cost per bbl.	Tax savings/bbl.	Tax savings/tonne CO_2	Net Cost/bbl.
CO_2 Transportation [1,2]	$5.00	$0	$0	$5.00
CO_2 price/bbl. ($30/t = 3 bbls.) [2]	$10.00	$0.50	$1.50	$9.50
Royalty payment est. (19% of $80/bbl. Oil)	$15.20	$0	$0	$15.20
Well and surface (taxable) [3]	$17.50	$0.88	$2.63	$16.63
Well and surface (non-taxable) [4]	$7.50	$0	$0	$7.50
Extraction tax savings - $80/bbl.*5%	$0	$4.00	$12.00	($4.00)
Totals	**$55.20**	**$5.38**	**$16.13**	**$49.83**

[1]Primary distribution delivery cost est. = $15/tonne
[2]Per bbl. based on $30/tonne CO2 and 3:1 bbl. oil/tonne CO2
[3]Includes well, distribution infrastructure & production costs
[4]Labor cost

CO_2-EOR Challenges and Opportunities

- 45Q incentive gap currently exists between EOR application and sequestration
  - EOR - $60 per metric tonne
  - Sequestration - $85 per metric tonne
- Closing the incentive gap is critical
- Competitive landscape – other oil producing states are aggressively pursuing mechanisms to incentivize CO_2-EOR within their borders
- Creating new efficiencies through advancements in technology represents a significant return on investment for North Dakota
- Shale plays like the Bakken experience rapid depletion rates
  - CO_2-EOR production revitalizes existing assets (wells) with minimal surface disturbance, within the same footprint
  - Creates greater, long-term assurances for oil producers which in turn, creates greater long-term financial certainty for North Dakota

Final Thoughts

- CO_2-EOR signifies the next chapter in North Dakota energy production
- Opportunity to accentuate existing and create new energy partnerships - increased value proposition
- CO_2-EOR and the race for capital will continue to intensify in what can best be described as a highly competitive landscape
- The ability to attract capital will be influenced by a multitude of factors, including advancements in technology - “cracking the code”
- Technology – tremendous progress to date, but more resources are needed to support continued advancement
- North Dakota is recognized as a global leader in shale oil production and can be in CO_2-EOR, as well

In closing, CO_2-EOR, represents a significant and exciting economic opportunity current and future generations can benefit from.

Summit Carbon Solutions Testimony on Senate Bill 2322
January 30, 2025, 9:00 A.M.
Senate Energy and Natural Resources Committee
Senator Dale Patten, Chairman

Charlie Adams – Manager of Agriculture and Stakeholder Relations, Summit Carbon Solutions

<u>Opposition to SB 2322</u>

Good morning, Chairman Patten and members of the committee. My name is Charlie Adams. I am a Manager of Agriculture and Stakeholder Relations for Summit Carbon Solutions. I am here today to testify in opposition to Senate Bill 2322.

This bill carves out CO_2 from state statue as not eligible as a common carrier and it strips CO_2 projects from the use of eminent domain if the project has been the recipient of the specific federal tax incentives. This will disqualify current projects in development and immediately stop the investment in North Dakota's CO_2 industry.

CO2 is a resource for North Dakota. Previous legislatures have established a well-thought-out strategy for CO2 infrastructure development for our state over the next 50+ years. That future CO2 infrastructure development strategy starts with capture facilities and pipelines. Proper allocation of this resource would unlock approximately 10 billion barrels of oil in the Bakken and Three Forks formations as well as unlocking previously unattainable markets, both domestically and internationally, for corn ethanol producers.

SB 2322 sends an unclear message to industry by arbitrarily singling out CO_2 and making developers weary of the business landscape in North Dakota. This bill discourages development and investment for future infrastructure. North Dakota's legislature has been an industry business partner with respect to ag and energy and I know our legislators take great pride in the state's economic successes as a result. Therefore, we respectfully ask you to oppose SB 2322. Thank you. I'm happy to answer questions.

