
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE
APPLICATION BY SCS CARBON
TRANSPORT LLC FOR A PERMIT TO
CONSTRUCT A CARBON DIOXIDE
TRANSMISSION PIPELINE**

HP22-001

**INTERVENORS
RITA BROWN'S
INITIAL PRE-FILED TESTIMONY
IN OPPOSITION TO SUMMIT'S
APPLICATION**

Q: Please state your name.

A: I am Rita Brown.

Q: Do you either personally own or lease land or are you a fiduciary for or member or beneficiary of any entity that owns or leases land or real property in South Dakota, that you believe would be negatively affected by the proposed Summit hazardous CO2 pipeline (hereafter "proposed hazardous pipeline")?

A: Yes.

Q: For the land discussed here that would be affected and impacted by the proposed hazardous pipeline, give the Commissioners an understanding of how long the land has been in your family including a little history of the land and its importance to you.

A: I imagine most of the histories of land ownership that you will read have been properties handed down through generations of family members. Our situation differs greatly. By the time Alan's parents were ready to retire, even though inheriting one-fourth of their property, we had so much invested in our own farm that we could not afford to buy out the other parcels of land from his sister and two brothers. Therefore, the land was sold to Kingbrook Rural Water System. Regardless of how long the land has been in a family, relying on it for survival changes who you are and what you value. I offer, with permission, the following

commentary because the sentiments it contains reflect my own experience of years on the farm:

A life of sacrifice, high courage

By Amanda Radke, The Radke Report

Teddy Roosevelt once said, “A soft, easy life is not worth living, if it impairs the fibre of brain and heart and muscle. We must dare to be great; and we must realize that greatness is the fruit of toil and sacrifice and high courage... For us is the life of action, of strenuous performance of duty; let us live in the harness, striving mightily; let us rather run the risk of wearing out than rusting out.”

It’s calving season around here. The days are long. The weather has not been kind. And we are weary from lack of sleep. Yet, there’s nothing else we would rather do than working the land, tending to the livestock, and raising our kids in this agricultural community we love. And Teddy’s quote rings so true for those of us living and working in production agriculture.

Here’s how I see it. Agriculture is rife with risk, and it’s certainly not a soft, easy life. Yet, the challenges of this lifestyle strengthen the moral fabric of the heart.

The challenges are great, and the toil is immense, but the fruits of our labor with each harvest make the sacrifice worthwhile. It takes high courage to face each day, knowing the deck is often stacked against you to succeed. And it’s that courage that assists us in taking the risk, investing in the land, buying more cattle, planting more acres, diversifying our operations, connecting with consumers, developing a premium-earning niche, and fighting a system that often leaves small and medium-sized producers in the dust. Agriculture is a life of action – no two days are the same. We get up each day with the sunrise, putting on our coveralls, pulling on our boots, slapping on a hat, slipping on our gloves, and heading outside to face the tasks of the day head on. It requires strenuous performance. Hard labor. Working with our hands. Navigating through equipment breakdowns. Innovating. Creating. Inventing. Problem solving. Our performance each day dictates the progress we can make with each passing year and with every generation.

Our duty is to be caregivers. It's the calling God has chosen us for. That means lovingly taking care of a bottle calf. And bedding the cattle ahead of a storm. It means chopping ice in the water tanks. And making sure the livestock are fenced in and secure. It means putting their needs before our own. It requires sacrifice, and it's not just a duty, but it is an honor.

Agriculture requires us to strive mightily – to take on the heartache, the hardships, the sacrifice, the long hours, and the incredible risk – and to choose to continue to move one step forward knowing that things might not work out as we had planned. And yet if things do work out, and our plans are perfectly executed, the next crop, the next harvest, the next set of calves – well it could be our best ever, and so we continue to push forward. Motivated. Determined. Excited. Focused.

Yes, this agriculture life isn't for the faint of heart. We work long days with very little reward sometimes. However, when we look at the rich blessings we have in good years and bad, we know that every pain, every tear, and every plan gone awry is worth the toll.

So Teddy, I agree with you. Let us rather run the risk of wearing out than rusting out. So when we get to the end of our life, we know we lived it fully, putting our whole heart into a noble pursuit.

Yes, that's American agriculture. And these are my people.

At the time Alan and I wanted to begin farming, his parents, Vern, and Ruth Brown, were still actively working their own land and were not ready to retire. In the spring of 1979, we became aware that neighbors were going to auction their property. The enticing words of the auction notice portrayed the picture: This farm has 149 acres of cropland and the balance in building site, native grass and wetland. The farm is level to gently rolling, good productive land with an irrigation potential. This is a very pleasant place to live overlooking Lake Brandt to the East and adjoining Round Lake to the north and only 2 miles from Lake Madison. This farm is located in good waterfowl hunting and fishing area. There is a large yard and lawn with cedar tree

belt, hedge, flowers and large shelterbelt. That sounded like the next thing to paradise to us!

Knowing of Alan's desire to farm, (and his dad's wish to have him as a farming partner), Vern and Ruth generously offered financial assistance and a promise that we could share their equipment. That is the only way we two "farm kids" could ever have had an opportunity to live the country lifestyle we dreamed of.

On April 6, 1979, Alan and I attended the auction and bought 149 acres of land from Elmer and Goldie Framness. In March of 1980, we purchased an additional 19 acres from Gene and Edna Brown. The entirety of the property is in the Chester Township. According to the 1979 SCS (Soil Conservation Service) description, the soil composition is mainly Worthing Silty Clay Loam and Whitewood Silty Clay Loam, (both subject to ponding), and gravelly knobs scattered throughout the Talmo-Delmont soil complex creating a weighted soil productivity rating of .45. (When we bought the property, there was a gravel pit that has been filled in over the years). The SD Department of Agriculture Division of Conservation assessed the land as "a few acres of depressional soils subject to ponding and a few acres that are shallow to sand or gravel that will not produce corn or alfalfa beneficially under irrigation," a contributing factor in placing approximately 10 acres in CRP in the spring of 2023 for the purpose of preventing soil erosion, improving water quality, enhancing wildlife habitat, and aiding in natural carbon sequestration. (This area is where the pipeline route should have been placed rather than dissecting the most productive areas of my property). Because of the land's soil characteristics, increasing crop productivity meant irrigating approximately 120 acres. A Zimmatic center-pivot was installed in 1981 at the cost of approximately \$50,000. After more than 30 years of use, the old system was replaced with a new Zimmatic center-pivot and a new well. (Exhibits 1A-1G) The system was installed in the spring of 2018, just before Alan passed away. Sadly, he never got to witness its operation.

Our property experienced many changes over the years. In August of 1997, approximately 60 acres of farm land was sold to Richard Bothwell for the

development of the Lakes Community and Golf Course. In 1989, we sold an acre of land to Wayne and Mary Hefner for the construction of a new home. The original homestead was sold in 1992. In February of 1999, we sold 16.58 acres to Mark Peltier for the Round Lake Hills addition. The remaining piece of the subdivision has been retained by our family for future development since the lakes community is continually growing.

For the entirety of our years on the land, Alan and I had full-time occupations away from the farm to support our family and pay for the land, which turned out to be a greater challenge than we had anticipated. Notable trials included the farm crisis in the 1980's and the years between 2013-2018 when prices for farm products plummeted and farmers experienced a nearly 50% drop in net farm income. Sheer grit and determination, along with the ability to do without when times were tough, helped us survive the turbulent times.

Some individuals devote sizable sums of money to businesses or other endeavors, while others choose to put their earnings into a savings account. We, on the other hand, invested in our land. It was supposed to be a lasting legacy for our family for generations to come.

Alan and I raised two daughters, both married with families. MeLisa and her family live near Lake Sinai. Although they enjoy country living, they have no interest in farming. Shelly is married to a Nebraska farmer. A granddaughter works in the agriculture industry; perhaps she will be interested in working the land someday. However, having a hazardous pipeline run through the center of it may be a deal breaker. It's heartbreaking to think that may be the determining factor in her decision. It's certainly not the legacy Alan and I wanted to leave our family.

Q: Do you depend on the income from your land to support your livelihood or the livelihood of your family?

A: Yes. I currently rent the farm land to relatives, Steve and Jeff Brown. They exercise responsible stewardship to improve land health and productivity while utilizing best farming practices paired with precision agriculture technologies. Steve and Jeff use

mainly a corn/soybean rotation on the 126 acres of irrigated land. However, in 2019, wheat was planted on part of the land. Grasslands are left undisturbed.

Q: As far as you know, does Attachment No. 1 purportedly depict Summit’s “preliminary route” and preliminary permanent easement and other easements they desire across your property for pre-construction, construction, maintenance and operation of their proposed hazardous pipeline on, under, across, over, and through the land described?

A: As far as I know, yes. This is what they refer to as “**Exhibit B**” to their proposed Easement and is the best estimation we have been provided or able to obtain. However, as described this appears to be preliminary and not final. We don’t “know” what the final proposal is or isn’t or exactly how much land and the location of all the negative impacts should the PUC approve this project to cut across my land. They have not confirmed specifically and exactly what permanent, temporary, access, and other easements and property rights they seek on our land, and it appears they believe they have the power to unilaterally and at any moment move and or expand the perpetual and “temporary” easements they seek. The uncertainty around this is troubling and it seems they are seeking permission from the PUC for the idea of a route rather than a final route.

Q: As you analyze Summit’s proposed “preliminary” route and easements across your property, as depicted Attachment No. 1, please describe your property and its particular features and characteristics such that the Commissioners will be able to understand why digging, trenching, constructing, and operating a hazardous CO2 pipeline across your property is challenging or simply a bad idea in your opinion.

A: The proposed pipeline will enter my property from the north, going between Round and Brant Lake and under a slough, crossing from north to south through the entire length of the field. In close proximity are to two wells and the original farmstead that houses two separate families in two individual dwellings. The temporary construction easement follows the pipeline route, moving diagonally from the

building site to connect with an access easement. The degree of intrusion by the pipeline, access and temporary easements will be a major disruption to the operation of a center pivot irrigation system on the property. (Attachments 2A, 2B, 2C)

There are five families living within a half-mile radius of where the pipeline will cross my property. Not only do I have concerns about the close proximity of the pipeline to them, but also for the livestock and wildlife that co-inhabit the land.

In distances ranging from across the road (west access area of Brant Lake) to two miles (Lake Madison), the pipeline will invade populated lake areas with residential housing, campgrounds and storage buildings including Round Lake Hills Addition, Long Lake, Brant Lake, the South Brant Lake Addition, Basler's Resort and the West Brant Lake Access Area, The Lakes Community and Golf Course and Lake Madison. More than a thousand families live in the many developments surrounding Brant Lake, Round Lake, Long Lake, and Lake Madison. Hundreds more visit the lakes on a weekly basis, especially during the summer months. New developments, Smith Cove Addition between Lake Madison and Long Lake, and Zimmerman Landing on Lake Madison, are further evidence of the economic development and population growth in this area.

If the PUC approves Summit's proposed route, they therefore authorize Summit's proposed easements near or potentially on our land as well as force upon us all the terms of Summit's easement forever. These potential actions by the PUC would have a permanent – forever – negative effect and impact on our land as well as our financial future, and on the economy of our county and State.

Q: What is your understanding of the Public Utilities Commission's (PUC) role related to this proposed hazardous pipeline?

