

HOUSE BILL NO. 24

INTRODUCED BY H. KLOCK

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CARBON DIOXIDE FOR ENERGY PRODUCTION PURPOSES; PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE; EXTENDING THE RIGHT OF EMINENT DOMAIN TO UNDERGROUND RESERVOIRS SUITABLE FOR STORING CARBON DIOXIDE; AND AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, 69-13-303, 70-30-102, 70-30-104, 70-30-105, 70-30-203, 70-30-206, 82-10-301, 82-10-302, 82-10-303, 82-10-304, AND 82-10-305, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-13-101, MCA, is amended to read:

"69-13-101. Common carrier pipeline. (1) ~~The following are hereby declared to be common carriers and subject to the provisions of this chapter: every~~ Each person, firm, corporation, limited partnership, joint-stock association, or association ~~of any kind whatever~~ is a common carrier if it engages in:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide to or for the public for hire or engaging in the business of transporting crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide to or for the public for hire; ~~which~~ when the pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide; ~~which~~ when the pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever,

any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point ~~thereof~~, within this state, of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide, bought ~~of~~ from others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter ~~shall do~~ not apply to:

(a) ~~those pipelines which that~~ are limited in their use to the wells, stations, plants, and refineries of the owner and ~~which that~~ are not a part of the pipeline transportation system of any common carrier, ~~as herein defined; nor shall such provisions apply to or~~

(b) any property of ~~such~~ a common carrier ~~which that~~ is not a part of or necessarily incident to its pipeline transportation system."

Section 2. Section 69-13-102, MCA, is amended to read:

"69-13-102. Scope of chapter -- enforcement. (1) It is declared that the operation of ~~these~~ pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide, in connection with the purchase or purchase and sale of ~~such~~ crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide, is a business in ~~mode of~~ ~~the conduct of~~ which the public is interested and ~~as such~~ is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide, using in connection with ~~such that~~ business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide ~~so~~ bought or sold ~~shall may~~ not be conducted unless ~~such the~~ pipeline ~~so~~ used in connection with ~~such that~~ business is a common carrier within the purview of this ~~law~~ chapter and subject to the jurisdiction ~~herein~~ conferred upon the commission.

(2) It ~~shall be~~ is the duty of the attorney general to enforce this provision by injunction or other adequate remedy."

Section 3. Section 69-13-201, MCA, is amended to read:

"69-13-201. Establishment of rates and operating rules. (1) The commission ~~shall have the power to~~ may establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering

crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide by ~~such~~ common carrier in this state and for the use of storage facilities necessarily incident to ~~such~~ the transportation and to prescribe and enforce rules for the government and control of ~~such~~ common carriers in respect to their pipelines and receiving, transferring, and loading facilities. ~~It shall be its duty to~~ The commission shall exercise ~~such~~ the power upon petition by any person showing a substantial interest in the subject.

(2) ~~No~~ An order establishing or prescribing rates and rules ~~shall~~ may not be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) ~~In the event any~~ If a rate ~~shall be~~ is filed by any pipeline and complaint against the ~~same~~ rate or petition to reduce the ~~same~~ shall be rate is filed by any shipper and ~~such~~ the complaint ~~be~~ is sustained, in whole or in part, all shippers who ~~shall~~ have paid the rates ~~so~~ filed by the pipeline ~~shall~~ have the right to reparation or reimbursement of all excess in transportation charges ~~so~~ paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of ~~such~~ the complaint."

Section 4. Section 69-13-301, MCA, is amended to read:

"69-13-301. Records and reports. (1) ~~Such common~~ Common carriers of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide shall make and publish their tariffs under ~~such~~ rules ~~as~~ that may be prescribed by ~~said~~ the commission. The commission shall require ~~them~~ the common carriers to make reports and may investigate their books and records kept in connection with ~~such~~ the business.

(2) The commission shall require ~~of such~~ common carrier pipelines to make monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide owned by ~~such~~ the pipelines, of that held by them in storage for others, and of their unfilled storage capacity. ~~No publicity shall~~ Publicity may not be given by the commission to the reports as to stock of crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making ~~such~~ the reports and of their aggregate storage capacity."

Section 5. Section 69-13-302, MCA, is amended to read:

"69-13-302. Connection and interchange facilities. (1) ~~Every~~ Each common carrier shall exchange crude petroleum tonnage, coal tonnage, ~~or~~ petroleum or coal products tonnage, or carbon dioxide volume with each ~~like~~ similar common carrier. The commission ~~shall have the power to~~ may require ~~such~~ connections and

facilities for the interchange of ~~such~~ the tonnage and volume to be made at every locality reached by both pipelines whenever a necessity ~~therefor~~ for the connections and facilities exists, subject to ~~such~~ rates and regulations ~~as that~~ may be made by the commission. Any ~~such~~ common carrier under ~~like~~ similar rules ~~shall must~~ be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, ~~or~~ the products ~~thereof~~ of crude petroleum or coal, or carbon dioxide of patrons at all points on ~~such~~ the pipeline.

