Carbon Storage: Texas Stakes Its Claim

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Leveraging its advantageous geologic conditions and its oil and gas industry experience, the state of Texas is a bellwether in the developing industry of anthropogenic carbon dioxide (CO_2) storage. This article discusses the state's initiatives specific to carbon storage and the research and pilot efforts private parties and academic institutions have undertaken within the state.

Carbon storage is an integral part of the carbon capture and storage (CCS) climate change mitigation strategy, designed to prevent the release of CO_2 into the atmosphere by capturing CO_2 at its source and storing it long term in geological formations. CCS is often discussed as a bridge technology to allow societies sufficient time to shift away from CO_2-intensive power production (e.g., coal plants) to energy produced with a lower carbon footprint. The International Energy Agency projects that CCS as a mitigation strategy could provide 20 percent of total global greenhouse gas (GHG) emission reductions by 2050. Claude Mandil, *The Role of CCS in Climate Change Mitigation*. IEA-CSLF Early Opportunities Workshop–Global Assessment. Oslo, Norway (June 21–22, 2008).

Despite the potential significance of CCS as a climate change mitigation strategy, widespread commercial deployment has been hampered by a number of significant obstacles relating to CO_2 storage. In addition to the financial, technical, and public-acceptance issues that full-scale development of this technology will trigger, the industry has been hamstrung by the lack of a clear, established legal and regulatory framework.

To clear the way for cost-effective and successful use of CCS as a climate mitigation strategy, a host of complex legal issues relevant to carbon storage must be resolved. Those issues include: (1) the classification of CO_2 as either a waste or a beneficial product; (2) a variety of surface and subsurface property rights issues (e.g., ownership of the injected CO_2, ownership of the underground formation and pore space, and the nature of the surface rights that will be required); and (3) liability and long-term stewardship issues (e.g., who will be responsible for releases, accidents, and trespass and other operational risks). These legal uncertainties pose significant obstacles to CCS projects.

However, Texas is forging ahead to address and overcome these obstacles and to position itself as a leader in carbon storage. It is well positioned to do so given its vast oil and gas experience and expertise in enhanced oil recovery (EOR) (the injection of material, often CO_2, into an oil reservoir to increase production from the reservoir). According to one study, more than 480 million tons of CO_2 has already been captured, transported, injected, and stored in Texas EOR operations. *See* House Research Organization, Bill Analysis, Tex. S.B. 1387, 81st Leg., R.S. (2009). The experience of the oil and gas industry with EOR is the cornerstone on which the Texas geologic storage industry will necessarily be built.

Texas is also blessed with the necessary geology. Carbon storage requires vast formations in which to inject the CO_2. The U.S. Department of Energy's National Energy Technology Laboratory has estimated that Texas has onshore storage capacity for between 661 million and 2.4 billion tons of CO_2. *See* National Energy Technology Laboratory, 2008 Carbon Sequestration Atlas of the United States and Canada—Version 2 (Appendix C: Stationary Source and Geologic Storage Estimates for Carbon Dioxide by State/Province). That estimate does not include the state's vast offshore capacity. Important to the development of the industry, those substantial formations include various types of reservoirs: producing and nonproducing, onshore and offshore, and formations located on lands owned by the state.

Further, Texas has a supportive political and administrative structure. While the governor and his administration are fundamentally opposed to the regulation of CO_2 and other GHGs (Governor Perry has said that the U.S. Environmental Protection Agency's (EPA's) proposal to regulate CO_2 and other greenhouse gases could cripple Texas' economy), they recognize the state's self-interest in promoting CO_2 storage as a mitigation strategy. *See, e.g.*, Press Release, Office of the Governor Rick Perry, *Gov. Perry:* Incentives Will Create New Clean Energy Sources (Aug. 19, 2009), *available at* www.governor.state.tx.us/news/press-release/13476. According to EPA's latest estimates, Texas remains the largest CO_2 emitter in the country, with over 650 million metric tons of annual emissions. *See* U.S. EPA, *State CO_2 Emissions from Fossil Fuel Combustion, 1990–2007*. In the face of federal action to curtail those emissions, CO_2 storage represents an important Texas strategy to avoid stifling CO_2-emitting industries in the state. It also represents a potentially substantial source of revenue for the state as its carbon storage industry expands. For those reasons, Texas has pushed programs and policies to promote this industry.