A: Based on information provided in a PUC document entitled "South Dakota Public Utilities Commission Information Guide to Siting Pipelines" which is included here as **Attachment No. 2**, and my participation in these matters, I understand the PUC has the power to approve or deny Summit's Permit Application. If approved by the PUC, Summit would be able to forever route and site its proposed hazardous

pipeline on, under, through, over, and across my land in question here and conduct any pre-construction, construction, and post-construction activities they deem necessary at any time, forever, that it wants without my permission. If the PUC were to approve the Application and the route approved crossed any portion of my land, I would then be subject to an easement agreement which restricts what I can do on my land and how I, my tenants, invited persons, and all future generations can conduct ourselves on the land – forever. An approval by the PUC is the trigger for Summit to condemn my land using eminent domain powers to which I am opposed. So, the PUC has in its hands whether or not me and all future generations who seek to use, develop, and work the land in question as we see fit will be unwillingly subjected to unwanted and restrictive permanent easements preventing us from doing so and subjecting us to liability and risk. The PUC’s actions, if approval of the Application, would also negatively impact our economic future forever. The PUC has my and this lands entire future in its hands.

Q: Have you heard or read that the PUC has nothing to do with easements or similar claims?

A: Yes, and that is logically and practically an incorrect assertion. Can you have a pipeline route without easements? The answer is no – a pipeline route is simply a series of connected easements – that’s what a route is. This pipeline will not be built without PUC Approval and easements. If and only if the PUC approves this hazardous pipeline application will my land and all future owners, tenants, and visitors to my land be negatively affected by pipeline easements, access easements, work space easements, and all the limitations, restrictions, dangers, and risks associated with those easements and what this proposed hazardous pipeline company and its future owners can do on my land and prevent me from doing on my land. No PUC approval means no unwanted easements and no unwanted property right transfer from me to the hazardous pipeline company. You cannot separate what the PUC is doing in this proceeding with the taking of my property rights. PUC approval is a vote by this Commission that it is okay for my property

rights to be taken and forever affected against my will and for the benefit of the proposed hazardous pipeline and for the economic gain of its wealthy investors.

Q: And what about the condemnation piece – the PUC says it has nothing to do with condemnation have you heard that and if so, what do you think?

A: I have heard that claim but again, same logic as above – no PUC approval means there is no project and no economic incentive to attempt to use eminent domain powers to condemn my land and my property rights. Only if the hazardous pipeline wanted to intimidate and scare me or send me a “message”, or if they were so confident that this process is a rubber stamp for them would they start condemnation actions before the PUC officially approved the route. But even if they would start condemnation prematurely, they would not go through the entire process and trial and the ultimate final taking of my rights unless the PUC approved their Application, so no PUC approval means there will not be a final forever taking of my land or property rights.

Q: What should the PUC consider when assessing how the proposed hazardous pipeline will directly affect your land and property rights?

A: In addition to what I have already discussed, you cannot have an intelligent consideration of a Route Application without reviewing Summit’s proposed Easement Agreement (herein referred to as the “Easement”) with a fine-tooth comb. This is the document that is part and parcel of a PUC Application approval. When you think about what a Pipeline Route is you conclude it is simply a long-connected chain of many Easements – no easements, no route. It is important to me that the PUC review this document in detail, understand the implications, and then consider all the implications relative to my land and property and how it is being used now and thinking into the future – forever – of how a PUC approval would therefore affect my land and my family. Each and every factor, as discussed in **Attachment No. 2**, is implicated by the Easement. A true and accurate copy of an example South Dakota Summit “Easement Agreement” is included here as **Attachment No. 3**. The

provisions and terms found in this exemplar are consistent with what has been presented to me.

Q: Please walk through the Easement and highlight your major concerns so the Commission can understand how their approval of Summit's Application would affect you forever.

A: Well, the first question and concern I have is the company that would have perpetual rights in my land is identified as Summit Carbon Solutions, LLC, a Iowa limited liability company with its principal office in Ames, Iowa.¹ I have tried to determine who owns this LLC and what its assets are but I can't figure it out and I am very concerned that the PUC could force this LLC upon me and no one knows who is behind the LLC curtain. Summit has refused to disclose the hidden layers of LLC member entities so that it is a secret who Summit really is and the PUC has no idea who it is dealing with. If I am forced against my will to have a co-owner of my land via Summit's desired perpetual easement against my land to do as they see fit within the easement language, then I want to know exactly who I am dealing with and the PUC should require the LLC to reveal its owners and investors and if those owners and investors are also entities the PUC should require transparency **at every level of ownership** so we ultimately know the real people behind this newly formed for-profit private company. When looking up Summit Carbon Solutions, LLC on the Iowa Secretary of State website it states the LLC was formed on June 28, 2021 – and it says it is a Foreign Limited Liability Company and that the actual state of incorporation is Delaware not Iowa as the Easement suggests. This Iowa Secretary of State search also reveals these companies that appear to be related:

¹ See page 1 of the Easement

Business Entities Results

 print

Searched: **Summit Carbon**

Results 1 - 6 of 6

<u>Business No.</u>	<u>Name</u>	<u>Status</u>	<u>Type</u>
677862	SUMMIT CARBON CAPTURE III, LLC	Active	Legal
677575	SUMMIT CARBON CAPTURE II, LLC	Active	Legal
671355	SUMMIT CARBON CAPTURE, LLC	Active	Legal
700745	SUMMIT CARBON PROJECT HOLDCO LLC	Active	Legal
646300	SUMMIT CARBON SOLUTIONS, LLC	Inactive	Legal
677150	SUMMIT CARBON SOLUTIONS, LLC	Active	Legal

When you then turn to the Delaware Secretary of State business entity search, it reveals these entities:

FILE NUMBER	ENTITY NAME
4931823	SUMMIT CARBON CAPTURE ALASKA, LLC
5004361	SUMMIT CARBON CAPTURE HOLDINGS, LLC
5004363	SUMMIT CARBON CAPTURE, LLC
5644331	SUMMIT CARBON HOLDINGS, LLC
6494069	SUMMIT CARBON PROJECT HOLDCO LLC
5927410	SUMMIT CARBON SOLUTIONS, LLC

What we have learned from the North Dakota PSC Summit proceedings is that as of May 9, 2023, these entities owned some or all of SCS Carbon Transport LLC, which is the North Dakota PSC Applicant and the South Dakota PUC Applicant: Summit Agriculture Group, SK Group, Tiger Infrastructure Partners, TPG Rise Climate, and Continental Resources, Inc.

Q: What is your next concern the PUC should be aware of?

A: Summit’s Easement refers to not only it as the “Company” involved but the defined term “Company” also includes any and all of Summit’s unknown “successors and assigns.” This means if the PUC approves Summit’s Application it is automatically approving any future unknown person, entity, country, or foreign sovereign wealth fund – including potentially countries and interests adverse to South Dakota and the

United States – to be my unwanted partner in my land – forever. I have no vote, no power, and no say-so.

Q: What is your next concern the PUC should be aware of?

A: Summit’s Easement states that we, as “Landowner” “hereby grants, sells and conveys unto Company [Summit and all future unknown successors and assigns], for use by Company and its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it, the following easements...”² Again, we are not forced to deal only with Summit – because the Easement says any unknown “agent, employees, designees..” etc. can use all the easements described.

Q: What is your next concern the PUC should be aware of?

A: Summit’s desired easements on my land are all shown as “approximate locations” so no one really knows the actual location or size of their desired easements and taking on my land and I don’t believe the PUC should approve an “approximate” route – they should evaluate a precise route, so this process is completely transparent.

Q: What is your next concern the PUC should be aware of?

A: Summit’s desires several easements, one is referred to as “Pipeline Easement” and it is to be “fifty feet (50’) in width” and “free and unobstructed” and “permanent.” I can’t understand why Summit should be approved by the PUC to have a “permanent” easement when they are not proposing a permanent or forever project. Also, the fact they demand a “free and unobstructed” easement calls into question what we can do on and across the easement forever.

Q: What is your next concern the PUC should be aware of?

A: Summit states in their Easement that they can use the desired “Pipeline Easement” for “the purposes of owning, accessing, surveying, establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing,

² *Id.* Para 1 Grant.

improving, substituting, operating, inspecting, maintaining, repairing, patrolling, protecting, changing slopes of cuts and fills to ensure proper lateral and subjacent support for and drainage for, changing the size of, relocating and changing the route or routes of, abandoning in place and removing at will, in whole or in part, one pipeline not to exceed twenty-four inches (24") in nominal diameter..." I want the PUC to understand that evaluation of the factors found in **Attachment No. 2** must be analyzed considering Summit can permanently and forever not only locate a hazardous pipeline on my land but also at anytime and forever access, survey, modify, patrol, cut and change the contours and slopes of my land, change and relocate the pipeline route, and abandon the pipeline in place, all on my land and without any permission or say-so from me or future owners. These rights alone, and we are still in the first paragraph of the Easement, not only poses a threat of serious injury to my social and economic condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region. All of the above uses they want are "for the transportation of carbon dioxide and its naturally occurring constituents and associated substances and any appurtenant facilities above or below ground, including aerial markers, power drops, telecommunications, cathodic protection, and such other equipment as is used or useful for the foregoing purposes ..." ³ So, while they are marketing now the transportation of Carbon Dioxide, they have the wiggle room to change that at anytime to anything that could fit under "and its naturally occurring constituents and associated substances..." Where are the limits? I thought this was a CO2 pipeline only. If the PUC were to approve this Application, which it should not, it must limit what can be transported in this hazardous pipeline. Clearly, not knowing the limitations of what could be flowing on, under, through, and across my land also poses a threat of serious injury to my social and economic

³ *Id.* para 1.a.

condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region. They also can place any facility and equipment of any kind above the ground or below ground on my land so long as Summit deems it “as is used or useful for the foregoing purposes” which covers any and everything they choose to do.

So, it appears what they would be able to do with the Pipeline Easement includes about everything and there are no time limitations, restrictions, or notice requirements as to any of these activities. Should the PUC approve this hazardous pipeline, which it should not, it should require reasonable limitations as to when these activities can be performed, for how long, and should be required to notify landowner well in advance of any such activity or entry onto landowner’s land. Further, Summit’s desired right to abandon in place their hazardous pipeline on my land must not be allowed. Should the PUC approve this hazardous pipeline, which it should not, it should require Summit, at landowner’s sole request, to remove the pipeline. If a landowner does not request this or if Summit and a particular landowner reach agreement and financial terms allowing the hazardous pipeline to remain, that should be up to each landowner. There is no provision for Landowner compensation for such abandonment nor any right for the Landowner to demand removal. Such unilateral powers and the threat and ability to abandon the pipeline in place poses a threat of serious injury to my social and economic condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: The Easement language and powers are far too vague and wide ranging, again no limitations and these roving rights Summit would claim subject me and my property to significant restrictions as their rights dominate mine; this will prevent me and future owners and users of my land from improving and developing the land in the ordinary course. These restrictions have negative economic impacts now and into the future. I will not be able to increase the value and usable features on my land

and will not do so in fear of having to remove any such desired improvements or be subject to Summit's claims my desires interfere with their Easement rights. The less I can improve my land, the less valuable it is, the less real property and personal property tax is generated, and the more South Dakota is harmed.

Q: What is your next concern the PUC should be aware of?

A: The second easement Summit seeks is a "Temporary Easement." However, there is no definition of how long this can be and it only terminates "on the Company's delivery to Landowner of written notice of termination..." If the PUC were to approve this Application, which it should not, in addition to locating a hazardous pipeline on my land Summit reserves the sole right to also locate upon my land and use temporary construction areas and additional temporary workspaces areas. There is no limitation on how large these can be and there is no limitation on what "temporary"⁴ means. How long is temporary? How long would Summit be able to argue "temporary" is all the while prohibiting me from using my land how I see fit.

Q: What is your next concern the PUC should be aware of?

