

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 30878
ORDER NO. 33538

IN THE MATTER OF A HEARING CALLED ON A MOTION OF THE COMMISSION TO CONSIDER THE APPLICATION OF SUMMIT CARBON STORAGE #3, LLC TO CONSIDER THE AMALGAMATION OF THE STORAGE RESERVOIR PORE SPACE, IN WHICH THE COMMISSION MAY REQUIRE THAT THE PORE SPACE OWNED BY NONCONSENTING OWNERS BE INCLUDED IN THE GEOLOGIC STORAGE, AS REQUIRED TO OPERATE THE SUMMIT CARBON STORAGE #3, LLC STORAGE FACILITY LOCATED IN SECTION 36, TOWNSHIP 143 NORTH, RANGE 87 WEST, SECTIONS 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, AND 36, TOWNSHIP 143 NORTH, RANGE 86 WEST, SECTIONS 1, 2, 11, 12, 13, 14, AND 24, TOWNSHIP 142 NORTH, RANGE 87 WEST, SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, AND 35, TOWNSHIP 142 NORTH, RANGE 86 WEST, AND SECTIONS 6, 7, 17, 18, 19, AND 20, TOWNSHIP 142 NORTH, RANGE 85 WEST, OLIVER COUNTY, ND, IN THE BROOM CREEK FORMATION, PURSUANT TO NORTH DAKOTA CENTURY CODE SECTION 38-22-10.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 11th of June, 2024. The hearing ran June 11 through June 13, 2024.
- (2) Case No. 30878 is a motion of the Commission to consider the amalgamation of storage reservoir pore space, pursuant to a Storage Agreement by Summit Carbon Storage #3, LLC (SCS #3) for use of pore space falling within portions of Section 36, Township 143 North, Range 87

West; Sections 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 143 North, Range 86 West; Sections 1, 2, 11, 12, 13, 14, and 24, Township 142 North, Range 87 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, and 35, Township 142 North, Range 86 West; and Sections 6, 7, 17, 18, 19, and 20, Township 142 North, Range 85 West, Oliver County, North Dakota, in the Broom Creek Formation, and to determine it has been signed, ratified, or approved by owners of interest owning at least sixty percent of the pore space interest within said lands, pursuant to North Dakota Century Code (NDCC) Section 38-22-10.

(3) Case Nos. 30878, 30869, 30870, 30871, 30872, 30873, 30874, 30875, 30876, 30877, 30879, and 30880 were combined for the purposes of hearing.

(4) Case No. 30869, also heard on the June 11, 2024 docket, is an application by Summit Carbon Storage #1, LLC (SCS #1) for an order requesting consideration for the geologic storage of carbon dioxide in the Broom Creek Formation from the Midwest Carbon Express Pipeline (MCE Pipeline) in the storage facility located in Sections 31, 32, 33, and 34, Township 142 North, Range 87 West; Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, and 36, Township 141 North, Range 88 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 141 North, Range 87 West; Sections 1, 2, 3, and 12, Township 140 North, Range 88 West; and Sections 4, 5, 6, and 7, Township 140 North, Range 87 West, Mercer, Morton, and Oliver Counties, North Dakota, pursuant to North Dakota Administrative Code (NDAC) Chapter 43-05-01.

(5) Case No. 30870, also heard on the June 11, 2024 docket, is a motion of the Commission to consider the amalgamation of storage reservoir pore space, pursuant to a Storage Agreement by SCS #1 for use of pore space falling within portions of Sections 31, 32, 33, and 34, Township 142 North, Range 87 West; Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, and 36, Township 141 North, Range 88 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 141 North, Range 87 West; Sections 1, 2, 3, and 12, Township 140 North, Range 88 West; and Sections 4, 5, 6, and 7, Township 140 North, Range 87 West, Mercer, Morton, and Oliver Counties, North Dakota, in the Broom Creek Formation, and to determine it has been signed, ratified, or approved by owners of interest owning at least sixty percent of the pore space interest within said lands, pursuant to NDCC Section 38-22-10.