Texas' Bellwether Tax & Grant Programs for Carbon Sequestration

Texas' first efforts to promote carbon storage were, in large part, precipitated by the state's efforts to secure the $1.5 billion federally funded FutureGen project. FutureGen, announced by

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President George Bush in 2003, is a public-private partnership to build a coal-fueled, near-zero emissions power plant that will include the capture and permanent storage of CO_2. *See* FutureGen Alliance, www.futuregenalliance.org (last visited May 18, 2010). In 2005, the Texas legislature adopted incentive measures to promote clean energy projects that were largely tied to promoting the state's efforts to secure the FutureGen site. *See* H.B. 149, 79th Leg., 3d C.S. (2005) (relating to the ownership and use of carbon dioxide captured by a clean coal project), and H.B. 2201, 79th Leg., R.S. (2005) (relating to implementing a clean coal project). The FutureGen project was ultimately awarded to Illinois (and has since undergone substantial restructuring), but Texas has continued to push forward in its efforts to promote carbon storage in the state. In the two legislative sessions that have followed the 2005 effort, Texas has continued to adopt initiatives intended to promote clean energy projects that include carbon storage on a broader scale.

In 2007, the Texas legislature passed the Advanced Clean Energy Project Grant and Loan Program (ACEP Program). H.B. 3732, 80th Leg., R.S. (2007). Among other things, the ACEP Program qualifies an "advanced clean energy project" for a limitation on appraised value of property subject to certain school district taxes. It defines "advanced clean energy projects" as those projects that implement certain emission reduction measures and render any resultant CO_2 capable of capture, sequestration, or abatement. The bill requires the Texas Commission on Environmental Quality (TCEQ) to prepare a nonexclusive list of pollution controls that may qualify for tax exemptions, including controls to capture CO_2 that is geologically sequestered, if EPA adopts a final rule regulating CO_2 as a pollutant (which it has now done). *See* Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (75 Fed. Reg. 31,514 (June 3, 2010)). The bill also provides for an oil severance tax rate reduction for certain eligible EOR projects capturing CO_2 and geologically storing those emissions.

Senate Bill (S.B.) 1461, 80th Leg., R.S. (2007), enacted during the same legislative session, authorizes the governor to contract on behalf of the state with a tax-exempt organization to implement a clean coal project or demonstration program. In addition, S.B. 1461 authorizes the governor and comptroller to issue franchise tax credits to such an entity to promote research and development activities related to a clean coal project.

In 2009, the Texas legislature adopted the so-called "Now Gen" bill (H.B. 469, 81st Leg., R.S. (2009)), establishing franchise tax credits of up to $100 million for the first three coal-fired power plant "clean energy projects." To qualify as a Now Gen "clean energy project," a plant project must, among other things: (1) capture at least 70 percent of its CO_2; (2) be capable of permanently sequestering (i.e., create a reasonable expectation that at least 99 percent of the CO_2 will remain sequestered for at least 1,000 years) the captured CO_2 in a geological formation; and (3) be capable of supplying the captured CO_2 for EOR projects.

The Now Gen bill also establishes incentives for a broader category of clean carbon projects referred to as "advanced clean energy projects," including those that capture at least 50 percent of their CO_2 emissions. It establishes a sales and use tax exemption for qualified components of tangible personal property (e.g., equipment that captures, transports, or injects CO_2) and authorizes local taxing entities to defer taxes on such projects. Finally, it makes EOR projects capturing and sequestering anthropogenic CO_2 eligible for severance tax exemptions.

During that same session, the Texas legislature adopted H.B. 1796, 81st Leg., R.S. (2009), which in addition to creating an offshore carbon repository program (discussed below), also establishes a grant program for new emission-reducing technology, including CCS projects. The new program authorizes TCEQ to issue grants and other financial incentives to offset the incremental cost of the emissions reductions.

Other notable bills enacted in 2009 paving the way for carbon storage were H.B. 3676, 81st Leg., R.S. (2009) and H.B. 3896, 81st Leg., R.S. (2009). H.B. 3676 extends until 2014 provisions relating to local property school district tax abatements of the Texas Economic Development Act that clarified the eligibility of property associated with advanced clean energy projects. H.B. 3896 extends for an additional ten years the expiration date of the Property Redevelopment and Tax Abatement Act applicable to cities and counties. H.B. 3896 gives these taxing jurisdictions increased opportunities to attract major economic developments, including clean energy projects.

