

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

RONALD ALVERSON
and SCS CARBON TRANSPORT LLC,

Plaintiffs,

v.

SPINK COUNTY, SOUTH DAKOTA;
SPINK COUNTY BOARD OF
COMMISSIONERS;
BRETT KNOX, in his official capacity
as a Spink County Commissioner;
BRIAN JOHNSON, in his official
capacity as a Spink County
Commissioner;
DUSTIN RISCHE, in his official
capacity as a Spink County
Commissioner;
SUZANNE SMITH, in her official
capacity as a Spink County
Commissioner; and
DAVE ALBRECHT, in his official
capacity as a Spink County
Commissioner,

Defendants.

No. 22-3023

COMPLAINT

INTRODUCTION

1. The Eighth Circuit has repeatedly held that federal law preempts state and local governments' efforts to impose their own standards on federally regulated pipelines. *See ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *cf. N. Nat. Gas Co. v. Iowa Utils. Bd.*, 377 F.3d 817 (8th Cir. 2004). Now, ignoring those rulings,

EXHIBIT

LO188

Spink County seeks to impose its own standards on an interstate pipeline. But its effort is preempted, invalid, and unenforceable.

2. Plaintiffs Ronald Alverson and SCS Carbon Transport LLC (“SCS” for short) bring this action seeking declaratory and injunctive relief against the enforcement of Spink County’s moratorium on pipeline permitting and construction and regulation of pipeline safety. The moratorium violates and is preempted by the federal Pipeline Safety Act and the Supremacy Clause of the U.S. Constitution because it impermissibly regulates safety aspects of SCS’s planned carbon dioxide pipeline.

PARTIES

3. Plaintiff Ronald Alverson is a citizen and resident of Lake County, South Dakota.

4. Plaintiff SCS Carbon Transport LLC is a limited liability company organized under Delaware law with its principal place of business in Ames, Iowa. SCS is authorized and in good standing to transact business in South Dakota.

5. Defendant Spink County, South Dakota is a county and body corporate under the laws of South Dakota.

6. Defendant Spink County Board of Commissioners is the board of commissioners and governing body for Spink County under the laws of South Dakota.

7. Defendant Brett Knox is a commissioner on the Spink County Board of Commissioners and is a resident of South Dakota. Mr. Knox is sued only in his official capacity as a Spink County Commissioner.

8. Defendant Brian Johnson is a commissioner on the Spink County Board of Commissioners and is a resident of South Dakota. Mr. Johnson is sued only in his official capacity as a Spink County Commissioner.

9. Defendant Dustin Rische is a commissioner on the Spink County Board of Commissioners and is a resident of South Dakota. Mr. Rische is sued only in his official capacity as a Spink County Commissioner.

10. Defendant Suzanne Smith is a commissioner on the Spink County Board of Commissioners and is a resident of South Dakota. Ms. Smith is sued only in her official capacity as a Spink County Commissioner.

11. Defendant Dave Albrecht is a commissioner on the Spink County Board of Commissioners and is a resident of South Dakota. Mr. Albrecht is sued only in his official capacity as a Spink County Commissioner.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiffs' claim arises under federal law, including the Supremacy Clause, U.S. Const. art. VI, cl. 2.

13. This Court is authorized to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65.

14. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all Defendants reside in this district and a substantial part of the events giving rise to Plaintiffs' claim occurred in this district.

FACTUAL ALLEGATIONS

Corn, Ethanol, and Carbon Dioxide in South Dakota

15. Corn is one of South Dakota's top commodities by volume and the State's most valuable agricultural commodity. Last year, South Dakota produced corn worth more than \$4.1 billion—which was \$1.3 billion more than the State's next most valuable crop (soybeans).¹

16. More than half of all corn harvested in South Dakota goes to ethanol production. In 2018, for example, the State produced 778 million bushels of corn, 396 million of which were used in ethanol production.²

17. And South Dakota is home to a significant percentage of the United States' ethanol production. In 2019, for example, the State's ethanol production accounted for approximately 8% of the Nation's total ethanol production.³ Most of the ethanol produced in South Dakota makes its way outside of the State.

18. Corn's value in South Dakota—and throughout the Nation—is inextricably tied to ethanol production.

19. The value of ethanol, and thus the price of corn, is affected by state and foreign regulations that target carbon dioxide (CO₂) emissions.

¹ See *2021 State Agriculture Overview*, U.S. Dep't of Agric., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=south%20dakota (last visited Dec. 9, 2022).

² See *Ethanol Plants Use Over Half of SD Corn*, S.D. Corn Utilization Council & S.D. Corn Growers Ass'n (July 22, 2020), <https://www.sdcorn.org/news/ethanol-plants-use-over-half-of-sd-corn>.

³ See *South Dakota State Energy Profile*, U.S. Energy Info. Admin., <https://www.eia.gov/state/print.php?sid=SD> (last updated June 16, 2022).

20. CO₂ is a byproduct of the fermentation process of producing ethanol from corn. CO₂ is not only a byproduct of ethanol plants but also a byproduct of numerous other manufacturing processes, including fertilizer ammonia production.

21. CO₂ is a greenhouse gas that poses environmental concerns if released into the atmosphere in large quantities.

22. Carbon capture and sequestration (CCS) is a process by which CO₂ is captured at the point of generation, transported, and then safely stored. CCS technology reduces greenhouse gas emissions by preventing the release of CO₂ into the atmosphere.

23. Carbon intensity measures the amount of carbon emitted per unit of energy consumed. Lower carbon emissions during fuel production result in a lower carbon intensity for that fuel.

24. Canada, for example, is a primary importer of ethanol from the United States, and South Dakota is one of the main sources of U.S. ethanol exports to Canada. In 2021, Canada imported approximately 1.3 billion liters of U.S. ethanol fuel—an 8% percent increase from 2020. Those imports are projected to reach a record 1.5 billion liters in 2022.⁴

25. Canada's increased demand for ethanol comes in part from recently enacted energy regulations that incentivize the production, sale, and use of low carbon intensity fuels. Canada's Clean Fuel Regulations (CFR), which became law in July 2022, impose a comprehensive set of fuel standards, including requirements that

⁴ See *Canada: Biofuels Annual*, Report No. CA2022-0019, U.S. Dep't of Agric. (Aug. 22, 2022), <https://www.fas.usda.gov/data/canada-biofuels-annual-8>.

fuel suppliers progressively reduce the carbon intensity of fuels sold in Canada.⁵ The CFR aims for a 15% decrease in the carbon intensity of gasoline and diesel used in Canada by 2030.

26. Energy regulations target carbon emissions in the United States too, increasing in-state demand for low carbon intensity fuels. California, for example, has adopted the Low Carbon Fuel Standard (LCFS), which requires ongoing reductions in the carbon intensity of fuels sold in the State.⁶ The LCFS considers emissions associated with the complete life cycle of fuel—from production to transportation to consumption. Under the LCFS, providers of low carbon intensity fuels generate credits. The value of those credits for ethanol plants has historically varied from \$50–\$200 per ton of CO₂ depending on demand.⁷ And the California Air Resources Board recognizes CCS as “an important strategy to reduce greenhouse gas (GHG) emissions and mitigate climate change.”⁸

27. Oregon has adopted a similar approach.⁹ Under its Clean Fuels Program, the State is targeting a 10% reduction in average carbon intensity from

⁵ See, e.g., *What are the Clean Fuel Regulations?*, Gov’t of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/about.html> (last updated July 7, 2022); *Compliance with the Clean Fuel Regulations*, Gov’t of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/compliance.html> (last updated July 20, 2022).

⁶ See, e.g., *Low Carbon Fuel Standard*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard> (last visited Dec. 9, 2022).

⁷ See *California Low Carbon Fuel Standard Credit Price*, Neste, <https://www.neste.com/investors/market-data/lcfs-credit-price> (last visited Dec. 9, 2022).

⁸ *Carbon Capture & Sequestration*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/carbon-capture-sequestration> (last visited Dec. 9, 2022).

⁹ See, e.g., *Clean Fuels Program Overview*, Oregon.gov, <https://www.oregon.gov/deq/ghgp/cfp/Pages/CFP-Overview.aspx> (last visited Dec. 9, 2022).

2015 levels by 2025, a 20% percent reduction by 2030, and a 37% reduction by 2035. Fuel providers and importers must show that the volume and type of fuel supplied meet annual standards. And businesses can generate credits for fuels that exceed those standards.

28. Other states have enacted similar low carbon initiatives and regulations.

29. The value of South Dakota ethanol production, and the value of corn in South Dakota—and throughout the Nation—depends on, and will likely increasingly depend on, carbon-reduction efforts of South Dakota ethanol facilities.

SCS's CO₂ Pipeline

30. SCS and its parent Summit Carbon Solutions, LLC are developing an interstate CO₂ pipeline and related facilities to facilitate CCS technology. When completed, the pipeline will transport CO₂ captured from more than 30 facilities (primarily ethanol plants but also some fertilizer plants) across South Dakota, North Dakota, Iowa, Minnesota, and Nebraska. The pipeline system will transport this CO₂ through a network of more than 1,900 miles of underground pipes across those five states and deliver it to geologically appropriate sequestration sites in North Dakota.

31. SCS will provide its CO₂ transportation services to the public for hire as a common carrier.

32. In South Dakota, the pipeline project is projected to involve more than 450 miles of pipeline, transporting CO₂ from both out-of-state and in-state facilities, including Dakota Ethanol, LLC in South Dakota.

33. The pipeline will travel through 18 counties in South Dakota: Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner.

34. The pipeline project is underway. SCS is in the process of surveying the routes for the project and securing the necessary permits. It is also negotiating with landowners for land access.

35. In South Dakota, SCS is engaging with the State's Public Utilities Commission (PUC) as part of the planning and permitting for the pipeline project. On February 7, 2022, SCS filed an application with the PUC for the siting permit required for the pipeline under South Dakota law.¹⁰

36. The pipeline project will help reduce the carbon footprint and environmental impact of ethanol production by facilitating the transportation and sequestration of CO₂, thereby reducing its release into the atmosphere, which in turn will reduce the carbon intensity of and enhance the long-term economic viability of South Dakota's ethanol and agriculture industries.

37. Ethanol plants whose CO₂ byproduct is transported through SCS's interstate pipeline—including Dakota Ethanol—will be equipped to produce carbon-neutral fuel by 2030 and will be better positioned to compete in energy markets that prefer or require fuels with low carbon intensity, including the Canada, California, and Oregon markets discussed above.

¹⁰ See *In the Matter of the Application by SCS Carbon Transport LLC for a Permit to Construct a Carbon Dioxide Transmission Pipeline*, Docket No. HP22-001 (S.D. Pub. Utils. Comm'n Feb. 7, 2022), <https://puc.sd.gov/dockets/HydrocarbonPipeline/2022/HP22-001.aspx>.

38. For example, through its use of SCS's pipeline, Dakota Ethanol expects to earn at least \$15 million per year in low carbon premiums.

39. Accordingly, South Dakota ethanol plants—including Dakota Ethanol—have a direct interest and stake in the success of SCS's pipeline project.

40. Mr. Alverson is also directly interested in the pipeline's success. He and his family own a 2,200-acre farm in Lake County, South Dakota, which he rents to his son. The farm grows around 1,800 acres of corn for an average yield of 180–190 bushels per acre. All of the corn grown on Mr. Alverson's farm is sold to Dakota Ethanol for ethanol production.

41. In fact, Mr. Alverson is a founder of Dakota Ethanol, which operates its ethanol production facility in Lake County, South Dakota. Mr. Alverson also holds an ownership interest in the company.

42. Dakota Ethanol produces approximately 100 million gallons of ethanol per year. It has approximately 1,000 members, approximately 95% of which are from South Dakota and approximately 80% of which are corn producers.

43. Dakota Ethanol ships approximately 80% of its ethanol fuel to the California and Pacific Northwest markets. Because of the California and Oregon low carbon fuel standards and incentives, Dakota Ethanol has opportunities to sell its ethanol in those states at a premium if its ethanol meets the states' low carbon intensity standards.

44. Mr. Alverson also holds ownership interests in several other ethanol production facilities.

45. Accordingly, Mr. Alverson has a direct interest and stake in the success of SCS's pipeline project, both as a farmer and as a part-owner of several ethanol production facilities. The pipeline project will help facilitate the viability and competitive edge of ethanol fuel production and increase that production. Increased ethanol production will bring higher demand and higher prices for corn, financially benefiting Mr. Alverson and other corn farmers in the State. Moreover, the value of Mr. Alverson's ownership interests in those ethanol facilities is inherently tied to the increased viability and volume of ethanol production that will result from SCS's pipeline project.

Spink County Resolution #22-24

46. Even though the federal government regulates the safety of SCS's pipeline project (as discussed below) and SCS is engaging with the PUC about the project, several South Dakota counties have taken their own steps to regulate SCS's and others' pipeline projects, citing safety concerns.

47. One of those counties is Spink County. On July 19, 2022, the Spink County Board of Commissioners unanimously passed Resolution #22-24, which established a moratorium on new conditional use permits and building permits for hazardous waste pipelines. The safety of SCS's pipeline was one of the concerns raised before the passage of Resolution #22-24.

48. Resolution #22-24 states that "pipelines, particularly those requiring the approval of the South Dakota Public Utilities Commission, can impact the **health, safety**, and general welfare of a large portion of this County's population" (emphasis added).

49. Resolution #22-24 states that Spink County “has begun the process of compiling, studying, reviewing, composing, and siting performance standards that it believes are **necessary to safeguard the health, safety**, and general welfare of the public prior to the issuance of a hazardous waste pipeline conditional use permit” (emphasis added).

50. Resolution #22-24 states that “this Resolution **reflects a concern for the health, safety**, and welfare of Spink County” (emphasis added).

51. Resolution #22-24 invokes the authority of Title 17 of the Spink County Zoning Ordinances “in order to promote the **health, safety**, and general welfare of the County” (emphasis added).

52. Resolution #22-24 imposes “a temporary moratorium on the issuance of any and all permits, licenses, or approvals for the construction, installation, or use of any hazardous waste pipeline, particularly those pipelines requiring the approval of the South Dakota Public Utilities Commission, traversing those lands contained within the unincorporated areas of Spink County, South Dakota.”

53. A true and accurate copy of the minutes that document the passage of Resolution #22-24 and that contain its text is attached as **Exhibit A**.

54. Resolution #22-24 is injuring Plaintiffs by preventing SCS from completing—or even beginning—the portion of the pipeline project in Spink County.

55. Because the main artery of the pipeline is planned to run through Spink County, the full interstate pipeline cannot be completed or placed into operation while Spink County’s regulation remains in place.

The Pipeline Safety Act

56. Although Spink County, through its board of commissioners, seeks to regulate safety aspects of SCS's pipeline project, federal law already exclusively regulates interstate pipeline safety under the Pipeline Safety Act (PSA), 49 U.S.C. §§ 60101 *et seq.*

57. Congress enacted the PSA in 1994 “to revise, codify, and enact without substantive change,” the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquids Pipeline Safety Act of 1979 (HLPSA). Pub. L. No. 103-272, 108 Stat. 745, preamble (1994). The PSA's purpose “is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities.” 49 U.S.C. § 60102(a)(1).

58. Under the PSA, the U.S. Department of Transportation (DOT) is charged with “prescrib[ing] minimum safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C. § 60102(a)(2). The PSA also provides that DOT “shall regulate carbon dioxide transported by a hazardous liquid pipeline facility” and “shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.” 49 U.S.C. § 60102(i)(1). DOT's regulatory authority, in turn, is delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA). *See* 49 U.S.C. § 108(a), (f).

59. CO₂ is a “hazardous liquid” under the PSA. *See* 49 U.S.C. § 60101(a)(4).

60. Because SCS is engaged in the interstate pipeline transportation of hazardous liquid and the construction, development, and operation of interstate

hazardous liquid pipeline facilities, its project is subject to federal regulation under the PSA.

61. Under the PSA, “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

62. Through section 60104(c), the PSA “expressly preempts” any local government’s “attempt to impose safety regulations” on interstate pipeline projects. *Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 880 (9th Cir. 2006); *see also, e.g., id.* at 878 (“Federal preemption of the regulation of interstate pipeline safety in any other manner is manifest in the language of the PSA provision entitled ‘Preemption.’”); *Kinley Corp.*, 999 F.2d at 359 (“Congress granted exclusive authority [through the HLPSA] to regulate the safety of construction and operation of interstate hazardous liquid pipelines to the Secretary of the Department of Transportation. This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards.”); *ANR Pipeline*, 828 F.2d at 470 (“Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities. . . . [T]he NGPSA leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, or identical to the federal standards.”).