(6) Case No. 30871, also heard on the June 11, 2024 docket, is a motion of the Commission to determine the amount of financial responsibility required of SCS #1 for the geologic storage of carbon dioxide from the MCE Pipeline in the storage facility located in Sections 31, 32, 33, and 34, Township 142 North, Range 87 West; Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, and 36, Township 141 North, Range 88 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 141 North, Range 87 West; Sections 1, 2, 3, and 12, Township 140 North, Range 88 West; and Sections 4, 5, 6, and 7, Township 140 North, Range 87 West, Mercer, Morton, and Oliver Counties, North Dakota, in the Broom Creek Formation, pursuant to NDAC Section 43-05-01-09.1.

(7) Case No. 30872, also heard on the June 11, 2024 docket, is a motion of the Commission to consider establishing the field and pool limits for lands located in Sections 31, 32, 33, and 34, Township 142 North, Range 87 West; Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, and 36, Township 141 North, Range 88 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, Township 141 North, Range 87 West; Sections 1, 2, 3, and 12, Township 140 North, Range 88 West; and Sections 4, 5, 6, and 7, Township 140 North, Range 87 West, Mercer, Morton, and Oliver Counties, North Dakota, subject to the application of SCS #1 for the geologic storage of carbon dioxide in the Broom Creek Formation, and enact such special field rules as may be necessary.

(8) Case No. 30873, also heard on the June 11, 2024 docket, is an application by Summit Carbon Storage #2, LLC (SCS #2) for an order requesting consideration for the geologic storage of carbon dioxide in the Broom Creek Formation from the MCE Pipeline in the storage facility located in Sections 27, 28, 29, 32, 33, 34, and 35, Township 143 North, Range 88 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, Township 142 North, Range 88 West; Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 31, Township 142 North, Range 87 West; and Sections 1, 2, and 3, Township 141 North, Range 88 West, Mercer and Oliver Counties, North Dakota, pursuant to NDAC Chapter 43-05-01.

(9) Case No. 30874, also heard on the June 11, 2024 docket, is a motion of the Commission to consider the amalgamation of storage reservoir pore space, pursuant to a Storage Agreement by SCS #2 for use of pore space falling within portions of Sections 27, 28, 29, 32, 33, 34, and 35, Township 143 North, Range 88 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, Township 142 North, Range 88 West; Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 31, Township 142 North, Range 87 West; and Sections 1, 2, and 3, Township 141 North, Range 88 West, Mercer and Oliver Counties, North Dakota, in the Broom Creek Formation, and to determine it has been signed, ratified, or approved by owners of interest owning at least sixty percent of the pore space interest within said lands, pursuant to NDCC Section 38-22-10.

(10) Case No. 30875, also heard on the June 11, 2024 docket, is a motion of the Commission to determine the amount of financial responsibility required of SCS #2 for the geologic storage of carbon dioxide from the MCE Pipeline in the storage facility located in Sections 27, 28, 29, 32, 33, 34, and 35, Township 143 North, Range 88 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, Township 142 North, Range 88 West; Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 31, Township 142 North, Range 87 West; and Sections 1, 2, and 3, Township 141 North, Range 88 West, Mercer and Oliver Counties, North Dakota, in the Broom Creek Formation, pursuant to NDAC Section 43-05-01-09.1.

(11) Case No. 30876, also heard on the June 11, 2024 docket, is a motion of the Commission to consider establishing the field and pool limits for lands located in Sections 27, 28, 29, 32, 33, 34, and 35, Township 143 North, Range 88 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, Township 142 North, Range 88 West; Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 31, Township 142 North,

Range 87 West; and Sections 1, 2, and 3, Township 141 North, Range 88 West, Mercer and Oliver Counties, North Dakota, subject to the application of SCS #2 for the geologic storage of carbon dioxide in the Broom Creek Formation, and enact such special field rules as may be necessary.

