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 KARIN WOMMACK AND KRISTIN REGAN INITIAL PRE-FILED TESTIMONY IN OPPOSITION TO SUMMIT'S APPLICATION**

Q: Please state your name.

A: We are Karin Wommack and Kristin Regan, we provide testimony here on our own behalf as well as the Patricia K. Deeg Trust.

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: In 1893 our great-grandfather qualified for the homestead certificate on the Deeg farm in Beadle County, SD. Our family has been stewards of this land for 130 years. On the Home site located on Section 26 he constructed his home with a stone cistern and dug the existing original well by hand through 865 feet of granite.

There is a small portion of the land used for limited agriculture, but the majority is native grasslands including wetlands, deep ravines and glacial striations. Summit states they will "restore" the land. "It takes decades to re-establish native prairie.

A healthy prairie can have 120 species of grass of grasses and forbs…Those vast root systems (which sometimes grow to a depth of 15 feet!)—and the microbes that depend on them are part of what makes this prairie landscape, when untouched by plows and annual cropping, so fertile and resilient against flooding and drought." (Dan O'Brien/Christine Grillo) Once the ground is broken, restoration of that ecosystem takes decades even if Summit or we invest unlimited time and resources. Our concern is for the land, livestock, neighboring landowners as well as the community resources and infrastructure. Risk is not limited to the land in direct contact with the pipeline. The proposed route crosses the James River, part of the Missouri and Mississippi watersheds. It may seem extreme but is a point in fact, system failure would affect the aquafers and ecology of the largest watershed in the US.

For these reasons the proposed route cuts diagonally thru the sections and close proximity to existing infrastructure and the route limits future building sites. In addition, the current route will likely cut cattle off from their water supply both during and post construction. Further we do not believe Summit or its third-party contractors will be able to fulfill the claim that the land will be returned to as good or better condition as they found it preconstruction.

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

A: Yes. Our farm has supported 5 generations of the Deeg family and contributed to the financial success of 2 additional tenant families. Currently the land supports 10 people. Those carefully chosen tenants are part of the fabric of Beadle County who embrace the philosophy "take care of the land and the land will take care of you".

Success of the cattle operation is grassland management and access to water. The proposed pipeline route and easement will damage the native prairie and reduce the viable grassland acreage by 5-10% forcing us to reduce herd capacity proportionally to manage proper pasture rotation. This reduced operating capacity reduces revenue for our tenant and negatively affects rental value. The effect will last decades while

the native prairie re-establishes as explained earlier. In addition, any anomaly in the pipeline easement area that impedes free access to the water sources to which it runs so closely increases cost of operation by forcing installation of new wells and stock ponds or hauling water and will further decreases the rental value of the property. The impacts of this proposed pipeline directly affect the annual income for three families, our ability to contribute to the local economy, and future credit.

The easement agreement Summit Carbon Solutions prepared includes a Temporary Easement Agreement for 80% of the property, the Access Easement and Pipeline Easement (presumably a 50–200 ft wide path through 640 acres). The statements referenced below give Summit Carbon Solutions unilateral authority at any time to shut down 80% of the cattle operation for an indeterminate amount of time to conduct maintenance or operations on the Pipeline Facilities.

In Section 5 Landowner Use, Part C it states "Landowner acknowledges. . . that during the initial construction. . . or any construction, maintenance, repair, replacement or removal work. . . Landowner may not have use of the Easements for any purpose. . ." Note this statement and use of "Easements plural" does not specify Pipeline Easement or exclude Temporary Easement

And because in Section 1 Grant, Part B Temporary Easement the document outlines the duration is at the sole discretion of Summit Carbon Solutions beginning with the Effective Date and ending upon Written Notice of Termination and, because it never specifies this is only for initial construction, it implies that the Temporary Easement could be reinstated for future Pipeline Facility work in the Pipeline Easement.