63. At least one South Dakota county has already recognized that local governments lack authority to regulate interstate pipeline safety. In April 2022, the Board of Commissioners for Hand County, South Dakota, unanimously passed Resolution 2022-15, which established a moratorium on the construction, installation, or use of any pipeline for the purpose of transmitting hazardous waste. But on July 5, 2022, the board voted to withdraw the moratorium, concluding that “the authority of the county is limited and the majority of law, rules and regulations rest with the PUC and the federal regulatory agencies.”

COUNT I
(Supremacy Clause Preemption)

64. Plaintiffs reallege and incorporate by reference all allegations in the Complaint.

65. Under the Supremacy Clause, “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. As a result, state and local laws, ordinances, and other regulations that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

66. Spink County’s Resolution #22-24 states that its purpose is to address safety aspects of pipelines, including SCS’s pipeline project.

67. As such, Resolution #22-24 constitutes a “safety standard[] for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

68. Resolution #22-24 is designed and serves to supplement and supplant the methods of regulating pipeline safety that Congress has established and delegated to DOT and PHMSA.

69. Resolution #22-24 purports to regulate within a field so pervasively occupied by federal law that any state or local regulation is precluded and excluded.

70. Resolution #22-24 violates the PSA, conflicts with the PSA, and stands as an obstacle to accomplishing Congress's full purposes and objectives.

71. The PSA therefore preempts Resolution #22-24—by express, field, and conflict preemption—rendering it invalid, unenforceable, and null and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

1. Under 28 U.S.C. §§ 2201 and 2022 and Federal Rule of Civil Procedure 57, declare that Spink County's Resolution #22-24 is preempted by the Pipeline Safety Act and is invalid, unenforceable, and null and void as applied to SCS's pipeline project;

2. Under Federal Rule of Civil Procedure 65, preliminarily and permanently enjoin Defendants from (i) enforcing or implementing Resolution #22-24, (ii) enforcing or implementing any other moratoriums or bans on the permitting, construction, or development of SCS's pipeline project, and (iii) enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any safety aspect of SCS's pipeline project;

3. Award Plaintiffs their costs under Federal Rule of Civil Procedure 54 and any other applicable authority; and

4. Award such other and further relief as the Court deems appropriate.

DATED, this 12th day of December, 2022.

**MAY, ADAM, GERDES &
THOMPSON LLP**

BY: /s/ Justin L. Bell

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Counsel for Plaintiffs

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ronald Alverson and SCS Carbon Transport LLC

(b) County of Residence of First Listed Plaintiff Lake County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
MAY, ADAM, GERDES & THOMPSON LLP
P.O. Box 160, Pierre, SD 57501-0160
(605) 224-8803

DEFENDANTS

Spink County, South Dakota; Spink County Board of Commissioners; Brett Knox; Brian Johnson; Dustin Rische;

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

49 U.S.C. 60104; U.S. Const. art. VI, cl. 2

Brief description of cause:
Challenge to legality of county resolution under the Supremacy Clause

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Chief Judge Roberto A. Lange

DOCKET NUMBER 3:22cv3018, 3:22cv3019

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below. United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Exhibit A

**SPINK COUNTY COMMISSION PROCEEDINGS
REDFIELD, SOUTH DAKOTA**

The Spink County Board of Commissioners met at 8:30 AM on Tuesday, July 19, 2022, at the Spink County Courthouse. Present were Commissioners Dave Albrecht, Brian Johnson, Brett Knox, and Suzanne Smith. Commissioner Dustin Rische was absent. Chair Suzanne Smith opened the meeting with the Pledge of Allegiance.

ADOPT AGENDA

Motion was made by Albrecht, seconded by Knox, to adopt the agenda. All members voted aye. Motion carried.

MINUTES APPROVED

Motion was made by Johnson, seconded by Knox, to approve the minutes of the July 5, 2022, Commission meeting. All members voted aye. Motion carried.

CORRESPONDENCE

- Sioux Valley Commissioners Association Meeting 8/10/22
- SD Dept of Ag & Natural Resources Re: Notice of Entry of Order Adopting Chief Engineer's Motion to Dismiss Petition Requesting the Water Management Board to Set an Ordinary High-Water Mark on Cottonwood Lake

PUBLIC COMMENT

LeRoy Braun, Spink County resident, presented information on modeling of accidental releases from high pressure carbon dioxide pipelines and proposed to the board to support a moratorium. Jamie Fisk and Ed Fischbach, residents, also spoke regarding the proposed carbon dioxide pipeline. Sandy Jungwirth, Deb Curtis, Brad Fischbach, Lance Fischbach, residents, and Trey Lester, Turnkey Logistics, were also present.

SHERIFF

Frank Krumm, Sheriff, gave an update of activities and presented an application to seek grant for the purchase of speed boards.

GRANTAPPLICATION

Motion was made by Knox, seconded by Johnson, to approve applying for a Highway Safety Grant for speed overtime plus the purchase of 3 mobile speed boards, total cost of the boards \$10,029, with the County responsible for 20% of the cost plus 20% match on the speed overtime paid. All members voted aye. Motion carried.

CONSTRUCTION CONTRACT

Vanessa Victor, Ulteig Engineers, Inc., presented a Notice of Award, Agreement between Owner and Contractor for Construction Contract, and Notice to Proceed. Motion was made by Johnson, seconded by Knox, to approve the Construction Contract between Spink County and Prahm Construction for Project BRO 8058(00) 20-1, Structure and Approach Grading, PCN 07U, for the structure commonly known as Bebo bridge, in the amount of \$1,994,899.49. All members voted aye. Motion carried.

PAY APPLICATION

Motion was made by Knox, seconded by Albrecht, to approve the Application for Payment No. 1 from Prahm Construction, Inc., in the amount of \$80,341.27. All members voted aye. Motion carried.

HIGHWAY SUPERINTENDENT

Jeff Haessig, Highway Superintendent, reviewed the Rural Access Infrastructure program and requested approval to apply for federal grant monies for the replacement of six bridge structures, with no local match required.

LOCAL FEDERAL BRIDGE PROGRAMS RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION (#22-17)

WHEREAS, Spink County wishes to submit an application for consideration of award for the Local Federal Bridge Programs:

STRUCTURE NUMBER AND LOCATION: 58-011-010 – 5.0 miles North and 5.9 miles West of Northville
AND WHEREAS, Spink County hereby authorizes the Local Federal Bridge application and any required funding commitments.

NOW THEREFORE BE IT RESOLVED:

That the South Dakota Department of Transportation be and hereby is requested to accept the attached Local Federal Bridge application.

LOCAL FEDERAL BRIDGE PROGRAMS RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION (#22-18)

WHEREAS, Spink County wishes to submit an application for consideration of award for the Local Federal Bridge Programs:

STRUCTURE NUMBER AND LOCATION: 58-050-330 – 5.0 miles East and 2.0 miles North of Tulare
AND WHEREAS, Spink County hereby authorizes the Local Federal Bridge application and any required funding commitments.

NOW THEREFORE BE IT RESOLVED:

That the South Dakota Department of Transportation be and hereby is requested to accept the attached Local Federal Bridge application.

LOCAL FEDERAL BRIDGE PROGRAMS RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION (#22-19)

WHEREAS, Spink County wishes to submit an application for consideration of award for the Local Federal Bridge Programs:

STRUCTURE NUMBER AND LOCATION: 58-120-231 – 1.9 miles North and 2.0 miles East of Redfield
AND WHEREAS, Spink County hereby authorizes the Local Federal Bridge application and any required funding commitments.

NOW THEREFORE BE IT RESOLVED:

That the South Dakota Department of Transportation be and hereby is requested to accept the attached Local Federal Bridge application.

LOCAL FEDERAL BRIDGE PROGRAMS RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION (#22-20)

WHEREAS, Spink County wishes to submit an application for consideration of award for the Local Federal Bridge Programs:

STRUCTURE NUMBER AND LOCATION: 58-160-042 – 3.0 miles West and 1.8 miles North of Brentford
AND WHEREAS, Spink County hereby authorizes the Local Federal Bridge application and any required funding commitments.

NOW THEREFORE BE IT RESOLVED:

That the South Dakota Department of Transportation be and hereby is requested to accept the attached Local Federal Bridge application.

LOCAL FEDERAL BRIDGE PROGRAMS RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION (#22-21)

WHEREAS, Spink County wishes to submit an application for consideration of award for the Local Federal Bridge Programs:

STRUCTURE NUMBER AND LOCATION: 58-290-388 – 1.0 miles West and 3.2 miles North of Bloomfield
AND WHEREAS, Spink County hereby authorizes the Local Federal Bridge application and any required funding commitments.

NOW THEREFORE BE IT RESOLVED:

That the South Dakota Department of Transportation be and hereby is requested to accept the attached Local Federal Bridge application.

LOCAL FEDERAL BRIDGE PROGRAMS RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION (#22-22)

WHEREAS, Spink County wishes to submit an application for consideration of award for the Local Federal Bridge Programs:

STRUCTURE NUMBER AND LOCATION: 58-340-343 4.0 miles East and 7.7 miles North of Bloomfield
AND WHEREAS, Spink County hereby authorizes the Local Federal Bridge application and any required funding commitments.

NOW THEREFORE BE IT RESOLVED:

That the South Dakota Department of Transportation be and hereby is requested to accept the attached Local Federal Bridge application.

Motion was made by Johnson, seconded by Knox to approve the six resolutions. All members voted aye.

Motion carried.

Dated at Redfield, South Dakota, this 19th day of July, 2022.

Suzanne Smith, Chair

Spink County Commission - June 21, 2022

Spink County Board of Commissioners

ATTEST:

Theresa Hodges, Auditor
Spink County, South Dakota

QUOTE

Haessig presented a quote for replacing the sprinkler system on the west side of the Courthouse along with replacing the control box. Motion was made by Johnson, seconded by Knox, to approve the quote from Inman Irrigation in the amount of \$1,374.00. All members voted aye. Motion carried.

AMBULANCE

Eric Schueth, Spink County Ambulance, gave an update on the four-wheel drive ambulance price and estimated delivery date. No action was taken, awaiting updated Ambulance Contract.

EAP

Tim Heerts, Avera EAP, reviewed the Employee Assistance Program available through Avera. Motion was made by Johnson, seconded by Knox, to approve providing the Avera Employee Assistance Program 5 session option to all full-time employees, at \$2.20 per employee per month. All members voted aye. Motion carried.

PLANNING & ZONING

At 10:06 AM a motion was made by Johnson, seconded by Albrecht, to recess as a Board of Commissioners and convene as a County Planning and Zoning Board. All members voted aye. Motion carried.

The Board of County Commissioners reconvened at 11:00 AM after having adjourned as the Planning and Zoning Board.

RESOLUTION FOR THE PROCLAMATION OF SPINK COUNTY AS A PURPLE HEART COUNTY (#22-23)

WHEREAS, the people of Spink County have great admiration and the utmost gratitude for all the men and women who have selflessly served their Country and this community in the Armed Forces; and
WHEREAS, veterans have paid the high price of freedom by leaving their families and communities and placing themselves in harm’s way for the good of all; and
WHEREAS, the contributions and sacrifices of the men and women from Spink County who served in the Armed Forces have been vital in maintaining the freedoms, the way of life enjoyed by our citizens; and
WHEREAS, many men and women in uniform have given their lives while service in the Armed Forces; and
WHEREAS, many citizens of our community have earned the Purple Heart Medal as a result of being wounded while engaged in combat with an enemy force, constructed as a singularly meritorious act of essential service; and
WHEREAS, July 19, 2022, has officially been designated as the day in Spink County to remember and recognize veterans who are recipients of the Purple Heart Medal.
NOW, THEREFORE, BE IT RESOLVED that the Spink County Board of Commissioners hereby proclaims Spink County as a Purple Heart County, honoring the service and sacrifice of our nation’s men and women in uniform wounded and killed by the enemy while serving to protect the freedoms enjoyed by all Americans.

Motion was made by Knox, seconded by Albrecht, to adopt the above resolution.

Dated at Redfield, South Dakota, this 19th day of July, 2022.

Suzanne Smith, Chair
Spink County Board of Commissioners

ATTEST:

Theresa Hodges, Auditor
Spink County, South Dakota

A RESOLUTION ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF CONDITIONAL USE PERMITS AND BUILDING PERMITS ON HAZARDOUS WASTE PIPELINES IN SPINK COUNTY, SOUTH DAKOTA (#22-24)

WHEREAS, in order to promote the health, safety, and general welfare of the County, the Board of Commissioners for Spink County adopted Title 17 Spink County Zoning Ordinances for the purpose of establishing zoning regulations upon all land within the unincorporated areas of Spink County, South Dakota; and
WHEREAS, Title 17, otherwise known as the Spink County Zoning Ordinance, categorizes all land withing the unincorporated areas of Spink County into Districts with each District having its own unique set of permitted uses, conditional uses, and prohibited uses; and

WHEREAS, Title 17.02 of the Spink County Zoning Ordinance defines a conditional use as a use of property in a zone for a particular purpose that is allowed under conditions set forth in the zoning ordinance, and, as such, a conditional use is therefore subject to evaluation and approval by the Spink County Board of Adjustment in accordance with the procedures contained in Chapter 17.22 of the zoning ordinance; and

WHEREAS, the Spink County Board of Planning & Zoning has never been tasked with establishing, siting, or performance standards necessary for the granting of a hazardous waste pipeline conditional use permit; and

WHEREAS, pipelines, particularly those requiring the approval of the South Dakota Public Utilities Commission, can impact the health, safety, and general welfare of a large portion of this County's population, Spink County has begun the process of compiling, studying, reviewing, composing, and siting performance standards that it believes are necessary to safeguard the health, safety, and general welfare of the public prior to the issuance of a hazardous waste pipeline conditional use permit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Spink County Commissioners does hereby impose a temporary moratorium on the issuance of any and all permits, licenses, or approvals for the construction, installation, or use of any hazardous waste pipeline, particularly those pipelines requiring the approval of the South Dakota Public Utilities Commission, traversing those lands contained within the unincorporated areas of Spink County, South Dakota, with said moratorium running for such a length of time that will give the Planning and Zoning Commission an opportunity to complete their review process, however, the temporary moratorium may be in effect for the length of one (1) year with a provision of an extended length of time of no longer than one (1) additional year from the date this Resolution is ratified.

BE IT FURTHER, RESOLVED that this Resolution reflects a concern for the health, safety, and welfare of Spink County, and shall become effective upon passage.

Motion was made by Johnson, seconded by Knox, to adopt the above resolution. All members voted aye. Motion carried.

Dated at Redfield, South Dakota, this 19th day of July, 2022

Suzanne Smith, Chair
Spink County Board of Commissioners

ATTEST:
Theresa Hodges, Auditor
Spink County, South Dakota

BUDGET

The Commission reviewed and made revisions to the 2023 budget requests. Motion was made by Albrecht, seconded by Johnson, to approve the Provisional Budget with the noted revisions discussed and a 5% increase budgeted for salaries. All members voted aye. Motion carried.

EXPENSE REQUESTS

Motion was made by Johnson, seconded by Knox, to approve the following expense requests:

- Frank Krumm, Sheriff, Dakota 911 Conference, Spearfish SD;
- Tracie Schipke, E911 Dispatcher, 911 Telecommunicator Program, Pierre, SD;
- Theresa Hodges, Auditor, Election Workshop, Pierre, SD;

All members voted aye. Motion carried.

CLAIMS AND REPORTS ALLOWED

Motion was made by Johnson, seconded by Knox, to approve the following claims and reports. All members voted aye. Motion carried.

