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Senator Bobby Singleton
11 South Union Street, Suite 740
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RE: SB 230 – Dealing with Pore Space

Senator Singleton,

As a resident of Choctaw County and a landowner/mineral interest owner, I wanted to contact you about Senate Bill 230 (a copy is attached/enclosed for your easy review) which has been introduced in the legislature. This legislation primarily deals with who is to be deemed the owner of “pore space”. The matter of “pore space” is a new development in the oil and gas industry. As background information, be advised that in the environmental world, it has now become financially beneficial for certain industries to store carbon dioxide that they produce underground. The area where carbon dioxide is stored underground is called “pore space”. The storage of carbon dioxide in pore spaces creates an issue as to who owns the pore space. Is the pore space owned by the person who owns the mineral rights, or is it owned by the person who owns the surface?

This issue will soon be a very important issue to the people in Choctaw County as there are going to soon be efforts made to build a pipeline from counties north of Choctaw County into Choctaw County. The pipeline will carry carbon dioxide that is produced in other areas of the state. Our county is a county that has the geological ability to store carbon dioxide. This developing environmental technology will present a financial windfall for our county.

I am convinced that the majority of people in Choctaw County would much prefer that the ownership of pore space (and thus entitled to receive money for storage rights) be with the people who own the mineral rights where the pore space is located. However, Senate Bill 230 makes a determination that pore space is owned by the surface owners. I am strongly opposed to the passage of this Bill.

This proposed legislation that grants “pore space” to the surface owners is controversial. While similar legislation has been approved in some states, it is my understanding that the largest oil-producing state in the country, Texas, has rejected this legislation. That act of rejection is telling and certainly needs to be taken into consideration.

There are two primary objections to this legislation:

- (1) Common sense tells you that pore space should be owned by the mineral owners and not the surface owners. When people retain or purchase mineral rights, it is fully expected that anything below the surface belongs to the owners of the oil, gas, and minerals. Carbon dioxide placed into pore spaces is, without a question a gas. When gases such as nitrogen and hydrogen sulfide are captured in oil and gas production they have always been deemed as belonging to the mineral owners.
- (2) The second objection lies with language found in proposed §9-17-164 (d) (1) (2) (3) and (4). This language places a potentially huge financial obligation on the State of Alabama to assume all financial obligations and liabilities that may arise should environmental issues arise with the storage of carbon dioxide in “pore spaces”. Why should the State incur this liability that was created by big industrial companies that produce the carbon dioxide? I draw your attention to the Alabama Department of Environmental Management (ADEM) rules governing landfills. People who operate landfills are required to post a bond (closure bond) to cover the cost of monitoring landfills for 30 years after a landfill is closed. It seems logical to require something similar from the big industrial companies that create the carbon dioxide.

One might question the rationale of this legislation. I am convinced that the sole motivating reason for this legislation is the simple fact that it is easier and less costly to the oil industry to determine title to the surface than it is to the minerals. That is simply the wrong reason to take away property rights from people. This legislation certainly raises constitutional issues dealing with the taking of property by state action without due process.

Please understand that I have no objection to the concept of storing carbon dioxide in pore spaces. In fact, it seems to be a wise environmental move. However, Senate Bill 230 which takes away the rights of mineral interest owners is not needed. Ownership should either be placed with the owner of the minerals or let the courts determine ownership.

Thank you for reviewing this matter, and I hope you will vote against this legislation and encourage your colleagues to do the same.

Feel free to contact me if you have any questions.

Sincerely yours,

J. Lee McPhearson

JLM/lt
enclosure