

Surface Wins the Subsurface: Texas Supreme Court Clarifies Pore Space Ownership in *Myers-Woodward*, Implications for CCS

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May 28, 2025**

On May 16, the Texas Supreme Court clarified a long-standing issue in [*Myers-Woodward, LLC v. Underground Services Markham, LLC and United Brine Pipeline Company, LLC*](#), holding that unless a deed provides otherwise, surface owners – not mineral owners – control subsurface pore space created by salt mining. The ruling has profound implications for the future of carbon capture and storage (CCS), particularly as Texas moves toward primacy over regulation of Class VI wells such that the state Railroad Commission (and not the federal Environmental Protection Agency) would have primary authority for implementation and enforcement of permitting standards for CCS installations – and the federal government expands incentives through the Section 45Q tax credit.

At the heart of the *Myers-Woodward* case lies a fundamental question of property rights: who owns the subsurface voids—specifically, salt caverns—created by salt extraction? The case concerned a 160-acre tract where the severed mineral estate was conveyed to Underground Services Markham, LLC (USM), which conducted solution-mining to extract salt, creating underground caverns suitable for storing hydrocarbons or CO₂. USM claimed ownership and usage rights to the caverns, arguing that as the mineral owner and creator of the caverns, it could store offsite hydrocarbons or lease storage rights to third parties. Myers-Woodward, LLC, the surface owner, countered that USM's rights were limited to salt production and did not include using the resulting voids for unrelated storage. The court agreed, ruling that absent an agreement to the contrary, these caverns formed through the removal of salt by the mineral estate holder belong to the surface estate. The decision distinguished seemingly analogous cases that favored mineral rights holders in disputes over the ownership of coal mines and established a new “bright-line” rule for salt caverns akin to existing precedent for migratory minerals like oil and gas: surface owners retain control over the empty spaces left behind after mineral extraction.

This ruling has profound implications for the future of CCS in Texas. Salt caverns are among the most promising geological formations for the long-term storage of carbon dioxide. However, to qualify for the lucrative 45Q tax credit—currently offering up to \$85 per metric ton of CO₂ permanently stored—developers must have legal rights to the storage site. The court's decision means that mineral rights holders cannot unilaterally repurpose caverns for CO₂ storage without acquiring the rights from the surface owner. In practical terms, this elevates the negotiating power of landowners like Myers-Woodward, who can now lease these caverns to CCS developers and potentially share in the revenue generated by 45Q credits.

The timing of this legal clarification is particularly significant as Texas nears approval for Class VI primacy. Under the Safe Drinking Water Act, Class VI wells are regulated to ensure the safe and permanent storage of CO₂ in deep geologic formations. While the Environmental Protection Agency (EPA) currently oversees these permits, Texas has taken steps to assume regulatory authority. In April 2025, the EPA and the Texas Railroad Commission (RRC) signed a Memorandum of Agreement, signaling that Texas is on the cusp of gaining full primacy. Once granted, the RRC will have the power to issue and enforce Class VI permits, streamlining the process for CCS projects and potentially accelerating deployment across the state.

The convergence of these developments underscores the complexity of aligning legal, economic, and environmental objectives. For CCS to succeed at scale, developers must navigate not only engineering challenges, but also the intricate web of property law and regulatory frameworks. GableGotwals attorneys have deep experience in energy law, environmental compliance, and property rights. Our team can help you navigate the complexities of subsurface ownership, secure 45Q tax incentives, and comply with Class VI well regulations.

If you have any questions, please contact any member of GableGotwals' [Energy, Oil & Gas team](#).



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