COMMISSIONERS		A & B BUSINESS SOLUTIONS, INC	36.36
HARR'S REDFIELD	62.36	CONNECTING POINT COMPUTER	4281.00
SANDRA MCNEILL	131.25	EXECUTIVE MANAGEMENT	6.84
THE REDFIELD PRESS	244.80	NORTHERN VALLEY COMMUNICATIONS	12.15
ELECTION		TREASURER	
E S & S, INC.	2585.92	A & B BUSINESS SOLUTIONS, INC	107.80
EXECUTIVE MANAGEMENT	0.56	CONNECTING POINT COMPUTER	2649.00
SANDRA MCNEILL	81.25	EXECUTIVE MANAGEMENT	18.92
REDFIELD ACE HARDWARE	37.99	SANDRA MCNEILL	18.75
THE REDFIELD PRESS	319.72	NORTHERN VALLEY COMMUNICATIONS	12.15
JUDICIAL SYSTEMS		STATES ATTORNEY	
DAKOTA COUNSELING GROUP LLC	1800.00	MICHAEL CARLSEN	54.50
		COMMUNITY MEMORIAL HOSPITAL	582.00
AUDITOR		CONNECTING POINT COMPUTER	28.00

EXECUTIVE MANAGEMENT	7.46	SD NEWSPAPER ASSOCIATION	150.00
NORTHERN VALLEY COMMUNICATIONS	4.05	THE SHOP	186.26
SD DEPARTMENT OF HEALTH	200.00	TOWNEPLACE SUITES	225.00
		TREMCO PRODUCTS, INC	141.90
CT APPT ATTY & CLERP			
SD COUNTIES	676.00	JAIL	
		CURA HOSPITALITY	8.00
GOVERNMENT BUILDINGS		EDMUNDS COUNTY SHERIFF DEPT	150.00
CINTAS	192.50		
COLE PAPERS, INC.	333.96	CARE OF POOR	
CONNECTING POINT COMPUTER	28.00	CONNECTING POINT COMPUTER	28.00
EXECUTIVE MANAGEMENT	0.55	NORTHERN VALLEY COMMUNICATIONS	4.05
GARRATT CALLAHAN CO	459.01		
JESSEN HEATING, REFRIGERATION	120.35	COUNTY NURSE	
NORTHERN VALLEY COMMUNICATIONS	4.05	SD DEPARTMENT OF HEALTH	1674.00
NORTHWESTERN ENERGY	2502.09		
PHEASANTLAND INDUSTRIES	20.90	DEVELOPMENTALLY DISA	
REDFIELD ACE HARDWARE	303.19	SD DEPARTMENT OF REVENUE	60.00
REDFIELD CITY	495.00		
SD DEPT OF PUBLIC SAFETY	160.00	COUNTY FAIR	
		JESSEN HEATING, REFRIGERATION	253.83
DIRECTOR EQUALIZ.		NORTHWESTERN ENERGY	824.74
A & B BUSINESS SOLUTIONS, INC	98.23	REDFIELD HARDWARE HANK	12.98
YVETTE ALBRECHT	48.00	REDFIELD CITY	214.75
APPEL OIL COMPANY	182.63		
TRACI CLEMENS	60.00	EXTENSION	
CONNECTING POINT COMPUTER	4183.33	A & B BUSINESS SOLUTIONS, INC	190.11
EXECUTIVE MANAGEMENT	17.22	CONNECTING POINT COMPUTER	56.00
SANDRA MCNEILL	12.50	EXECUTIVE MANAGEMENT	6.37
TRACEY MILLAR	60.00	AMY HERMANN	60.80
NORTHERN VALLEY COMMUNICATIONS	16.20	SHAYNA LAMB	52.24
SALLY SCHWAB	108.00	KIM MCGRAW	80.87
THE LODGE AT DEADWOOD	744.00	SANDRA MCNEILL	75.00
		NORTHERN VALLEY COMMUNICATIONS	8.10
REGISTER OF DEEDS		THE REDFIELD PRESS	58.00
A & B BUSINESS SOLUTIONS, INC	53.60		
CONNECTING POINT COMPUTER	84.00	WEED CONTROL	
EXECUTIVE MANAGEMENT	22.33	CONNECTING POINT COMPUTER	56.00
SANDRA MCNEILL	12.50	AUTO VALUE REDFIELD	14.90
NORTHERN VALLEY COMMUNICATIONS	8.10	REDFIELD ACE HARDWARE	59.97
		REDFIELD CITY	84.75
VETERANS SERVICE			
CONNECTING POINT COMPUTER	28.00	PLANNING BOARD	
EXECUTIVE MANAGEMENT	6.50	CONNECTING POINT COMPUTER	28.00
NORTHERN VALLEY COMMUNICATIONS	4.05	SANDRA MCNEILL	56.25
		NORTHERN VALLEY COMMUNICATIONS	4.05
INFO TECHNOLOGY			
CONNECTING POINT COMPUTER	583.34	RD & BRG - ADMIN	
		A & B BUSINESS SOLUTIONS, INC	63.44
SHERIFF		AGTEGRA COOPERATIVE	4326.54
A & B BUSINESS SOLUTIONS, INC	98.23	ALL AMERICA PRESSURE	5000.00
APPEL OIL COMPANY	3133.18	ASPHALT PAVING & MATERIALS CO.	261225.00
CONNECTING POINT COMPUTER	722.33	BUTLER MACHINERY CO.	255.00
EXECUTIVE MANAGEMENT	89.30	CINTAS	25.15
HARR'S REDFIELD	1987.03	CONNECTING POINT COMPUTER	1502.00
HEARTLAND STATE BANK	44.76	DOLAND CITY FINANCE OFFICE	62.49
HUB INTERNATIONAL	160.00	EXECUTIVE MANAGEMENT	21.71
SANDRA MCNEILL	6.25	FARM TIRE SERVICE	1685.00
MODERN MARKETING	595.40	AUTO VALUE REDFIELD	38.47
PHEASANTLAND INDUSTRIES	108.72	HUB INTERNATIONAL	1160.00
REDFIELD CITY	77.00	JOHNSON OIL COMPANY, INC.	20020.00

SANDRA MCNEILL	12.50	VENTURE COMMUNICATIONS COOP	164.78
NORTHERN VALLEY COMMUNICATIONS	39.95		
NORTHWESTERN ENERGY	728.13	EMERGENCY MANAGEMENT	
POWER PLAN (RDO)	1776.70	APPEL OIL COMPANY	305.05
PRAHM CONSTRUCTION	80341.27	CONNECTING POINT COMPUTER	28.00
PRESSURE WASHER CENTAL	112.50	NORTHERN VALLEY COMMUNICATIONS	4.05
REDFIELD CITY	77.00		
THE REDFIELD PRESS	48.64	JAIL	
THE SHOP	420.80	INTOXIMETERS, INC	320.00
TRANSOURCE TRUCK & EQP INC	271.47		
		REGISTER OF DEEDS	
E-911		EXECUTIVE MANAGEMENT	397.00
JAMES VALLEY TELECOMMUNICATION	209.10		

REPORTS

- June 2022 Sheriff’s Checking Account Statement
- June 2022 Register of Deeds Statement of Fees Collected: \$8,988.60
- June 2022 Report of Payments Received to Reimburse Poor Liens: \$0.00
- May 2022 Report of Payments Received to Reimburse CAA: \$1,241.30
- June 2022 Report of Payments Received to Reimburse CAA: \$4,049.03
- July 2022 Quotes on Diesel Fuel & Ethanol/Gas
- July 12, 2022 Quotes for 4700 gallon delivery of Diesel Fuel
- June 2022 Highway Superintendent Report of Collections Made:
 - Road & Bridge Fund \$665.31
- Auditor’s Account with the County Treasurer – 6/30/2022
 - Checking Accounts \$4,780,924.72
 - Savings Accounts 978,130.19
 - Certificates of Deposits 1,730,000.00
 - Cash Change Accounts 100.00
 - Cash & Cash Items 35,549.85
 - Total \$ 7,524,704.76

Chair Smith declared the meeting adjourned at 12:40 PM until 8:30 AM, Tuesday, August 2, 2022.

Suzanne Smith, Chair
Spink County Board of Commissioners

ATTEST:
Theresa Hodges, Auditor
Spink County, South Dakota

Published at an approximate cost of

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

RONALD ALVERSON
and SCS CARBON TRANSPORT LLC,

Plaintiffs,

v.

MCPHERSON COUNTY, SOUTH
DAKOTA;
MCPHERSON COUNTY BOARD OF
COMMISSIONERS;
ANTHONY KUNZ, in his official
capacity as a McPherson County
Commissioner;
RICK BEILKE, in his official capacity
as a McPherson County Commissioner;
DELMAR METZGER, in his official
capacity as a McPherson County
Commissioner;
SID FEICKERT, in his official capacity
as a McPherson County Commissioner;
and
JEFF NEUHARTH, in his official
capacity as a McPherson County
Commissioner,

Defendants.

3:22-CV-3022

No. _____

COMPLAINT

INTRODUCTION

1. The Eighth Circuit has repeatedly held that federal law preempts state and local governments' efforts to impose their own standards on federally regulated pipelines. *See ANR Pipeline Co. v. Iowa State Com. Comm'n*, [828 F.2d 465](#) (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, [999 F.2d 354](#) (8th Cir. 1993); *cf. N. Nat. Gas Co. v. Iowa Utils. Bd.*, [377 F.3d 817](#) (8th Cir. 2004). Now, ignoring those rulings,

McPherson County seeks to impose its own standards on an interstate pipeline. But its effort is preempted, invalid, and unenforceable.

2. Plaintiffs Ronald Alverson and SCS Carbon Transport LLC (“SCS” for short) bring this action seeking declaratory and injunctive relief against the enforcement of McPherson County’s moratorium on pipeline permitting and construction and regulation of pipeline safety. The moratorium violates and is preempted by the federal Pipeline Safety Act and the Supremacy Clause of the U.S. Constitution because it impermissibly regulates safety aspects of SCS’s planned carbon dioxide pipeline.

PARTIES

3. Plaintiff Ronald Alverson is a citizen and resident of Lake County, South Dakota.

4. Plaintiff SCS Carbon Transport LLC is a limited liability company organized under Delaware law with its principal place of business in Ames, Iowa. SCS is authorized and in good standing to transact business in South Dakota.

5. Defendant McPherson County, South Dakota is a county and body corporate under the laws of South Dakota.

6. Defendant McPherson County Board of Commissioners is the board of commissioners and governing body for McPherson County under the laws of South Dakota.

7. Defendant Anthony Kunz is a commissioner on the McPherson County Board of Commissioners and is a resident of South Dakota. Mr. Kunz is sued only in his official capacity as a McPherson County Commissioner.

8. Defendant Rick Beilke is a commissioner on the McPherson County Board of Commissioners and is a resident of South Dakota. Mr. Beilke is sued only in his official capacity as a McPherson County Commissioner.

9. Defendant Delmar Metzger is a commissioner on the McPherson County Board of Commissioners and is a resident of South Dakota. Mr. Metzger is sued only in his official capacity as a McPherson County Commissioner.

10. Defendant Sid Feickert is a commissioner on the McPherson County Board of Commissioners and is a resident of South Dakota. Mr. Feickert is sued only in his official capacity as a McPherson County Commissioner.

11. Defendant Jeff Neuharth is a commissioner on the McPherson County Board of Commissioners and is a resident of South Dakota. Mr. Neuharth is sued only in his official capacity as a McPherson County Commissioner.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiffs' claim arises under federal law, including the Supremacy Clause, U.S. Const. art. VI, cl. 2.

13. This Court is authorized to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65.

14. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all Defendants reside in this district and a substantial part of the events giving rise to Plaintiffs' claim occurred in this district.

FACTUAL ALLEGATIONS

Corn, Ethanol, and Carbon Dioxide in South Dakota

15. Corn is one of South Dakota's top commodities by volume and the State's most valuable agricultural commodity. Last year, South Dakota produced corn worth more than \$4.1 billion—which was \$1.3 billion more than the State's next most valuable crop (soybeans).¹

16. More than half of all corn harvested in South Dakota goes to ethanol production. In 2018, for example, the State produced 778 million bushels of corn, 396 million of which were used in ethanol production.²

17. And South Dakota is home to a significant percentage of the United States' ethanol production. In 2019, for example, the State's ethanol production accounted for approximately 8% of the Nation's total ethanol production.³ Most of the ethanol produced in South Dakota makes its way outside of the State.

18. Corn's value in South Dakota—and throughout the Nation—is inextricably tied to ethanol production.

19. The value of ethanol, and thus the price of corn, is affected by state and foreign regulations that target carbon dioxide (CO₂) emissions.

¹ See *2021 State Agriculture Overview*, U.S. Dep't of Agric., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=south%20dakota (last visited Dec. 9, 2022).

² See *Ethanol Plants Use Over Half of SD Corn*, S.D. Corn Utilization Council & S.D. Corn Growers Ass'n (July 22, 2020), <https://www.sdcorn.org/news/ethanol-plants-use-over-half-of-sd-corn>.

³ See *South Dakota State Energy Profile*, U.S. Energy Info. Admin., <https://www.eia.gov/state/print.php?sid=SD> (last updated June 16, 2022).

20. CO₂ is a byproduct of the fermentation process of producing ethanol from corn. CO₂ is not only a byproduct of ethanol plants but also a byproduct of numerous other manufacturing processes, including fertilizer ammonia production.

21. CO₂ is a greenhouse gas that poses environmental concerns if released into the atmosphere in large quantities.

22. Carbon capture and sequestration (CCS) is a process by which CO₂ is captured at the point of generation, transported, and then safely stored. CCS technology reduces greenhouse gas emissions by preventing the release of CO₂ into the atmosphere.

23. Carbon intensity measures the amount of carbon emitted per unit of energy consumed. Lower carbon emissions during fuel production result in a lower carbon intensity for that fuel.

24. Canada, for example, is a primary importer of ethanol from the United States, and South Dakota is one of the main sources of U.S. ethanol exports to Canada. In 2021, Canada imported approximately 1.3 billion liters of U.S. ethanol fuel—an 8% percent increase from 2020. Those imports are projected to reach a record 1.5 billion liters in 2022.⁴

25. Canada's increased demand for ethanol comes in part from recently enacted energy regulations that incentivize the production, sale, and use of low carbon intensity fuels. Canada's Clean Fuel Regulations (CFR), which became law in July 2022, impose a comprehensive set of fuel standards, including requirements that

⁴ See *Canada: Biofuels Annual*, Report No. CA2022-0019, U.S. Dep't of Agric. (Aug. 22, 2022), <https://www.fas.usda.gov/data/canada-biofuels-annual-8>.

fuel suppliers progressively reduce the carbon intensity of fuels sold in Canada.⁵ The CFR aims for a 15% decrease in the carbon intensity of gasoline and diesel used in Canada by 2030.

26. Energy regulations target carbon emissions in the United States too, increasing in-state demand for low carbon intensity fuels. California, for example, has adopted the Low Carbon Fuel Standard (LCFS), which requires ongoing reductions in the carbon intensity of fuels sold in the State.⁶ The LCFS considers emissions associated with the complete life cycle of fuel—from production to transportation to consumption. Under the LCFS, providers of low carbon intensity fuels generate credits. The value of those credits for ethanol plants has historically varied from \$50–\$200 per ton of CO₂ depending on demand.⁷ And the California Air Resources Board recognizes CCS as “an important strategy to reduce greenhouse gas (GHG) emissions and mitigate climate change.”⁸

27. Oregon has adopted a similar approach.⁹ Under its Clean Fuels Program, the State is targeting a 10% reduction in average carbon intensity from

⁵ See, e.g., *What are the Clean Fuel Regulations?*, Gov’t of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/about.html> (last updated July 7, 2022); *Compliance with the Clean Fuel Regulations*, Gov’t of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/compliance.html> (last updated July 20, 2022).

⁶ See, e.g., *Low Carbon Fuel Standard*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard> (last visited Dec. 9, 2022).

⁷ See *California Low Carbon Fuel Standard Credit Price*, Neste, <https://www.neste.com/investors/market-data/lcfs-credit-price> (last visited Dec. 9, 2022).

⁸ *Carbon Capture & Sequestration*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/carbon-capture-sequestration> (last visited Dec. 9, 2022).

⁹ See, e.g., *Clean Fuels Program Overview*, Oregon.gov, <https://www.oregon.gov/deq/ghgp/cfp/Pages/CFP-Overview.aspx> (last visited Dec. 9, 2022).

2015 levels by 2025, a 20% percent reduction by 2030, and a 37% reduction by 2035. Fuel providers and importers must show that the volume and type of fuel supplied meet annual standards. And businesses can generate credits for fuels that exceed those standards.

28. Other states have enacted similar low carbon initiatives and regulations.

29. The value of South Dakota ethanol production, and the value of corn in South Dakota—and throughout the Nation—depends on, and will likely increasingly depend on, carbon-reduction efforts of South Dakota ethanol facilities.

SCS's CO₂ Pipeline

30. SCS and its parent Summit Carbon Solutions, LLC are developing an interstate CO₂ pipeline and related facilities to facilitate CCS technology. When completed, the pipeline will transport CO₂ captured from more than 30 facilities (primarily ethanol plants but also some fertilizer plants) across South Dakota, North Dakota, Iowa, Minnesota, and Nebraska. The pipeline system will transport this CO₂ through a network of more than 1,900 miles of underground pipes across those five states and deliver it to geologically appropriate sequestration sites in North Dakota.

31. SCS will provide its CO₂ transportation services to the public for hire as a common carrier.

32. In South Dakota, the pipeline project is projected to involve more than 450 miles of pipeline, transporting CO₂ from both out-of-state and in-state facilities, including Dakota Ethanol, LLC in South Dakota.

33. The pipeline will travel through 18 counties in South Dakota: Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner.

34. The pipeline project is underway. SCS is in the process of surveying the routes for the project and securing the necessary permits. It is also negotiating with landowners for land access.