(2) ~~No~~ A carrier ~~shall may not~~ be required to receive or transport any crude petroleum, coal, ~~or~~ the products ~~thereof~~ of crude petroleum or coal, or carbon dioxide except ~~such~~ as may be marketable under rules ~~to be~~ prescribed by the commission, ~~which they are hereby empowered and required to prescribe~~. The commission is ~~also empowered and required to~~ shall make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, ~~or~~ the products ~~thereof~~ of crude petroleum or coal, or carbon dioxide tendered for transportation, for deduction ~~therefor~~ for water and foreign matter, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The ~~recital herein~~ of particular powers ~~on~~ delegated to the part of said commission ~~shall in this section may~~ not be construed to limit the general powers conferred by this chapter."

Section 6. Section 69-13-303, MCA, is amended to read:

"69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), ~~no such~~ a common carrier in its operations ~~as such shall may not~~ discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ of crude petroleum or coal, or carbon dioxide; ~~nor shall there~~ There may not be any discrimination in the transportation of crude petroleum, coal, ~~or~~ the products ~~thereof~~ of crude petroleum or coal, or carbon dioxide produced or purchased by ~~itself~~ the common carrier directly or indirectly. In this connection the pipeline ~~shall must~~ be considered as a shipper of the crude petroleum, coal, ~~or~~ the products ~~thereof~~ of crude petroleum or coal, or carbon dioxide produced or purchased by ~~itself~~ the pipeline directly or indirectly and handled through its facilities. ~~No such~~ A carrier in ~~such the~~ operation ~~shall may not~~ directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules ~~which that~~ may be prescribed by the commission, every ~~such~~ common carrier shall receive and transport crude petroleum, ~~or~~ coal, the products of crude petroleum or coal, or carbon dioxide delivered to it for transportation and shall ~~so~~ receive and transport the same products and perform its other duties with respect ~~thereto~~ to the products without discrimination.

(2) The provisions of subsection (1) ~~shall do~~ not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine, ~~nor shall any A carrier be is not~~ guilty of discrimination when obeying any order of the commission. When there ~~shall be is~~ offered for transportation more crude petroleum, coal, ~~or the products thereof~~ of crude petroleum or coal, or carbon dioxide than can be immediately transported, the ~~same shall~~ products must be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. ~~No such A common carrier shall may not~~ at any time be required to receive for shipments exceeding 3,000 barrels of petroleum or the products ~~thereof~~ of petroleum in any one day from any person, firm, corporation, or association of persons."

Section 7. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;

- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- (25) water conservation and flood control projects as provided in 76-5-1108;
- (26) acquisition of natural areas as provided in 76-12-108;
- (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- (29) conservancy district purposes as provided in 85-9-410;
- (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;
- (31) canals, ditches, flumes, aqueducts, and pipes for:
 - (a) supplying mines, mills, and smelters for the reduction of ores;
 - (b) supplying farming neighborhoods with water and drainage;
 - (c) reclaiming lands; and
 - (d) floating logs and lumber on streams that are not navigable;
- (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.
- (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;
- (35) an occupancy in common by the owners or the possessors of different mines of any place for the

flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas or carbon dioxide;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

Section 8. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. (1) The following is a classification of the estates and rights in land subject to taking for public use:

(a) subject to subsection (2), estates or rights that are necessary, up to and including a fee simple

interest, when taken for:

- (i) public buildings or grounds;
- (ii) permanent buildings;
- (iii) an outlet for a flow or a place for the deposit of debris or tailings of a mine;

(iv) the mining and extracting of ores, metals, or minerals when the ores, metals, or minerals are owned by the condemnor but are located beneath or upon the surface of property for which the title to the surface vests in others; or

(v) the underground storage of natural gas by a natural gas public utility as defined in 82-10-301 or the underground storage of carbon dioxide by a common carrier of carbon dioxide as defined in 82-10-301. When the taking is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir taken must be determinable and for all purposes terminates upon abandonment or upon cessation for the period of 1 year of the use for which the property was taken. Upon the abandonment or cessation, the ownership of the residue of natural gas remaining in the reservoir vests in the current owners of the surface property over the reservoir space.

(b) the estate or rights in the surface property that are necessary for a reservoir or dam and for the permanent flooding that results from the reservoir or dam, up to the edge of the maximum pool of the reservoir;

(c) an easement, leasehold, or other interest, for as long as the interest is necessary for the purpose described in the complaint, or fee simple interest when taken for any other use;

(d) the right of entry upon and occupation of land and the right to take from the land any earth, gravel, stones, trees, and timber that may be necessary for some public use.