Texas' Bellwether Legal Framework for CO_2 Storage

In 2008, EPA proposed rules to regulate geologic sequestration of CO_2. Federal Requirements under the Underground Injection Control (UIC) Program for Carbon Dioxide Geologic Sequestration (GS) Wells, 73 Fed. Reg. 43,492 (July 25, 2008). EPA approach would establish a new Class VI injection well class for carbon storage under EPA's UIC program. However, the proposed permitting requirements for this new Class VI injection well are largely based on the requirements for Class I injection wells—applicable to injection of hazardous waste. Some participants in the federal rulemaking, including industry representatives interested in the expedited development of a comprehensive carbon storage regulatory scheme, consider EPA's proposed rules to be an overly restrictive approach to managing the groundwater contamination risks associated with geologic storage of CO_2.

In contrast, Texas adopted a more flexible regulatory framework. S.B. 1387, 81st Leg., R.S. (2009), enacted by the Texas legislature in 2009, achieves three important objectives. First, and most significant, it establishes a statewide legal framework for permitting and operating anthropogenic CO_2 storage facilities in productive oil and gas formations and related saline formations. Second, in conjunction with other legislation enacted in 2009, it sets the stage for the development of anthropogenic CO_2 storage on state-owned, offshore submerged lands. Third, it lays the groundwork for the development of a regulatory program for anthropogenic CO_2 storage in unproductive geologic formations.

S.B. 1387 establishes the legal framework for geologic storage in Texas in "a reservoir that is initially or may be produc-

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tive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir." Tex. Water Code § 27.041(a). The legislation focuses on productive reservoirs in recognition that the CO_2 geologic storage industry must develop, initially, on the shoulders of oil and gas production and, particularly, EOR operations. This approach allows initial program development and implementation to benefit from the oil and gas industry's relevant practices, knowledge, and expertise. In particular, it takes advantage of Texas' expansive database of knowledge regarding the geologic structure and physical properties of candidate sites, the dynamics of subsurface injection of CO_2, and the existing injection and pipeline infrastructure used in EOR operations.

The statute assigns jurisdiction for the program to the Railroad Commission of Texas (RRC), the state agency with primary jurisdiction over the oil and natural gas industry. It directs the RRC to develop a regulatory program setting forth the permitting, operating, and post-operation requirements for injection into and storage in those formations. It authorizes the RRC to impose fees to cover the cost of the program, including the agency's permitting, monitoring, inspection, and enforcement activities. It also establishes the "anthropogenic carbon dioxide storage trust fund" as a special fund in the State treasury to receive those fees.

The statute maintains flexibility in areas important to the state's oil and gas industry. Under the legislation, operators have the opportunity to permit wells for multiple uses, transition wells from one use to another (e.g., EOR operations to geologic storage), and extract and use the stored CO_2. At the same time, the statute preserves the existing EOR framework by expressly excluding Class II EOR wells from the new program. In adopting S.B. 1387, Texas sought to provide the RRC the flexibility to conduct case-by-case analysis and decision making. Further, the legislation seeks to maintain and maximize Texas' oversight and flexibility in conducting CO_2 storage in Texas. It directs the RRC to develop its rules in conformity with EPA geologic storage rules once those rules are finalized. Conforming rules will allow the RRC to seek delegation from EPA for primary authority to operate and enforce the program and thus control the program at the state level.

S.B. 1387 also addresses important ownership and operational issues associated with injected anthropogenic CO_2. First, S.B. 1387 assigns title to the injected CO_2 to the person authorized to operate the geologic storage facility, subject to valid transfers of title from the operator to third parties. Second, S.B. 1387 preserves the right of the owners of stored CO_2 to reuse the injected CO_2. And, third, the statute assigns jurisdiction over any such reuse activity to the RRC. S.B. 1387 is silent on one of the more difficult ownership issues—ownership of the pore space into which the CO_2 is injected.

Finally, the statutory framework includes a role for the TCEQ, the state's environmental agency. An applicant for a RRC geologic storage permit must obtain a letter from the TCEQ executive director certifying that (1) drilling and operating the injection well will not injure any freshwater strata in the area, and (2) the formation or stratum to be used for the geologic storage facility is not freshwater sand. Tex. Water Code § 27.046(a). The TCEQ is charged with developing separate rules to implement that aspect of the program.