Summit Carbon Solutions
Additional Facts on CCUS

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ND has worked on CO2 for over 3 decades – give these laws the chance they deserve

- The legislature has worked for many years to create a legal, tax, and regulatory framework for how to lead the world in C02 development,
  - including the definition of pore space, the fee structure at the ND Industrial Commission, the long-term accountability for CO2 storage, exempting CO2 from sales and use tax, and important investments and research and development.

Timeline:

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- Regardless of perspectives on CO2 - markets are demanding low-emission energy.

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Comments of Curtis Jundt

Before the ND Legislative Senate/House Natural Resources Committee

In support of HB1292 (Sponsor Rep. Lori VanWinkel, et al)
SB2322 (Sponsor Senator Magrum, et al)
HB1414 (Sponsor Rep Heilman, et al)
Purpose: Various Senate and House Bills to Amend NDCC Sections 32-15-02, 49-19-01, 49-19-11 and 49-19-19 to Eliminate "CO2" from the Definition of Common Carrier Status and, to Repeal Section 38-22-10 (HB1414) relating to the exercise of Public (Eminent) Domain in Geologic Storage CO2 and,

SB2320 (Sponsor Senator Magrum, et al)
Purpose: To remove/repeal NDCC 57-06-01: the 10-year Tax Exemption for CO2 Pipelines for EOR or Sequestration and,

HB1210 and (Sponsor Rep SuAnn Olson, et al)
Purpose: To create a new NDCC Section 35 creating a CO2 Pipeline Operator's Liability Victims Fund

<u>January 30, 2025</u>

Good morning (afternoon) Senate Committee Chair Patten (House Committee Chair Porter) and Legislator Committee Members:

My name is Curtis Jundt. I am here today in support the Senate (House) Bill before you along with several others Bill's proposed that are part-and-parcel to CO2 Pipeline transportation and CCUS (Carbon Capture Utilization and Storage) where CO2 has been lumped in and treated *<u>on par</u>* with the true transportation Commodities of Crude Petroleum (Crude Oil and Its Refined Residual Fuels), Coal and **Natural Gas**.

<u>A couple of Philosophical Comments to Preface my Testimony</u>:

I disagree with the former U.S. president who repeatedly said that "Climate Change is an Existential Threat to America – I believe the most significant Existential Threat to our Country is the ever-increasing National Debt

*How can anyone be against the "Green New Deal (Scam) – that is 100% about reducing "carbon emissions" that is primarily CO2 emissions – and STILL be in favor of our Country and State spending Trillions of dollars on CCUS? It's an oxymoron and an imponderable! *

I've spent my entire nearly 43-year engineering career in the energy industry with emphasis on building Natural Gas-producing assets, energy project economics and micro-macroeconomics within the energy Industry as a whole. Natural Gas, like Crude Oil and Refined Products, are true Commodities, derived from the word "Commerce" (the activity of Buying and Selling especially on a large scale) – all traded as Commodities on the NYSE. A "Common Carrier" transportation Company, like a pipeline for example, transport a Commodity for benefit of "Public Convenience and Necessity". **Pursuant to Article 1, Section 16 of the North Dakota Constitution:**

".....a Public Use or a Public Purpose does not include benefits of Economic Development, including and increase in tax base, tax revenues, employment, or general economic health" and continues "Private Property Shall Not be taken for the use of, or ownership by, any private individual or entity, unless that Property is necessary for conducting a common carrier or utility business (emphasis supplied)"

