

NORTH DAKOTA

Landowners say CO2 oil recovery law violates Constitution

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A group of North Dakota landowners is asking a judge to overturn a state law aimed at promoting the use of carbon dioxide-enhanced oil recovery, saying it unconstitutionally took away their property rights.

The measure, [S.B. 2344](#), allows oil producers to use underground pore spaces for enhanced oil recovery or other oil field operations such as wastewater disposal, without compensating the surface owner. It overturns previous case law that gave the surface owners control over those cavities, violating the state and federal constitutions, according to a [lawsuit](#) filed Monday.

While the law only applies to North Dakota, the dispute has broader implications, since the drilling industry frequently tries to convince states to adopt pro-industry policies that have been implemented in one location. It also could intersect with attempts to ramp up carbon capture technology, which often envisions removing CO2 from large emitters and piping the captured greenhouse gas for use in oil fields.

"This is not a North Dakota specific issue," Derrick Braaten, an attorney for the landowners, said in an email. "My read on this is that the industry is taking the most aggressive approach possible to see if they can jam it through, and if it's successful they'll use this as a model across the country."

The oil industry said the bill had broad support among energy producers, coal miners and the state Farm Bureau.

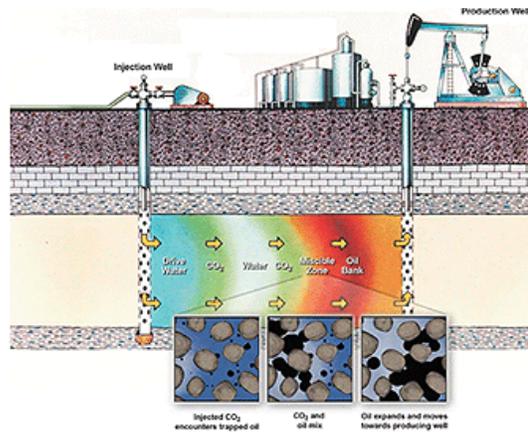
It was "a chance to clarify existing law and reduce future lawsuits to ensure mineral development can continue in the Bakken and make it possible to utilize carbon dioxide for enhanced oil recovery in our mature oil fields," North Dakota Petroleum Council President Ron Ness said in a statement.

North Dakota is the second-biggest oil producing state, pumping about 1.4 million barrels a day. So-called split estate ownership, where different parties own the surface and mineral rights, is frequent across the state's Bakken Shale oil field.

The new law says that injecting fluids or other substances into pore spaces "is not unlawful and by itself does not constitute trespass, nuisance or other tort."

The lawsuit was filed in state district court in Bottineau County, N.D., by the Northwest Landowners Association, which represents property owners in the Bakken region, and it names Gov. Doug Burgum (R), Attorney General Wayne Stenehjem (R), the state industrial commission and the state land board.

The case doesn't cite any instances where operators are trespassing while conducting enhanced oil recovery, but it cites five cases in which oil and gas operators are already disposing of brine without the surface owner's permission.



[+] In enhanced oil recovery (shown), carbon dioxide is injected underground to release more oil. In North Dakota, a state law promoting the process is prompting a legal challenge from landowners who say it violates their property rights. Department of Energy



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