S.B. 1387 also reflects the Texas legislature's recognition of the substantial and strategically advantageous geologic storage resources available on 20 million acres of state-owned lands and mineral-right properties (including the "submerged" lands extending 10.3 miles into the Gulf of Mexico). The Texas General Land Office (GLO), the manager of Texas' state-owned lands, is directed to prepare a report in conjunction with the RRC, the TCEQ, and the Bureau of Economic Geology on a recommended framework for managing geologic storage activities on those lands. The report, due in December 2010, must include recommended criteria for identifying candidate geologic storage sites for the various types of geological settings, a proposed regulatory framework for leasing state-owned land for geologic storage, and recommended additional legislation to ensure that public land management and leasing laws are adequate.

The S.B. 1387 GLO report operates in tandem with H.B. 1796, 81st Leg., R.S. (2009), another key 2009 CO_2 storage initiative. H.B. 1796 addresses sequestration on offshore GLO lands and authorizes the GLO to create rules adopting standards for the location, construction, maintenance, monitoring, and operation of an offshore, deep subsurface CO_2 geologic storage repository.

The S.B. 1387 GLO report and H.B. 1796 are important tools to advancing geologic storage of CO_2 in Texas because of their focus on storage into reservoirs on state-owned lands, particularly offshore, submerged lands. In addition to offering substantial geologic resources, the state-owned lands represent an opportunity to avoid some of the more daunting private-land CO_2 storage issues. The state-owned lands include reservoirs expected to be sufficiently vast that no additional accumulation of storage space would be necessary, thus avoiding the need for eminent domain actions or unitization-type actions (i.e., legal or contractual consolidation of discretely owned interests in the reservoir) to secure necessary reservoir space.

Various other considerations make offshore CO_2 storage an attractive option. Because the state owns the surface and subsurface of the storage area, ownership issues relating to pore space would not be a complicating factor. As indicated in H.B. 1796, the state would take long-term ownership of the injected CO_2, including the responsibilities and liabilities associated with the long-term storage of the CO_2. Also, to the extent the activities were conducted on offshore GLO lands, away from populated areas, the threat to individuals resulting from a catastrophic event (the sudden release of injected CO_2) or impacts to fresh groundwater supplies would be greatly reduced.

The third important objective achieved by S.B. 1387 is the commissioning of an evaluation of geologic storage in nonproductive reservoirs. The RRC and TCEQ, in consultation with the Bureau of Economic Geology, are required to develop a report, due in December 2010, that (1) analyzes the requirements for injection and storage of anthropogenic CO_2 in nonproductive saline formations; (2) recommends a

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permitting process for anthropogenic CO_2 injection wells and geologic storage facilities for those formations; and (3) recommends the agency or agencies that should have jurisdiction over that permitting.

The RRC/TCEQ report will also include an evaluation of some of the more general issues associated with the state's anthropogenic CO_2 geologic storage program, including a review of liability issues tied to the storage of anthropogenic CO_2 on private or state-owned land; recommendations to address financial assurance and the allocation of long-term liability for the postoperational phase of geologic storage projects; the status of any request for primary enforcement authority from EPA; and any recommendations for additional legislation or rule changes.

Texas' Bellwether Administrative Rules for Carbon Sequestration

In April 2010, the RRC and TCEQ each published proposed rules to implement their respective responsibilities under S.B. 1387. The proposed TCEQ rules mirror the provisions of S.B. 1387 requiring TCEQ's certification that drilling and operating the injection well will be protective of freshwater strata. *See* 35 Tex. Reg. 3005 (2010) (to be codified at 30 Tex. Admin. Code §§ 331.2, 331.17, 331.18) (proposed Apr. 16, 2010).

However, the primary rulemaking for the program falls on the shoulders of the RRC. The proposed RRC rules address the permitting, operating, and postoperation requirements associated with an injection/storage project. *See* 35 Tex. Reg. 2456 (2010) (to be codified at 16 Tex. Admin. Code §§ 5.101-.102) (proposed Mar. 26, 2010); 35 Tex. Reg. 2456 (2010) (to be codified at 16 Tex. Admin. Code §§ 5.201–.208) (proposed Mar. 26, 2010). The proposed rules cover the life cycle of a carbon storage project, including geologic site characterization, well construction, facility operation, testing and monitoring, plugging, post-injection site care, and site closure. The proposed RRC rules also address the scope of the agency's jurisdiction under S.B. 1387 and clarify that a productive reservoir under its jurisdiction is a reservoir that "has had production in the past, which is similar to productive or previously productive reservoirs along the same or a similar trend, or potentially contains oil, gas, or geothermal resources based on analysis of geophysical and/or seismic data." 35 Tex. Reg. at 2457. The rules also shed light on the extent of the statute's EOR exemption by defining enhanced recovery injection well operations as those "from which there is a reasonable expectation of more than insignificant future production volumes . . . and operating pressures are no higher than reasonably necessary to produce such volumes or rates." *Id.*