(12) Case No. 30877, also heard on the June 11, 2024 docket, is an application by SCS #3 for an order requesting consideration for the geologic storage of carbon dioxide in the Broom Creek Formation from the MCE Pipeline in the storage facility located in Section 36, Township 143 North, Range 87 West; Sections 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 143 North, Range 86 West; Sections 1, 2, 11, 12, 13, 14, and 24, Township 142 North, Range 87 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, and 35, Township 142 North, Range 86 West; and Sections 6, 7, 17, 18, 19, and 20, Township 142 North, Range 85 West, Oliver County, North Dakota, pursuant to NDAC Chapter 43-05-01.

(13) Case No. 30879, also heard on the June 11, 2024 docket, is a motion of the Commission to determine the amount of financial responsibility required of SCS #3 for the geologic storage of carbon dioxide from the MCE Pipeline in the storage facility located in Section 36, Township 143 North, Range 87 West; Sections 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 143 North, Range 86 West; Sections 1, 2, 11, 12, 13, 14, and 24, Township 142 North, Range 87 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, and 35, Township 142 North, Range 86 West; and Sections 6, 7, 17, 18, 19, and 20, Township 142 North, Range 85 West, Oliver County, North Dakota, in the Broom Creek Formation, pursuant to NDAC Section 43-05-01-09.1.

(14) Case No. 30880, also heard on the June 11, 2024 docket, is a motion of the Commission to consider establishing the field and pool limits for lands located in Section 36, Township 143 North, Range 87 West; Sections 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 143 North, Range 86 West; Sections 1, 2, 11, 12, 13, 14, and 24, Township 142 North, Range 87 West; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, and 35, Township 142 North, Range 86 West; and Sections 6, 7, 17, 18, 19, and 20, Township 142 North, Range 85 West, Oliver County, North Dakota, subject to the application of SCS #3 for the geologic storage of carbon dioxide in the Broom Creek Formation, and enact such special field rules as may be necessary.

(15) The record in these matters was left open to receive additional information from SCS #1, SCS #2, and SCS #3. Such information was received on June 24, 2024 and the record was closed.

(16) The Commission gave at least a thirty-day public notice and comment period for the draft storage facility permit and issued all notices using methods required of all entities under NDCC Section 38-22-06 and NDAC Section 43-05-01-08. Publications were made in The Bismarck Tribune on April 17, May 1, and May 8, 2024 and the Center Republican on April 18, May 9, and May 16, 2024. SCS #3 hand-delivered affidavits to the Commission on June 11, 2024 stating it provided at least a forty-five day notice as required by NDAC Section 43-05-01-08. The comment period for written comments ended at 5:00 PM CDT June 10, 2024. The hearing was open to the public to appear and provide comments.

(17) Several landowners filed petitions to intervene in these combined matters and motions were also filed. The discussion of these is covered in Order Nos. 33529, 33533, and 33537 and are included herein by reference.

(18) Order No. 33537 entered in Case No. 30877 created the KJ Hintz Broom Creek Storage Facility.

(19) The plan for amalgamation proposed by SCS #3 includes a Storage Agreement for the Broom Creek Formation for certain lands in Oliver County, North Dakota.

(20) The area proposed to be included within the amalgamation area of the storage facility is as follows:

TOWNSHIP 143 NORTH, RANGE 87 WEST
THE E/2 AND SW/4 OF SECTION 36,

TOWNSHIP 143 NORTH, RANGE 86 WEST
ALL OF SECTIONS 20, 29, 31, 32, 33, 34, AND 35, THE SE/4 SE/4 OF SECTION 19, THE W/2 OF SECTION 21, THE NW/4 AND S/2 OF SECTION 28, THE S/2 SW/4 AND E/2 OF SECTION 30, AND THE W/2 OF SECTION 36,

TOWNSHIP 142 NORTH, RANGE 87 WEST
ALL OF SECTIONS 1, 12, AND 13, THE S/2 NE/4 AND SE/4 OF SECTION 2, THE E/2 OF SECTION 11, THE NE/4 OF SECTION 14, AND THE NE/4 AND E/2 SE/4 OF SECTION 24,