So trying to sell the Summit CO2 pipeline beyond its original purpose of CO2 sequestration by saying that is vital to the survival/sustenance/growth of ND's oil shale production by use of CO2 in EOR to increase recoverable reserves of oil and gas - that then equates to sustaining or growing the State's oil tax collections - does not justify a CO2 pipeline as a "Common Carrier" transporter. Nevertheless, for the first twelve (12) years, the CO2 pipeline transportation will be strictly used for permanent sequestration and DOES NOT in any way fit that definition. First, there is no "Commerce" taking place in the CCUS-CO2 pipeline transportation. Secondly, there is NO GOOD or "Public Convenience and Necessity" benefiting the Public, the citizens of North Dakota. In fact, it's quite the opposite. Any CO_2 pipeline, like Summit CS, seeking to take advantage of the Inflation Reduction Act's 45Q/Z/V/etc. CCUS tax subsidies and/or credits are proposed to **happen at a Public Cost**. No citizen, landowner, commercial or residential customer will ever be able to tap into Summit's CO_2 pipeline for any purpose except, possibly in the future, a mega-Meat Processing/Packing Plant using CO_2 to euthanize the livestock. Safety is a much greater justified citizen concern. In addition to CO_2 being used to euthanize animals (Hitler used it to do the same to humans), there are CO_2 weapons of mass destruction that exist in military arsenals around the world that once dropped, turn the landscape into a total realm of euthanizing every living breathing bug, rodent, wildlife, livestock and humans as the heavier than air CO_2 spreads overland as an asphyxiant.

So here now we have the taxpayers paying for the CO_2 pipeline ROI (Summit CS will generate \$1.6 billion per year totally \$19.4 billion (or more) in 12 years in taxpayer subsidies/credits) the CO_2 pipeline comes with a very different set of operational and safety risks to landowners, towns, cities and Counties along its route that are substantially greater due to the more complex thermophysical properties of CO_2 and thermodynamic challenges of transporting CO_2 in a high pressure supercritical state. When released from a CO_2 pipeline rupture, dense-phase CO_2 at 60 lbs/cubic feet (or more) in a 24-inch CO_2 2,183PSIG/50 degrees Fahrenheit goes through multiple phase changes eventually becoming an odorless, colorless gas spreading along the ground at 1.53X the weight of air. At concentrations of 3 to 4% CO_2 by volume in our breathable air exposure in minutes can begin to cause problems for humans while at concentrations of 8% and higher you have minutes, not hours, to save yourself and your family or be rescued.

In a Natural Gas pipeline, a rupture from the same pipeline conditions has a density of less than 9lbs/cubic feet and when venting to the atmosphere in a single-phase gas that is 1/2 the weight of air tends to disperse more easily. Believing that CO_2 pipelines are safer than a Natural Gas pipeline - or any other pipeline running through ND is - in my experience and belief - patently false! For this and other reasons, it has been an unintended consequence for ND's Legislators to have treated CO_2 as though it were in the same category as crude oil, refined petroleum products or Natural Gas while inserting CO_2 throughout our Century Code to receive the same treatment as the other energy hazardous fluid and gases. To further support how different CO_2 transportation is from Natural Gas pipeline transportation, I have provided below **USDOT's PHMSA's January 15, 2025, release of its 346-Page DRAFT Proposed Rulemaking "To Strengthen Safety Requirements for Carbon Dioxide Pipelines"**

(End Direct Testimony – Due to 5-Minute Time Limit)

<u>Supplemental Testimony/information for reading at your leisure:</u>

The NDCC additions over the last dozen or more years were done somewhat under the radar and before an unwitting Public. I firmly believe this was not intentional. No one ever told any of you, or the Public, or our federal elected delegation or the employees of the Department of Mineral Resources or Geological Survey or even the Governor's office, what the risks to health and safety would be for those landowners and citizens living in X-mile proximity of a 2,100+PSIG carbon steel CO_2 pipeline or what the risks are associated with injecting 19 million metric tons of high pressure CO_2 1-1/2 miles below ground. While tens-of-millions of dollars of federal and state grant money have been spent on the R & D of sequestering CO_2 in the Broom Creek formation of North Dakota, I cannot find ANY additional research that has been done on addressing the increased safety risks (like enhanced Public Alert Systems) or heightened Emergency Response procedures and equipment needed that comes with the whole CCUS and high-pressure CO_2 pipeline transportation. From POV, I believe that Safety has previously been minimized and taken for granted and completely deflected to the USDOT PHMSA as was done by our NDPSC throughout the Summit Application proceedings. The Narrative by the litany of proponents of the CO2 pipeline is "it will be the safest ever built in ND and even safer than a Natural Gas pipeline." In fact, through the entire 24-month NDPSC Hearing process on the Summit CS Application, the Public STILL has not been told what the risks may be in the event of a CO2 pipeline rupture and therefore have little to no idea how to respond to save themselves and their families. Weve been left to figure it out on our own with Summit basically saying, "just trust us." The last time we did that was five years ago listening to Dr. Anthony Fauci and we all now see how well that turned out!

