

STATE OF SOUTH DAKOTA)
)SS
COUNTIES OF MCPHERSON, SPINK,)
BROWN, AND EDMUNDS)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

PETER HELFENSTEIN, JR., ROTT FARMS, INC., KETTERLING FARM, LLC, VILHAUER LAND LIMITED PARTNERSHIP, BRIAN HOFFMAN THE DAVID AND VALERIE RATH LIVING TRUST, COLIN AND MARY BETH HOFFMAN, JEROME G. HOFFMAN, MICHAEL AND NANCY KLIPFEL, ALDEN AND WILMA FLAKOLL, SHANTEL C. SCHUMACK, LEROY AND JOAN WEISZHAAR, and WADE AND JUDY WEISZHAAR,

Plaintiffs,

vs.

SCS CARBON TRANSPORT LLC, a/k/a SUMMIT CARBON SOLUTIONS,

Defendant.

**ORDER GRANTING
SCS CARBON TRANSPORT LLC'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING LANDOWNERS'
MOTION TO CONTINUE**

45CIV22-000014

SCS CARBON TRANSPORT LLC,

Plaintiff,

vs.

GERALDINE H. SAYLER JORDRE, DENNIS WOLFF, QUINTON WOLFF, R & C FEICKERT LAND LLC, REBECCA D. MICHAELSOHN, DAVID MELLAND, ROTT RANCH LIMITED PARTNERSHIP, THE ROGER E. MEYER AND ELIZABETH I. MEYER REVOCABLE LIVING TRUST, SUSIE K. TREFTZ, PAMALA KESSLER, GARY AND SHIRLEY WOLFF LIVING TRUST, WILLARD GOESHEL, LARVINA W

45CIV22-000018

MEIER, KEN STUGELMAYER, MARSHA M. VOSSLER, THE MARK M. VOSSLER AND MARSHA M. VOSSLER REVOCABLE TRUST, MARILYN D. NELSON, MARK THOMPSON, THE ESTATE OF ALBERT EUGENE ERDMANN, CHARLES E. SCHAUNAMAN, JEROME R. WAHL, THE VIRGINIA L. BREITAG LIVING TRUST, and SIEH FARMS, LLC,

Defendants.

BRAUN FAMILY TRUST 2020, B&L FISCHBACH FARMS, MARGARET ELLETT LIVING TRUST, KEN OLSON TRUST 2010, OLSON FAMILY TRUST 2019, FRANCOLI FAMILY LIMITED PARTNERSHIP, FISCHBACH REAL ESTATE LP, ED and JOELL FISCHBACH, ARMADALE LIMITED PARTNERSHIP, PAUL FISCHBACH TRUST 2012 & DAWN FISCHBACH TRUST 2012, J&S PARTNERSHIP, MYRON O. HAMMER CREDIT SHELTER TESTAMENTARY TRUST, and JAMES AND ALTA SMITH,

Plaintiffs,

vs.

SCS CARBON TRANSPORT LLC, a Delaware Limited Liability Company, a/k/a SUMMIT CARBON SOLUTIONS,

Defendant.

71CIV22-000047

JARED BOSSLY, BOSSLY REAL ESTATE LIMITED PARTNERSHIP, KENNETH and DIANNA SHAFER, ESTATE OF DONALD A. SCHAUNAMAN, CRAIG SCHAUNAMAN, KIRK SCHAUNAMAN, JOYCE DAHME, TODD and DONNA ROZELL, SCOTT ROZELL, DENNIS and

06CIV22-000253

JEAN HASELHORST, MILTON and
RHONDA HASELHORST, SETH KLIPFEL,
and MICHAEL AND NANCY KLIPFEL,

Plaintiffs,

vs.

SCS CARBON TRANSPORT LLC, a
Delaware Limited Liability Company, a/k/a
SUMMIT CARBON SOLUTIONS,

Defendant.

DELORES SCHUMACHER REVOCABLE
TRUST, and JOHN AND STEPHANIE
JUNG,

Plaintiffs,

vs.

SCS CARBON TRANSPORT LLC, a/k/a
SUMMIT CARBON SOLUTIONS,

Defendant.

