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Gavel to Gavel: Oklahoma's Carbon Storage Unit Law Turns One, Just as North Dakota's Pooling Law Stumbles

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Alex R. Telarik



Ethan T. Mock

Oklahoma's carbon dioxide storage unit statute, 27A O.S. § 3-5-107, took effect November 1, 2025, joining North Dakota and other states with similar laws. Within months, two North Dakota trial courts struck down that state's nearly identical pore space amalgamation law as an unconstitutional taking. Appeals are pending, but Oklahoma developers and lawmakers should take notice.

In *Northwest Landowners Association v. State* and *Swenson Living Trust v. NDIC*, North Dakota courts held that forcing nonconsenting owners to accept injected carbon dioxide is a permanent physical occupation and *per se* taking under the North Dakota Constitution. They rejected the oil and gas correlative rights analogy because pore space does not migrate and carbon dioxide is a foreign substance. They also faulted the compensation scheme: payment was not required before possession, and a state agency, not a jury, set the amount.

Oklahoma's statute follows the same pooling model. An applicant with injection rights in at least 63% of the surface acreage may obtain a Corporation Commission storage unit order. Nonconsenting owners participate or take Commission-determined fair market value and forfeit their storage rights. Upon unit creation, injection may begin and the unit holds the exclusive right to store carbon dioxide in all pore space within it, including that of nonconsenting owners. The North Dakota courts faulted each of those features. Oklahoma's Constitution potentially creates additional hurdles: Article 2, § 24 bars disturbing an owner's property until compensation is paid, condemnees get a jury on demand, and Article 2, § 23 prohibits taking private property for private use.

Nevertheless, Oklahoma already lets private entities condemn for public purposes – pipelines take rights of way, utilities take depleted formations for gas storage. Carbon dioxide storage currently lacks any public-use designation. The legislature could supply it by declaring storage a public use and requiring open access, though under Article 2, § 24 public use remains a judicial question. Oklahoma could also follow Louisiana by adding a condemnation fallback if unitization fails, plus "quick-take" authority to deposit compensation before possession.

The North Dakota Supreme Court's ruling, the first Oklahoma storage unit orders, and the 2027 legislative session will determine whether Oklahoma's law is tested or repaired first. Developers should secure voluntary agreements across the modeled plume before injection.

Alex Telarik and Ethan Mock are attorneys at GableGotwals in Tulsa, OK.