Summit's justification for not providing "Plume Dispersion Modeling/Analysis" and a credible Modeling Tool to Emergency Responders to use in real time, is because we were told "we cannot provide this to the Public at the risk it could end up in the hands of a Terrorist(s)". That pretty says it all. One can only conclude that "well isn't that just great, it is by our default conclusion that Summit is building a "weapon-of-mass-destruction!" Yes, a CO2 pipeline rupture when compared to an oil or natural gas pipeline rupture is a very different animal - a very dark horse of a different color! Another reason why creating CO2 in our Century Code on par with our "true" energy transporting Commodities has been a grave injustice to the citizens of ND and that is loaded with a litany of unintended consequences to any citizen living within a lethal proximity of a 24-inch 2,183PSIG 19+ million metric tons a year CO2 pipeline that is part of the longest haul, greatest capacity CO2 pipeline ever built in the lower-48 states by a newly formed LLC pipeline company assembled by group of AG executives. But you do not have to take my word on the part of a CO2 Pipeline being more technically challenging when it comes to operations, safety protocols, Plume Dispersion Modeling/Analysis of the numerous variables that can occur at the time of a CO2 release to the air we breathe, you can read it for yourself in the **USDOT's PHMSA's January 15, 2025 release of its 346-Page DRAFT Proposed Rulemaking "To Strengthen Safety Requirements for Carbon Dioxide Pipelines"**. Per PHMSA's Draft Rulemaking Pages 101-102:

In contrast, carbon dioxide behaves differently when released to the atmosphere compared to flammable gases and hazardous liquids. Specifically, when modeling the failure and subsequent release of carbon dioxide from a pipeline compared to a failure and release of (flammable) natural gas, release simulations indicate that a significantly larger percentage of the initial mass in the pipeline will be immediately released from a rupture on a carbon dioxide pipeline than the percentage of the initial mass in the pipeline that would be released from a natural gas pipeline. [Insert by CJundt: This is due to the density in a CO2 24-inch pipeline being more than 6X the density of Natural Gas at the same pressure and temperature conditions] This increased amount of released carbon dioxide, combined with a density greater than air, can quickly lead to asphyxiating concentrations of carbon dioxide at or near the ground level. Further, these hazardous plumes of carbon dioxide can settle into low-lying areas and flow downhill into areas that are distant from the release site, before ultimately dissipating into the atmosphere. Unlike other gases (e.g. natural gas and certain other Part192-regulated gases) whose release could result in ignition or combustion in the immediate vicinity of the release point (thereby potentially limiting the geographic scope of public safety and environmental harm), carbon dioxide is not a flammable gas. Combustion or ignition would not reduce the potential for carbon dioxide asphyxiation hazards distant from the release site, nor would the asphyxiation hazard posed by released carbon dioxide persist in the environment as long as other Part195-regulated commodities (e.g., crude oil); released carbon dioxide eventually dissipates to atmosphere. Reliance on either of the above approaches currently used by PHMSA's parts 192 and 195 regulations may not, therefore, be appropriate to address the asphyxiation and other risks specific to carbon dioxide pipelines. The risks carbon dioxide pipelines pose to the public and the environment are not adequately addressed in existing location-based part 195 requirements"

Newsworthy Items to be aware of while dealing with Bills related to CCUS and CO2 pipeline transportation:

- Summer 2024 it was announced by the EPA that ADM CCUS at Decatur Illinois had halted its CO2 injections due to migration of saline/brine water to unintended formations. They injected about 1 million metric tons of CO2 annually for about 7 years. Summit is planning on injecting 19 million metric tons PER YEAR into the ND Broom Creek formation.