The proposed RRC rules set forth the findings prerequisite to the issuance of a permit. Specifically, the proposed rules incorporate the statutory findings related to avoiding an endangerment or injury to any oil, gas, or other mineral formation or human health and safety; adequate protection of groundwater and surface freshwater from CO_2 migration or displaced formation fluids; and suitability of the reservoir to protect against the escape or migration of CO_2. In addition, the proposed RRC rules would establish, as conditions for permitting of a carbon storage facility, the following criteria: location in an area with suitable injection and confining zone geology; evidence of good-faith claims to the necessary property rights for construction and operation of the geologic storage facility; and satisfaction of financial responsibility and financial assurance requirements.

The proposed RRC rules reflect the State's interest in assuming implementation authority and enforcement primacy from EPA for its geologic storage program. However, the proposed rules include implementation flexibility that EPA could construe as inconsistent with its program (once it is adopted). For example, the proposed RRC rules regarding logging, sampling, and testing requirements include more performance requirements and fewer mandates. The RRC believes the use of performance requirements will allow the operator the flexibility to use whatever tests provide the necessary demonstration and will allow for technological advancements in testing methods. Also, while EPA's draft rules set a maximum injection pressure of 90 percent of the fracture pressure of the injection zone, the proposed RRC rules decline to establish a numerical percentage maximum injection pressure. Texas has actively participated in EPA's rulemaking process, in large part to promote the flexibility and state program judgment reflected in the RRC's draft rules. Ideally, the proposed RRC regulatory program will inform and serve as a model to EPA's adoption of its federal framework.

Bellwether Sequestration Efforts by Texas Industry and Academic Institutions

In tandem with the momentum created by the Texas legislature, Texas industry and academic interests have been seeking federal funding to promote carbon storage in Texas—typically in conjunction with broader CCS funding opportunities. Most recently, various industry interests have availed themselves of funding under the U.S. Department of Energy (DOE) Clean Coal Power Initiative, a cost-sharing collaboration between the federal government and private industry to demonstrate CCS technologies for coal-based power generation. *See* U.S. DOE, Recovery Act, http://fossil.energy.gov/recovery/projects/ccpi.html (last visited May 14, 2010).

For example, on March 9, 2010, DOE announced that NRG Energy, Inc. would receive up to $154 million to build a post-combustion carbon capture demonstration project at the company's W.A. Parish power plant southwest of Houston, Texas. *See* Press Release, U.S.DOE, Secretary Chu Announces up to $154 Million for NRG Energy's Carbon Capture and Storage Project in Texas (Mar. 10, 2010), *available at* www.energy.gov/8729.htm. The planned unit will use technology designed to capture 90 percent of CO_2 entering the post-combustion system. That CO_2 will be compressed and used in EOR operations in one of the Texas Gulf Coast oil fields located near the plant.

DOE also awarded Summit Texas Clean Energy, LLC a $350 million grant to construct a 400 megawatt plant near Midland-Odessa, Texas designed to capture 90 percent of its CO_2

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emissions. *See* Press Release, U.S. DOE, Sec. Chu Announces $3 Billion Investment for Carbon Capture and Sequestration (Dec. 4, 2009), *available at* http://fossil.energy.gov/news/techlines/2009/09081-Secretary_Chu_Announces_CCS_Invest.html. The captured CO_2 will be treated, compressed, and transported by pipeline to the Permian Basin in West Texas for EOR operations. The Bureau of Economic Geology, a research institute affiliated with the University of Texas (UT), will participate in that project, designing a CO_2 sequestration monitoring, verification, and accounting program for the project.