35. In South Dakota, SCS is engaging with the State's Public Utilities Commission (PUC) as part of the planning and permitting for the pipeline project. On February 7, 2022, SCS filed an application with the PUC for the siting permit required for the pipeline under South Dakota law.¹⁰

36. The pipeline project will help reduce the carbon footprint and environmental impact of ethanol production by facilitating the transportation and sequestration of CO₂, thereby reducing its release into the atmosphere, which in turn will reduce the carbon intensity of and enhance the long-term economic viability of South Dakota's ethanol and agriculture industries.

37. Ethanol plants whose CO₂ byproduct is transported through SCS's interstate pipeline—including Dakota Ethanol—will be equipped to produce carbon-neutral fuel by 2030 and will be better positioned to compete in energy markets that prefer or require fuels with low carbon intensity, including the Canada, California, and Oregon markets discussed above.

¹⁰ See *In the Matter of the Application by SCS Carbon Transport LLC for a Permit to Construct a Carbon Dioxide Transmission Pipeline*, Docket No. HP22-001 (S.D. Pub. Utils. Comm'n Feb. 7, 2022), <https://puc.sd.gov/dockets/HydrocarbonPipeline/2022/HP22-001.aspx>.

38. For example, through its use of SCS's pipeline, Dakota Ethanol expects to earn at least \$15 million per year in low carbon premiums.

39. Accordingly, South Dakota ethanol plants—including Dakota Ethanol—have a direct interest and stake in the success of SCS's pipeline project.

40. Mr. Alverson is also directly interested in the pipeline's success. He and his family own a 2,200-acre farm in Lake County, South Dakota, which he rents to his son. The farm grows around 1,800 acres of corn for an average yield of 180–190 bushels per acre. All of the corn grown on Mr. Alverson's farm is sold to Dakota Ethanol for ethanol production.

41. In fact, Mr. Alverson is a founder of Dakota Ethanol, which operates its ethanol production facility in Lake County, South Dakota. Mr. Alverson also holds an ownership interest in the company.

42. Dakota Ethanol produces approximately 100 million gallons of ethanol per year. It has approximately 1,000 members, approximately 95% of which are from South Dakota and approximately 80% of which are corn producers.

43. Dakota Ethanol ships approximately 80% of its ethanol fuel to the California and Pacific Northwest markets. Because of the California and Oregon low carbon fuel standards and incentives, Dakota Ethanol has opportunities to sell its ethanol in those states at a premium if its ethanol meets the states' low carbon intensity standards.

44. Mr. Alverson also holds ownership interests in several other ethanol production facilities.

45. Accordingly, Mr. Alverson has a direct interest and stake in the success of SCS's pipeline project, both as a farmer and as a part-owner of several ethanol production facilities. The pipeline project will help facilitate the viability and competitive edge of ethanol fuel production and increase that production. Increased ethanol production will bring higher demand and higher prices for corn, financially benefiting Mr. Alverson and other corn farmers in the State. Moreover, the value of Mr. Alverson's ownership interests in those ethanol facilities is inherently tied to the increased viability and volume of ethanol production that will result from SCS's pipeline project.

McPherson County Moratorium

46. Even though the federal government regulates the safety of SCS's pipeline project (as discussed below) and SCS is engaging with the PUC about the project, several South Dakota counties have taken their own steps to regulate SCS's and others' pipeline projects, citing safety concerns.

47. One of those counties is McPherson County. On January 11, 2022, the McPherson County Board of Commissioners convened for a special session for the sole purpose of passing a moratorium on pipeline construction in the county. The moratorium passed by a unanimous vote. The safety of SCS's pipeline was one of the concerns raised before the passage of the moratorium.

48. The moratorium covers "hazardous liquid transmission pipelines as defined in Title [49 CFR Section 192.3](#) and Title 49 CFR 195.2 and Title 49 CFR 193.2007."

49. The moratorium is indefinite.

50. In a letter to the PUC on January 11, 2022 informing the PUC of the moratorium, the Board specifically referred to SCS's pipeline. To justify the moratorium, the Board stated that many residents had concerns "regarding both the **short term and long-term safety** of the project and the possible **health risks** thereby associated" (emphasis added).

51. A true and accurate copy of the minutes that document the passage of the moratorium is attached as **Exhibit A**. A true and accurate copy of the Board's January 11, 2022 letter to the PUC is attached as **Exhibit B**.

52. McPherson County's moratorium is injuring Plaintiffs by preventing SCS from completing—or even beginning—the portion of the pipeline project in McPherson County.

53. Because the main artery of the pipeline is planned to run through McPherson County, the full interstate pipeline cannot be completed or placed into operation while McPherson County's moratorium remains in place.

The Pipeline Safety Act

54. Although McPherson County, through its board of commissioners, seeks to regulate safety aspects of SCS's pipeline project, federal law already exclusively regulates interstate pipeline safety under the Pipeline Safety Act (PSA), [49 U.S.C. §§ 60101 et seq.](#)

55. Congress enacted the PSA in 1994 "to revise, codify, and enact without substantive change," the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquids Pipeline Safety Act of 1979 (HLPSA). Pub. L. No. 103-272, [108 Stat. 745](#), preamble (1994). The PSA's purpose "is to provide adequate protection

against risks to life and property posed by pipeline transportation and pipeline facilities.” [49 U.S.C. § 60102\(a\)\(1\)](#).

56. Under the PSA, the U.S. Department of Transportation (DOT) is charged with “prescrib[ing] minimum safety standards for pipeline transportation and for pipeline facilities.” [49 U.S.C. § 60102\(a\)\(2\)](#). The PSA also provides that DOT “shall regulate carbon dioxide transported by a hazardous liquid pipeline facility” and “shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.” [49 U.S.C. § 60102\(i\)\(1\)](#). DOT’s regulatory authority, in turn, is delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA). *See* [49 U.S.C. § 108\(a\), \(f\)](#).

57. CO₂ is a “hazardous liquid” under the PSA. *See* [49 U.S.C. § 60101\(a\)\(4\)](#).

58. Because SCS is engaged in the interstate pipeline transportation of hazardous liquid and the construction, development, and operation of interstate hazardous liquid pipeline facilities, its project is subject to federal regulation under the PSA.

59. Under the PSA, “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” [49 U.S.C. § 60104\(c\)](#).

60. Through section 60104(c), the PSA “expressly preempts” any local government’s “attempt to impose safety regulations” on interstate pipeline projects. *Olympic Pipe Line Co. v. City of Seattle*, [437 F.3d 872, 880](#) (9th Cir. 2006); *see also, e.g., id.* at 878 (“Federal preemption of the regulation of interstate pipeline safety in

any other manner is manifest in the language of the PSA provision entitled ‘Preemption.’”); *Kinley Corp.*, 999 F.2d at 359 (“Congress granted exclusive authority [through the HLPESA] to regulate the safety of construction and operation of interstate hazardous liquid pipelines to the Secretary of the Department of Transportation. This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards.”); *ANR Pipeline*, 828 F.2d at 470 (“Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities. . . . [T]he NGPSA leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, or identical to the federal standards.”).

61. At least one South Dakota county has already recognized that local governments lack authority to regulate interstate pipeline safety. In April 2022, the Board of Commissioners for Hand County, South Dakota, unanimously passed Resolution 2022-15, which established a moratorium on the construction, installation, or use of any pipeline for the purpose of transmitting hazardous waste. But on July 5, 2022, the board voted to withdraw the moratorium, concluding that “the authority of the county is limited and the majority of law, rules and regulations rest with the PUC and the federal regulatory agencies.”

COUNT I
(Supremacy Clause Preemption)

62. Plaintiffs reallege and incorporate by reference all allegations in the Complaint.

63. Under the Supremacy Clause, “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. As a result, state and local laws, ordinances, and other regulations that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

64. McPherson County’s January 11, 2022 moratorium’s purpose is to address safety aspects of pipelines, including SCS’s pipeline project.

65. As such, the moratorium constitutes a “safety standard[] for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

66. The moratorium is designed and serves to supplement and supplant the methods of regulating pipeline safety that Congress has established and delegated to DOT and PHMSA.

67. The moratorium purports to regulate within a field so pervasively occupied by federal law that any state or local regulation is precluded and excluded.

68. The moratorium violates the PSA, conflicts with the PSA, and stands as an obstacle to accomplishing Congress’s full purposes and objectives.

69. The PSA therefore preempts McPherson County’s January 11, 2022 moratorium—by express, field, and conflict preemption—rendering it invalid, unenforceable, and null and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

1. Under 28 U.S.C. §§ 2201 and 2022 and Federal Rule of Civil Procedure 57, declare that McPherson County's January 11, 2022 moratorium is preempted by the Pipeline Safety Act and is invalid, unenforceable, and null and void as applied to SCS's pipeline project;

2. Under Federal Rule of Civil Procedure 65, preliminarily and permanently enjoin Defendants from (i) enforcing or implementing McPherson County's January 11, 2022 moratorium, (ii) enforcing or implementing any other moratoriums or bans on the permitting, construction, or development of SCS's pipeline project, and (iii) enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any safety aspect of SCS's pipeline project;

3. Award Plaintiffs their costs under Federal Rule of Civil Procedure 54 and any other applicable authority; and

4. Award such other and further relief as the Court deems appropriate.

DATED, this 12th day of December, 2022.

**MAY, ADAM, GERDES &
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BY: /s/ Justin L. Bell

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Counsel for Plaintiffs

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ronald Alverson and SCS Carbon Transport LLC

(b) County of Residence of First Listed Plaintiff Lake County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
MAY, ADAM, GERDES & THOMPSON LLP
P.O. Box 160, Pierre, SD 57501-0160
(605) 224-8803

DEFENDANTS

McPherson County, South Dakota; McPherson County Board of Commissioners; Anthony Kunz; Rick Beilke;

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
	REAL PROPERTY	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 864 SSID Title XVI	<input checked="" type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	CIVIL RIGHTS		<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 530 General	IMMIGRATION	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application	
	<input type="checkbox"/> 448 Education	Other:	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
49 U.S.C. 60104; U.S. Const. art. VI, cl. 2

Brief description of cause:
Challenge to legality of county resolution under the Supremacy Clause

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Chief Judge Roberto A. Lange

DOCKET NUMBER 3:22cv3018, 3:22cv3019

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Exhibit A

McPherson County Board of Commissioners
Minutes of Proceedings
January 11th, 2022

The McPherson County Board of Commissioners met telephonically in special session on Tuesday, January 11th, 2022. The call could be heard in the Commissioners chambers. Chairman Anthony Kunz called the meeting to order at 2PM. Members present were Rick Beilke, Delmar Metzger, Sid Feickert, and Jeff Neuharth.

Feickert moved and Metzger seconded to approve the agenda of the January 11th meeting. All voted in favor. Motion carried. No conflicts were declared.

Neuharth moved and Feickert seconded to place a moratorium on hazardous liquid transmission pipelines as defined in Title [49 CFR Section 192.3](#) and Title 49 CFR 195.2 and Title 49 CFR 193.2007; this moratorium shall remain in place until a revised McPherson County zoning ordinance can be approved and take effect. Upon roll call vote: Beilke, Feickert, Kunz, Neuharth and Metzger voted Aye. Motion carried.

Neuharth moved and Beilke seconded that a letter be sent to the South Dakota Public Utilities Commission including the moratorium action taken by McPherson County. Upon roll call vote: Beilke, Feickert, Kunz, Neuharth and Metzger voted Aye. Motion carried.

The letter sent to the Public Utilities Commission Chairman Chris Nelson, Commission Vice Chairperson Kristie Fiegen and Commissioner Gary Hanson on January 11th, 2022 reads as follows:

To Whom It May Concern:

Over the last several months, many residents of McPherson County have expressed concerns regarding the Summit Carbon Solutions CO2 pipeline (hereinafter referred to as the "Pipeline"). The Pipeline's proposed route runs directly through McPherson County. Nearly all the concerns surrounding the Pipeline were regarding both the short term and long-term safety of the project and the possible health risks thereby associated.

On January 4th, 2022, the McPherson County Board of Commissioners held an open forum for residents to express their concerns. At the conclusion of listening to the input, the McPherson County Board of Commissioners voted in support of the McPherson County Planning and Zoning Board to pass a moratorium on new pipelines being built in McPherson County.

On January 11th, 2022, the McPherson County Planning and Zoning Board passed a moratorium on any new pipelines being built in McPherson County that carry hazardous materials. On the same day, the McPherson County Board of Commissioners voted in approval of the moratorium. The moratorium is included below.

Neuharth moved and Feickert seconded to place a moratorium on hazardous liquid transmission pipelines as defined in Title [49 CFR Section 192.3](#) and Title 49 CFR 195.2 and Title 49 CFR 193.2007; this

moratorium shall remain in place until a revised McPherson County zoning ordinance can be approved and take effect. Upon roll call vote: Beilke, Feickert, Kunz, Neuharth and Metzger voted Aye. Motion carried.

We would ask that the South Dakota Public Utilities Commission take residents, as well as local government's concern regarding the Pipeline into account when making any decisions dealing with the Pipeline. Thank you.

Respectfully submitted by the McPherson County Commissioners,
Anthony Kunz, McPherson County Commission Chairman
Rick Beilke, McPherson County Commission Vice Chairman
Sid Feickert, McPherson County Commissioner
Delmar Metzger, McPherson County Commissioner
Jeff Neuharth, McPherson County Commissioner

At 2:10PM Feickert moved and Beilke seconded to adjourn the meeting. Upon roll call vote: Beilke, Feickert, Kunz, Neuharth and Metzger voted Aye. Motion carried. The next regular commissioners meeting is scheduled for February 1st, 2022 beginning at 10AM.

ATTEST:

Lindley Howard

McPherson County Auditor

Anthony Kunz

Chairman of the Board of Commissioners

Exhibit B



MCPHERSON COUNTY COMMISSION
706 MAIN STREET
LEOLA, SD 57456

January 11, 2022

RECEIVED

JAN 18 2022

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

South Dakota Public Utilities Commission
Capitol Building 1st Floor
500 E Capitol Avenue
Pierre, SD 57501

Commission Chairman Chris Nelson
Commissioner Kristie Fiegen
Commissioner Gary Hanson

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Neuharth moved and Feickert seconded to place a moratorium on hazardous liquid transmission pipelines as defined in Title [49 CFR Section 192.3](#) and Title 49 CFR 195.2 and Title 49 CFR 193.2007; this moratorium shall remain in place until a revised McPherson County zoning ordinance can be approved and take effect. Upon roll call vote: Beilke, Feickert, Kunz, Neuharth and Metzger voted Aye. Motion carried.

We would ask that the South Dakota Public Utilities Commission take residents as well as local governments concern regarding the Pipeline into account when making any decisions dealing with the Pipeline. Thank you.

Respectfully submitted by the McPherson County Commissioners,

A handwritten signature in black ink, appearing to read "Anthony Kunz". The signature is fluid and cursive, written over a light blue horizontal line.

Anthony Kunz, McPherson County Commission Chairman
Rick Beilke, McPherson County Commission Vice Chairman
Sid Feickert, McPherson County Commissioner
Delmar Metzger, McPherson County Commissioner
Jeff Neuharth, McPherson County Commissioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

RONALD ALVERSON
and SCS CARBON TRANSPORT LLC,

Plaintiffs,

v.

EDMUNDS COUNTY, SOUTH
DAKOTA;
EDMUNDS COUNTY BOARD OF
COMMISSIONERS;
TIMOTHY THOMAS, in his official
capacity as an Edmunds County
Commissioner;
MORRIS GROSZ, in his official
capacity as an Edmunds County
Commissioner;
JEROME SCHAFFNER, in his official
capacity as an Edmunds County
Commissioner;
CHAD PRESZLER, in his official
capacity as an Edmunds County
Commissioner; and
DEAN MEHLHAFF, in his official
capacity as an Edmunds County
Commissioner,

Defendants.

No. 3:22-CV-03019-RAL

AMENDED COMPLAINT

INTRODUCTION

1. The Eighth Circuit has repeatedly held that federal law preempts state and local governments' efforts to impose their own standards on federally regulated pipelines. *See ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *cf. N. Nat. Gas*

Co. v. Iowa Utils. Bd., 377 F.3d 817 (8th Cir. 2004). Now, ignoring those rulings, Edmunds County seeks to impose its own standards on an interstate pipeline project. But its effort is preempted, invalid, and unenforceable.

2. Plaintiffs Ronald Alverson and SCS Carbon Transport LLC (“SCS” for short) bring this action seeking declaratory and injunctive relief against the enforcement of Edmunds County’s regulation of pipeline permitting and safety. The regulation violates and is preempted by the federal Pipeline Safety Act and the Supremacy Clause of the U.S. Constitution because it impermissibly regulates safety aspects of SCS’s planned carbon dioxide pipeline. Plaintiffs also seek declaratory and injunctive relief against the enforcement of newly imposed permitting fees by Edmunds County that violate South Dakota law and the Dormant Commerce Clause.