A: The next easement sought is an "Access Easement" which again is a "free and unobstructed" easement "in, to, through, on, over, under, and across" my land forever "for the purposes of ingress and egress to the Pipeline Easement..." and to the "Temporary Construction Easement and for all purposes necessary and at all times convenient..." to Summit. So, if the PUC approves this Application, which it should not, Summit gets a blanket easement and access across my entire property forever that I have to keep "free and unobstructed." This means I cannot locate equipment, livestock, or anything that could hinder Summit's unrestricted total access of my land. Summit would take a forever right to travel anywhere it desires on my entire Property – not just within the Easement area. This ability to have free reign on a landowners' entire property reduces the value of the property and chills my desire to economically improve my property which again is a detriment not only

⁴ See para 1.b. of the Easement

to me but to the entire State in lost tax revenue. Such unilateral powers and the forever restrictions upon my land and me and all future generations poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit unilaterally can determine the final location of the pipeline and it does not have to be in the middle of the easement: “the centerline of the pipeline may not, in all instances, lie in the middle of the Pipeline Easement.” See Easement paragraph 2 “Location.” To make matters worse – should Summit chose to change location, Landowner then, at their time and cost, has review, execute, and deliver to Summit any correct documents or any modifications that Summit requests. See Easement paragraph 2 “Location.”

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit seeks to limit the compensation available for all the easements and any other damages that Landowner would suffer up and until the time of Summit’s restoration of our land following pipeline installation. Additionally, Summit seeks to cap damages to growing crops and yield loss for the three years following the initial construction of the pipeline. Summit claims it will pay Landowner “a reasonable sum” for any “subsequent actual, proven damages to growing crops...” but there is no mechanism or metrics of how this would work. My research shows that previous Landowners have had difficulty getting compensation for damages caused by pipeline construction and given yield loss can continue decades into the future this provision should concern the PUC. These provisions and limitations pose a threat of serious injury to my social and economic condition.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit does not have to repair or restore my land to as good a location or better as it found it as that claim in promotional statements. In fact, Summit only has to restore my land “insofar as reasonably practicable...” as solely determined by Summit. See Easement paragraph 4 – “Restoration.” Should there be a dispute in this regard, Landowner would have to incur more costs, expenses, and wasted time hiring legal counsel and perhaps experts, and likely litigating the matter. Therefore, these provisions and limitations pose a threat of serious injury to my social and economic condition.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit would have the unilateral power to tell Landowner what they can and can’t do on all of the easements. If anything, that Landowner wants to do on their property above the surface of where the pipeline or any easement is located that in Summit’s “sole discretion” “causes a safety hazard or unreasonably interfere[s]” with Summit’s rights, then Landowner is prohibited from taking such action. See Easement paragraph 5.a. – “Landowner’s Use.” Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, I cannot, unless previously being given permission by Summit, construct anything on the easements, cannot drill or operate any well or equipment for production or development of minerals, cannot remove soil or change the grade or slope of my land, cannot impound surface water, and cannot plant trees or place landscaping. Landowner also cannot place any above ground or below ground “obstruction” of any kind that Summit may deem to interfere with or be inconvenient to operation of the pipeline

or other Pipeline Facilities or use of the Easements without written permission from Summit – which they can withhold. See Easement paragraph 5.b. – “Landowner’s Use.” Worse yet, if I do utilize my property as I see fit, and Summit in its sole discretion determines any such actions in any way “...interferes or may interfere with its right...” then Summit “shall have the immediate right to correct or remove such violation or obstruction at the sole expense of Landowner.” Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Landowner is prohibited “during the initial construction of the Pipeline Facilities or any construction, maintenance, repair, replacement or removal work on the Pipeline Facilities...” from using any portion of the Easements for any purpose. See Easement paragraph 5.c. – “Landowner’s Use.” Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, I am prohibited from using my land for agricultural and pasturage purposes if they are in anyway interfere with Summit’s use of the Easement. So, assume Summit where to bury its proposed hazardous pipeline only four (4) or five (5) feet below the surface, then I can’t use any equipment with tires four (4) or five (5) feet in diameter or larger in my operations for fear if I would sink, the tires could come in contact with the pipeline. Preventing my ability to stay competitive and utilize larger equipment to work my land negatively impacts me by not allowing me to be as efficient as

possible and reduces my profitability. There is no reason for me to keep buying the newest and latest equipment which hurts local businesses. All of this has a negative impact on the State's economy and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, Summit has the sole and exclusive “right to sell, assign, apportion, mortgage or lease this Agreement [the Easement]...” otherwise transfer this Agreement in whole or in part...”⁵ If Summit exercises any of these rights and some unknown and unwanted party becomes the owner of the Easement on and pipeline and equipment on my land, not only do I have no say-so. Additionally, if Summit sells or assigns any part of the Agreement or the Easements to anyone else, then Summit “... shall be released from its obligations under this Agreement.” All of this has a negative impact on the State's economy and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region. If the PUC were to approve this Application, which it should not, it must require any new entity that would become owner or operator of this hazardous pipeline to first apply for and be granted permission to take this project over from Summit. Assignment to any unknown person, company, or government could have terrible impacts upon all of South Dakota depending upon who may buy it and I don't know of any safeguards in place for us or the State to veto or have any say so in who may own, operate, or be responsible for this pipeline in the future. This concerns me because it would allow my easement to be transferred or sold to someone or some

⁵ See paragraph 7 of the Easement

company or country or who knows what that I don't know and who we may not want to do business with.

Q: What is your next concern the PUC should be aware of?

A: If the PUC were to approve this Application, which it should not, the liability and insurability aspects of this hazardous pipeline being forever located on my land are very concerning. See Easement paragraph 6 – “Indemnification.” Summit says it “shall pay commercially reasonable costs” for damages resulting from their use of the Easements. Why don't they pay any and all costs if there is damage resulting from their use of the Easements? Who determines what “commercially reasonable” means? I doubt I do. How much expense and time and frustration does Landowner go through fighting for payment of actual damages? The Easement also states that Company (Summit) shall indemnify and hold Landowner harmless for damages resulting from their use of their easements. Summit has acted as if this is a big concession – that they should be responsible for the damage they cause. However, their indemnification and hold harmless language does nothing at all to protect Landowner from any claim – a mere claim – that Landowner or its agents (tenants or others) acts of gross negligence or willful misconduct within the Easements caused damage. And there is no protection at all for any claims that Landowners or their agents took any action outside the Easements that may have caused issues within the Easements that then lead to damages or losses. Discussed in more detail later is Landowners inability to obtain liability insurance to protect itself from the damages and losses that occur when hazardous pipelines have a rupture or break that leads to a spill or release causing damages. Such restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, then I have no liability protection and am directly exposed to liability as Summit offers no indemnification or hold harmless protections to me for what damages or injury occur on my property outside of the specific Easement areas. This is true because, as discussed above, if the PUC approves this Application, then Summit has a blanket right to access my entire property and is not limited to the Easements. Also, Summit can allege either I or any person whom is on my property is negligent or partially negligent and I could be subjected to damages claims that would bankrupt me. Summit also shifts potential liability to me for any of my negligent acts that may occur in the Easement areas.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, then I am exposed for significant personal liability for any damages due to the existence of and potential release or rupture or spill from the hazardous pipeline. I have reviewed my insurance documents and coverage for my property and obtained information from my insurance company. I have learned that my insurance policies have what is known as a “pollution exclusion” and that I would have no insurance coverage should any damage or injury be caused by a carbon dioxide release from the hazardous pipeline as carbon dioxide is considered a “pollutant” under my policy. I have considered this scenario: “If a hazardous pipeline transporting carbon dioxide is placed upon my land, and either I or someone I have invited onto my land is determined to be responsible for some damage to the pipeline or responsible for an event that caused some damage to the pipeline, and then CO2 escapes and injures a person, or livestock, or property either on my own property or on my neighbors – do any of my insurance policies I have provide me a lawyer for a defense AND provide me insurance coverage to pay for the damage/injuries?” In considering these questions I have determined not only does my policy not afford me a lawyer and not afford me a legal defense that I also have no coverage for such a scenario, nor can I purchase coverage or an insurance rider. I would be completely unprotected and

exposed to liability, and I would have to pay for my defense out of my own pocket and personally pay for and damages ultimately attributed to me. This is unacceptable. The PUC must deny this project for these reasons alone. The PUC cannot put landowners out in the cold to defend ourselves without any assistance. I should never have these kinds of risks due to the presence of a hazardous pipeline I do not want. If the PUC were to approve this Application, which it should not, it must require Summit to be solely responsible for any injuries or damages of any kind either directly or indirectly caused by any release of CO2 from their pipeline other than those caused by criminal acts of the landowners. The PUC must also require Summit to add each and every landowner and their tenants as additional insureds on all Summit liability insurance policies. The PUC should require that Summit add each landowner and inhabitant and tenant on each affected property to Summit' insurance policy all as additional insureds.

Q: Do you have any other concerns about this liability issues?

A: When evaluating the impact on property rights implicated by Summit's Indemnity provision, you must consider the potentially extremely expensive fight a Landowner would have over this question of whether or not damage was an act of negligence. Putting this kind of potential liability upon the Landowner is incredibly problematic and is detrimental to the protection of property rights. I don't think this unilateral power which I can't do anything about as the landowner is in the best economic interest of the land in question or the State of South Dakota for landowners to be treated that way. This poses a threat of serious injury to my social and economic condition but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefor the region.

Q: Is there any specific event or example you are aware of that makes this concern more real for you?

A: Yes, one need not look further than a November 3, 2015, lawsuit filed against Nemaha County, Nebraska landowner farmers who accidently/negligently struck two Magellan Midstream Partners, LP pipelines, one used to transport a mixture of

gasoline and jet fuel and a second used to transport diesel fuel. Magellan alleged negligence and sued the Nebraska farmer for \$4,151,148.69. A true and accurate copy of the Federal Court Complaint is here as **Attachment No. 4**. The ability of a large company like Summit, or whoever buys their pipeline once they cash out to be able to sue me or place blame on me because they choose to put something on my land against my will is in no way in the public interest and is a reason this Application must be denied.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, then Summit forces landowner to deal directly with its tenant regarding any compensation landowner negotiates for any Easement or any damages landowner receives in terms of allocating any such payments between landowner and tenant. This guarantees that landowner will never be made whole by Summit for such damages as landowner and tenant have different interests and should each independently be compensated by Summit for such damages. Landowner should not be made to be the agent of Summit to deal separately with claims its tenant may be entitled to bring for compensation.

Q: What is your next concern?

A: If the PUC were to approve this Application, which it should not, it is essentially approving a roving right for Summit to locate its hazardous pipeline anywhere on my land. On Exhibit B of the Easement it talks about “proposed route” “proposed pipeline easement” and states the Exhibit B is “is not intended to depict the final alignment.” It is not a plat or a survey. So, I am in the dark – as is the PUC – of what it would be approving given there is no “final” route to approve. The PUC should deny the Application on this basis alone. It is not fair for Summit to have a roving right across my entire property or any length, size, and location of easements on my land it desires.

Q: What is your understanding of the significance of the Easement as proposed by Summit?

A: My understanding is that this is the document that will govern all of the rights and obligations and duties as well as the limitations of what I can and cannot do and how I and any future landowner and any person I invite to come onto my property must behave as well as what Summit is and is not responsible for and how they can use my land forever. This is why the PUC cannot pretend the Easement is anything other front and center in these proceedings. No court no judge no jury can change the terms of the Easement, only the PUC now can consider what Summit wants to force upon all of the land at issue in these proceedings and consider those effects in terms of the factors the PUC is to consider when evaluating Summit's Application.

Q: You have discussed a number of concerns of how you would be negatively impacted by the terms and restrictions in the Easement alone should the PUC grant Summit's Application, do you think those negative effects go beyond just you as directly affected landowner?