- Satartia MS CO2 Denbury Gulf Coast February 22, 2020 pipeline rupture resulted in PHMSA's May 26, 2022, 269-page Investigation Report, with an announcement that PHMSA would be initiated a Rulemaking Process to enhance Safety Regulations in CO2 Pipeline Transportation and an assessment of $3+ million fines against the company. Numerous victim lawsuits followed with substantial liabilities against Denbury Gulf Coast. The company filed for Bankruptcy and opened the next day as Denbury Energy LLC. Months later they are acquired by ExxonMobil Corporation. Is this how an entity can get out of paying for liabilities?

(END)

#32912

Legislative Assembly

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

S tor Jeffery J. Magrum
D 8
P.O. Box 467
Hazelton, ND 58544-0467
C: 701-321-2224
jmagrum@ndlegis.gov

COMMITTEES:
Finance and Taxation
Energy and Natural Resources

01/30/2025

Good morning, Chairman Patten and committee members.

For the record I am Senator Jeff Magrum Representing District 8.

I stand before you to introduce SB2322. The goal of 2322 is to prevent the use of Eminent Domain for Green New Deal Projects in ND. As Industry continues to expand Green New Deal projects the concern is that property rights for landowners will see an increase of attacks on their property rights. This law change will pre-empt threats of Eminent Domain when Industry Representatives meet with our property owners. This law change will encourage Industry to treat property owners with dignity and respect to get their projects done. Landowners in should not have to fear negotiations with Industry representatives. Landowners in ND should be able to negotiate contracts without fear of eminent domain hanging over their heads. This change will encourage peaceful development instead of the civil unrest that we have been seeing, turning neighbors against neighbors. North Dakota has been very supportive of Industrial development. The threat of Eminent Domain has increased landowner fatigue and anger. If we as a state Legislature want to continue to promote and support continued industrial development, we must protect our landowners from Combative and predatory practices by taking away the big stick of Eminent Domain. In the end we will likely see Industry and property owners work together in harmony.

As far as Common Carrier Status, recently the South Dakota Supreme Court ruled that Summit Carbon Solutions does not qualify as a Common Carrier because it doesn't allow for buying and selling to the general public. They also ruled that Carbon Dioxide is not a commodity.

Our ND Constitution addresses this question Article 1. Section 16.

Thank you for your consideration and I humbly ask for a do pass recommendation on SB2322.

CHAPTER 49-19
COMMON PIPELINE CARRIERS

49-19-01. Definition of common pipeline carriers.
Every person:
1. Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, coal, or carbon dioxide by pipelines;
2. Owning, operating, managing, or participating in the ownership, operation, or management of, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline, or any part of any pipeline, for the transportation of crude petroleum, gas, or coal bought from others from any oil, gas, or coal field or place of production, to any distributing, refining, or marketing center or reshipping point;
3. Engaged in the business of producing, purchasing, transporting for hire or transporting for sale within this state of natural gas, which is transported through pipelines, or any part of a pipeline, the right of way for which is granted or secured under the provisions of this chapter or, subject to chapter 32-15, through the exercise of the right of eminent domain; or
4. Made a common carrier by or under the terms of a contract with or in pursuance of the laws of the United States, is a common carrier and is subject to the provisions of this chapter as a common pipeline carrier.

49-19-02. Pipeline carriers - Special powers of commission.
The commission shall take reports from and may investigate the books and records kept by any pipeline carrier in connection with its business, and may require such company to make monthly reports duly verified under oath showing the total quantity of crude petroleum owned by such carrier and of that held by it in storage for others, and its unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum of any particular pipeline, but it may make public the aggregate amounts held by all the pipelines making such reports and their aggregate storage capacity.