PARTIES

3. Plaintiff Ronald Alverson is a citizen and resident of Lake County, South Dakota.

4. Plaintiff SCS Carbon Transport LLC is a limited liability company organized under Delaware law with its principal place of business in Ames, Iowa. SCS is authorized and in good standing to transact business in South Dakota.

5. Defendant Edmunds County, South Dakota is a county and body corporate under the laws of South Dakota.

6. Defendant Edmunds County Board of Commissioners is the board of commissioners and governing body for Edmunds County under the laws of South Dakota.

7. Defendant Timothy Thomas is a commissioner on the Edmunds County Board of Commissioners and is a resident of South Dakota. Mr. Thomas is sued only in his official capacity as an Edmunds County Commissioner.

8. Defendant Morris Grosz is a commissioner on the Edmunds County Board of Commissioners and is a resident of South Dakota. Mr. Grosz is sued only in his official capacity as an Edmunds County Commissioner.

9. Defendant Jerome Schaffner is a commissioner on the Edmunds County Board of Commissioners and is a resident of South Dakota. Mr. Schaffner is sued only in his official capacity as an Edmunds County Commissioner.

10. Defendant Chad Preszler is a commissioner on the Edmunds County Board of Commissioners and is a resident of South Dakota. Mr. Preszler is sued only in his official capacity as an Edmunds County Commissioner.

11. Defendant Dean Mehlhaff is a commissioner on the Edmunds County Board of Commissioners and is a resident of South Dakota. Mr. Mehlhaff is sued only in his official capacity as an Edmunds County Commissioner.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over Counts I and II under 28 U.S.C. § 1331 and 42 U.S.C. § 1983 because the claims arise under federal law, including the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Commerce Clause, U.S. Const. art. I, § 8, cl. 3.

13. This Court has supplemental jurisdiction over Count III under 28 U.S.C. § 1367(a).

14. This Court is authorized to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65.

15. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all Defendants reside in this district and a substantial part of the events giving rise to Plaintiffs' claims occurred in this district.

FACTUAL ALLEGATIONS

Corn, Ethanol, and Carbon Dioxide in South Dakota

16. Corn is one of South Dakota's top commodities by volume and the State's most valuable agricultural commodity. Last year, South Dakota produced corn worth more than \$4.1 billion—which was \$1.3 billion more than the State's next most valuable crop (soybeans).¹

17. More than half of all corn harvested in South Dakota goes to ethanol production. In 2018, for example, the State produced 778 million bushels of corn, 396 million of which were used in ethanol production.²

18. And South Dakota is home to a significant percentage of the United States' ethanol production. In 2019, for example, the State's ethanol production accounted for approximately 8% of the Nation's total ethanol production.³ Most of the ethanol produced in South Dakota makes its way outside of the State.

¹ See *2021 State Agriculture Overview*, U.S. Dep't of Agric., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=south%20dakota (last visited Oct. 10, 2022).

² See *Ethanol Plants Use Over Half of SD Corn*, S.D. Corn Utilization Council & S.D. Corn Growers Ass'n (July 22, 2020), <https://www.sdcorn.org/news/ethanol-plants-use-over-half-of-sd-corn>.

³ See *South Dakota State Energy Profile*, U.S. Energy Info. Admin., <https://www.eia.gov/state/print.php?sid=SD> (last updated June 16, 2022).

19. Corn's value in South Dakota—and throughout the Nation—is inextricably tied to ethanol production.

20. The value of ethanol, and thus the price of corn, is affected by state and foreign regulations that target carbon dioxide (CO₂) emissions.

21. CO₂ is a byproduct of the fermentation process of producing ethanol from corn. CO₂ is not only a byproduct of ethanol plants but also a byproduct of numerous other manufacturing processes, including fertilizer ammonia production.

22. CO₂ is a greenhouse gas that poses environmental concerns if released into the atmosphere in large quantities.

23. Carbon capture and sequestration (CCS) is a process by which CO₂ is captured at the point of generation, transported, and then safely stored. CCS technology reduces greenhouse gas emissions by preventing the release of CO₂ into the atmosphere.

24. Carbon intensity measures the amount of carbon emitted per unit of energy consumed. Lower carbon emissions during fuel production result in a lower carbon intensity for that fuel.

25. Canada, for example, is a primary importer of ethanol from the United States, and South Dakota is one of the main sources of U.S. ethanol exports to Canada. In 2021, Canada imported approximately 1.3 billion liters of U.S. ethanol fuel—an 8% percent increase from 2020. Those imports are projected to reach a record 1.5 billion liters in 2022.⁴

⁴ See *Canada: Biofuels Annual*, Report No. CA2022-0019, U.S. Dep't of Agric. (Aug. 22, 2022), <https://www.fas.usda.gov/data/canada-biofuels-annual-8>.

26. Canada's increased demand for ethanol comes in part from recently enacted energy regulations that incentivize the production, sale, and use of low carbon intensity fuels. Canada's Clean Fuel Regulations (CFR), which became law in July 2022, impose a comprehensive set of fuel standards, including requirements that fuel suppliers progressively reduce the carbon intensity of fuels sold in Canada.⁵ The CFR aims for a 15% decrease in the carbon intensity of gasoline and diesel used in Canada by 2030.

27. Energy regulations target carbon emissions in the United States too, increasing in-state demand for low carbon intensity fuels. California, for example, has adopted the Low Carbon Fuel Standard (LCFS), which requires ongoing reductions in the carbon intensity of fuels sold in the State.⁶ The LCFS considers emissions associated with the complete life cycle of fuel—from production to transportation to consumption. Under the LCFS, providers of low carbon intensity fuels generate credits. The value of those credits for ethanol plants has historically varied from \$50–\$200 per ton of CO₂ depending on demand.⁷ And the California Air

⁵ See, e.g., *What are the Clean Fuel Regulations?*, Gov't of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/about.html> (last updated July 7, 2022); *Compliance with the Clean Fuel Regulations*, Gov't of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/compliance.html> (last updated July 20, 2022).

⁶ See, e.g., *Low Carbon Fuel Standard*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard> (last visited Oct. 10, 2022).

⁷ See *California Low Carbon Fuel Standard Credit Price*, Neste, <https://www.neste.com/investors/market-data/lcfs-credit-price> (last visited Oct. 10, 2022).

Resources Board recognizes CCS as “an important strategy to reduce greenhouse gas (GHG) emissions and mitigate climate change.”⁸

28. Oregon has adopted a similar approach.⁹ Under its Clean Fuels Program, the State is targeting a 10% reduction in average carbon intensity from 2015 levels by 2025, a 20% percent reduction by 2030, and a 37% reduction by 2035. Fuel providers and importers must show that the volume and type of fuel supplied meet annual standards. And businesses can generate credits for fuels that exceed those standards.

29. Other states have enacted similar low carbon initiatives and regulations.

30. The value of South Dakota ethanol production, and the value of corn in South Dakota—and throughout the Nation—depends on, and will likely increasingly depend on, carbon-reduction efforts of South Dakota ethanol facilities.

SCS’s CO₂ Pipeline

31. SCS and its parent Summit Carbon Solutions, LLC are developing an interstate CO₂ pipeline and related facilities to facilitate CCS technology. When completed, the pipeline will transport CO₂ captured from more than 30 facilities (primarily ethanol plants but also some fertilizer plants) across South Dakota, North Dakota, Iowa, Minnesota, and Nebraska. The pipeline system will transport this CO₂

⁸ *Carbon Capture & Sequestration*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/carbon-capture-sequestration> (last visited Oct. 10, 2022).

⁹ See, e.g., *Clean Fuels Program Overview*, Oregon.gov, <https://www.oregon.gov/deq/ghgp/cfp/Pages/CFP-Overview.aspx> (last visited Oct. 10, 2022).

through a network of more than 1,900 miles of underground pipes across those five states and deliver it to geologically appropriate sequestration sites in North Dakota.

32. SCS will provide its CO₂ transportation services to the public for hire as a common carrier.

33. In South Dakota, the pipeline project is projected to involve more than 450 miles of pipeline, transporting CO₂ from both out-of-state and in-state facilities, including Dakota Ethanol, LLC in South Dakota.

34. The pipeline will travel through 18 counties in South Dakota: Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner.

35. The pipeline project is underway. SCS is in the process of surveying the routes for the project and securing the necessary permits. It is also negotiating with landowners for land access.

36. In South Dakota, SCS is engaging with the State's Public Utilities Commission (PUC) as part of the planning and permitting for the pipeline project. On February 7, 2022, SCS filed an application with the PUC for the siting permit required for the pipeline under South Dakota law.¹⁰

37. The pipeline project will help reduce the carbon footprint and environmental impact of ethanol production by facilitating the transportation and sequestration of CO₂, thereby reducing its release into the atmosphere, which in turn

¹⁰ See *In the Matter of the Application by SCS Carbon Transport LLC for a Permit to Construct a Carbon Dioxide Transmission Pipeline*, Docket No. HP22-001 (S.D. Pub. Utils. Comm'n Feb. 7, 2022), <https://puc.sd.gov/dockets/HydrocarbonPipeline/2022/HP22-001.aspx>.

will reduce the carbon intensity of and enhance the long-term economic viability of South Dakota's ethanol and agriculture industries.

38. Ethanol plants whose CO₂ byproduct is transported through SCS's interstate pipeline—including Dakota Ethanol—will be equipped to produce carbon-neutral fuel by 2030 and will be better positioned to compete in energy markets that prefer or require fuels with low carbon intensity, including the Canada, California, and Oregon markets discussed above.

39. For example, through its use of SCS's pipeline, Dakota Ethanol expects to earn at least \$15 million per year in low carbon premiums.

40. Accordingly, South Dakota ethanol plants—including Dakota Ethanol—have a direct interest and stake in the success of SCS's pipeline project.

41. Mr. Alverson is also directly interested in the pipeline's success. He and his family own a 2,200-acre farm in Lake County, South Dakota, which he rents to his son. The farm grows around 1,800 acres of corn for an average yield of 180–190 bushels per acre. All of the corn grown on Mr. Alverson's farm is sold to Dakota Ethanol for ethanol production.

42. In fact, Mr. Alverson is a founder of Dakota Ethanol, which operates its ethanol production facility in Lake County, South Dakota. Mr. Alverson also holds an ownership interest in the company.

43. Dakota Ethanol produces approximately 100 million gallons of ethanol per year. It has approximately 1,000 members, approximately 95% of which are from South Dakota and approximately 80% of which are corn producers.

44. Dakota Ethanol ships approximately 80% of its ethanol fuel to the California and Pacific Northwest markets. Because of the California and Oregon low carbon fuel standards and incentives, Dakota Ethanol has opportunities to sell its ethanol in those states at a premium if its ethanol meets the states' low carbon intensity standards.

45. Mr. Alverson also holds ownership interests in several other ethanol production facilities.

46. Accordingly, Mr. Alverson has a direct interest and stake in the success of SCS's pipeline project, both as a farmer and as a part-owner of several ethanol production facilities. The pipeline project will help facilitate the viability and competitive edge of ethanol fuel production and increase that production. Increased ethanol production will bring higher demand and higher prices for corn, financially benefiting Mr. Alverson and other corn farmers in the State. Moreover, the value of Mr. Alverson's ownership interests in those ethanol facilities is inherently tied to the increased viability and volume of ethanol production that will result from SCS's pipeline project.

Edmunds County Resolution #2022-4-1 and Permit Fee Increases

47. Even though the federal government regulates the safety of SCS's pipeline project (as discussed below) and SCS is engaging with the PUC about the project, several South Dakota counties have taken their own steps to regulate SCS's and others' pipeline projects, citing safety concerns.

48. One of those counties is Edmunds County.

49. On April 12, 2022, the Edmunds County Board of Commissioners unanimously passed Resolution #2022-4-1, which formally opposes SCS's pipeline project.

50. Resolution #2022-4-1's stated basis is SCS's application for a construction permit to develop the pipeline project in the county.

51. Resolution #2022-4-1 states that "there are numerous **risks** involved with a carbon transmission pipeline" (emphasis added).

52. Resolution #2022-4-1 states that the county "is concerned with the **potential risks** involved with a carbon transmission pipeline, such as the current proposed location of the pipeline, depth of pipeline, and **safety to the residents** of Edmunds County" (emphasis added).

53. Resolution #2022-4-1 establishes the county's formal opposition to "the construction of the proposed carbon pipeline" and asserts that "the location, depth, and **other safety matters** involving the pipeline must be addressed and modified prior to said permitting" (emphasis added).

54. Immediately after passing Resolution #2022-4-1, the Edmunds County Board of Commissioners approved significant increases to fees for three utility permits.

55. The board increased the following permit fees:

- (i) the "Hazardous Utility (occupancy)" permit fee from \$250 to \$5,000 (a 1,900% increase);

- (ii) the “Hazardous Utility ‘Plus additional per each crossing’” permit fee from \$1,500 to \$50,000 (a more than 3,233% increase); and
- (iii) the “Hazardous Utility ‘Plus additional per each longitudinal parallel mile’” permit fee from \$1,800 to \$100,000 (a more than 5,455% increase) (together, the “Permit Fees”).

56. Each of the Permit Fees is allocated 80% to the county’s Local Emergency Planning Committee and 20% to the county’s Road & Bridge fund.

57. Each of these permits is required for the planned route of SCS’s pipeline through Edmunds County.

58. The board provided no justification for these fee increases and made no findings concerning the relationship between the increased amounts and administering the permits.

59. The Permit Fees are not remotely related to Edmunds County’s costs associated with utility highway crossings and are grossly disproportionate to Edmunds County’s \$3.7 million general fund budget.

60. A true and accurate copy of the minutes that document the passage of Resolution #2022-4-1, that contain its text, and that document the increased Permit Fees is attached as **Exhibit A**.

61. Resolution #2022-4-1 is injuring Plaintiffs by preventing SCS from completing—or even beginning—the portion of the pipeline project in Edmunds County.

62. Because the main artery of the pipeline is planned to run through Edmunds County, the full interstate pipeline cannot be completed or placed into operation while Resolution #2022-4-1 remains in place.

The Pipeline Safety Act

63. Although Edmunds County, through its board of commissioners, seeks to regulate safety aspects of SCS's pipeline project, federal law already exclusively regulates interstate pipeline safety under the Pipeline Safety Act (PSA), 49 U.S.C. §§ 60101 *et seq.*

64. Congress enacted the PSA in 1994 “to revise, codify, and enact without substantive change,” the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquids Pipeline Safety Act of 1979 (HLPSA). Pub. L. No. 103-272, 108 Stat. 745, preamble (1994). The PSA's purpose “is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities.” 49 U.S.C. § 60102(a)(1).

65. Under the PSA, the U.S. Department of Transportation (DOT) is charged with “prescrib[ing] minimum safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C. § 60102(a)(2). The PSA also provides that DOT “shall regulate carbon dioxide transported by a hazardous liquid pipeline facility” and “shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.” 49 U.S.C. § 60102(i)(1). DOT's regulatory authority, in turn, is delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA). *See* 49 U.S.C. § 108(a), (f).

66. CO₂ is a “hazardous liquid” under the PSA. *See* 49 U.S.C. § 60101(a)(4).

67. Because SCS is engaged in the interstate pipeline transportation of hazardous liquid and the construction, development, and operation of interstate hazardous liquid pipeline facilities, its project is subject to federal regulation under the PSA.

68. Under the PSA, “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

69. Through section 60104(c), the PSA “expressly preempts” any local government’s “attempt to impose safety regulations” on interstate pipeline projects. *Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 880 (9th Cir. 2006); *see also, e.g., id.* (“Federal preemption of the regulation of interstate pipeline safety in any other manner is manifest in the language of the PSA provision entitled ‘Preemption.’”); *Kinley Corp.*, 999 F.2d at 359 (“Congress granted exclusive authority [through the HLPSA] to regulate the safety of construction and operation of interstate hazardous liquid pipelines to the Secretary of the Department of Transportation. This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards.”); *ANR Pipeline*, 828 F.2d at 470 (“Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities. . . . [T]he NGPSA leaves nothing to the states in terms of

substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, or identical to the federal standards.”).

70. At least one South Dakota county has already recognized that local governments lack authority to regulate interstate pipeline safety. In April 2022, the Board of Commissioners for Hand County, South Dakota, unanimously passed Resolution 2022-15, which established a moratorium on the construction, installation, or use of any pipeline for the purpose of transmitting hazardous waste. But on July 5, 2022, the board voted to withdraw the moratorium, concluding that “the authority of the county is limited and the majority of law, rules and regulations rest with the PUC and the federal regulatory agencies.”