A: Yes, while myself, my family, future generations, and my land would all be directly and negatively impacted it doesn't stop there. Just like Summit wants to claim there is a multiplier effect economically by the spending during construction and increased consumption by the workers or others in South Dakota, the flip side is that the negative impacts on me and my land are forever – the easement is forever and therefore any restrictions or limits or outright bans on my and any future landowners' ability to use their land as they see fit, and to improve or develop their land is a direct and ongoing negative economic impact locally on small business that are not getting contracted to do work or certain projects, I believe the value of my land decreases should this hazardous pipeline and associated Easement terms cast a cloud over my land forever, and I intend to protest my valuations and seek a reduction in property tax which will negatively affect that State – and Summit is not making this up. They will pay no real property taxes on any of the Easements obtained. My state also suffers do to the ripple effect of less development, expansion, and property improvement. This project has no net benefits – it is a net negative on the State.

Q: Do you have additional concerns how you would be negatively affected should the PUC approve this Application?

A: Yes, I didn't mention the compensation piece. Summit proposes to pay me one time only for the Easements. They do not propose recurring annual or quarterly payments. They make my land a liability when it was previously an asset. If this was forced upon us we should be paid a royalty of some percentage of the annual profits and value generated by Summit and its investors. They can't earn a dollar number one without my land and the land of others and we should be compensated much differently than they propose. It is not fair to the landowner, the county, or the State. It is not fair to the landowner because they want to have my land forever for use as they see fit so they can make a daily profit from their customers. If I was to lease ground from my neighbor I would typically pay twice a year every year as long as they granted me the rights to use their land. That only makes sense – that is fair. If I was going to rent a house in town I would typically pay monthly, every month until I gave up my right to use that house. By Summit getting out on the cheap and paying once in today's dollars that is monthly, bi-annual, or at least an annual loss in tax revenue collection on the money I would be paid and then pay taxes on and contribute to this state and this country. It is money I would be putting back into my local community both spending and stimulating the local economy and generating more economic activity right here. Instead Summit's shareholders keep all that money and it never finds its way to South Dakota.

Q: Do you think it is in the public interest of South Dakota to not be one-hundred percent clear on exactly who could become the owner of over hundreds of miles of South Dakota land?

A: No, Summit should have to reveal all of its owners at each level and all of those owners and so on until there is no mystery as to who is behind this newly formed deal company.

Q: Do you think it is in the public interest of South Dakota to not be one-hundred percent clear on exactly who will be operating and responsible for hundreds of miles of hazardous pipeline underneath and through South Dakota land?

A: No.

Q: Do you think that type of uncertainty and lack of control over a major piece of infrastructure crossing South Dakota is in the public interest?

A: No, certainly not, in fact, just the opposite.

Q: Does it makes sense to you that PUC approval of the Application would lead to a perpetual Easement affecting you and your land?

A: I am unaware of any data proving there is a perpetual supply of carbon dioxide and the irony is we are supposed to produce less carbon dioxide and curb those activities more each year so one of the purposes of this project renders it by definition very limited in time and not something that a permanent easement should be available. Nowhere in Summit's application does it even attempt to argue let alone prove there is a perpetual necessity for this hazardous pipeline or to transport CO₂ to unproven underground storage in North Dakota. My understanding of energy infrastructure like wind towers is they have a decommission plan and actually take the towers down when they become obsolete or no longer needed. Nothing manmade lasts forever. My land however will, and I want my family or future South Dakota families to have that land as undisturbed as possible and it is not in my interest or the public interest of South Dakota to be forced to give up perpetual and permanent rights in the land for this specific kind of pipeline project. It is also not prudent to authorize a forever interference on my property so Summit can chase twelve (12) years of tax credits at over \$1,500,000,000.00 per year.

Q: Do you have any other concerns about the Easement language that you can think of that is important for the PUC to know at this time?

A: Generally such unilateral restrictions and limitations on my rights are not conducive to the protection of property rights or my economic interest. I reserve the right to

discuss any additional concerns that I think of at the time of live testimony during the Hearing.

Q: Based upon what you have shared with the Commission above regarding Summit's proposed Easement terms and agreement, do you believe those to be reasonable or just, under the circumstances of the pipeline's impact upon you and your land?

A: No, I do not believe those terms to be reasonable or just for the reasons that we discussed previously.

Q: As the owner of the land in question and as the person who knows it better than anyone else, do you believe that Summit offered you just, or fair, compensation for all of what they proposed to take from you so that their hazardous pipeline could be located across your property?

A: No, I do not. Not at any time has Summit, in my opinion, made a fair or just offer for all the potential impacts and effects and the rights that I'm giving up, and what we will be prevented from doing in the future and how their pipeline would impact my property forever and ever.

Q: Has Summit ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in your best interest?

A: No, they have not.

Q: Has Summit ever contacted you and specifically asked you if you thought their proposed location of their proposed pipeline across your land was in the public interest of the State of South Dakota or for public use?

A: No, they have not.

Q: Are you familiar with the Fifth Amendment to the U.S. Constitution and the Takings Clause and the corollary in the South Dakota Constitution?

A: Yes, I am.

Q: What is your understanding as those relate to taking of an American citizens property?

A: My understanding is that, according to the United States Constitution and South Dakota's Constitution, that if the government is going to take land for public use, then in that case, or by taking for public use, it can only occur if the private landowner is compensated justly, or fairly.

Q: What is your understanding of the PUC's framework for decision making relative to this proposed hazardous pipeline?

A: **Attachment No. 2** includes four (4) main elements of proof that Summit has the sole burden to prove as summarized here: a) that Summit will comply with all applicable laws and rules; b) that no aspect of Summit's proposed hazardous pipeline will pose a threat of serious injury to: the environment, or to the social condition of current inhabitants or expected inhabitants in the siting area, or to the economic condition of current inhabitants or expected inhabitants in the siting area; c) that no aspect of Summit's proposed hazardous pipeline will substantially impair the health, safety, or welfare of the inhabitants; and d) that no aspect of Summit's proposed hazardous pipeline will unduly interfere with the orderly development of the region – with special consideration given to the views and positions of the governing bodies of affected local units of government.

Q: What is your testimony regarding whether or not Summit will comply with all applicable laws and rules?

A: That is impossible for the PUC to know and therefore it can't find in Summit's favor on that element. This type of analysis can only be based on what Summit claims it will do and given they have already admitted to failing to follow the law regarding their failure to timely and sufficiently notify all required persons affected by their Application and proposed route, the evidence available weighs against this element being able to be satisfied. Further, South Dakota counties have passed moratoria, ordinances, and regulations related to hazardous pipeline setbacks and other issues and Summit has not yet committed to following those applicable laws and rules and rather has stated they will not follow them or has sued to get out of following so rules and regulations. Until Summit dismisses all these lawsuits against the various

counties and affirmatively agrees to abide by any such setbacks and other ordinances, the PUC must deny their Application for failure to meet their burden of proof as to this element.

Q: Do you believe any aspect of Summit’s proposed hazardous pipeline will pose a threat of serious injury to the environment?

A: Yes, I do. There are many aspects of the proposed hazardous pipeline that pose threat of serious injury to the environment. I adopt and incorporate here all such concerns of all other witnesses. There are many such environmental concerns and I also adopt and share those as incorporated here and found in Attachment No. 5, It’s Time to End Carbon Capture of Climate Policy; Attachment No. 6. The facts, opinions, and arguments referenced here by no means include all such threats posed but highlight some of the many.

Q: Do you believe any aspect of Summit’s proposed hazardous pipeline will pose a threat of serious injury to the social condition of current inhabitants or expected inhabitants in the siting area, if yes, why?

A: Yes. The proposed Summit pipeline will pose a threat of serious injury to current future and social conditions, for the following reasons.

The proposed project’s finances and commercial foundation are dependent for ongoing commercial viability on the federal 26 U.S.C. § 45Q carbon capture tax credit program, which I will refer to as the 45Q Program. This dependency creates a risk to South Dakota’s social conditions. The purpose of the 45Q program is to reduce carbon emissions as a means to mitigate climate change. It was originally established by Congress in 2008 with a maximum tax credit benefit of \$20 per metric ton of carbon captured and sequestered. In 2018, Congress increased this value to \$50 per metric ton. In 2022, Congress further increased the value to up to \$85 per metric ton as part of the Inflation Reduction Act. The 45Q Program tax credits are available for the first twelve years of a capture facility’s operation, but the program has no limit on the total amount of tax credit claims by taxpayers or the tons of carbon dioxide sequestered. Thus, the 45Q program does not limit the

number of capture, transportation, and sequestration projects it may support. Further, these tax credits are essentially transferrable and the Inflation Reduction Act allows certain entities to claim them as a cash benefit paid by the U.S. Treasury, in certain circumstances converting this tax credit into a federal grant.

The Summit Project was proposed in 2021 when the 45Q tax credit for sequestered carbon stood at \$50 per metric ton. Then, in 2022, the tax credit was increased to \$85 per metric ton. At a tax credit rate of \$85 per metric ton, and given the Summit pipeline system's ultimate capacity of 15 million metric tons per year, the emitters of carbon dioxide that are contracted with Summit could receive up to \$1.275 billion in federal tax credits per year, or \$15.3 billion over twelve years. This federal tax benefit would provide essentially all of the revenue needed to pay for construction of the proposed project as well as Summit's ongoing transportation and sequestration services. That is, the proposed Summit Project is financially entirely dependent on the ongoing existence of the federal 45Q Program.

The Summit Project does not appear to have any other current government subsidies or market-based support sufficient to support its financial viability. Summit claims that its contracted ethanol plants may benefit from the low carbon fuel credits currently available in California, as well as possible similar programs that may be established in other states. However, the value of these low carbon credits is highly variable and dependent on supply of and demand for such credits. The more entities that lower their carbon score, the less valuable the credits become. The carbon dioxide emitters that are connected to the Summit system may be able to benefit from low carbon fuel credits to some degree, but by themselves such credits would likely not support the construction and ongoing operation of the proposed project. Low carbon fuel credits existed before Congress increased the value of the 45Q tax credits to levels that made the proposed project financially viable, indicating that the low carbon fuel credits by themselves were not sufficient to support development of regional carbon capture pipelines systems. Thus, low

carbon fuel standard programs, now and in the future, are unlikely to provide sufficient financial benefits to justify the construction and ongoing operation of Summit's proposed pipelines.

Another possible commercial foundation for the Summit system is use of captured carbon dioxide in enhanced oil recovery operations. For example, carbon dioxide has been captured at the Arkalon and Bonanza ethanol plants in Kansas, since 2009 and 2013, respectively and transported to enhanced oil recovery operations 15 miles to Oklahoma and 90 miles to Texas, respectively. However, these existing ethanol carbon capture and enhanced oil recovery projects have always been dependent on the 45Q Program and are much smaller scale projects. Moreover, enhanced oil using supercritical carbon dioxide has existed since the 1970s, but has not generated sufficient revenue by itself to support the cost of constructing carbon capture facilities and transporting anthropogenic carbon dioxide long distances to enhanced oil recovery operations. If enhanced oil recovery had been sufficiently profitable without federal subsidies to support anthropogenic carbon capture, then the carbon capture industry would have grown without the need for federal tax credits. Therefore, it is very unlikely that use of the captured carbon dioxide for enhanced oil recovery would by itself support the costs of constructing and operating the proposed project.

In addition, there is a commercial market for limited amounts of carbon dioxide for use in industrial and retail settings, but the total demand of such commercial markets is very small relative to the capacity of the Summit Project, and existing demand is met via existing carbon dioxide production facilities. Commercial demand for carbon dioxide is simply too small to support infrastructure on the scale of the proposed project.

