



Adopted on September 25, 2017

Resolution sponsored by: Governor Phil Bryant, Mississippi*
Senator Terry Burton, Mississippi
Representative Gary Staples, Mississippi
Representative Randy Davis, Alabama

11.2017 | Prioritizing State Mineral Property and Conservation Law Principles as They Apply to Federal Incentives that Advance Investment in Carbon Capture and Enhanced Oil Recovery

WHEREAS, federal protections of water and air through the Safe Drinking Water Act Underground Injection Control (SDWA UIC) program and the Clean Air Act (CAA) Greenhouse Gas (GHG) Reporting program were designed to distinguish between enhanced oil recovery (EOR) oilfield injection operations and dedicated geologic storage activities; and

WHEREAS, the Southern States Energy Board (SSEB) member states, in order to encourage the utilization of industrially sourced carbon dioxide (CO₂) for EOR, have taken the lead through legislative enactment to establish mechanisms that provide for the accounting of CO₂ injected volumes resulting in the associated storage of CO₂ incidental to EOR hydrocarbon recovery operations and that are consistent with the protection of the correlative rights of mineral interest property owners and state mineral conservation laws; and

WHEREAS, SSEB member states, through their Attorneys General, were successful in persuading the U.S. Environmental Protection Agency (EPA) to properly enumerate these principles and distinctions as they pertain to their application to EOR under the SDWA UIC program; and

WHEREAS, at least 13 SSEB member states have petitioned The United States District Court of Appeals for the District of Columbia Circuit seeking to overturn and invalidate CAA GHG reporting provisions as they relate to EOR contained within the now stayed EPA Clean Power Plan because such "restriction tramples state mineral property laws and private mineral leases"; and

WHEREAS, SSEB is on record urging state Attorney Generals "to prevent unlawful obligations from being imposed on states" as it pertains to the Clean Power Plan; and

WHEREAS, SSEB is on record as supporting federal legislation for additional tax credits for CO₂ capture and use in EOR (e.g., through amendments to Section 45Q of the Internal Revenue Code of 1986); and

WHEREAS, legislation is pending before Congress to expand and extend existing federal tax credits for CO₂ capture and use in EOR that contain provisions that are not compatible with state oil and gas mineral property laws and private mineral leases consistent with prior SSEB member states objections.

THEREFORE BE IT RESOLVED, that the Southern States Energy Board members urge the Congress of The United States ensure any legislation seeking a federal tax incentive, including but not limited to tax credits, master limited partnerships, or private facilities bonds for the purpose of advancing carbon capture technologies so that CO₂ will be utilized in EOR



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hydrocarbon production operations and also result in associated storage of CO₂, be legally compatible with state mineral property and conservation laws and regulations.