22CIV22-000020

**ORDER GRANTING
SCS CARBON TRANSPORT LLC'S MOTION FOR SUMMARY JUDGMENT AND
DENYING LANDOWNERS' MOTION TO CONTINUE**

This matter came to be heard on the 14th day of March, 2023, before the Honorable Richard A. Sommers on SCS Carbon Transport LLC's Motion for Summary Judgment, filed on February 10, 2023, and on Landowners'* Motion to Continue, filed on February 28, 2023. Said motions having been argued by all parties appearing at said hearing, SCS Carbon Transport LLC having been represented by Justin L. Bell of May, Adam, Gerdes & Thompson LLP, and Landowners having been represented by Brian E. Jorde of Domina Law Group; all parties having had an opportunity to present arguments; and on the basis of the hearing on said motions, the arguments of counsel and the records and files of this action, including supplemental briefing and materials related to the issue taken under advisement by this Court; and good cause appearing, which is

* The term "Landowners" refers collectively to the Plaintiffs in nos. 45CIV22-000014, 71CIV22-000047, 06CIV22-000253, and 22CIV22-000020 and the Defendants in no. 45CIV22-000018.

further explained in the Court’s March 28, 2023 Order and April 19, 2023 Letter Decision, which are fully incorporated herein by reference, it is therefore:

ORDERED, ADJUDGED, AND DECREED that SCS Carbon Transport LLC’s Motion for Summary Judgment, filed February 10, 2023, is hereby **GRANTED**. Landowner Plaintiffs’ Amended Complaint (case nos. 45CIV22-000014, 71CIV22-000047, 06CIV22-000253, and 22CIV22-000020), filed on October 27, 2022, and Landowner Defendants’ Counterclaim (case no. 45CIV22-000018), filed on August 29, 2022, are **DISMISSED** with prejudice;

ORDERED, ADJUDGED, AND DECREED that Landowners’ Motion to Continue, filed February 14, 2023, is **DENIED**;

ORDERED, ADJUDGED, AND DECREED that, pursuant to SDCL § 21-35-31, SCS Carbon Transport LLC is granted the declaratory judgment and the injunctive relief it seeks in its Restated Counterclaim (case nos. 45CIV22-000014, 71CIV22-000047, 06CIV22-000253, and 22CIV22-000020), filed on November 7, 2022, and in its Complaint (case no. 45CIV22-000018), filed on July 20, 2022, including authorizing access for the purpose of conducting civil, environmental, and archaeological/cultural, surveys and examinations, including any necessary geotechnical/soil borings, archaeological/cultural resource surveys and examinations, and deep dig surveys and examinations, and including any necessary core or water sampling activities subject to any conditions, for the properties described as follows:

Landowner	County	APN	Legal Description
Peter Helfenstein, Jr.	McPherson	3764	SEC 19-T128N-R70W: NW1/4
	McPherson	4719	SEC 24-T128N-R71W: N1/2NE1/4
	McPherson	4721	SEC 24-T128N-R71W: N1/2NW1/4
	McPherson	4636	SEC 13-T128N-R71W: NE1/4SW1/4
	McPherson	4652	SEC 14-T128N-R71W: NW1/4SE1/4
	McPherson	4642	SEC 14-T128N-R71W: SW1/4NE1/4
	McPherson	4647	SEC 14-T128N-R71W: SE1/4NW1/4
	McPherson	4616	SEC 10-T128N-R71W: SE1/4SE1/4
Rott Farms, Inc.	McPherson	1369	SEC 18-T125N-R67W: SW1/4
	McPherson	1368	SEC 18-T125N-R67W: NW1/4
	McPherson	1005	SEC 18-T127N-R67W: S1/2NE1/4
	McPherson	1014	SEC 19-T127N-R67W: LOTS 3, 4, 5, 6, 11 & 12
	McPherson	350	SEC 36-T127N-R68W: E1/2SW1/4
Ketterling Farm, LLC	McPherson	1186	SEC 16-T126N-R68W: SW1/4

