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FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 02/05/10
LAST UPDATED 02/18/10 HB _____
SHORT TITLE Ownership of Pore Space SB 145/SJCS/aSFI#1/aHJC
ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
NFI	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment focuses the bill on ownership of the pore space and the relationships with owners of the surface and mineral estates. In doing so, the amendment removes portions of the bill relating to use of the pore space specifically for carbon dioxide sequestration. The amendment also makes language of the proposed statute more direct and less ornate.

Synopsis of SFI Amendment #1

Senate Floor Amendment #1 specifies that no title instrument shall be construed as effecting severance of pore space ownership on the transfer of the surface estate, the mineral estate or any other estate unless specifically provided in the title instrument.

Synopsis of Original Bill

The Senate Judiciary Committee Substitute for Senate Bill 145 clarifies the ownership determination of pore space and specifies that no severance of the pore space can diminish or interfere with the rights of a previously severed mineral estate. Further, the substitute provides that no grant of easement or access from the owner or lessee of the severed pore space is required for surface access for the exercise of rights acquired in a mineral lease or deed or for the installation, use, repair or removal of buried pipelines, flowlines, gathering lines, powerlines or similar utility lines.

The Senate Judiciary Committee Substitute specifies that the provisions of Section C, in addition to not changing statutory or common law with respect to underground waters adds provisions for the dominance of the mineral estate, including use of the pore space that is reasonably necessary for the exercise of the rights belonging to the mineral estate and the right to inject any substance into the pore space as approved by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department.

The Senate Judiciary Committee Substitute would require that carbon dioxide injection for the purpose of geologic sequestration would be allowed only with a permit issued under the underground injection control provisions of the Federal Safe Drinking Water Act of 1974, as amended and that the application for a permit contain evidence that the applicant has acquired all necessary property rights for the purpose of geologic sequestration.

The Senate Judiciary Committee Substitute adds to the definition of pore space “other fluids” in addition to carbon dioxide and specifies in the definition of reservoir that any oil or gas reservoir used for carbon dioxide sequestration must be “depleted”.

FISCAL IMPLICATIONS

The Senate Judiciary Committee Substitute for Senate Bill 145 has no fiscal impact.

SIGNIFICANT ISSUES

The ENMRD states in its analysis of the original bill:

By defining property rights to pore space and to stored CO₂, this bill lays a foundation for using the pore space under New Mexico land for geologic (underground) sequestration of anthropogenic CO₂ from industrial waste streams. Additional legislation will be necessary before sequestration can commence. However, passage of this bill will enable persons who want to start sequestration projects to begin acquiring necessary property rights, a vital first step.

The purpose of geologic sequestration of CO₂ is to remove this “greenhouse gas” from the atmosphere. CO₂ sequestration is needed because conversion to alternative fuels cannot be accomplished immediately, and there are underground reservoirs where CO₂ can be permanently stored, preventing release of the CO₂ to the atmosphere where it could contribute to climate change. Technology for extracting CO₂ from industrial waste streams is advancing. This bill is a step in the development of the necessary *legal* infrastructure. This bill is similar to a statute recently enacted in Wyoming providing for pore space ownership by the owner of the surface estate.

Additional provisions in the bill that protect the rights of mineral owners and water users:

To protect mineral owners, the bill:

(1) provides that it does not change existing law regarding the rights of the mineral owners to use the surface estate (specifically including the pore space) to facilitate mineral production, including the right to inject fluids for enhanced recovery or for disposal as permitted by the Oil Conservation Division; and

(2) provides for the right to drill through any storage reservoir, in accordance with OCD rules.

To protect water users and preserve New Mexico's water resources, the bill

(1) provides that it does not change existing law with respect to underground waters; and

(2) prohibits injection into an "underground source of drinking water," as now or hereafter defined by EPA may be used for injection or storage of CO₂ or other gasses. This would exclude use for geologic sequestration of any reservoir containing water with less than 10,000 ppm Total Dissolved Solids (TDS).

GH/svb:mew