(2) Subject to 60-4-102, an easement is presumed to be sufficient for a project for a public use unless the parties agree that a greater interest should be taken or the condemnor shows by a preponderance of the evidence that a greater interest is necessary."

Section 9. Section 70-30-105, MCA, is amended to read:

"70-30-105. Taking of underground natural gas or carbon dioxide storage reservoir -- effect on owner's right to drill. (1) The taking of any sand, stratum, or formation for use as an underground natural gas or carbon dioxide storage reservoir is without prejudice to the rights of the owner or owners of the land or of the oil, gas, or other mineral rights in the land to drill or bore through the sand, stratum, or formation taken for use as an underground natural gas or carbon dioxide storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in the land above or below the sand, stratum,

or formation taken.

(2) Any additional cost or expense required to be incurred in order to protect the underground natural gas storage or carbon dioxide reservoir against pollution and the escape of the gas or carbon dioxide from the reservoir by reason of boring or drilling through the sand, stratum, or formation used as an underground natural gas or carbon dioxide storage reservoir must be paid by the persons, firm, or corporation owning the underground natural gas or carbon dioxide storage reservoir at the time of the boring or drilling."

Section 10. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. (1) The complaint for condemnation must contain:

(a) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff;

(b) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants;

(c) a statement of the right of the plaintiff to take the property for public use;

(d) statements of each of the facts necessary to be found in 70-30-111;

(e) a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(f) a statement of the condemnor's claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.

(2) If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map of the route, so far as the route is involved in the action or proceeding.

(3) (a) If a sand, stratum, or formation suitable for use as an underground natural gas or carbon dioxide storage reservoir is sought to be taken, in addition to the items listed in subsection (1), the complaint must include a description of the reservoir and of the land in which the reservoir is alleged to be contained and a description of all other property and rights sought to be taken for use in connection with the right to store natural gas or carbon dioxide in and withdraw natural gas or carbon dioxide from the reservoir.

(b) In addition, the complaint must state facts showing that:

(i) the reservoir is subject to being taken by the plaintiff;

(ii) the underground storage of natural gas or carbon dioxide in the land sought to be taken is in the public interest;

(iii) the reservoir is suitable and practicable for natural gas or carbon dioxide storage;

(iv) the plaintiff in good faith has been unable to acquire the rights sought to be taken; and

(v) a statement that the rights and property sought to be taken are not prohibited by law from being taken.

(c) The complaint must be accompanied by a certificate from the board of oil and gas conservation as provided in 82-10-304."

Section 11. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) In a condemnation proceeding, the court may:

(a) regulate and determine the place and manner of:

(i) making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e); and

(ii) occupying canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) subject to 70-30-104(2), limit the interest in real property sought to be taken if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of an interest in real property and that the condemnor has met the burden of proof under 70-30-111, the court shall enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) (a) If the property sought to be taken is a sand, stratum, or formation suitable for use as an underground natural gas or carbon dioxide storage reservoir and the existence and suitability of the property for that use has been proved by the condemnor based upon substantial evidence, the order of the court must direct the condemnation commissioners to determine the amount to be paid by the condemnor to each person for each person's interest in the property sought to be taken for use as an underground natural gas or carbon dioxide storage reservoir.

(b) In addition to or in lieu of the amount paid under subsection (3)(a), the court may direct the commissioners to determine the annual rental for:

- (i) the use of the underground natural gas or carbon dioxide storage reservoir;
- (ii) the use of so much of the surface as is required in the operation of the reservoir and for the use in connection with the creation, operation, and maintenance of the reservoir; and
- (iii) all the native gas contained in the reservoir. However, the amount to be paid for the native gas may not be less than the market value of the gas.

(4) The court shall appoint three persons, qualified and recommended as experts by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by the condemnor to each person for each person's interest in the property sought to be taken. The fees and expenses of the experts are chargeable as costs of the proceedings to be paid by the condemnor.

(5) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give the proceedings expeditious and priority consideration. The preliminary condemnation proceeding must be tried by the court sitting without a jury."

Section 12. Section 82-10-301, MCA, is amended to read:

"82-10-301. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

- (1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.
- (2) "Carbon dioxide" means carbon dioxide that is either naturally occurring or the byproduct of human activities.
- (3) "Common carrier of carbon dioxide" means a person or entity described in 69-13-101(1).
- ~~(2)~~(4) "Native gas" means gas ~~which~~ that has not been previously withdrawn from the earth.
- ~~(3)~~(5) "Natural gas" means gas either while in its original state or after the ~~same gas~~ gas has been processed by removal ~~therefrom~~ of component parts not essential to its use for light and fuel from the gas.
- ~~(4)~~(6) "Natural gas public utility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.
- ~~(5)~~(7) "Underground reservoir" means any subsurface sand, stratum, or formation of the earth suitable

for the injection, and storage, of natural gas therein and the withdrawal of natural gas therefrom or carbon dioxide.