COUNT I
(Supremacy Clause Preemption)

71. Plaintiffs reallege and incorporate by reference all allegations in the Complaint.

72. Under the Supremacy Clause, “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. As a result, state and local laws, ordinances, and other regulations that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

73. Resolution #2022-4-1 states that its purpose is to address safety aspects of pipelines, including SCS’s pipeline project.

74. As such, Resolution #2022-4-1 constitutes a “safety standard[] for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

75. Resolution #2022-4-1 is designed and serves to supplement and supplant the methods of regulating pipeline safety that Congress has established and delegated to DOT and PHMSA.

76. Resolution #2022-4-1 purports to regulate within a field so pervasively occupied by federal law that any state or local regulation is precluded and excluded.

77. Resolution #2022-4-1 violates the PSA, conflicts with the PSA, and stands as an obstacle to accomplishing Congress’s full purposes and objectives.

78. The PSA therefore preempts Resolution #2022-4-1—by express, field, and conflict preemption—rendering it invalid, unenforceable, and null and void.

COUNT II
(Dormant Commerce Clause)

79. Plaintiffs reallege and incorporate by reference all allegations in the Complaint.

80. Under 42 U.S.C. § 1983, “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

81. The Commerce Clause provides that “Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States.” U.S. Const. art. I, § 8, cl. 3.

82. Under the so-called “Dormant” Commerce Clause, state and local governments lack the “the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.” *Or. Waste Sys., Inc. v. Dep’t of Env’t Quality*, 511 U.S. 93, 98 (1994); *see also U & I Sanitation v. City of Columbus*, 205 F.3d 1063, 1067–72 (8th Cir. 2000). A statute, ordinance, or regulation that violates the Dormant Commerce Clause is “invalid.” *Or. Waste Sys.*, 511 U.S. at 99, 108.

83. The Edmunds County Board of Commissioners approved the Permit Fees immediately after passing Resolution #2022-4-1, in which the board expressed its official and formal opposition to SCS’s interstate pipeline project.

84. The Permit Fees were enacted for the discriminatory purpose of discouraging and impeding the development of SCS’s interstate pipeline project in Edmunds County.

85. The Permit Fees have no rational relationship to Edmunds County’s local interests, and the burden they impose on interstate commerce is clearly excessive in relation to the benefits to Edmunds County’s highways.

86. The Permit Fees therefore violate the Dormant Commerce Clause and are invalid.

COUNT III
(Violation of S.D. Codified Laws §§ 6-12-14 and 10-12-7)

87. Plaintiffs reallege and incorporate by reference all allegations in the Complaint.

88. Under South Dakota law, “[t]he distinction between fees and taxes is that taxes are imposed for the purpose of general revenue while license or other fees are ordinarily imposed to cover the cost and expense of supervision or regulation.” *Valandra v. Viedt*, 259 N.W.2d 510, 512 (S.D. 1977).

89. Because Edmunds County’s Permit Fees are allocated 80% to funding emergency planning and 20% to the roads and bridges funds, at least 80% of each fee is collected for revenue purposes and “bears no relationship to the cost of administering” the permits themselves. *Id.*

90. Each of the Permit Fees is therefore “primarily a tax for revenue purposes and clearly goes beyond the limits of a fee for costs of administering the system.” *Id.*

91. Under South Dakota law, “[n]o county . . . unless otherwise specifically provided by statute, may[] enact or increase, in any form a tax, fee, or charge that is . . . similar to a tax which provides revenues to the state.” S.D. Codified Laws § 6-12-14.

92. Under South Dakota law, county taxes must “be levied or voted in specific amounts of money required and within the limitations fixed by law.” S.D. Codified Laws § 10-12-07.

93. South Dakota has established a tax on CO₂ pipelines for revenue-collecting purposes. *See* S.D. Codified Laws §§ 10-37-1 *et seq.*

94. The Permit Fees therefore violate S.D. Codified Laws § 6-12-14 as taxes or fees that are “similar to a tax which provides revenues to the state” and violate S.D. Codified Laws § 10-12-7 because they were not levied “within the limitations fixed by law.”

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

1. Under 28 U.S.C. §§ 2201 and 2022 and Federal Rule of Civil Procedure 57, declare that Edmunds County Resolution #2022-4-1 is preempted by the Pipeline Safety Act and is invalid, unenforceable, and null and void as applied to SCS’s pipeline project;

2. Under Federal Rule of Civil Procedure 65, preliminarily and permanently enjoin Defendants from (i) enforcing or implementing Edmunds County Resolution #2022-4-1, (ii) enforcing or implementing any other moratoriums or bans on the permitting, construction, or development of SCS’s pipeline project, and (iii) enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any safety aspect of SCS’s pipeline project;

3. Under 28 U.S.C. §§ 2201 and 2022 and Federal Rule of Civil Procedure 57, declare that Edmunds County’s Permit Fees violate the Dormant Commerce Clause as well as S.D. Codified Laws §§ 6-12-14 and 10-12-7 and are therefore void, invalid, and unenforceable;

4. Under Federal Rule of Civil Procedure 65, preliminarily and permanently enjoin Defendants from enforcing or implementing the Permit Fees;
5. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988, Federal Rule of Civil Procedure 54, and any other applicable authority; and
6. Award such other and further relief as the Court deems appropriate.

DATED, this 10th day of November, 2022.

MAY, ADAM, GERDES & THOMPSON LLP

BY: /s/ Brett Koenecke

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Counsel for Plaintiffs

Exhibit A

COUNTY COMMISSION MEETING

IPSWICH, SOUTH DAKOTA

April 12, 2022

The Edmunds County Board of Commissioners met at 9:20 A.M. on April 12, 2022 at the county courthouse. Members present were: Dean Mehlhaff, Morris Grosz, Jerome Schaffner, Chad Preszler, and Timothy Thomas. Chairman Thomas called the meeting to order at 9:20 A.M. Others present for portions of the meeting were: Vaughn Beck, Brittney Duvall, Todd Holtz, Michael Jager, and Sandra Northrop.

MINUTES APPROVED: Motioned by Schaffner, seconded by Grosz to approve the minutes of the March 22, 2022 regular meeting. Motion carried.

CLAIMS APPROVED: SD Association of County Officials, Register of Deeds Modernization, Preservation Relief fees \$100.00; SD Department of Revenue, motor vehicle, state fees, & driver's license 170,047.50.

Professional Services: Avera Occupational Medicine \$386.00; Avera St Lukes 38.00; Vaughn P. Beck 1,550.00; First Concord Benefits Group 228.50; Tammy Pitz 75.00.

Phone & Utilities: Bowdle City Office \$203.20; Century Link 53.52; FEM Electric 685.44; Ipswich City Office 217.41; Montana Dakota Utilities 2,787.96; Midcontinent Communications 216.78; Reuer Sanitation 39.00; Valley Telecommunications 824.59; Verizon Wireless 354.40. WEB Water Bottling Company 92.50; WEB Water 83.43.

Publishing: Gibson Publishing Co \$1,266.36; The Pride of the Prairie 545.46.

Travel Expenses, Dues & Registration: SD Association of County Officials \$555.00; SDAE4-HP 15.00.

Supplies, Parts & Repairs: Aberdeen Chrysler Center \$47.32; Auto Value Parts Stores 137.57; Bowdle Building & Hardware Center 58.75; Century Business Products 210.06; Connecting Point 204.00; Crawford Trucks & Equipment 763.08; Dakota Fluid Power 61.30; Dakota Ink & Toner 139.96; Dakota Oil 49.44; Dollar General 138.65; Farnams Napa 820.80; Heier's Body & Repair Shop LLC 177.68; Heinz Snow Removal 42.50; Hutson Construction 127.50; Intoximeters Inc 422.86; Ipswich Lumber & Hardware 2.58; Ipswich State Bank 15.00; J Gross Equipment 132.36; John Deere Financial 5,844.53; Ken's Foodfair 223.66; Mac's Hardware 110.26; Microfilm Imaging Systems 337.00; PowerPlan 1,763.24; Roscoe Trustworthy Hardware 18.97; Safety Service 95.95; Schurrs 40.00; Servall Uniform & Linen 58.76; TranSource Truck & Equipment 223.56; Trav's Outfitter 260.10; US Bank 3,475.64; WEX Bank 2,401.64.

Salaries of Officers and Employees for Month of March: Commissioners \$5,500.00; Auditor 8,118.48; Treasurer 7,723.64; States Attorney 4,151.82; Courthouse Maintenance 3,751.66;

Director of Equalization 7,723.64; Register of Deeds 7,723.64; Veteran Service Officer 1,224.16; Sheriff’s Department 28,266.42 (Overtime Pay: Jonathan Waldner 333.90); (Speed Overtime pay: Kyle Couchey 36.17; Jonathan Waldner 400.68); (On call pay: Kyle Couchey 80.00; Daniel Hardison 114.00; Jonathan Waldner 178.00); County Jail 7,078.53 (Overtime Pay: Brandon Bowar 340.89; Nathan Jaenisch 655.97; Cynthia Sahli 177.56; Zach Sahli 295.95); Coroner 125.00; Emergency Management 1,330.40; Highway Department 46,629.92; 4-H 3,591.74; 24/7 Sobriety 206.60.

Payroll Deductions and Benefits: AFLAC \$1,712.30; AIG 60.00; Delta Dental 1,014.60; Colonial Life 380.06; First Concord Benefits Group 727.86; Ipswich State Bank, social security, withholding, and fees 30,024.81; SD Retirement 15,468.06; SD Supplemental Retirement 1,125.00; Washington National Health Insurance 23.95; Standard Insurance 433.80; Wellmark Blue Cross Blue Shield 34,883.00.

Motioned by Mehlhaff, seconded by Schaffner to pay all above claims. Motion carried.

FINANCIAL REPORT: Motioned by Grosz, seconded by Mehlhaff to accept the March 31, 2022, Financial Statement for Edmunds County as follows:

Total March Receipts -- \$818,326.81
 Total March Disbursements -- \$837,870.37

 Balance in Checking Account -- \$320,704.15
 Today’s Receipts -- \$40,047.12
 Change -- \$1,300.00
 Money Market -- \$2,141,929.81
 Money Certificates -- \$2,100,000.00
 Total Cash Assets -- \$4,603,981.08

Edmunds County General Fund:		
Balance March 1, 2022	\$2,041,062.30	
March Receipts	171,489.30	
March Disbursements	196,719.34	
Balance March 31, 2022	\$2,015,832.26	Motion carried.

REGISTER OF DEEDS: Motioned by Mehlhaff, seconded by Schaffner to accept the Register of Deeds Statement of Fees for the month of March 2022 in the amount of \$2,927.85. Motion carried.

WEED & PEST BOARD MEETING: Motioned by Schaffner, seconded by Mehlhaff to open the weed meeting at 10:40 A.M. Motion carried. Michael Jager, Edmunds County Weed Supervisor was present for the meeting.

MINUTES APPROVED: Motioned by Grosz, seconded by Schaffner to approve the minutes of the March 8, 2022 Weed & Pest Board Meeting. Motion carried.

JOINT POWERS AGREEMENT: Motioned by Mehlhaff, seconded by Preszler to approve and allow the Chairman to sign the Joint Powers Agreement between Edmunds County and the City of Bowdle, for the rental of county spray equipment and one Edmunds County highway employee at the rate of \$80.00 per hour, for the purpose of spraying mosquitoes within the City of Bowdle, for the year of 2022. Motion carried.

WEED & PEST GRANT: Motioned by Grosz, seconded by Mehlhaff to approve and allow the Chairman to sign the agreement, between Edmunds County Weed & Pest Board and the South Dakota Weed and Pest Commission, to accept grant funding and follow the guidelines for weed and pest control in Edmunds County, in the amount not to exceed \$5,100.00, effective July 1, 2022, through June 1, 2023. Motion carried.

WEED CONTROL: Michael Jager, Edmunds County Weed Supervisor, discussed the weed control plan for 2022 in Edmunds County.

Motioned by Schaffner, seconded by Mehlhaff to adjourn the weed meeting at 10:55 A.M. Motion carried.

CARBON DIOXIDE PIPELINE: The following resolution was introduced by Commissioner Grosz, who moved its adoption: Resolution #2022-4-1, Opposing the Current Plans of Construction of Summit Carbon Solutions Carbon Transport LLC Permit to Construct a Carbon Dioxide Transmission Pipeline. The motion to adopt the resolution was seconded by Preszler. Roll call vote: Mehlhaff - yes, Grosz - yes, Schaffner - yes, Preszler - yes, Thomas - yes. Resolution adopted.

WHEREAS, Summit Carbon Solutions Carbon Transport LLC has applied for a construction permit to construct a carbon transmission pipeline within Edmunds County, South Dakota; and

WHEREAS, there are numerous risks involved with a carbon transmission pipeline; and

WHEREAS, Edmunds County is concerned with the potential risks involved with a carbon transmission pipeline, such as the current proposed location of the pipeline, depth of pipeline, and safety to the residents of Edmunds County, South Dakota, if the pipeline is approved as currently proposed.

NOW THEREFORE, BE IT RESOLVED that the Edmunds County Commission hereby opposes the construction of the proposed carbon pipeline and requests that if a permit allowing for the construction of the pipeline is granted, the location, depth, and other safety matters involving the pipeline must be addressed and modified prior to said permitting.

UTILITIES RIGHT-OF-WAY: All three of the following motions are in reference to the Edmunds County Highway Utility Crossing Ordinances and the "Accommodation of Utilities on County Highway Right-of-Way" document. Distribution of any and all these permit fees collected will be distributed eighty percent to the Edmunds County Local Emergency Planning Committee for Emergency Services and twenty percent to the Edmunds County Road & Bridge fund.

Motioned by Schaffner, seconded by Preszler to amend Appendix C of the Utility ROW document increasing the "Hazardous Utility (occupancy)" permit fee from \$250.00 to \$5,000.00 and to require the line be encased, splitting the fee 80% LEPC and 20% R&B. Motion carried.

Motioned by Preszler, seconded by Mehlhaff to amend Appendix C of the Utility ROW document increasing the Hazardous Utility "Plus additional per each crossing" permit fee from \$1,500.00 to \$50,000.00 and splitting the fee 80% LEPC and 20% R&B. Motion carried.

Motioned by Grosz, seconded by Schaffner to amend Appendix C of the Utility ROW document increasing the Hazardous Utility "Plus additional per each longitudinal parallel mile" permit fee from \$1,800.00 to \$100,000.00 and splitting the fee 80% LEPC and 20% R&B. Motion carried.

AMERICAN RESCUE PLAN: Motioned by Mehlhaff, seconded by Schaffner to direct Keith Schurr, County Auditor, to elect "Standard Allowance Revenue Loss" of the American Rescue Plan Act State and Local Fiscal Recovery Funds final rule allowing counties to use the funds for the provisions of general government services without needing to use the US Treasury revenue loss formula calculator. Edmunds County has elected to use six months of 2022 & six months of 2023 County Road and Bridge salaries and County paid benefits as road building and maintenance, and other infrastructure expenses, as use of the ARPA SLFRF up to the amount received, projected to be \$743,600.00. Motion carried.

DISCUSSION: John Villbrandt with the SD Department of Transportation met with the Board to give an update on the reconstruction of State Highway 47 and the related possible impacts to Edmunds County Highways 1 and 10.

HEALTH INSURANCE: Motioned by Preszler, seconded by Mehlhaff to approve the Associated School Boards of South Dakota revised Protective Trust Joint Powers Agreement and Bylaws Resolution. Roll call vote: Mehlhaff - yes, Grosz - yes, Schaffner - yes, Preszler - yes, Thomas - yes. Resolution adopted.

Motioned by Mehlhaff, seconded by Schaffner to approve and allow the chairman to sign the Associated School Boards of South Dakota Health Benefits Fund Participation Agreement, with the South Dakota School District Benefit Fund, to provide health insurance for Edmunds County employees, offering \$1,000 and \$1,500 deductibles, effective July 1, 2022 through June 30, 2023. Motion carried.

JOINT POWERS AGREEMENTS: Motioned by Grosz, seconded by Preszler to approve and allow the chairman to sign the joint powers agreements, between Edmunds County and the Townships of Bowdle, Cottonwood Lake, Glover, and Hudson for the rental of county blade/motor grader, snow removal equipment and an operator. Motion carried.

POOR CLAIM: A request for payment of a poor claim was received, for Client ECO-331, in the amount of \$15,370.39 from Avera Heart Hospital of South Dakota. Motioned by Grosz, seconded by Mehlhaff to deny the poor claim. Motion carried.

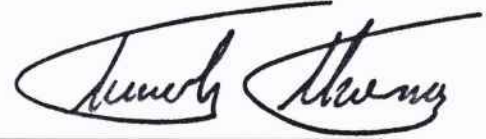
RADIO DISPATCH: Motioned by Preszler, seconded by Mehlhaff to approve the installation of an additional dedicated digital radio in the Sheriff's Office, by Minn-Kota Communications Inc, in the amount of \$6,150.99 and Dakota Electronics, in the amount of \$1,455.00. Motion carried.