Neither the low carbon fuel credits, enhanced oil recovery, nor other existing commercial uses of carbon dioxide are likely to provide sufficient revenue to support development of carbon capture systems on a scale of the Summit

Project. Thus, the Summit Project's current and future financial viability is entirely dependent on the continuation of the 45Q Program.

This dependency creates substantial long-term risks to the financial security of South Dakota's ethanol and corn industries. First, unlike other federal agricultural programs that subsidize South Dakota's otherwise market-based agricultural economy, the market for captured carbon dioxide is based for all practical purposes entirely based on the 45Q Program. The 45Q Program does not subsidize an existing market-based industry; it creates an entirely new industry, namely the carbon dioxide sequestration industry, which collects a pollutant and disposes of it. The 45Q Program converts a liability (carbon dioxide) into an asset. Absent the 45Q program, the carbon dioxide sequestration industry would not exist to the extent necessary to support construction and operation of Summit Project. While it is true that construction of the Summit Project would create a new revenue stream in the form of tax credits for ethanol plant investors, it is also true that this revenue stream would be entirely dependent on the continued existence of the 45Q Program, that in turn would depend on the financial health of the federal government and ongoing political support for the 45Q Program. As federal budget deficits increase, political pressure to limit federal expenditures will likely also increase, putting at risk funding programs deemed unnecessary or politically vulnerable, such as the 45Q Program.

Summit's application states that, "[t]he Heartland Greenway System will facilitate significant CO₂ emissions reductions that will allow industry and governments in the project footprint to meet their carbon reduction goals." Summit, however, does not identify any provision in South Dakota state law or local ordinances that mention or even recognize the existence of climate change, much less impose carbon reduction goals. Thus, the policy purpose for the Summit Project, which is climate change mitigation, is not in accordance with South Dakota law and does not advance state policy objectives. South Dakota's governments do not agree that climate change exists and have not adopted policies to mitigate it. Yet, Summit seeks South

Dakota government approval for its project, the sole purpose of which is to mitigate climate change. Approval of the Summit Project advances a policy objective with which the State of South Dakota does not agree.

Moreover, there are no federal mandates that South Dakota must approve the Summit Project or any other carbon capture climate change mitigation project. Federal law does not require South Dakota to support carbon capture and storage. It is possible that future federal air quality regulations may make carbon capture one option for addressing carbon dioxide emissions, but the promulgation of such possible rule is at best years in the future, subject to litigation, subject to rejection by future federal administrations aligned with South Dakota's position on climate change policy, and therefore entirely speculative. The Commission cannot approve the proposed project based on a claim that federal mandates require approval of the proposed project, because such mandates do not currently exist and may never exist. While the federal government currently has climate change policy objectives, it has not required development of carbon capture projects, but rather created tax credits that encourage but do not mandate such development. Participation in the 45Q Program is voluntary. Therefore, the federal government has left decisions on the merits of carbon capture projects to the judgment of state governments, which are free to support or reject any particular project or the carbon capture industry as a whole.

Given the State of South Dakota's rejection of the need for climate change mitigation and its freedom to accept or reject carbon capture development, a Commission approval of Summit's proposed project would likely be seen by many South Dakotans as an extreme example of hypocritical government action. As such, Commission approval of the Summit Project would result in substantial reputational damage to and a loss of citizen trust and faith in the Commission and South Dakota's state government in general. Since faith in government institutions is part of the bedrock of American society, such damage would constitute "a threat of serious

injury . . . to the social . . . condition of inhabitants or expected inhabitants in the siting area,” as well as within all of South Dakota.

The Summit Project also creates a threat of serious injury to the social conditions in South Dakota due to excessive state and local dependency on a politically unstable federal funding program. The threat of anthropogenic climate change is the subject of considerable political controversy within the United States and South Dakota. The future commercial viability of the 45Q Program and the Summit Project is entirely dependent on ongoing federal political support for climate change mitigation in general and the 45Q Program in particular. A change in federal leadership that agrees with the State of South Dakota’s position on climate change could result in future congressional and administrative actions to reduce or even eliminate the 45Q Program. Further, the ongoing viability of the 45Q Program is dependent on the financial health of the federal government, including the fiscal impacts of the ever-growing federal budget deficit. Given that the 45Q Program includes no cap on federal financial outlays, it will increase the federal deficit potentially by tens or even hundreds of billions of dollars annually, depending on how fast it grows. In the event of a severe economic downturn or a federal government default on its loans, Congress could reduce or entirely eliminate the 45Q Program, prior statutory commitments notwithstanding. Thus, the commercial foundation for the Summit Project is built on a political foundation that is too unstable to justify making South Dakota’s corn and ethanol industries dependent on it.

In the event that the 45Q Program falls out of favor, the commercial foundation for the Summit Project could disappear quickly, causing it to precipitously cease operation, in which case South Dakota’s corn and ethanol industries would face a potentially existential financial shock that could significantly disrupt South Dakota’s agricultural industries, many rural communities, and the state’s overall economic wellbeing. Further, landowners would be saddled with paying for the cost of abandoned pipeline mitigation. It is one thing for South Dakota to accept federal

subsidies for production of agricultural commodities for which there will always be demand. It is an entirely different thing to base a substantial part of South Dakota's farm economy on an entirely new federally created non-market-based industry that captures a waste product for which there will never be significant commercial demand. There is a risk to tying South Dakota's market-based agricultural economy to politically and fiscally unstable federal largess. Construction of the Summit Project would make its contracted ethanol producers and the farmers that provide them with corn overly dependent on a politically unstable federally created artificial market for carbon dioxide. The demise of this market, for either political or fiscal reasons, would severely damage the State's agricultural economy and disrupt rural communities throughout South Dakota. Such community disruption would constitute "a threat of serious injury . . . to the social . . . condition of inhabitants or expected inhabitants in the siting area," as well as within all of South Dakota.

While the promised financial benefits of the Summit Project appear to be tempting, their acceptance would come at a cost and create a threat of serious injury to the political and social fabric of the State of South Dakota.

Further, I adopt and incorporate the opinions found in **Attachment No. 7** and those found in **Attachment No. 8**.

Q: Do you believe any aspect of Summit's proposed hazardous pipeline will pose a threat of serious injury to the economic condition of current inhabitants or expected inhabitants in the siting area, if yes why?

A: In addition to those already discussed, based upon my experience and all the information obtained throughout this process and simple common sense the answer is yes – this hazardous pipeline does pose a threat of serious injury in this way. There are many such economic concerns. If the PUC approves this Application I will likely not invest in and develop my property as I would have without the effects of such a hazardous pipeline. The fact I can't purchase insurance to cover me and my property against certain claims and allegations and the fact whether or not I am alleged to be liable for or to have contributed to a leak or rupture event rests in the

hands of Summit's insurance defense attorneys should they seek to spread their risk of liability on to me, it is likely I and others will not use the easement area and surrounding areas to their highest and best use given the less activity in that area means the less likely we could be blamed for something relative to the pipeline or supporting equipment.

I share the concerns of Marvin Lugert and Loren Staroba about future fertility of the land and compaction and yield loss and loss in productivity not just in years one through three post-construction, but forever. As discussed by Mr. Lugert and Mr. Staroba, they have experienced continual yield loss for 20 to 45 years post-pipeline construction. All the claims and glossy brochures about how great the unknown contractors and workers who have the responsibility of screening the topsoil and other important aspects is just talk. I adopt and share those as incorporated here and found in **Attachment No. 9**, related to soil compaction and reduced yields – and that was a study funded by a major pipeline player. I also incorporate the conclusions and findings in **Attachment No. 10**.

The facts, opinions, and arguments referenced herein by no means include all such economic threats posed but highlight some of the many. The overall chill on development, expansion and freedom to do as you choose on and with your land are all significant economic detriments that occur only if the PUC approves this Application.

Q: Do you believe any aspect of Summit's proposed hazardous pipeline will substantially impair the health, the safety, or the welfare of the inhabitants, if yes why?

A: In addition to what we have already discussed, yes, this proposed hazardous pipeline would substantially impair the health and the safety and welfare of the inhabitants. There are many such substantial impairment concerns and I adopt and share those as incorporated here and found in **Attachment No. 11**. The facts, opinions, and arguments referenced here by no means include all such threats posed but highlight

some of the many. I further adopt the testimony of Dr. Schettler and Carolyn Raffensperger.

Q: Do you believe any aspect of Summit's proposed hazardous pipeline will unduly interfere with the orderly development of the region, if yes, why?

A: Yes, I incorporate my answers above here. Adding a hazardous and dangerous pipeline to the region and taking people's rights away while telling them what they can and can't do is a direct undue interference with the orderly development of each affected parcel, the surrounding parcels, and thereby the region. The existence of this particular hazardous CO2 pipeline carries a stigma and perception that it is bad and dangerous. Such stigmas mean it is more likely that people will not want to purchase land with such a hazardous CO2 pipeline or would seek a discount to do so. I am aware of property that had interest for purchase but did not get bids once it was discovered a CO2 company sought to locate a hazardous pipeline on the land.

Q: What is your understanding regarding the views and positions of the governing bodies of affected local units of government in and around the proposed siting and corridor area?

A: I am aware of many local boards who continue to exercise their rightful local power to enact intelligent land use restrictions in ordinances and through setback requirements. Many counties are not in favor of this project. Others have enacted Moratoria pending further advances in federal law and guidance on the subject and pending further study. It would be irresponsible for the PUC to approve this Application until all counties have weighed in and complete their local ordinances related to CO2 pipelines.

Q: What is it that you are requesting the PUC Commissioners do in regard to Summit's Application for its proposed hazardous pipeline across South Dakota?

A: I am respectfully and humbly requesting that the Commissioners think far beyond a temporary job spike that this project may bring to a few counties and beyond the relatively small amount of taxes this proposed foreign pipeline would possibly

generate. Instead think about the perpetual and forever impacts of this pipeline as it would have on the landowners specifically, first and foremost, but also thereby upon the entire state of South Dakota. This project is not in the best interest of the state of South Dakota. When you look at all the negative effects that will be in place forever versus limited benefits, if any, this proposed hazardous pipeline should not be approved. There are no net benefits of this project. It is not right to subject hundreds of miles and land and countless numbers of people and business to this hazardous pipeline all for the sole benefit of Summit's owners and possibly four or so Ethanol companies in South Dakota. This is not for the greater good, it is not for public use, Summit is not a common carrier, and this Application is a bad idea the must be denied. I also am against corporate welfare and the billions of dollars in our taxpayer dollars that will be allocated to this project if it is built.

Q: Does Attachment No. 12 here contain additional information to support your concerns that if the PUC approves this Application, you will be unable to obtain liability insurance to that would assist in providing you a defense against claims of liability should CO2 from the proposed pipeline to be located on your land cause injury or damage to any person or thing that you wish to be part of your testimony that you can discuss in more detail as needed at the Hearing?

A: Yes.

Q: Does Attachment No. 13 here contain other documents that further illustrate your concerns about Summit's Application and that you wish to be part of your testimony that you can discuss in more detail as needed at the Hearing?

A: Yes.

Q: Do you believe the PUC should approve Summit's Application to locate its proposed hazardous CO2 pipeline, on, under, across, over, and through the land in question?

A: No. they should not for all of the reasons expressed herein. However, if the PUC was to approve the Application, then it should force Summit to move the route along property boundaries and away from structures and any sensitive land features.

Summit hasn't constructed an inch of this pipeline and they can and should re-route if approved.