TOWNSHIP 142 NORTH, RANGE 86 WEST
ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 33, AND 34, THE NE/4 NE/4, W/2 E/2, AND W/2 OF SECTION 24, THE W/2 NE/4, NW/4, N/2 SW/4, AND NW/4 SE/4 OF SECTION 25, THE N/2, NE/4 SW/4, W/2 SW/4, AND N/2 SE/4 OF SECTION 26, THE N/2 OF SECTION 30, THE NE/4, N/2 NW/4, N/2 SE/4, AND SE/4 SE/4 OF SECTION 32, AND THE W/2 NW/4 OF SECTION 35,

TOWNSHIP 142 NORTH, RANGE 85 WEST
ALL OF SECTION 18, THE W/2 OF SECTION 6, THE W/2, W/2 NE/4, NW/4 SE/4, AND THE S/2 SE/4 OF SECTION 7, THE W/2 W/2 OF SECTION 17, THE N/2 N/2 OF SECTION 19, AND THE NW/4 NW/4 OF SECTION 20.

ALL IN OLIVER COUNTY AND COMPRISING OF 31,238.68 ACRES, MORE OR LESS.

(21) SCS #3 is proposing a one-phase formula for the calculation of tract participation, allocating 100% to surface acres.

“Surface acres” means the number of acres within each respective tract.

(22) Pursuant to NDCC Section 47-31-03, title to pore space in all strata underlying surface lands and waters is vested in the owner of the overlying surface estate.

SCS #3 did not find instances of pore space being severed from the surface estate as allowed prior to April 9, 2009.

(23) A one-phase formula based on surface acres will equitably compensate owners farther away from the injection well that will eventually have pore space occupied by carbon dioxide. SCS #3 testified to the limitations of seismic time-lapse monitoring and to a lack of history matched data for carbon dioxide saturation rates in the Broom Creek Formation for a pore volume allocation methodology that would fairly apportion use of pore space. Computational modeling performed by SCS #3 and reviewed by the Commission supports SCS #3's assessment.

The Commission believes uncertainties related to capillary trapping and relative permeability hysteresis, and a lack of local area history matching data from injection of carbon dioxide into the saline Broom Creek Formation reservoir provides reasonable doubt for the utility of a pore volume formula. The Commission believes the 100% weighting on surface acreage is acceptable and that the one-phase formula is protective of correlative rights and should not be modified.

(24) SCS #3 delineated the tracts to be utilized through computational modeling based on site characterization as required by NDAC Section 43-05-01-05.1. The data acquired during site characterization as well as the reservoir model and all inputs were provided to the Commission. The Commission evaluated the storage reservoir utilizing data acquired during site characterization and other publicly available data before performing computational simulation. The Commission concludes that SCS #3's inclusion of pore space that will be affected by the project has been adequately delineated.

(25) The Storage Agreement contains reasonable and equitable provisions for:

- (a) The amalgamation of pore space interests for the storage of carbon dioxide within said pore spaces of the storage reservoir.
- (b) The division of interest or formula for the apportionment and allocation of carbon dioxide to be stored.
- (c) The measurement of quantity of carbon dioxide injected into the pore spaces underlying the delineated storage facility.
- (d) The enlargement or reduction of the delineation of pore space utilized for geologic storage of carbon dioxide which may be warranted by review pursuant to NDAC Section 43-05-01-05.1(4).
- (e) The time when the Storage Agreement shall become effective.

- (f) The time when, conditions under, and the method by which the Storage Agreement shall be or may be terminated and its affairs wound up.

(26) Such amalgamation of the storage reservoir's pore space and the Storage Agreement are in the public interest, and require procedures that promote, in a manner equitable to all interested, cooperative management, thereby ensuring the maximum use of natural resources, and that said Storage Agreement, as contained therein, appears to conform and comply with the provisions and requirements of NDCC Section 38-22-08.