49-19-03. Enforcement of orders by commission.
The commission shall hear and determine complaints, require attendance of witnesses, and institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

49-19-04. Reservation in gas franchises.
No city or other public corporation hereafter shall grant to any person a franchise to furnish natural gas to the public in this state without making a reservation therein that a percentage of native natural gas shall be used by such person if and when the same is produced in commercial quantities.

49-19-05. Percentage of native natural gas to be used.
Whenever native natural gas is produced in this state in commercial quantities, any person having a franchise to furnish gas to the public, which franchise is dated after March 9, 1933, shall use fifty percent, or its equivalent, of native natural gas as developed if the source thereof is located not more than six miles [9.66 kilometers] from any established gas pipeline.

49-19-06. Gas in commercial quantities - What constitutes.
Any gas well of two hundred fifty thousand cubic feet [7079.21 cubic meters] volume and two hundred pounds [90.72 kilograms] of rock pressure shall constitute a well producing native natural gas in commercial quantities under the provisions of this chapter.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

In the Matter SCS Carbon Transport LLC) Acceptance of Provisions of North Dakota) Century Code § 49-19-12)	Case No. ____________

ACCEPTANCE OF PROVISIONS OF NORTH DAKOTA CENTURY CODE § 49-19-12

Upon approval by the North Dakota Public Service Commission ("Commission") for construction of a proposed carbon dioxide ("CO_2") pipeline project, SCS Carbon Transport LLC ("SCS") will own and operate a pipeline located within the State of North Dakota and will be engaged in the business of transporting CO_2 for others by such pipeline in accordance with the definition of a common carrier. *See* N.D.C.C. § 49-19-01.

North Dakota Century Code § 49-19-12 provides in relevant part that "[e]very common pipeline carrier which shall have filed with the commission its acceptance of the provisions of this chapter has, subject to chapter 32-15, the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline."

SCS, pursuant to North Dakota Century Code § 49-19-12, as a common carrier, accepts the provisions of Chapter 49-19 of the North Dakota Century Code. This acceptance by SCS is hereby filed with the Commission.

Dated this 24th day of June, 2022.

SCS Carbon Transport LLC

James Pirolli, Chief Commercial Officer

TARA KLEIN
Commission Number 782368
My Commission Expires
1/28/2023

STATE OF IOWA)
)ss.
COUNTY OF STORY)

The foregoing instrument was acknowledged before me this 24th day of June, 2022, by James Pirolli, Chief Commercial Officer of SCS Carbon Transport LLC, a limited liability company, on behalf of the company.

Tara Klein
Notary Public
My Commission Expires: 1/28/2023

Fredrikson
& BYRON, P.A.

June 24, 2022

HAND DELIVERED

Mr. Steve Kahl
Executive Secretary/Director of Administration
North Dakota Public Service Commission
600 E Blvd Ave Dept 408
Bismarck, ND 58505-0480

RE: SCS Carbon Transport LLC
Acceptance under NDCC §49-19-12

Dear Mr. Kahl:

Pursuant to the provisions of Section 49-19-12 of North Dakota Century Code, please find enclosed herewith an original and five (5) copies of the SCS Carbon Transport LLC Acceptance of Provisions of North Dakota Century Code §49-19-12.

Also enclosed herewith is a CD containing this letter and the above-referenced document in PDF format.

Should you have any questions, please advise.

Sincerely,

LAWRENCE BENDER

LB/kl
Enclosures

76319704 v1

1 PU-22-260 Filed 06/24/2022 Pages: 3
Acceptance of Provisions of N.D.C.C. Section 49-19-12
SCS Carbon Transport LLC
Lawrence Bender, Fredrikson&Byron, P.A.