SURPLUS PROPERTY: Motioned by Preszler, seconded by Mehlhaff to declare 11.58 ton of scrap iron as surplus county property and allow the same to be sold to Meyers Tractor Salvage LLC. Motion carried.

TRAVEL AUTHORIZATIONS: Motioned by Preszler, seconded by Mehlhaff to allow Keith Schurr to attend the Election Systems & Software Equipment training in Faulkton on April 27th, and to allow Patricia Nigg, Gwen Geditz, and Keith Schurr to attend the SD Association of County Officials Workshop in Pierre on May 3rd-4th. Motion carried.

MEETINGS SCHEDULED: The next regular Edmunds County Commissioner Meetings will be held at 9:00 A.M. on April 26th and May 10th.

ADJOURN: Motioned by Grosz, seconded by Schaffner to adjourn at 11:30 A.M. Motion carried.



Timothy Thomas
Chairman of the Board

ATTEST: 
Keith Schurr
Edmunds County Auditor

Published once at the total approximate cost of \$_____.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

RONALD ALVERSON
and SCS CARBON TRANSPORT LLC,

Plaintiffs,

v.

BROWN COUNTY, SOUTH DAKOTA;
BROWN COUNTY BOARD OF
COMMISSIONERS;
DUANE SUTTON, in his official
capacity as a Brown County
Commissioner;
MIKE WIESE, in his official capacity as
a Brown County Commissioner;
DENNIS FEICKERT, in his official
capacity as a Brown County
Commissioner;
DOUG FJELDHEIM, in his official
capacity as a Brown County
Commissioner; and
MIKE GAGE, in his official capacity as
a Brown County Commissioner,

Defendants.

No. 3:22-CV-03018-RAL

AMENDED COMPLAINT

INTRODUCTION

1. The Eighth Circuit has repeatedly held that federal law preempts state and local governments' efforts to impose their own standards on federally regulated pipelines. *See ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *cf. N. Nat. Gas Co. v. Iowa Utils. Bd.*, 377 F.3d 817 (8th Cir. 2004). Now, ignoring those rulings,

Brown County seeks to impose its own standards on an interstate pipeline project. But its effort is preempted, invalid, and unenforceable.

2. Plaintiffs Ronald Alverson and SCS Carbon Transport LLC (“SCS” for short) bring this action seeking declaratory and injunctive relief against the enforcement of Brown County’s moratorium on pipeline permitting and construction and regulation of pipeline safety. The moratorium violates and is preempted by the federal Pipeline Safety Act and the Supremacy Clause of the U.S. Constitution because it impermissibly regulates safety aspects of SCS’s planned carbon dioxide pipeline.

PARTIES

3. Plaintiff Ronald Alverson is a citizen and resident of Lake County, South Dakota.

4. Plaintiff SCS Carbon Transport LLC is a limited liability company organized under Delaware law with its principal place of business in Ames, Iowa. SCS is authorized and in good standing to transact business in South Dakota.

5. Defendant Brown County, South Dakota is a county and body corporate under the laws of South Dakota.

6. Defendant Brown County Board of Commissioners is the board of commissioners and governing body for Brown County under the laws of South Dakota.

7. Defendant Duane Sutton is a commissioner on the Brown County Board of Commissioners and is a resident of South Dakota. Mr. Sutton is sued only in his official capacity as a Brown County Commissioner.

8. Defendant Mike Wiese is a commissioner on the Brown County Board of Commissioners and is a resident of South Dakota. Mr. Wiese is sued only in his official capacity as a Brown County Commissioner.

9. Defendant Dennis Feickert is a commissioner on the Brown County Board of Commissioners and is a resident of South Dakota. Mr. Feickert is sued only in his official capacity as a Brown County Commissioner.

10. Defendant Doug Fjeldheim is a commissioner on the Brown County Board of Commissioners and is a resident of South Dakota. Mr. Fjeldheim is sued only in his official capacity as a Brown County Commissioner.

11. Defendant Mike Gage is a commissioner on the Brown County Board of Commissioners and is a resident of South Dakota. Mr. Gage is sued only in his official capacity as a Brown County Commissioner.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiffs' claim arises under federal law, including the Supremacy Clause, U.S. Const. art. VI, cl. 2.

13. This Court is authorized to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65.

14. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all Defendants reside in this district and a substantial part of the events giving rise to Plaintiffs' claim occurred in this district.

FACTUAL ALLEGATIONS

Corn, Ethanol, and Carbon Dioxide in South Dakota

15. Corn is one of South Dakota's top commodities by volume and the State's most valuable agricultural commodity. Last year, South Dakota produced corn worth more than \$4.1 billion—which was \$1.3 billion more than the State's next most valuable crop (soybeans).¹

16. More than half of all corn harvested in South Dakota goes to ethanol production. In 2018, for example, the State produced 778 million bushels of corn, 396 million of which were used in ethanol production.²

17. And South Dakota is home to a significant percentage of the United States' ethanol production. In 2019, for example, the State's ethanol production accounted for approximately 8% of the Nation's total ethanol production.³ Most of the ethanol produced in South Dakota makes its way outside of the State.

18. Corn's value in South Dakota—and throughout the Nation—is inextricably tied to ethanol production.

19. The value of ethanol, and thus the price of corn, is affected by state and foreign regulations that target carbon dioxide (CO₂) emissions.

¹ See *2021 State Agriculture Overview*, U.S. Dep't of Agric., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=south%20dakota (last visited Oct. 10, 2022).

² See *Ethanol Plants Use Over Half of SD Corn*, S.D. Corn Utilization Council & S.D. Corn Growers Ass'n (July 22, 2020), <https://www.sdcorn.org/news/ethanol-plants-use-over-half-of-sd-corn>.

³ See *South Dakota State Energy Profile*, U.S. Energy Info. Admin., <https://www.eia.gov/state/print.php?sid=SD> (last updated June 16, 2022).

20. CO₂ is a byproduct of the fermentation process of producing ethanol from corn. CO₂ is not only a byproduct of ethanol plants but also a byproduct of numerous other manufacturing processes, including fertilizer ammonia production.

21. CO₂ is a greenhouse gas that poses environmental concerns if released into the atmosphere in large quantities.

22. Carbon capture and sequestration (CCS) is a process by which CO₂ is captured at the point of generation, transported, and then safely stored. CCS technology reduces greenhouse gas emissions by preventing the release of CO₂ into the atmosphere.

23. Carbon intensity measures the amount of carbon emitted per unit of energy consumed. Lower carbon emissions during fuel production result in a lower carbon intensity for that fuel.

24. Canada, for example, is a primary importer of ethanol from the United States, and South Dakota is one of the main sources of U.S. ethanol exports to Canada. In 2021, Canada imported approximately 1.3 billion liters of U.S. ethanol fuel—an 8% percent increase from 2020. Those imports are projected to reach a record 1.5 billion liters in 2022.⁴

25. Canada's increased demand for ethanol comes in part from recently enacted energy regulations that incentivize the production, sale, and use of low carbon intensity fuels. Canada's Clean Fuel Regulations (CFR), which became law in July 2022, impose a comprehensive set of fuel standards, including requirements that

⁴ See *Canada: Biofuels Annual*, Report No. CA2022-0019, U.S. Dep't of Agric. (Aug. 22, 2022), <https://www.fas.usda.gov/data/canada-biofuels-annual-8>.

fuel suppliers progressively reduce the carbon intensity of fuels sold in Canada.⁵ The CFR aims for a 15% decrease in the carbon intensity of gasoline and diesel used in Canada by 2030.

26. Energy regulations target carbon emissions in the United States too, increasing in-state demand for low carbon intensity fuels. California, for example, has adopted the Low Carbon Fuel Standard (LCFS), which requires ongoing reductions in the carbon intensity of fuels sold in the State.⁶ The LCFS considers emissions associated with the complete life cycle of fuel—from production to transportation to consumption. Under the LCFS, providers of low carbon intensity fuels generate credits. The value of those credits for ethanol plants has historically varied from \$50–\$200 per ton of CO₂ depending on demand.⁷ And the California Air Resources Board recognizes CCS as “an important strategy to reduce greenhouse gas (GHG) emissions and mitigate climate change.”⁸

27. Oregon has adopted a similar approach.⁹ Under its Clean Fuels Program, the State is targeting a 10% reduction in average carbon intensity from

⁵ See, e.g., *What are the Clean Fuel Regulations?*, Gov’t of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/about.html> (last updated July 7, 2022); *Compliance with the Clean Fuel Regulations*, Gov’t of Canada, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/compliance.html> (last updated July 20, 2022).

⁶ See, e.g., *Low Carbon Fuel Standard*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard> (last visited Oct. 10, 2022).

⁷ See *California Low Carbon Fuel Standard Credit Price*, Neste, <https://www.neste.com/investors/market-data/lcfs-credit-price> (last visited Oct. 10, 2022).

⁸ *Carbon Capture & Sequestration*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/our-work/programs/carbon-capture-sequestration> (last visited Oct. 10, 2022).

⁹ See, e.g., *Clean Fuels Program Overview*, Oregon.gov, <https://www.oregon.gov/deq/ghgp/cfp/Pages/CFP-Overview.aspx> (last visited Oct. 10, 2022).

2015 levels by 2025, a 20% percent reduction by 2030, and a 37% reduction by 2035. Fuel providers and importers must show that the volume and type of fuel supplied meet annual standards. And businesses can generate credits for fuels that exceed those standards.

28. Other states have enacted similar low carbon initiatives and regulations.

29. The value of South Dakota ethanol production, and the value of corn in South Dakota—and throughout the Nation—depends on, and will likely increasingly depend on, carbon-reduction efforts of South Dakota ethanol facilities.

SCS's CO₂ Pipeline

30. SCS and its parent Summit Carbon Solutions, LLC are developing an interstate CO₂ pipeline and related facilities to facilitate CCS technology. When completed, the pipeline will transport CO₂ captured from more than 30 facilities (primarily ethanol plants but also some fertilizer plants) across South Dakota, North Dakota, Iowa, Minnesota, and Nebraska. The pipeline system will transport this CO₂ through a network of more than 1,900 miles of underground pipes across those five states and deliver it to geologically appropriate sequestration sites in North Dakota.

31. SCS will provide its CO₂ transportation services to the public for hire as a common carrier.

32. In South Dakota, the pipeline project is projected to involve more than 450 miles of pipeline, transporting CO₂ from both out-of-state and in-state facilities, including Dakota Ethanol, LLC in South Dakota.

33. The pipeline will travel through 18 counties in South Dakota: Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner.

34. The pipeline project is underway. SCS is in the process of surveying the routes for the project and securing the necessary permits. It is also negotiating with landowners for land access.

35. In South Dakota, SCS is engaging with the State's Public Utilities Commission (PUC) as part of the planning and permitting for the pipeline project. On February 7, 2022, SCS filed an application with the PUC for the siting permit required for the pipeline under South Dakota law.¹⁰

36. The pipeline project will help reduce the carbon footprint and environmental impact of ethanol production by facilitating the transportation and sequestration of CO₂, thereby reducing its release into the atmosphere, which in turn will reduce the carbon intensity of and enhance the long-term economic viability of South Dakota's ethanol and agriculture industries.

37. Ethanol plants whose CO₂ byproduct is transported through SCS's interstate pipeline—including Dakota Ethanol—will be equipped to produce carbon-neutral fuel by 2030 and will be better positioned to compete in energy markets that prefer or require fuels with low carbon intensity, including the Canada, California, and Oregon markets discussed above.

¹⁰ See *In the Matter of the Application by SCS Carbon Transport LLC for a Permit to Construct a Carbon Dioxide Transmission Pipeline*, Docket No. HP22-001 (S.D. Pub. Utils. Comm'n Feb. 7, 2022), <https://puc.sd.gov/dockets/HydrocarbonPipeline/2022/HP22-001.aspx>.

38. For example, through its use of SCS's pipeline, Dakota Ethanol expects to earn at least \$15 million per year in low carbon premiums.

39. Accordingly, South Dakota ethanol plants—including Dakota Ethanol—have a direct interest and stake in the success of SCS's pipeline project.

40. Mr. Alverson is also directly interested in the pipeline's success. He and his family own a 2,200-acre farm in Lake County, South Dakota, which he rents to his son. The farm grows around 1,800 acres of corn for an average yield of 180–190 bushels per acre. All of the corn grown on Mr. Alverson's farm is sold to Dakota Ethanol for ethanol production.

41. In fact, Mr. Alverson is a founder of Dakota Ethanol, which operates its ethanol production facility in Lake County, South Dakota. Mr. Alverson also holds an ownership interest in the company.

42. Dakota Ethanol produces approximately 100 million gallons of ethanol per year. It has approximately 1,000 members, approximately 95% of which are from South Dakota and approximately 80% of which are corn producers.

43. Dakota Ethanol ships approximately 80% of its ethanol fuel to California and Pacific Northwest markets. Because of the California and Oregon low carbon fuel standards and incentives, Dakota Ethanol has opportunities to sell its ethanol in those states at a premium if its ethanol meets the states' low carbon intensity standards.

44. Mr. Alverson also holds ownership interests in several other ethanol production facilities.

45. Accordingly, Mr. Alverson has a direct interest and stake in the success of SCS's pipeline project, both as a farmer and as a part-owner of several ethanol production facilities. The pipeline project will help facilitate the viability and competitive edge of ethanol fuel production and increase that production. Increased ethanol production will bring higher demand and higher prices for corn, financially benefiting Mr. Alverson and other corn farmers in the State. Moreover, the value of Mr. Alverson's ownership interests in those ethanol facilities is inherently tied to the increased viability and volume of ethanol production that will result from SCS's pipeline project.

Brown County Resolution #33-22

46. Even though the federal government regulates the safety of SCS's pipeline project (as discussed below) and SCS is engaging with the PUC about the project, several South Dakota counties have taken their own steps to regulate SCS's and others' pipeline projects, citing safety concerns.

47. One of those counties is Brown County. On July 19, 2022, the Brown County Board of Commissioners unanimously passed Resolution #33-22, which establishes a moratorium on new conditional use permits and building permits for hazardous waste pipelines in the county. The safety of SCS's pipeline was one of the concerns raised before the passage of Resolution #33-22. In fact, minutes before moving for the passage of Resolution #33-22 and voting in favor of it, Commissioner Feickert expressed his concerns over a possible pipeline rupture and discussed how Resolution #33-22's moratorium would provide time to consider setback requirements as a means of addressing those safety concerns.

48. Resolution #33-22 invokes the authority of Title 4 of the Brown County Zoning Ordinance “to promote the **health, safety,** and general welfare of the County” (emphasis added).

49. One of Resolution #33-22’s stated justifications is that pipelines “can impact the public **health** [and] **safety**” of Brown County residents (emphasis added).

50. Resolution #33-22’s stated purpose is to provide the county’s Zoning Board of Adjustment time to study and review pipeline standards “that it believes are necessary to safeguard the **health, safety,** and general welfare of the public prior to the issuance of a transmission pipeline conditional use permit” (emphasis added).

51. Resolution #33-22 imposes “a temporary moratorium on the issuance of any and all permits, licenses, or approvals for the construction, installation, or use of any transmission pipeline requiring the approval of the South Dakota Public Utilities Commission, traversing those lands contained within the unincorporated areas of Brown County, South Dakota, including the construction of any transmission pipeline related infrastructure.”

52. A true and accurate copy of the minutes that document the passage of Resolution #33-22 and that contain its text is attached as **Exhibit A**.

53. Resolution #33-22 is injuring Plaintiffs by preventing SCS from completing—or even beginning—the portion of the pipeline project in Brown County.

54. Because the main artery of the pipeline is planned to run through Brown County, the full interstate pipeline cannot be completed or placed into operation while Brown County’s regulation remains in place.

The Pipeline Safety Act

55. Although Brown County, through its board of commissioners, seeks to regulate safety aspects of SCS's pipeline project, federal law already exclusively regulates interstate pipeline safety under the Pipeline Safety Act (PSA), 49 U.S.C. §§ 60101 *et seq.*

56. Congress enacted the PSA in 1994 “to revise, codify, and enact without substantive change,” the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquids Pipeline Safety Act of 1979 (HLPSA). Pub. L. No. 103-272, 108 Stat. 745, preamble (1994). The PSA’s purpose “is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities.” 49 U.S.C. § 60102(a)(1).

57. Under the PSA, the U.S. Department of Transportation (DOT) is charged with “prescrib[ing] minimum safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C. § 60102(a)(2). The PSA also provides that DOT “shall regulate carbon dioxide transported by a hazardous liquid pipeline facility” and “shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.” 49 U.S.C. § 60102(i)(1). DOT’s regulatory authority, in turn, is delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA). *See* 49 U.S.C. § 108(a), (f).

