

Pore space ownership issues for CO₂ sequestration in the U.S.

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Abstract:

Previous assertions that the ownership of subsurface pore space in states in the US under common law are divided into a majority following the American Rule (surface rights owner owns pore space) and a minority following the English Rule (mineral rights owner owns the pore space) are shown to be inconsistent with case law precedents traced back to 1861. The mineral estate is not likely to “own” the pore space or to have the right to use the pore space for purposes other than extracting minerals. The exception will be where the original fee simple owner sells the surface rights but reserves the subsurface mineral rights. In all other circumstances it is likely that courts will find that the surface owner also owns the pore space under common law.

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