(27) NDCC Section 38-22-08(4) requires the storage operator to make a good-faith effort to get the consent of all persons who own the storage reservoir's pore space and NDCC Section 38-22-08(5) requires the storage operator to obtain the consent of persons who own at least sixty percent of the storage reservoir's pore space. SCS #3 testified that through good-faith negotiations with over 450 landowners, it acquired pore space agreements for over 146,500 acres and during those negotiations made changes to the pore space agreement, including a 50% increase in the royalty payment rate, the addition of a Favored Nations clause, and offering of a no surface facilities clause (No Surface Occupancy). Exhibit 5A, 5B, and 5C show SCS #1, SCS #2, and SCS #3 have leased approximately 89.14%, 92.43%, and 96.77%, respectively, across the three proposed storage facilities. A good-faith effort does not always result in an agreement between parties and a good-faith effort was made by SCS #3 as indicated by the large percentage of consenting pore space owners.

(28) NDCC Section 38-22-10 provides that the Commission may require that the pore space owned by nonconsenting owners be included in a storage facility and subject to geological storage, if a storage operator does not obtain the consent of all persons who own the storage reservoir's pore space. All nonconsenting pore space owners are or will be equitably compensated pursuant to NDCC Section 38-22-08(14).

(29) Pursuant to NDAC Section 43-05-01-08(2)(e), the required notice given by SCS #3 included a statement that amalgamation of the storage reservoir's pore space is required to operate the storage facility, that the Commission may require the pore space owned by nonconsenting owners be included in the storage facility and subject to geologic storage, and that the amalgamation of pore space will be considered at the hearing.

(30) The approval of this application is in the public interest by promoting the policy stated in NDCC Section 38-22-01.

IT IS THEREFORE ORDERED:

(1) The amalgamation of pore space in the KJ Hintz Broom Creek Storage Facility in Oliver County, North Dakota, is hereby approved.

(2) The Storage Agreement for the Broom Creek Formation is hereby incorporated in this order by reference insofar as the Commission has jurisdiction and said Storage Agreement for the amalgamated pore space therein is approved; and that if said Storage Agreement does not in all

respects conform to and comply with the provisions and requirements under North Dakota Century Code (NDCC) Chapter 38-22, the statute shall prevail.

(3) The amalgamated pore space is hereby defined as the following described tracts of land in Oliver County, North Dakota:

TOWNSHIP 143 NORTH, RANGE 87 WEST
THE E/2 AND SW/4 OF SECTION 36,

TOWNSHIP 143 NORTH, RANGE 86 WEST
ALL OF SECTIONS 20, 29, 31, 32, 33, 34, AND 35, THE SE/4 SE/4 OF SECTION 19, THE W/2 OF SECTION 21, THE NW/4 AND S/2 OF SECTION 28, THE S/2 SW/4 AND E/2 OF SECTION 30, AND THE W/2 OF SECTION 36,

TOWNSHIP 142 NORTH, RANGE 87 WEST
ALL OF SECTIONS 1, 12, AND 13, THE S/2 NE/4 AND SE/4 OF SECTION 2, THE E/2 OF SECTION 11, THE NE/4 OF SECTION 14, AND THE NE/4 AND E/2 SE/4 OF SECTION 24,

TOWNSHIP 142 NORTH, RANGE 86 WEST
ALL OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 33, AND 34, THE NE/4 NE/4, W/2 E/2, AND W/2 OF SECTION 24, THE W/2 NE/4, NW/4, N/2 SW/4, AND NW/4 SE/4 OF SECTION 25, THE N/2, NE/4 SW/4, W/2 SW/4, AND N/2 SE/4 OF SECTION 26, THE N/2 OF SECTION 30, THE NE/4, N/2 NW/4, N/2 SE/4, AND SE/4 SE/4 OF SECTION 32, AND THE W/2 NW/4 OF SECTION 35,

TOWNSHIP 142 NORTH, RANGE 85 WEST
ALL OF SECTION 18, THE W/2 OF SECTION 6, THE W/2, W/2 NE/4, NW/4 SE/4, AND THE S/2 SE/4 OF SECTION 7, THE W/2 W/2 OF SECTION 17, THE N/2 N/2 OF SECTION 19, AND THE NW/4 NW/4 OF SECTION 20.