58. CO₂ is a “hazardous liquid” under the PSA. *See* 49 U.S.C. § 60101(a)(4).

59. Because SCS is engaged in the interstate pipeline transportation of hazardous liquid and the construction, development, and operation of interstate

hazardous liquid pipeline facilities, its project is subject to federal regulation under the PSA.

60. Under the PSA, “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

61. Through section 60104(c), the PSA “expressly preempts” any local government’s “attempt to impose safety regulations” on interstate pipeline projects. *Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 880 (9th Cir. 2006); *see also, e.g., id.* (“Federal preemption of the regulation of interstate pipeline safety in any other manner is manifest in the language of the PSA provision entitled ‘Preemption.’”); *Kinley Corp.*, 999 F.2d at 359 (“Congress granted exclusive authority [through the HLPSA] to regulate the safety of construction and operation of interstate hazardous liquid pipelines to the Secretary of the Department of Transportation. This Congressional grant of exclusive federal regulatory authority precludes state decision-making in this area altogether and leaves no regulatory room for the state to either establish its own safety standards or supplement the federal safety standards.”); *ANR Pipeline*, 828 F.2d at 470 (“Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities. . . . [T]he NGPSA leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive, or identical to the federal standards.”).

62. At least one South Dakota county has already recognized that local governments lack authority to regulate interstate pipeline safety. In April 2022, the Board of Commissioners for Hand County, South Dakota, unanimously passed Resolution 2022-15, which established a moratorium on the construction, installation, or use of any pipeline for the purpose of transmitting hazardous waste. But on July 5, 2022, the board voted to withdraw the moratorium, concluding that “the authority of the county is limited and the majority of law, rules and regulations rest with the PUC and the federal regulatory agencies.”

COUNT I
(Supremacy Clause Preemption)

63. Plaintiffs reallege and incorporate by reference all allegations in the Complaint.

64. Under the Supremacy Clause, “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. As a result, state and local laws, ordinances, and other regulations that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

65. Brown County’s Resolution #33-22 state that its purpose is to address safety aspects of pipelines, including SCS’s pipeline project.

66. As such, Resolution #33-22 constitutes a “safety standard[] for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c).

67. Resolution #33-22 is designed and serves to supplement and supplant the methods of regulating pipeline safety that Congress has established and delegated to DOT and PHMSA.

68. Resolution #33-22 purports to regulate within a field so pervasively occupied by federal law that any state or local regulation is precluded and excluded.

69. Resolution #33-22 violates the PSA, conflicts with the PSA, and stands as an obstacle to accomplishing Congress's full purposes and objectives.

70. The PSA therefore preempts Resolution #33-22—by express, field, and conflict preemption—rendering it invalid, unenforceable, and null and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

1. Under 28 U.S.C. §§ 2201 and 2022 and Federal Rule of Civil Procedure 57, declare that Brown County's Resolution #33-22 is preempted by the Pipeline Safety Act and is invalid, unenforceable, and null and void as applied to SCS's pipeline project;

2. Under Federal Rule of Civil Procedure 65, preliminarily and permanently enjoin Defendants from (i) enforcing or implementing Resolution #33-22, (ii) enforcing or implementing any other moratoriums or bans on the permitting, construction, or development of SCS's pipeline project, and (iii) enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any safety aspect of SCS's pipeline project;

3. Award Plaintiffs their costs under Federal Rule of Civil Procedure 54 and any other applicable authority; and

4. Award such other and further relief as the Court deems appropriate.

DATED, this 10th day of November, 2022.

MAY, ADAM, GERDES & THOMPSON LLP

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Exhibit A

JULY 19, 2022 – GENERAL MEETING

Meeting called to order by Chair Sutton at 8:45 A.M. in the Commission Chambers, Courthouse Annex, Brown County, SD. Present were Commissioners Feickert, Fjeldheim, Wiese, and Gage. Commissioner Weise led the pledge of allegiance.

APPROVAL OF AGENDA:

Moved by Gage, seconded by Feickert to approve the agenda. All members present voting aye. Motion carried.

OPPORTUNITY FOR PUBLIC COMMENT:

Commission was informed of the Republican Party meeting being held in Bristol South Dakota.

PIPELINE MORATORIUM:

Dan Lederman, Summit Carbon Solutions, spoke against signing the Moratorium. Concerns were heard from landowners supporting signing the moratorium.

PIPELINE MORATORIUM:

Commissioner Feickert offered the following Resolution:

RESOLUTION #33-22

A RESOLUTION ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF CONDITIONAL USE PERMITS AND BUILDING PERMITS ON HAZARDOUS WASTE PIPELINES IN BROWN COUNTY, SOUTH DAKOTA.

WHEREAS, to promote the health, safety, and general welfare of the County, the Board of Commissioners for Brown County adopted Title 4 Brown County Zoning Ordinances for the purpose of establishing zoning regulations upon all land within the unincorporated areas of Brown County, South Dakota; and

WHEREAS, Title 4 otherwise known as the Brown County Zoning Ordinance, categorizes all land within the unincorporated areas of Brown County into Districts with each District having its own unique set of permitted uses, conditional uses, and prohibited uses; and

WHEREAS, Title 4.0102 of the Brown County Zoning Ordinance defines a conditional use as a use that would not be appropriate generally or without restriction throughout the zoning division or district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare, and such uses may be permitted in a zoning district as conditional uses, as specific provisions for such exception are made Brown County zoning regulations, and conditional uses are subject to evaluation and approval by the Board of Adjustment and are administrative in nature. (Ord. 2004-1); and

WHEREAS, Title 4.0102 of the Brown County Zoning Ordinance states a transmission pipeline may mean a pipeline that transports hazardous liquid or gas within a storage field or

transports hazardous liquid or gas user or operates at a hoop stress of twenty percent or more of the specified minimum yield strength and that a “water service main” or a natural gas service main are meant as smaller mains, service lines and utility lines for servicing buildings or individual parcels and would not qualify as a transmission pipeline; and

WHEREAS, Transmission Pipelines, particularly those requiring the approval of the South Dakota Public Utilities Commission, can impact the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare of a large portion of Brown County's population: and

WHEREAS, Brown County has enacted an ordinance establishing siting, or performance standards necessary for the granting of transmission pipeline conditional use permit, but said ordinance may need to be revised to ensure it is consistent with South Dakota and Federal law The Brown County Zoning Board of Adjustment requires time to begin the process of studying, reviewing South Dakota and Federal law, and the siting and performance standards that it believes are necessary to safeguard the health ,safety, and general welfare of the public prior to the issuance of a transmission pipeline conditional use permit.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Brown County Commissioners does hereby impose a temporary moratorium on the issuance of any and all permits, licenses, or approvals for the construction, installation, or use of any transmission pipeline requiring the approval of the South Dakota Public Utilities Commission, traversing those lands contained within the unincorporated areas of Brown County, South Dakota, including the construction of any transmission pipeline related infrastructure, with said moratorium running for such a length of time that will give the Planning and Zoning Commission an opportunity to complete their review process or one year from the date of this Resolution is enacted.

Dated this 19th Day of July 2022.

Seconded by Commissioner Gage. Roll call vote: Commissioners Fjeldheim-aye; Gage-aye; Weis-aye; Sutton-aye. Resolution Adopted.

RICHMOND LAKE ROADS:

Dirk Rogers, Highway Superintendent, gave an update on Richmond Lake Roads and options for improving roads. No action taken.

HIGHWAY DEPARTMENT UPDATE:

Dirk Rogers, Highway Superintendent, gave updates on Bridge Inspection Resolution and Highway Department.

MINUTES:

Moved by Fjeldheim, seconded by Wiese to approve the general meeting minutes of July 12, 2022. All members present voting aye. Motion carried.

ORDINANCES 219- REZONE- FIRST READING:

Moved by Fjeldheim, seconded by Feickert to approve first reading of Proposed Ordinance 219, Applicants Clarence and Lori Habeck requesting to rezone from Chapter 4.06 Agriculture Preservation District (AG-P) to Chapter 4.14 Highway Commercial (H-C) : Proposed Lot 1, “Bim and Lori’s Venture Addition” in the NW ¼ of Section 9-T123N-R63W of the 5th P.M., Brown County, South Dakota. All members present voting aye. Motion carried.

ORDINANCE 220 – REZONE – FIRST READING:

Moved by Gage, seconded by Weise to approve first reading of Proposed Ordinance 220, applicants Done and Christine Bruner requesting to go from Chapter 4.06 Agriculture Preservation District (AG-P) to Chapter 4.07 Mini Ag District (M-AG): “Bruner’s Outlot 1” in the SE1/4 of Section 28-T122N-R62W of the 5th P.M., Brown County, South Dakota. All members present voting aye. Motion Carried.

ORDINANCE 221 – REZONE – FIRST READING

Moved by Feickert, seconded by Fjeldheim to approve first reading of Proposed ordinance 221, applicants Jeremy and Lindsey Lesnar requesting to rezone from Chapter 4.06 Agriculture Preservation District (AG-P) to Chapter 4.07 Mini Ag District (M-AG): Lot 2, “Hagemann First Subdivision” in the SE1/4 of Section 26-T124N-R63W of the 5th P.M., Brown County, South Dakota. All members present voting aye. Motion carried.

CLAIMS:

Professional Fees: ACE REFRIGERATION LLC \$418.20; CERTIFIED LANGUAGES INTERNATIONAL LLC \$744.15; Child's Voice Route #6361 \$435.48; DEAN SCHAEFER COURT REPORTING \$354.00; FIRE SAFETY FIRST, LLC \$183.00; KRISTI BRANDT \$80.00; MICHELLE GAIKOWSKI \$121.80; NE MENTAL HEALTH CENTER \$2,262.00; Saber Shred Solutions, Inc. \$12,524.15; SANFORD HEALTH \$2,100.00; SANFORD HEALTH OCCUPATIONAL MEDICINE ABERDEEN \$378.00; SD DEPT OF HEALTH \$620.00; SD DEPT OF REVENUE & REGULATIONS \$1,016.76; SD NETWORK AGAINST FAMILY VIOLENCE & SEXUAL ASSAULT \$200.00; SHI INTERNATIONAL CORP \$1,067.80; TYLER TECHNOLOGIES INC \$260.00; WEST PUBLISHING CORP. \$1,417.08; WEST PUBLISHING CORP. \$1,142.03; WEX HEALTH INC. \$170.70 Publishing: GateHouse Media South Dakota Holdings, Inc. \$1,137.59; HUB CITY RADIO \$5,910.00; LEE ENTERPRISES \$19.42; NORTHWEST BLADE \$54.75 Repairs & Maintenance: CENTURY BUSINESS PRODUCTS \$16.01; DOUBLE D BODY SHOP INC \$18,751.31; HOUSE OF GLASS \$180.57; IMEG Corp \$20,249.75; POMPS TIRE SERVICE, INC \$1,107.00; SEWER DUCK INC \$65.00; SHOWTIME INVESTMENTS, INC \$2,560.36; TITAN MACHINERY - ABERDEEN NH \$993.82 Supplies: ADVANCE AUTO PARTS \$717.57; AGTEGRA COOPERATIVE \$11,052.87; ASHLEY FARRAND DUNHAM \$40.00; Avera LTC Pharmacy Aberdeen \$21.80; CENTURY BUSINESS PRODUCTS \$2,121.18; CHARM-TEX \$136.02; CREATIVE PRODUCT SOURCING, INC. \$1,094.88; EARTHGRAINS BAKING CO. INC. \$948.76; ELECTION SYSTEMS & SOFTWARE LLC \$127.00; Ellie Weinmeister \$42.17; FIRE SAFETY FIRST, LLC \$451.00; JENSEN ROCK & SAND INC \$18,458.56; KESSLERS \$145.52; LIEN TRANSPORTATION COMPANY \$98,572.99; Linde Gas & Equipment Inc. \$334.71; MAC'S INC \$509.82; MENARDS \$182.99; MIDWEST ALARM \$279.26; NORTHERN VALLEY COMMUNICATION \$26.76; PHARMCHEM \$103.00; PIERSON-FORD-LINCOLN -MERCURY \$166.98; PLUMBING & HEATING WHOLESALE, INC. \$92.23; POMPS TIRE SERVICE, INC \$1,022.35; PRO AG SUPPLY, INC \$115.83; RIXSTINE TROPHY COMPANY \$1,956.60; RUNNINGS \$139.96; SCHWAN WELDING \$1,429.10; SHARE CORP \$303.00; STAN HOUSTON EQUIPMENT CO. \$222.95; Talent Buyers Network \$1,000.00; TITAN MACHINERY - ABERDEEN NH \$79.46; TRI STATE WATER \$35.00; WEST PUBLISHING CORP. \$2,397.11 Travel & Conference: REGENCY MIDWEST VENTURES LIMITED PARTNERSHIP \$390.64; SDSU EXTENSION \$64.68 Utilities: DEPENDABLE SANITATION INC \$348.00; JAMES VALLEY TELECOMMUNICATIONS \$218.30; MIDCONTINENT COMMUNICATIONS \$127.52;

NORTHERN ELECTRIC COOP, INC \$495.73; NORTHERN VALLEY COMMUNICATION \$5,275.28; NORTHWESTERN ENERGY & COMMUNICATIONS \$90.27; QWEST CORPORATION \$1,207.81; STATE OF SOUTH DAKOTA \$140.61; VERIZON WIRELESS SERVICES LLC \$40.03; WEB WATER DEVELOPMENT ASSOC. INC. \$85.53 Rentals: Linde Gas & Equipment Inc. \$47.62; PANTORIUM CLEANERS INC. \$207.36
All members present voting aye. Motion carried.

DESIGNATE AUDITOR SIGNATURE:

Moved by Wiese, seconded by Gage to appoint Chief Deputy Auditor Brock Hoyle as signatory for documents requiring Auditors Signature until an interim County Auditor is sworn in. All members present voting aye. Motion carried.

TEMPORARY SPECIAL EVENT MALT BEVERAGE PERMIT:

Moved by Wiese, seconded by Gage to approve temporary Malt Beverage permit for Boys & Girls Club of Aberdeen Area during the Brown County Fair Grandstand Concessions August 15 – 21st, 2022 . All members present voting aye. Motion carried.

HR REPORT:

Moved by Gage seconded by Feickert to approve the following Human Resource Report:

- Acknowledge Resignation of Nicole Phillips, Brown County Jail Correctional Officer, Full Time; effective July 7, 2022. Request to fill.
- Approve Hiring of Heather Kulwicki as Brown County Jail Correctional Officer, Full Time; effective July 26, 2022, starting wage \$19.58/hr.
- Approve Hiring of Dawn Owens as Brown County Jail Correctional Officer, Full Time, Starting Wage \$18.87/hr, effective July 26, 2022.
- Approve Hiring of Cody Richards as Brown County Jail Correctional Officer, Full Time, Starting Wage \$18.87/hr, effective July 26, 2022.
- Increase the wage of Kelsi Vinger with the Brown County State’s Attorney Office to \$52,000/year plus \$7,000/year for the new grant, for a total of \$59,000/year, effective July 1, 2022. For 2023, the COLA increase will be calculated from \$52,000. The new grant is scheduled to end on 6-30-23, at that time the \$7,000 will be subtracted from the annual wage.
- Acknowledge the following personal miles driven for April, May & June while using county owned vehicle to be taxed at \$.585 per mile: Kendell Titze 294miles @ \$171.99; John Florey 342 miles @ \$200.07; Dirk Rogers 1,995 miles @ \$1,167.08; Mike Scott 590 miles @ \$345.15

LEMPG QUARTER 3 REPORT:

Moved by Feickert, seconded by Fjeldheim to Approve LEMP Quarter 3 Report. All members present voting aye. Motion carried.

OTHER BUSINESS:

Chair Sutton, presented the promo list for carnival tickets for approval. Moved by Feickert, Seconded by Fjeldheim to approve. All members present voting aye. Motion Carried.

OUT OF STATE TRAVEL REQUEST:

Moved by Fjeldheim, seconded by Weise to approve out of state travel request for Scott Madsen, GIS Coordinator to attend ND Geospatial Summit September 14-15, 2022. All members present voting aye. Motion Carried.

EXECUTIVE SESSION:

Moved by Fjeldheim, seconded by Wiese to go into executive session to discuss personnel, legal and contracts per SDCL 1-25-2. All members present voting aye. Motion carried. The chair declared the executive session closed with no action taken.

ADJOURNMENT:

Moved by Feickert, seconded by Gage to adjourn the Brown County Commission at 11:00 a.m. All members present voting aye. Motion carried.

Brown County Auditor

Published once at the total approximate cost of \$_____.