There is no guarantee of present or future safety and no commitment from Summit to be fully responsible for liability. Nor is there legal protection or Summit's commitment to own liability for landowners, assets and the community in the event Summit divests or provides access to a 3rd party.

For these reasons we anticipate added cost and liability could prove cost prohibitive to continue the cattle operation. The impact is indefinitely there after taking that revenue out of the local economy and putting the livelihood of 3 families at risk.

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 dissects the homestead and cuts diagonally through each section of the farm. It falls within 50ft the original homesite, cistern and well. The topography of the land is rough, rocky terrain, ravines and low-lying river bottom prone to flooding. The proximity of the route thru each section prohibits future build of any additional structures and strictly limits our ability to dig future well sites. Further the increased liability is cost prohibitive and puts future cattle

operation at risk. There is too much uncertainty and operational liability to safely run cattle over a pipeline. The land has afforded us the opportunity to support 3 distinct family farm operations. The added liability this pipeline puts the opportunity for the next generations of family farms at risk.

An Archaeological survey conducted by Metcalf during the 1980s identified multiple hot spots indicating pre-contact sites along the James River corridor and adjacent sections of our property. The current path of the proposed pipeline runs directly thru those hot spots. Reference #3 Document Metcalf.

Location of the Riverside Hutterite Colony is situated along the James River adjacent to the west section 35 and north of the proposed pipeline route. The Colony includes more than 70 individuals (59 families) living and working onsite. They run a large poultry operation as well as have other livestock at that site.

The highest elevation of our property is approx. 1300ft and the James River runs approx. 60 ft lower. If there was a pipeline breach anywhere along the proposed pipeline crossing sections 35, 26, or 25 (especially where it crosses the river), the evaporation of supercritical CO2 resulting in a heavier-than-air vapor cloud would likely fill the river bottom resulting in the gases channeling up to the Colony thus putting both the people and their livestock at great risk.

To put this into perspective, referencing the PHMSA Failure Investigation Report – Denbury Gulf Coast Pipeline LLC dated February 22, 2020, on the CO2 pipeline rupture near Satartia, MS states, “The rupture location was 1 mile from the center of Satartia, where the entire town was evacuated.” (Figure 6, p 13). “Local authorities evacuated approximately 200 people near the rupture, including the entire town of Satartia (around 50 residents). . . “ (p3). Forty-five of the people evacuated were taken to the hospital.

Section 35 is identified as “highly erodible” by the USDA FSA. Again for perspective on highly erodible land, the PHMSA report on the Denbury pipeline failure identified the type of failure “natural force damage”. “The pipeline failed on a steep embankment adjacent to HWY 433, which had recently subsided.

Heavy rains are believed to have led to a landslide, which created axial strain on the pipeline and resulted in a full circumferential girth weld failure." Referencing p. 3 PHMSA Failure Investigation Report – Denbury Gulf coast Pipelines LLC. and Reference USDA FSA Document.

Section 25 is full of glacial erratics, rocky terrain and deep ravines where Shue Creek runs thru the section and eventually feeds into the James River thus another channel for any potential high density CO2 release.

Section 26 includes the original homestead site, access to electricity and the original well. The proposed location of the pipeline cuts diagonally thru this section and potentially destroying the stock ponds on this section.

Because of the proposed pipeline route the cattle will very likely be separated for their water source during or after pipeline construction forcing us to either haul water, dig new stock ponds and/or dig new wells. This obviously creates additional financial hardship for us the landowners and should we choose to extend those costs, financial hardship for the tenants as well.

The loss of the native grasses and forbs thru the center of each section puts the surrounding eco system at risk of foreign vegetation or invasive weeds with long term consequences to the health of the grasslands. Erosion or settling of the backfill can result in a trench hazardous to livestock. Construction of operating or monitoring equipment as well as any future restrictions above ground that would impede the free movement of the livestock and access to water.

Long Term we have no assurance and no control over how and when the pipeline owners will access or limit use of the entire section(s).