ARTICLE I
DECLARATION OF RIGHTS

Section 1. All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Section 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Section 4. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Section 5. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

Section 6. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Section 7. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

Section 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Section 9. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

Section 10. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

Section 11. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

Section 12. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Section 13. The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.

Section 14. The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.

Section 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

Section 16. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

AI Overview

Learn more

On August 22, 2024, the South Dakota Supreme Court ruled that Summit Carbon Solutions (SCS) is not a common carrier. This ruling means that SCS cannot use eminent domain to survey or build its proposed carbon dioxide pipeline in South Dakota.

Explanation

- The court ruled that SCS did not prove it is a common carrier, which is necessary for using eminent domain.
- The court also ruled that carbon dioxide is not a commodity.
- The ruling was a victory for landowners and those who opposed the pipeline.

Impact

- The ruling complicates SCS's efforts to build its pipeline.
- SCS must get permission from all states where the pipeline would run, including Iowa and Nebraska.
- SCS must work with landowners to secure the necessary permits.

- South Dakota Supreme Court sides with landowners, says ...Based on facts, either observed and verified firsthand by the reporter, or reported and verified from knowledgeable sources. What ...

IN

InForum

Conclusion

[¶76.] We hold that on this record the circuit courts erred in granting summary judgment because SCS has not demonstrated that it is a common carrier holding itself out to the general public as transporting a commodity for hire. The circuit courts also erred in denying Landowners' motions to continue because further discovery was central to Landowners' ability to resist summary judgment. Landowners are entitled to additional discovery within the scope of SDCL 15-6-26,

including depositions and the production of unredacted documents related to SCS's offtake agreements and business model under terms prescribed by the courts. [¶77.] In order to provide clarity on remand, we also determine that SDCL 21-35-31 only authorizes limited pre-condemnation standard surveys, as defined herein. As a result, we conclude that this statute, as strictly interpreted herein, is constitutional under the takings and due process clauses of the state and federal constitutions because limited pre-condemnation standard surveys are a longstanding background restriction on property rights. In addition, SDCL 21-35- 31, read in conjunction with South Dakota Constitution article XVII, § 18, guarantees a jury determination of any damages caused during the surveys and thus comports with South Dakota's unique constitutional guarantees regarding property rights.

[¶78.] We reverse the grant of summary judgment and remand for further proceedings consistent with this opinion.

[¶79.] JENSEN, Chief Justice, and SALTER and MYREN, Justices, and WIPF PFEIFLE, Retired Circuit Court Judge, concur.

[¶80.] WIPF PFEIFLE, Retired Circuit Court Judge, sitting for DEVANEY, Justice, who deemed herself disqualified and did not participate.

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2322
2/6/2025

Relating to the revocation of common carrier status of carbon dioxide pipelines; and to repeal section 38-22-10 of the North Dakota Century Code, relating to the exercise of public domain in geological storage of carbon dioxide.

10:05 a.m. Chairman Patten opened the hearing.

Members present: Chairman Patten, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting. Vice Chairman Kessel absent.

Discussion Topics:

- Common carrier
- Open season
- Enhanced oil recovery

10:08 a.m. Chairman Patten opened discussion for SB 2322.

10:19 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Peace Garden Room, State Capitol

SB 2322
2/7/2025

Relating to the revocation of common carrier status of carbon dioxide pipelines; and to repeal section 38-22-10 of the North Dakota Century Code, relating to the exercise of public domain in geological storage of carbon dioxide.

9:15 a.m. Chairman Patten opened the hearing.

Members present: Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Pipeline companies
- Property rights
- Repository for CO2
- Corn industry
- Ethanol plants
- Geology in ND
- Oil & Gas component
- Terminal decline
- Different avenues

9:33 a.m. Senator Gerhardt Moved a Do Not Pass.

9:34 a.m. Senator Kessel seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	N

Motion Passed 6-1-0.

9:35 a.m. Senator Kessel will carry the bill.

9:35 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2322 (25.0659.01000)

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2322 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.