Landowner	County	APN	Legal Description
Vilhauer Land Limited Partnership	McPherson	2758	SEC 35-T127N-R69W: NW1/4
	McPherson	2751	SEC 34-T127N-R69W: SE1/4NE1/4; N1/2NE1/4
	McPherson	2707	SEC 27-T127N-R69W: S1/2SE1/4
	McPherson	2702	SEC 27-T127N-R69W: S1/2NE1/4; NW1/4NE1/4
	McPherson	2703	SEC 27-T127N-R69W: NW1/4
	McPherson	2673	SEC 22-T127N-R69W: SW1/4
	McPherson	2708	SEC 28-T127N-R69W: NE1/4
	McPherson	2670	SEC 21-T127N-R69W: SE1/4
	McPherson	2668	SEC 21-T127N-R69W: E1/2SW1/4
	McPherson	2665	SEC 20-T127N-R69W: SE1/4
Brian Hoffman	McPherson	1128	SEC 6-T126N-R68W: LOT 6
	McPherson	2761	SEC 35-T127N-R69W: SW1/4SE1/4
The David and Valerie Rath Living Trust dated December 02, 2013	McPherson	1377	SEC 20-T12N5-R67W: SW1/4
	McPherson	1371	SEC 19-T125N-R67W: NE1/4
Colin and Mary Beth Hoffman	McPherson	1184	SEC 16-T126N-R68W: N1/2NW1/4
	McPherson	1144	SEC 8-T126N-R68W: S1/2SE1/4
	McPherson	1141	SEC 6-T126N-R68W: NE1/4SW1/4; S1/2SW1/4
	McPherson	1131	SEC 7-T126N-R68W: NE1/4NE1/4
	McPherson	1149	SEC 9-T126N-R68W: SW1/4SE1/4
	McPherson	1148	SEC 9-T126N-R68W: SW1/4
Jerome G. Hoffman	McPherson	1185	SEC 16-T126N-R68W: S1/2NW1/4
Michael and Nancy Klipfel	McPherson	454	SEC 23-T128N-R66W: NW1/4
Alden and Wilma Flakoll	McPherson	474	SEC 28-T128N-R66W: NE1/4
	McPherson	477	SEC 28-T128N-R66W: SE1/4
Shantel C. Schumack	McPherson	975	SEC 12-T127N-R67W: NW1/4
Leroy and Joan Weiszhaar	McPherson	1248	SEC 27-T126N-R68W: NW1/4
Wade and Judy Weiszhaar	McPherson	1214	SEC 21-T126N-R68W: NW1/4
	McPherson	1212	SEC 21-T126N-R68W: N1/2NE1/4
Dennis Wolff	McPherson	3862	SEC 35-T128N-R70W: NW1/4SW1/4
Quinton Wolff	McPherson	3850	SEC 34-T128N-R70W: N1/2NE1/4
	McPherson	3851	SEC 34-T128-R70: S1/2NE1/4
	McPherson	3852	SEC 34-T128N-R70W: N1/2NW1/4
	McPherson	3853	SEC 34-T128-R70: S1/2NW1/4
R & C Feickert Land LLC	McPherson	3815	SEC 27-T128N-R70W: SW1/4
	McPherson	3822	SEC 28-T128N-R70W: SE1/4
	McPherson	3819	SEC 28-T128N-R70W: NE1/4
Rebecca D. Michaelsohn	McPherson	4644	SEC 14-T128N-R71W: NE1/4NW1/4
David Melland	McPherson	925	SEC 1-T127N-R67W: SE1/4