~~(6)~~(8) "Underground storage" means the process of injecting and storing of natural gas or carbon dioxide within and withdrawing of natural gas or carbon dioxide from an underground reservoir."

Section 13. Section 82-10-302, MCA, is amended to read:

"82-10-302. Policy. (1) The underground storage of natural gas ~~which that~~ promotes conservation ~~thereof of natural gas, which that~~ permits the building of reserves for orderly withdrawal in periods of peak demand, ~~which that~~ makes more readily available natural gas to the domestic, commercial, and industrial consumers of this state, or ~~which that~~ provides a better year-round market to the various gas fields serves the public interest and welfare of this state.

(2) The underground storage of carbon dioxide that safely sequesters carbon serves the public interest and welfare of this state.

~~(2)~~(3) ~~Therefore, in the manner hereinafter provided, the~~ The board and the court may find and determine that the underground storage of natural gas and carbon dioxide ~~as hereinbefore defined~~ provided in this part is in the public interest."

Section 14. Section 82-10-303, MCA, is amended to read:

"82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility or common carrier of carbon dioxide may acquire, through the exercise of the right of eminent domain as provided in Title 70, chapter 30, and this part, an underground reservoir for its use for the underground storage of natural gas or carbon dioxide. The right of eminent domain may be exercised only if the board finds that the reservoir is suitable and its taking is in the public interest for the underground storage of natural gas or carbon dioxide. In connection with the underground reservoir, the utility or common carrier may acquire other interests in property that may be required to adequately maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) Sand, a formation, or a stratum that is producing, that has produced, or that is capable of producing oil is not subject to taking under this section.

(b) A gas-bearing sand, formation, or stratum is not subject to taking under this section unless:

(i) the recoverable volumes of native gas in the interest sought to be taken have all been produced; or
unless

(ii) the sand, formation, or stratum being taken for natural gas storage has a greater value or utility as an underground reservoir for the purpose of ensuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas in the sand, formation, or stratum.

(c) Gas, sand, formation, or stratum may not be acquired under this part when the natural gas in the underground reservoir is being used for the secondary recovery of oil unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations. However, the amount of gas furnished may not exceed the quantity of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its taking if the operator was at that time entitled to all of the gas or if entitled to less than all of the gas, then an amount not to exceed the quantity of gas to which the operator was entitled.

~~(c)~~(d) Only the area of the underground sand, formation, or stratum that may reasonably be expected to be penetrated by gas or carbon dioxide displaced or injected into the underground reservoir may be taken.

~~(d)~~(e) Rights or interests in existing underground reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the reservoir are not subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section is without prejudice to the rights of the owner of the land or of other rights or interests in the land to drill or bore into or through the underground reservoir in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas or carbon dioxide and is without prejudice to the rights of the owner of the land or other rights or interests in the land as to all other uses of the land. The additional cost of complying with those rules or orders in order to protect the reservoir must be paid by the natural gas public utility or common carrier of carbon dioxide."

Section 15. Section 82-10-304, MCA, is amended to read:

"82-10-304. Certificate of board required prior to use of eminent domain. (1) A natural gas public utility or common carrier of carbon dioxide desiring to exercise the right of eminent domain pursuant to Title 70, chapter 30, and this chapter for taking property to use for underground storage of natural gas or carbon dioxide shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain a certificate

from the board. The certificate must contain the following findings of the board:

- (a) that the underground sand, stratum, or formation sought to be taken is suitable for an underground reservoir for the storage of natural gas or carbon dioxide and that its use for that purpose is in the public interest;
 - (b) the amount of native gas, if any, remaining in the reservoir and the portion of gas recoverable; and
 - (c) that the applicant has in good faith sought to acquire the rights sought under this part.
- (2) The board may not issue the certificate until after a public hearing is held on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action."

Section 16. Section 82-10-305, MCA, is amended to read:

"82-10-305. Proceedings. After obtaining a certificate from the board, a natural gas public utility or common carrier of carbon dioxide desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas or carbon dioxide shall proceed as provided in this section. The natural gas public utility or common carrier of carbon dioxide shall present to the district court of the county in which the land is situated a complaint setting forth the purpose for which the property is sought to be taken, a description of the property sought to be taken, and the names of the owners of the property as shown by the records of the county. The utility shall file the certificate of the board as a part of its complaint, and an order by the court granting the complaint may not be entered without the certificate being filed with the complaint. Subsequent proceedings must follow the procedure provided by Title 70, chapter 30."

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