Companies have also received funding under the American Recovery and Reinvestment Act (ARRA), the federal government's economic stimulus program. *See* U.S. DOE, Carbon Capture and Sequestration from Industrial Sources, http://fossil.energy.gov/recovery/projects/industrial_ccs.html (last visited May 14, 2010). On October 2, 2009, DOE announced the first round of funding of $26.1 million from $1.4 billion from the ARRA for the selection of twelve projects that will capture CO_2 from industrial sources for storage or beneficial use. *See* Press Release, U.S. DOE, Sec. Chu Announces First Awards from $1.4 Billion for Industrial Carbon Capture and Storage Projects (Oct. 2, 2009), *available at* www.energy.gov/8102.htm. DOE will award the remaining ARRA funding to those projects that prove most promising during a competitive phase two selection process. The Texas-based projects awarded money under the first round of funding include (1) the Air Products and Chemicals Inc. project at Port Arthur, Texas, from which more than one million tons of CO_2 would be delivered per year, via pipeline, for sequestration into the Oyster Bayou oil field for EOR, and (2) the ConocoPhillips integrated gasification combined cycle power plant project in Sweeny, Texas, from which over five million tons of CO_2 would be sequestered into a depleted oil or gas field.

While not a part of the wave of federal grant money, several other Texas-based projects continue to move forward. For example, the Tenaska Trailblazer Energy Center plant near Sweetwater, Texas, will be designed to capture 85 to 90 percent of its CO_2 and transport it to the Permian Basin for use in EOR operations and, ultimately, geologic storage. *See* Tenaska Trailblazer Energy Center, www.tenaskatrailblazer.com (last visited May 18, 2010).

Texas also remains one of several state partners in two of the Regional Carbon Sequestration Partnerships (RCSP) programs—the Southeast Regional Carbon Sequestration Partnership, in which the Bureau of Economic Geology is a key player (operating under a ten year, $38 million subcontract) and the Southwest Regional Partnership for Carbon Sequestration, in which the Bureau of Economic Geology is also a partner. The RCSPs are government/industry partnerships tasked with determining the most suitable technologies, regulations, and infrastructure needs for carbon capture, storage, and sequestration in different areas of the country. *See* National Energy Technology Laboratory, Carbon Sequestration, Regional Carbon Sequestration Partnerships, www.netl.doe.gov/technologies/carbon_seq/partnerships/partnerships.html (last visited May 18, 2010).

Texas academic institutions have not been left out. In fall 2009, UT received almost $1 million in a three-year grant from DOE to train students and professionals to work in the CCS industry. *See* Press Release, DOE Announces More Than $8.4 Million for Regional Sequestration Technology Training Projects (Aug. 27, 2009), *available at* www.energy.gov/7845.htm. The university is using the grant money to create the Alliance for Sequestration, Training, Outreach, Research and Education (STORE), which will draw researchers from UT's Institute for Geophysics, the Center for Petroleum and Geosystems Engineering, and the Bureau of Economic Geology.

Also in fall 2009, DOE issued a five-year, $15.5 million grant to establish an Energy Frontier Research Center (EFRC) at UT, one of forty-six new centers in the country, to fund the University's Center for Frontiers of Subsurface Energy Security. *See* U.S. DOE, Energy Frontier Research Centers, www.sc.doe.gov/bes/EFRC/index.html. The goal of the Center is to explain the movement of CO_2 (and other greenhouse gases) in geological systems.

At this point, it is difficult to predict whether Texas' efforts will be rewarded with a widespread, commercial carbon storage industry in the state. While Texas has positioned itself to be a leader in the industry, it still faces a number of obstacles. Fundamentally, as long as federal regulation of CO_2 emissions remains in flux, sufficient impetus for commercial deployment of CO_2 storage may be lacking. The host of legal issues raised by CO_2 storage also must be resolved to avoid the current state of regulatory uncertainty—uncertainty that Texas has taken first steps to address. Further, the extent to which the development of a uniform federal regulatory structure will similarly promote the cost-effective and successful deployment of CO_2 storage as a climate mitigation strategy remains to be seen. In February 2010, President Obama established an Interagency Task Force on Carbon Capture and Storage. *See* Presidential Memorandum—A Comprehensive Federal Strategy on Carbon Capture and Storage (Feb. 3, 2010) (75 Fed. Reg. 6087 (Feb. 4, 2010)). The Task Force has been charged with preparation of a proposed plan to address the barriers to CCS deployment within the next ten years. At the end of the day, Texas has taken deliberate and unmistakable steps to avail itself of the opportunities presented by carbon storage and has set the stage for continued development of policies to promote investment in this worthwhile industry. However, the ultimate success of carbon storage in Texas hinges on the development of favorable national policies.

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