Landowner	County	APN	Legal Description
Rott Ranch Limited Partnership	McPherson	1665	SEC 12-T125N-R68W: NE1/4
Gary and Shirley Wolff Living Trust	McPherson	2643	SEC 17-T127N-R69W: S1/2SW1/4
	McPherson	8959	SEC 20-T127N-R69W: NW1/4 EXCEPT WOLF SUBDIVISION IN THE NW1/4 & NE1/4
Willard Goeshel	McPherson	2646	SEC 18-T127N-R69W: NE1/4
	McPherson	2651	SEC 18-T127N-R69W: E1/2SE1/4
	McPherson	2652	SEC 18-T127N-R69W: W1/2SE1/4
Ken Stugelmayer	McPherson	3779	SEC 21-T128N-R70W: N1/2SW1/4; SE1/4SW1/4
Marsha M. Vossler	McPherson	4654	SEC 14-T128N-R71W: SE1/4SE1/4
The Mark M. Vossler and Marsha M. Vossler Revocable Trust	McPherson	4651	SEC 14-T128N-R71W: NE1/4SE1/4
Marilyn D. Nelson	McPherson	496	SEC 33-T128N-R66W: NW1/4
Mark Thompson	McPherson	961	SEC 8-T127N-R67W: SE1/4
The Estate of Albert Eugene Erdmann	McPherson	1007	SEC 18-T127N-R67W: LOTS 2, 7, & 10
Braun Family Trust 2020	Spink	005294	SEC 34-T120N-R63W: ALL W OF RIV IN NE1/4
	Spink	005224	SEC 27-T120N-R63W: ALL W OF RIV IN SE1/4
Margaret Ellett Living Trust	Spink	003054	SEC 14-T117N-R63W: SE1/4
Ken Olson Trust 2010	Spink	001629	SEC 7-T118N-R62W: SE1/4
	Spink	001627	SEC 7-T118N-R62W: NE1/4
	Spink	001628	SEC 7-T118N-R62W: NW1/4
Olson Family Trust 2019	Spink	001701	SEC 20-T118N-R62W: NE1/4
	Spink	001634	SEC 8-T118N-R62W: SW1/4
Francoli Family Limited Partnership	Spink	005234	SEC 28-T120N-R63W: NE1/4
Armadale Limited Partnership	Spink	005225	SEC 27-T120N-R63W: SW1/4
	Spink	005223	SEC 27-T120N-R63W: NW1/4 LESS NW1/4 OF NW1/4

Landowner	County	APN	Legal Description
Myron O. Hammer Credit Shelter Testamentary Trust	Spink	007314	SEC 23-T119N-R63W: N1/2 OF N1/2 OF SE1/4
	Spink	007312	SEC 23-T119N-R63W: S 60A OF NE1/4
	Spink	007211	SEC 11-T119N-R63W: NW1/4
	Spink	007142	SEC 2-T119N-R63W: SW1/4 OF SW1/4
	Spink	007141	SEC 2-T119N-R63W: NW1/4 OF SW1/4
	Spink	007148	SEC 3-T119N-R63W: NE1/4 EX LOT H-1
	Spink	004511	SEC 34-T120N-R63W: ALL E OF RIV IN SE1/4
Jared Bossly	Brown	6495	SEC 20-T121N-R64W: SE
Bossly Real Estate Limited Partnership	Brown	6510	SEC 21-T121N-R64W: SW
	Brown	6476	SEC 19-T121N-R64W: SE
Estate Of Donald A. Schaunaman	Brown	5786	SEC 25-T123N-R65W: NE
Craig D. Schaunaman	Brown	5509	SEC 28-T123N-R64W: NW
	Brown	5524	SEC 29-T123N-R64W: NE
	Brown	5793	SEC 25-T123N-R65W: N2 SW
	Brown	5787	SEC 25-T123N-R65W: S2 NW
Kirk Schaunaman aka Kirk J. Schaunaman	Brown	5540	SEC 30-T123N-R64W: SE
	Brown	5541	SEC 30-T123N-R64W: SW
Todd and Donna Rozell	Brown	5923	SEC 12-T121N-R65W: W2 SE
Scott Rozell aka Scott A. Rozell	Brown	5927	SEC 13-T121N-R65W: W2 NE
	Brown	20091	SEC 33-T122N-R65W: SE
Seth Klipfel	Brown	7938	SEC 7-T128N-R65W: NE
Delores Schumacher Revocable Trust	Edmunds	1723	SEC 9-T124N-R67W: SW4
John and Stephanie Jung	Edmunds	2795	SEC 8-T123N-R66W: NW4

and,

ORDERED, ADJUDGED, AND DECREED that the above Landowners, their agents and representatives, and anyone acting in concert with them, are enjoined from interfering with SCS Carbon Transport, LLC's access for the purpose of surveying and examining said properties, including conducting civil, environmental, and archaeological/cultural surveys and examinations, including any necessary geotechnical/soil borings, archaeological/cultural resource surveys and examinations, and deep dig surveys and examinations, and including any necessary core or water sampling activities subject to any conditions.

[SIGNATURE PAGE FOLLOWS]

4/26/2023 10:36:41 AM

BY THE COURT:

Attest:
Young, Lisa
Clerk/Deputy



A handwritten signature in black ink, appearing to read "Richard A. Sommers", is written above a horizontal line.

The Honorable Richard A. Sommers
Circuit Court Judge