ALL IN OLIVER COUNTY AND COMPRISING OF 31,238.68 ACRES, MORE OR LESS.

(4) The Storage Agreement for the Broom Creek Formation identified the storage reservoir as the interval containing the amalgamated pore space defined as the stratigraphic interval from below the top of the Spearfish/Opeche Formations (Upper Confining Zone), found at a depth of 5,587 feet below the Kelly Bushing, to above the base of the Amsden Formation (Lower Confining Zone), found at a depth of 6,421 feet below the Kelly Bushing, as identified by the Array Induction Gamma log run in the Milton Flemmer #1 well (File No. 38594), located in NW/4 NE/4 of Section 35, Township 141 North, Range 88 West, Mercer County, North Dakota.

The average depths for the storage reservoir, as identified within the limits of the facility area, hereinbefore described in Paragraph (3) above, by the well logging suite performed on the Milton Flemmer #1, three 3D seismic surveys, and one 5 mile long 2D seismic line covering an area totaling 208 miles in and around the Slash Lazy H #5 well (File No. 38701) are defined as the

stratigraphic interval from below the top of the Spearfish/Opeche Formations, found at an average depth of 5,336 total vertical feet, to above the base of the Amsden Formation, found at an average depth of 6,033 total vertical feet.

(5) The injection of carbon dioxide shall only be permitted within the injection zone of the storage reservoir, hereinbefore described in Paragraph (4) above. The Commission defines the Broom Creek Formation (Injection Zone) as the stratigraphic interval from below the base of the undifferentiated Spearfish/Opeche Formations, found at a depth of 5,565 feet below the Kelly Bushing, to above the top of the Amsden Formation, found at a depth of 5,840 feet below the Kelly Bushing, as identified by the Array Induction Gamma log performed in the Slash Lazy H #5 well (File No. 38701), located in Lot 1 of Section 6, Township 142 North, Range 86 West, Oliver County, North Dakota.

(6) The injection of carbon dioxide into the amalgamated pore space by the operator for the purpose of storage of carbon dioxide is authorized through the KJ Hintz #1 well (File No. 40127), located 426 feet from the north line and 546 feet from the east line of Section 17, Township 142 North, Range 86 West, Oliver County, North Dakota, and the KJ Hintz #2 well (File No. 40128), located 526 feet from the north line and 546 feet from the east line of Section 17, Township 142 North, Range 86 West, Oliver County, North Dakota; provided, however, that prior to the commencement of such injection the operator shall obtain permits as required under North Dakota Administrative Code (NDAC) Chapter 43-05-01.

(7) The termination of the amalgamation of lands hereinbefore described in Paragraph (3) above shall be as prescribed in the Storage Agreement or at project completion as provided by NDCC Section 38-22-17; and that notwithstanding any provisions to the contrary, in the event that the operator fails to commence or ceases storage operations, the Commission, upon its own motion, after notice and hearing, may consider rescinding this order, or any portion thereof, so that this order of amalgamation will terminate and cease to exist.

(8) Summit Carbon Storage #3, LLC shall provide an affidavit affirming it has obtained executed agreements to store carbon dioxide within the pore space located beneath all lands within the storage facility that are located on State land. The effective date of the amalgamation of pore space in the lands hereinbefore described in Paragraph (3) above shall be provided by order of the Director of the North Dakota Oil and Gas Division after said affidavit is received by the Commission.

(9) No well, other than those proposed in Order No. 33537, shall be hereafter drilled and completed in or inject into the amalgamated pore space, as defined herein, or otherwise penetrate the amalgamated pore space, without order of the Commission after due notice and hearing.

(10) This order shall be reviewed when a review of Order No. 33537 is conducted.

(11) This order shall cover all of the amalgamated pore space, as defined herein, and continues in full force and effect until further order of the Commission.

Dated this 12th day of December, 2024.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

/s/ Doug Burgum, Governor

/s/ Drew H. Wrigley, Attorney General

/s/ Doug Goehring, Agriculture Commissioner