Q: Although you have made it clear that you believe there is no appropriate location on or near your property for a hazardous high pressure CO2 Pipeline, if the PUC asked you to provide a potential alternative location or route on your property, please describe where that would be, if any such potential location exists.

A: There is no place on my land which is appropriate for a hazardous CO2 pipeline for all the reasons discussed here.

Q: Are all of your statements in your testimony provided above true and accurate as of the date you signed this document to the best of your knowledge?

A: Yes, they are.

Q: Have you fully expressed each and every opinion, concern, or fact you would like the PUC Commissioners to consider in their review of Summit's Application?

A: No, I have not. I have shared that which I can think of as of the date I signed this document below, but other things may come to me, or my memory may be refreshed and I will add and address those things at the time of the Hearing and address any additional items at that time as is necessary. Additionally, I have not had an adequate amount of time to receive and review all of Summit's answers to our discovery and the discovery of others, so it was impossible to competently and completely react to that in my testimony here and I reserve the right to also address anything related to discovery that has not yet concluded as of the date I signed this document below. Lastly, certain documents requested have not yet been produced by Summit and therefore I may have additional thoughts on those I will also share at the hearing as needed.

Q: Do you believe the Summit Carbon Solutions pipeline will pose a threat of serious injury to the environment within the siting area? Yes If so, why?

A: Environmental issues related to the pipeline route on my land and neighboring properties include the impact on water availability and potential water pollution. One of the many topics pipeline companies have been tight-lipped about is the amount of water needed for capturing and transporting CO₂. To get a rough estimate, doubling the amount of water the ethanol plan currently uses is suggested. That is approximately how much water would be needed to accommodate CO₂ capture and transmission. At present, the Big Sioux Rural Water System provides Dakota Ethanol with up to a million gallons of water daily. It is alarming to learn that water usage may be increased to 1.5 million gallons of water per day!

This major increase in water consumption will affect me and other area landowners who irrigate. Undoubtedly, increased water use by ethanol plants and CO₂ pipelines will exacerbate future water shortages and conflicts thus creating yet another significant negative economic impact.

The extravagant use of water by this project is cause for great concern. “Water is a human right; without water, no life is possible.” With these words, Cherise Morris echoed indigenous spiritual understanding that water is to be revered and protected as an essential source of life. Unfortunately, the prevailing capitalist belief system views water as nothing more than a resource to be extracted for profit. Industry caused crises have resulted in the privatization of water leading to the growing concern of water availability. “As people struggle with the daily effects of inflation and stagnated wages, they have to worry more and more about their water, where it comes from and how they’ll afford it. A society that ensures the fundamental human right to water meets us from a perspective of love and compassion. One that denies and rejects the right of all to accessible, affordable and safe water perpetuates the most nefarious kind of violence. If a system will exploit and destroy the water, it will absolutely exploit and destroy human life. Water is a human right. Water is life” (Morris, 2023). Another quote from an anonymous author confirms, “Water is not the source of life, it is life.”

The argument for “value added agriculture” that Summit Carbon Solutions depends on to garner support for the project will have little to no merit if there is not enough water for farmers to produce the corn the ethanol plants rely on. (The irrigation water permit issued to Alan on March 27, 2018 states, “The well approved under the Permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.”) If individual landowners have to abide by this requirement, shouldn’t the pipeline and ethanol companies have to operate under similar constraints?

The Lake County Comprehensive Plan for Future Development lists as one of its objectives, “to maintain a viable agricultural economy and preserve the rural quality of life.... emphasizing the importance of long-term agricultural use by seeking to minimize interference with farming activities and discourage premature development, which leads to costly and inefficient public expenditures” (www.lake.sd.gov/custom/planning-and-zoning). The unprecedented construction of CO2 pipelines funded by taxpayer dollars for corporate profit, is a prime example of costly and inefficient public expenditures. Premature development is the definition of this project because it is based on fallacy rather than scientific facts. The cart is being put before the horse. It is not tested or sustainable and as such, does not contribute to long-term agricultural use. Furthermore, allowing CO2 pipelines to be buried beneath the land certainly doesn’t contribute to preserving the rural quality of life. It appears Lake County officials are so desperate for new sources of revenue, they are willing to overlook how this project interferes with farming activities and a stable agricultural economy.

“How much revenue would it take to activate BlackRock’s Larry Fink and CEO Bruce Rastetter into a full-court press over six states with a countless statutory, regulatory and constitutional obstacles?” Former Iowa Congressman Steve King offers the following data and calculations the public has been asking for from the

CO2 pipeline companies: “Having spoken with the policymakers in each legislative arena, it is clear. None of the policy players have a handle on the magnitude of public coffer treasurers that are about to be poured out over the outstretched hands of Fink and Rastetter. This pair of monguls never mention the money they will make, so let’s do a little math with their published numbers and include the Wolf numbers, too.” King continues, “The projected annual outlay from the federal government just to the two moguls is \$8.127 billion with Wolf picking up the remaining \$3.793 billion. The total share for all the ethanol plants, contracting with the three CO2 pipeline companies, is projected to be \$5.702 billion. The total annual projected reckoning for the American Taxpayer for these three projects is \$17.622 billion per year”.

“The numbers are stunning. Worse yet is the calculated and relentless trampling of the Constitutional property rights of the owners of the best farmland in the world. Rastetter and Fink are using complicit state governments and the courts to help facilitate eminent domain. The 5th Amendment to U.S. Constitution reads “...nor shall private property be taken for public use without just compensation.” It was inconceivable for the Framers of our Constitution that private property would be taken for private use and private profit by the consent of complicit state governments. “ Landowners find no solace from state utility commissions who insist they will be informed, read and listen to both sides and make an unbiased and objective decision. “We already know their decision. The rest is a charade orchestrated by the “Puppeteer of the Prairie” and the “Wizard of Davos” who pan to bulldoze their way through farms and property rights in five states”(King, 2023). Pipeline projects interfere with long-term agricultural use by defiling the land needed for crop production, especially since the buildout of projects is expected to increase from the current 5,000 miles to 66,000 miles by 2050. Thousands of acres of productive farmland in the United States will be taken out of production. The consequence could very well be inadequate supplies of corn for ethanol plants, or worse yet, nation-wide food shortages.

As stated earlier, the proposed route of the CO₂ pipeline involving my property begins at Dakota Ethanol and travels in a southerly direction eventually going between Round Lake and Brant Lake, and upon entering my land, goes under a slough and crosses an irrigated field with two supporting wells. In close proximity are Long Lake, Skunk Creek, and Buffalo Creek. Underlying these is the North Skunk Creek Aquifer. Both Big Sioux Rural Water and Kingbrook Rural Water Systems are also located nearby.

Imagine the impact a pipeline disaster could have on my parcel of land. Now visualize what a pipeline leak or rupture on a larger scale. A plume from a pipeline rupture can travel for miles. In addition to Long Lake, Round Lake and Brant Lake, Lakes Madison and Herman and those living around them could also be affected. The potential for serious injury or loss of life is evident. This is a high consequence area!

These and other safety concerns prompted me to investigate whether or not Summit Carbon Solutions is required to follow South Dakota's Hazardous Mitigation Plan for CO₂ Pipelines (as they say they will in documents filed with the PUC). I learned that FEMA approved a proposal in 2019 in which hazards within the state are identified along with actions to minimize impacts to lives and property for both natural and human caused events. However, in a phone conversation in the fall of 2022, SD Office of Emergency Management personnel, I discovered that S.D. does have a hazardous mitigation plan for manmade causes, but not specifically for CO₂. The agency has plans to update specifications, but it won't include CO₂ pipelines because these enterprises have their own Emergency Response Plans. Pipeline companies determine the conditions; the State Mitigation Plan does not supersede theirs. The only source of consolation I had following this conversation is that SCS's Emergency Action Plan is reviewed and approved by PHMSA. Unfortunately, unless the agency's outdated (2015) guidelines are replaced with those that address the lack of regulations specific to CO₂, one can't assume Summit will make safety a priority. Who is going to police SCS before, during and long after the construction

is completed? I don't have confidence that the pipeline company will do what is in the best interest of the citizens of this state without an outside party overseeing their Emergency Response Plans and making sure they mitigate CO₂ pipeline leaks and/or ruptures accordingly. Have these emergency plans been made public?

Safety threats to inhabitants and the environment within the siting area are compounded by the fact that federal pipeline safety regulations do not adequately address the risk a major CO₂ pipeline buildout poses to the public. An obvious omission from any current deliberation about new CCS pipelines is the recognition that they require stronger safeguards (Mall, 2021).

Summit Carbon Solution's promise to adhere to current safety regulations only increases safety concerns since standards have not been updated since the Satartia, Mississippi pipeline rupture incident in 2020. Considerable regulatory gaps that involve siting, fracture mitigation, the determination of potential impact areas, use of odorant, emergency response and contaminants are evident. Current federal safety regulations for CO₂ pipelines are incomplete, inadequate and place the public at great risk. A Pipeline Safety Trust report further states, "The way regulations currently consider and mitigate for the risks posed by hydrocarbon pipelines in communities are neither appropriate nor sufficient for CO₂ pipelines (www.pstrust.org, 2022). Bill Caram, Executive Director of the nonprofit Pipeline Safety Trust concurs, "As a pipeline safety expert, I can confidently say that we are not ready for a buildout of carbon dioxide pipelines. Federal minimum safety regulations are in desperate need of modernization (Caram, 2023). "The evidence is clear and compelling: the way pipeline construction is currently permitted in the U.S. is inadequate to protect clean water and other natural resources, local communities and environmental justice" (Pipeline Safety Trust, 2022).

The Satartia, Mississippi pipeline rupture incident prompted the Pipeline and Hazardous Materials Safety Administration (PHMSA) to initiate the funding of new research and development projects concerning the safe transportation of carbon dioxide through pipelines (<https://www.phmsa.dot.gov/>, 2022).

The project will address several elements requiring more research and are intended to cover the following knowledge gaps:

The appropriate fracture toughness and steel pipe quality as it relates to pipeline leaks or ruptures is currently unknown. Using data from research and development projects to improve pipe quality standards and strategies for the correct placement of fracture mitigation measures is crucial.

The effects of corrosion, dents, cracks, or gouges on a wide range of steel grades regarding CO₂ operation have yet to be determined.

To insure public safety and emergency response, odorization of CO₂ is one of the easiest ways to ensure leak detection. However, odorization strategies have yet to be defined.

Right now, there are no defined safe distance or plume dispersion models for creating a potential impact area (PIR) adjacent to pipelines. Without that vital information, it is impossible to establish accurate emergency response safe distances. This could have deadly consequences due to the asphyxiation potential of CO₂ pipelines. More importantly, only after an appropriate PIR for CO₂ pipelines has been established can PHMSA assess the effectiveness and integrity management procedures.

Additionally, PHMSA has directed researchers to “identify safety gaps and requirements to support best practices for both gaseous and supercritical liquid systems, beyond the requirements of 49 CFR Part 195 for CO₂ pipeline transportation.” The scope of this project coupled with the mandate to look at CO₂ as both a gas and a liquid, makes it clear that PHMSA is concerned not only with under-regulation of CO₂ pipelines, but also the current lack of technical knowledge needed to create appropriate minimum safety standards.

It is important to note that new regulations have not been issued since PHMSA has not completed the rule making process or released its recommendations specific to CO₂ pipelines to the public. Permits for CCS should be put on an indefinite hold until PHMSA has made its ruling.

In spite of the fact the proposed pipeline project will rely on untested technology, SCS claims CO2 pipelines are safest of all pipelines. The truth is, CO2 pipelines actually have more accidents per type, but many failures go unreported. Joris Koornneef did a quantitative risk review of pipeline failures in 2010 that outlined 11 distinct assessments involving failure rates of CO2 pipelines. The average rate was 0.44 per 621 miles of pipeline per year. “At that rate, a 66,000 mile pipeline system would experience an average of one failure every 7 days for the lifetime of the pipeline network (Montague & Raffensperger, 2021). If that’s the case, pipeline accidents could overwhelm emergency resources, especially in small rural communities. On top of that, these same country areas are faced with the dilemma of hiring and maintaining additional qualified EMS personnel. A lot of responsibility and confidence is being placed on people; people make mistakes.

Technology, by its very nature, creates a safety risk because it is not 100% reliable. Power outages, cyberattacks and hacking make the system vulnerable. When that happens, monitoring systems will become worthless. Where will the protection come from then?

Above ground facilities and apparatus that are a part of the pipeline network are at risk of being damaged by year round extreme weather conditions. Severe summer storms and deadly winter blizzards and extremely cold temperatures will certainly impact operations and safety. This same equipment is vulnerable in the event of an accident by farm equipment or vehicles as well as vandalism or intentional damage. SCS has continually relied on the narrative that CO2 pipelines are no better or worse than natural gas pipelines. This misinformation is irresponsible and has led the general public to believe that CO2 pipelines don’t pose unique safety risks. For that reason, too many don’t know or take seriously the real threat these hazardous pipelines pose. Uneducated or indifferent citizens create safety risks one cannot imagine or properly prepare for. The tragedy is, lives may be endangered because of the deception promoted by SCS.

Aaron Eldridge, project manager SCS in SD, has stated, “Carbon dioxide pipeline will meet the minimum standards set by PHMSA.” Why aren’t these projects held to maximum standards? It is common knowledge that CO2 pipelines are grossly under regulated, not regulated at all, or the standards and their enforcement are left up to the discretion of the pipeline companies.

Jake Ketzner of SCS proclaimed, “Pipelines are already heavily regulated on a federal and state level through PHMSA” (Kulkarni, 2022). Pipelines in general may be, but not CO2 pipelines. Are you willing to bet your life and the lives of your family and neighbors that CCS technologies will operate perfectly? With every mile added, with each weld (from the current 5,000 miles to the proposed 66,000 miles country-wide), there is increased risk. Just because Summit representatives keep saying, “In the unlikely event of a pipeline rupture”.....doesn’t make it so. The public should be given facts, not misrepresentations or outright lies.

“The evidence is clear and compelling: the way pipeline construction is currently permitted in the U.S. is inadequate to protect clean water and other natural resources, local communities and environmental justice” (Mall, 2021).

In conclusion, I submit the words of Food & Water Watch Policy Director Jim Walsh: “Carbon capture and the hazardous pipelines it relies on are a danger to public health, safety and our climate. It would be ludicrous to allow pipeline corporations eager to cash in on a gold rush of federal subsidies to run roughshod over communities while the federal government is still evaluating the explicit dangers of those proposals. PHMSA must direct states to halt carbon pipeline approvals – these projects are far too dangerous to proceed” (Hoffman, 2022).

Q: Have you been sued by Summit Carbon Solutions to compel court ordered access to your land? If so, (1) Has Summit Carbon Solutions provided you any legal authority (i.e., state statute) supporting its claim that you have no right to exclude them from your land at the time of said lawsuit? And (2) Have you incurred legal fees in defending against said lawsuit?

A: I was not sued by Summit Carbon Solutions to compel court ordered access to my land because I was led to believe, (in a phone call from Summit land agent, Angel Thomas), that I had no choice in whether or not to allow surveying. My land had already been surveyed by the time the lawsuits to gain access began. This deception marked the beginning of my distrust for the pipeline organization. My confidence in the ability of company representatives to act with honesty and integrity have further eroded since then.

Q: Has Summit Carbon Solutions made any statements to you that it is a “common carrier” under South Dakota law? If so, please describe.

A: I was present during hearings in the 2023 S.D. legislative session when Brett Koenecke, Summit attorney, claimed SCS is a common carrier under South Dakota law. At the Lake County hearing regarding the right of SCS to enter and/or survey land without permission, Summit attorneys made the same statement claiming to be common carriers. I do not recall the names of the attorneys present at that hearing.

Q: Has any representative of Summit Carbon Solutions made any statements to you or others that you believe are not true? If so, please explain.

A: The only representative from Summit I have had direct contact with was Angel Thomas, land agent. After a brief overview of the project, she sought my participation by encouraging me to sign an easement. When I said I wanted to do some research before I made any commitments, she left. At one point Ms. Thomas called to tell me that surveying would be done on my land, leaving the impression that I had no choice in the matter. It had to be done. Angel returned to the house on a few other occasions, but I did not acknowledge her presence. I received a phone call from a Summit representative, but once I said I was being represented by Domina Law, all communications ceased.

Based on landowner testimonies and rebuttal from Summit and Navigator concerning bills related to common carrier status and eminent domain during 2023 SD legislative hearings, I have no confidence that statements made by the pipeline companies are straightforward. Furthermore, the Summit Carbon Solutions website,

mailings and other publications continually make claims about their project goals, safety issues, environmental impacts, and economic benefits that are half-truths if not out-right lies.

Q: What statements do you believe are not true?

A: Let's start with the project in general. The project goals of SCS are like a moving target, according to Jess Mazour, Conservation Coordinator for the Iowa Chapter of the Sierra Club. "At first, this was all about climate change. They said, 'We're going to save the planet. We're going to solve climate change. We're going to capture the emissions.' And then when that didn't go over so well and everyone said, 'Well, you're actually going to do enhanced oil recovery or all this other stuff,' then they switch their argument. 'We need these pipelines because ethanol is going to die without them, and this is going to help all the farmers.' However, when farmers pointed out that profits would go to carbon capture companies, not to farmers, they changed the reason for carbon capture again. Now, their reason for these pipelines is, 'This is a commodity and we're going to be a common carrier, and we're going to sell the CO₂.' Their reason keeps changing. If this was really about climate change, they'd be sticking to that argument still today, and they're not. The whole thing is about these tax credits. And they just got a huge increase" (Brelie, 2023). To be clear, carbon capture and storage does not address the climate crisis (if you believe there is one), or reduce GHG emissions in any meaningful way. This project is founded on deception; it is a ruse. I concur with Trent Loos' conviction that we need to stop calling it "green energy. "Anything that requires a subsidy to get going and more subsidies to maintain is about the furthest thing from green you can get.....Let's stop calling it "green energy" and start calling it what it is: a hoax and a get rich scheme for those who've created it" (Loos, 2022). In addition, I offer the following arguments:

- "CO₂ has always been released into the air from ethanol plants, but it was never acknowledged as a big problem until the "solution" meant money" (Basu, 2022). For example, Dakota Ethanol, Wentworth, S.D., has been in

operation since 1999, but has not expressed concern for CO2 emissions until recently when huge profits were promised.

- One of the dominant selling points for this project has been the claim that without CO2 pipelines, the ethanol industry would surely die. Iowa Representatives Bobby Kaufmann and Helena Hays made clear that this is false. “In reality, it’s math. These companies stand to make billions thanks to your tax dollars subsidizing them – safety concerns be damned... How did these companies raise enough money to not only propose such capital-intensive projects, but also spend hundreds of millions of dollars in lobbying and other efforts to try and secure their approval?” Monopoly power. Each pipeline company has partnered with one or more corporate monopolies. Summit has partnered with billionaire oil tycoon Harold Hamm and corporate monopoly John Deere. (Navigator has teamed up with the oil giant Valero along with the Wall Street investment firm BlackRock, and Wolf Carbon Solutions in partnership with Archer Daniels Midland (ADM). The same ADM that has encountered multiple lawsuits from other ethanol producers for allegedly controlling the US ethanol market with its monopoly power). This exclusive control is exploiting US taxpayers by extorting what are basically private taxes for the purpose of funding pro-pipeline endeavors. Scott Syroka, former Johnston city council member sums it up this way: “The irony would be funny if it weren’t so tragic” (Syroka, 2023).

According to Geoff Cooper, president and CEO of the Renewable Fuels Association, carbon capture may be important, but it’s not “do or die.” “There’s going to be markets for all forms of ethanol, with or without carbon capture and sequestration” (Peikes, 2023). In an interview with AgWeek, Cooper said, “We remain very optimistic and very bullish about the future of ethanol.” While carbon capture and pipelines are one option to achieve net zero emissions, “there’s lots of other ways to do that as well” (Beach, 2023).

A 2021 study by the Center for International Environmental Law reveals, “Projects like these, (CCS and CCUS), have not been proven to be feasible or economically efficient, even at a larger scale. In fact, CCS masks the harmful carbon emissions from the underlying source, enabling that source to continue operating rather than being replaced altogether, while creating additional risks, impacts, and costs associated with the CCS infrastructure itself.” Emissions from burning fossil fuels are responsible for driving climate change; extraction emissions are a small percentage of the carbon footprint. Carbon capture systems essentially need a whole new power plant to fuel them (Moen, 2023). The proposal to attach a power plant to existing ethanol plants is counterproductive. How does one get to net zero carbon emissions by capturing from one site while spewing CO₂ emissions from the other? It is an impossibility.

CCS is unnecessary, not economically feasible or environmentally useful. From a purely economic perspective, CCS doesn’t make sense. There is plenty of proof that these projects require new, expensive infrastructures and way too much energy to justify ever building them. For example, equipment to capture CO₂ emissions requires energy, 10%-40% more than a similar plant without CCS, creating an “energy penalty” (Moen, 2023).

“Carbon capture is a highly experimental technology with an unproven track record for truly reducing CO₂ emissions or removing pre-existing CO₂ from the atmosphere — a necessary step for actually solving the climate crisis. Even when a CCS facility operates perfectly, it does not reduce emissions at a meaningful rate. CCS is also very expensive. Unlike cost-competitive technologies such as solar and wind, it would not be able to reach economic viability without significant public subsidies” (Jacobson, 2022).

A study led by June Sekera, senior research fellow at Boston University’s Global Development Policy Center and visiting scholar at The New School for Social Research concludes, “If they look at the data, policymakers will understand that public taxpayer’s money is much better spent on supporting biological methods than

it is on supporting the mechanical methods that they're currently subsidizing. Scientists at the international level are predicting that we won't get to even one gigaton of CO₂ removal using the mechanical methods by 2050.”

“The study demonstrated that mechanical approaches to capture carbon, similar to Summit's proposal, have barely moved the needle in removing emissions from the air. Biological methods, such as replanting trees, have contributed nearly one million tons of carbon dioxide removal” (Moen, 2023).

There are other ways to sequester carbon from ethanol production without the construction of pipelines and sequestration. During photosynthesis, plants absorb carbon dioxide, converting it to sugars and starches, transporting it down into the roots and eventually releasing it into the soil where it becomes food for microorganisms – a process that keeps carbon confined underground for centuries. Each year native grasslands sequester up to one billion metric tons of CO₂. Some farmers suggest using tax credits and federal subsidies to augment existing incentives for natural carbon sequestration practices such as no-till farming, protecting and increasing wildlife and cleaner water (Haiar, 2023).

“Natural climate solutions are in fact the world's oldest negative emissions technology,” according to Justin Adams in a 2018 article published by the Thomson Reuters Foundation. “By managing carbon dioxide-hungry forests and agricultural lands better, we can remove vast quantities of greenhouse gases from the atmosphere and store them in trees and soils.”

Science confirms that policymakers and investors are wrong to advocate for mechanical CDR solutions to the detriment of biological ones. “The fate of future generations is at stake, and we cannot afford to waste both time and money on techno-fixes that are ineffective at achieving our climate goals. The clear path forward to addressing the looming catastrophic effects of climate change is to restore nature” (Heinberg, 2023).

If the ethanol and pipeline companies and their investors really believe in the technology used for carbon capture and storage, why don't they pay for it? “With

CCS, we are building ‘a taxpayer-financed sewer system’ for the fossil fuel industry,” says Kert Davies, director of the Climate Investigations Center. “It’s time to end the era of public subsidy for CCS. It’s not taxpayers who should pay for these costly experiments, it’s the businesses profiting from pollution...Every dollar we spend on this dangerous and counter-productive technology is a dollar we can’t spend on real solutions to climate change.....” (Sekera, 2023).

Governments around the globe are acting to implement fossil fuel-free or “Net Zero” energy systems without scientific proof to support them. There is no scientific justification for transitioning to Net Zero. Worse yet, Net Zero proponents have made no attempt to address the significant economic, societal or environmental consequences of over reliance on renewable energy and the required battery-backup necessary for the transition to a fossil fuel free future. Professors’ emeriti at Princeton University and Massachusetts Institute of Technology, Drs. William Happer and Richard Lindzen, have for decades studied and written about the physics of Earth’s atmosphere. Contributor Gregory Wrightstone, a geologist of more than 40 years, specializes in the interplay of geology, history and climate. All find that “Net Zero – the global movement to eliminate fossil fuels and its emissions of CO2 and other greenhouse gases – to be scientifically invalid and a threat to the lives of billions of people ” (Happer et al., 2023).

Among the conclusions contained in Challenging “Net Zero” with Science are:

Net Zero proponents regularly report that extreme weather is more severe and frequent because of climate change while the evidence shows no increase – and, in some cases, a decrease – in such events.

Computer models supporting every government Net Zero regulation and the trillions of dollars subsidizing renewables and electric cars, trucks, home heating, appliances and many other products do not work.

Scientific research and studies that do not support the “consensus” narrative of harmful man-made global warming are routinely censored and excluded from

government reports such as the Intergovernmental Panel on Climate Change and the National Climate Assessment.

Conclusions of the Intergovernmental Panel on Climate Change that contradict the narrative of catastrophic global warming from fossil fuels are rewritten by government bureaucrats for public reports to support the false narrative of Net Zero. The many benefits of modest warming and increasing carbon dioxide are routinely either eliminated or minimized in governmental reports.

Eliminating fossil fuels and implementing Net Zero policies and actions mean the elimination of fossil fuel-derived nitrogen fertilizers and pesticides that will result in about half the world's population not having enough food to eat. Many would starve.

The adoption of Net Zero is the rejection of overwhelming scientific evidence that there is no risk of catastrophic global warming caused by fossil fuels and CO₂. Net Zero, then, violates the tenets of the scientific method that for more than 300 years has underpinned the advancement of western civilization.

I have included but a snippet of the information contained in this study. I highly recommend reading the entire article to better understand the basis of the authors' claims. I am confident that you will gain insights and understandings that you will not find elsewhere. (Happer et al., 2023).

With all of the hype about net zero, it's not surprising that on Summit Carbon Solution's website advertises their intent to lower the carbon intensity score of ethanol plants about 50%, eventually getting down to net zero carbon emissions while making the environment cleaner and healthier.

Net zero refers to emissions that have been matched by reductions over a specific period of time. However, converting biomass into fuel, and then burning that fuel creates its own emissions and in some instances, creates pollution that is worse for human health than burning coal. In other words, ethanol companies are claiming they are doing more to reduce emissions than they actually are. "The open secret behind corporate climate pledges is that many companies don't know how they will

meet them. Some of the biggest questions lie behind the “net” in net-zero, exactly how, where and when companies will compensate for the climate pollution that they fail to eliminate from their own operations “(Kusnetz, 2023).

A peer-reviewed study examined the effects of the U.S. renewable fuel standard, a federal program that dictates using biofuels, and discovered that increased use of corn ethanol has prompted farmers to grow more corn on more land. This expansion of cropland and increased fertilizer use thwarted any climate benefits the fuel might have provided. In fact, the climate impact of corn ethanol produced under the fuel standard was no less than gasoline and very likely was 24% higher. “It should be noted that because of ethanol’s lower energy content, miles per gallon values for ethanol blended with gasoline are typically 4-5% lower than for pure gasoline. Consequently, CO₂ emissions per mile traveled are as high or higher for ethanol blends than for pure gasoline.....Thus, for the U.S., tailpipe emissions from using E10 in 2020 were almost 25 times greater than the 43 million metric tons of CO₂ that could potentially be captured at all the nation’s ethanol plants” (Appelgate et al., 2022).

The sale of carbon credits for CO₂ removal provides an additional economic incentive to produce more ethanol, potentially contributing to the greater problem created by carbon emissions generated as grasslands are converted to crops along with increased use of fertilizer. Nitrous oxide (N₂O) released in fertilizer creation, storage, and use contributes to a global warming potential up to 300 times higher than carbon dioxide. (Kusnetz, 2023). Increasing demand for land for BECCS (Bioenergy with Carbon Capture and Storage) would threaten biodiversity, causing serious deterioration of soil, making it harder to grow food, thus contributing to global food shortages. (www.fern.org, 2018).

The goal of getting down to a net zero carbon footprint is clearly unattainable as long as the project is adding rather than removing carbon emissions. This is evidence that the project will not contribute in any meaningful way to making the environment cleaner and healthier. Furthermore, SCS will not be able to lower their

carbon intensity score significantly because, in truth, the facilities can only capture a fraction of their carbon emissions. “CCS projects often claim they will reduce CO₂ emissions by as much as 90%, but in reality they capture as little as 7% or less. In many cases, CCS projects actually increase CO₂ emissions” (Montague, 2022). Every large CCS project advanced so far in the U.S. has failed to meet its goals. Since 1985, more than 9 billion dollars of public funds have been expended to develop CCS, and yet every big project has either shut down, or has failed to meet promised goals. As further evidence, 11 out of 22 CCS projects operating in the U.S. today are for the use of enhanced oil recovery rather than carbon capture and sequestration because harvesting oil is the only way to make CCS pay for itself (Montague, 2022).

Summit Carbon Solutions claims that in three years following pipeline construction, the land will return to its original productivity. In fact, they state they will “leave it better tomorrow than we got it today.” However, a study conducted by Iowa State University scientists produced the following contradiction:

Pipeline construction requires substantial disruption of both soil and vegetation in farm fields. “Crop yields can suffer for multiple years since soil heals slowly from the wounds inflicted by excavation, compaction, and back filling.” In a study conducted by Iowa State University scientists following an oil pipeline construction project, it was discovered that corn and soybean yields were reduced 15% and 25% respectively. (Robinson & Tekeste, 2021).

Soil compaction and rutting from heavy construction equipment making multiple passes on the same area, damage soil structure, reduce infiltration and increase runoff and erosion. Ruts that exceed topsoil

depth can mix topsoil with subsoil reducing soil productivity. Rutting affects surface hydrology by damming surface water flows creating accelerated erosion.

Land may be permanently damaged if construction continues during adverse weather conditions. Valuable topsoil may be carried away by tires or tracked equipment.

In addition to erosion caused by water, construction sites are also susceptible to wind erosion.

The operation of permanent facilities will lead to perpetually altered soils or loss of soil resources within that specific footprint.

Following the construction of the Dakota Access Pipeline, an Iowa State University study discovered, “Overall, in the first two years, we found the construction caused severe subsoil compaction, impaired soil physical structure that can discourage root growth and reduce water filtration in the right-of-way.” Significant soil compaction resulting in a gradual recovery of crop yield in the right-of-way over five years was noted (Robinson & Tekeste, 2021).

Given the destruction of farmland soils and reduced crop yields along with the absence of substantial environmental benefits to the public associated with CO2 pipelines, it is easy to understand why farmers aware of such consequences are reluctant to allow the degradation of their land for pipeline construction.

Neither study specified the difference in yield losses on various types of soil. Results could vary greatly based on specific soil composition. At any rate, compensation for three years of yield loss is not sufficient. Nor is the fact that yield losses on temporary and access easements and the land in between have not been addressed.

The amount of land that will be devoured by this project is of concern. Summit’s figures show 9,296.4 acres will be impacted by temporary and permanent easements. SCS provides no specific acreage numbers for specialized construction sites used for horizontal directional drilling of railroads, roads, wetlands, waterbodies, foreign utility line crossings, tie-ins with existing pipeline facilities, areas with steep side slopes, and pipeline crossings, although SCS says these areas will revert to pre-existing conditions after construction with no permanent damage – a claim that can’t be substantiated. Above ground facilities fenced and removed permanently from current use are not included in total number of acres to be impacted. Taking what could easily be 10,000 acres of land out of normal crop use will decrease food production and increase food insecurity. It could also impact the

amount of corn available for ethanol processing. (The problem would be amplified by the additional acres involved in the Navigator and Wolf projects). Where would CO2 pipeline projects turn to fill the demand for low carbon fuel then?

Why are these projects advancing even though the science behind the technology does not support their false claims? The biggest reason, of course, is tax credits and profits in the billions of dollars, along with the power of persuasion (amount of corrupt money going into pockets of elected officials to support the project). To quote Richard Kuprewicz, an independent pipeline safety consultant and expert witness who has worked in the oil and gas industry since the 1970's, "For billions of dollars you make smart people do incredibly stupid things."

Besides government tax credits, Summit's revenue source includes tons of captured carbon that has increasing value in private carbon markets. "Companies that exceed the carbon intensity benchmark or are unable to achieve the standard while capturing emissions are required to purchase 'offsets' in order to remain compliant. In other words, polluting companies invest in programs that quantifiably reduce carbon emissions until their emissions are below the mandatory cap." The ten or so million tons of stored carbon captured from Midwestern ethanol plants every year could be utilized to, on paper, offset an equal tonnage of emissions around the world. In fact, NextGen with several international investors is planning to purchase over 1 million tons of CDR's (Carbon Dioxide Removals) by 2025, giving them a "strong foothold" in the voluntary carbon offset market (Harward, 2023).

The fact that Summit's ethanol and carbon capture proposal intends to combine the sale of credits on voluntary carbon markets with involvement in government-run carbon markets like California's low carbon fuel standard program raises a myriad of unanswered ethical questions. Do these emissions reductions get counted more than once? Can the projects achieve "additionality" by guaranteeing the credits generated represent the actual removals, those that would not have occurred otherwise? The question of additionality, whether the projects would have happened even without the credits being sold, is one that needs to be answered by the pipeline

investors. If projects aren't able to certify additionality, the credits being claimed by corporate buyers become worthless since they aren't achieving any additional emissions cuts. Anu Khan, deputy director of science and innovation at Carbon 180, a carbon removal think tank adds, "Additionality is a concern for any large-scale biofuel operation. Because an ethanol plant's main business is selling ethanol, and that fuel could sell at a premium in certain markets if carbon capture equipment lowers its carbon footprint, it can be difficult to say whether the sale of carbon credits is actually necessary to the project or used to merely pad profits. If the credits were not necessary, they would fail the "additionality" test and ultimately provide only the illusion of for whoever buys them" (Kusnetz, 2023).

Although Ben Nelson, Summit's director of carbon programs, claims the company would not be able to operate without selling credits, I want this claim and that of the company planning to develop a verification system for carbon offset projects to be scrutinized to the highest degree. In addition, the company should not be allowed to create their own verification system and claim offsets without an outside authority overseeing the record keeping. Not doing so would be like "letting a fox into the hen house."

Q: Thank you, I have no further questions at this time and reserve the right to ask you additional questions at time of the Hearing in this matter.

Dated June 15, 2023

/s/ Rita Brown

Rita Brown