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 Sumit 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

[1] See page 1 of the Easement

incorporation is Delaware not Iowa as the Easement suggests. This Iowa Secretary of State search also reveals these companies that appear to be related:

Business Entities Results

print

Searched: **Summit Carbon**

Results 1 - 6 of 6

Business No.	Name	Status	Type
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,

[2] *Id.* Para 1 Grant.

constructing, reconstructing, installing, realigning, modifying, replacing, 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 slops 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 injuries 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 smally 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 and 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 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 appliable 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 CO_2 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. If forced to identify an alternative route, with an abundance of caution with respect to the Riverside Colony, neighboring farms the only alternative we could suggest is to move the pipeline route south following 201st street and 405th Ave along the property boundaries. This would effectively minimize the risk to property, property owners and the likelihood the pipeline separates the livestock from their water source.

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. Communication with Taylor Jans, EMS in Beadle County dated May 17, 2022. In summary, when I asked what information Summit had produced for his office, his response dated May 18, 2022, was "All I know is that the ending route goes somewhere in ND deep underground. . . They did assure me that transporting the CO2 emissions via the pipeline is the safest and most cost-effective way." Is this indicative of the kind of safety communication and training of EMS personnel we can expect from Summit Carbon Solutions? Please note this exchange was 2 years after the pipeline rupture in Satartia, MS.

Collectively our background includes Natural History, Chemical Engineering, Finance and Software Projects for Global Manufacturing. We've been denied any proof of concept or even standard safety protocol to demonstrate in good faith how they plan to manage their automated safety systems. For a high-pressure pipeline containing hazardous material I find this lack of transparency and dismissal negligent.

As a Chemical Engineer I, Karin Wommark, worked in chemical manufacturing for 20 years. It's been my professional experience that often people will, typically with good intentions, promise you the world to get their project approved but dismally fail to produce the items everyone agreed were imperative. Often those imperative items are overlooked or deprioritized because of the crisis of the day. That is, until today's crisis is the catastrophe that didn't wait until tomorrow.

The past 18 years I, Kristin Regan, worked as a Financial Business Manager responsible for the largest SAP Software implementation and Trade Planning Management tool for a multibillion-dollar manufacturing company. It's been my experience that routinely software upgrades, developments and large or small changes routinely cause automation to fail often unidentified until an end user encounters a problem. Summit claims they will employ automation to monitor the pipeline operation, employ safety protocol for installation and

maintenance yet despite requests they refuse to produce documentation that outlines the standards and process used to manage their technology.

Summit was granted access to conduct surveys with the stipulation they provide notice to the landowner and any tenants. They went forward with the move invasive surveys without any attempt to provide notice to the tenants.

There has been no guarantee of present or future safety. Nor is there legal protection for landowners, assets and the community in the event Summit divests or provides access to a 3rd party.

The CCS pipeline is merely a tool for ethanol producers to diversify and maximize their revenue meanwhile forcing landowners to relinquish autonomy managing their land and security for their crops and livestock. The landowners assume the economic burdens while the companies reap the reward. Allowing a private entity access to personal property to install a transportation system for hazardous material without guarantees for additions or alternations in the future would be irresponsible on the part of the entities in place to ensure public projects are handled legally, ethically, and safely.

CCS projects like this are an example of private industry exploiting environmental policy for financial gain. The proposal introduces significant safety and environmental hazard; the liability will not be shouldered 100% by Summit Carbon Solutions. Cost will be leveled against landowners and public services. Approval of the pipeline would establish a precedent that opens access for other like businesses to force private citizens to relinquish rights to personal property.

Summit Carbon Solutions has routinely assured landowners and produced marketing materials that clearly state the CO2 will be permanently sequestered. However their representatives and executive leadership has stated there is potential for reuse and future profit from the CO2.

They recognize the huge market for carbon capture that allows investment from companies like John Deere, Microsoft, Google, and Amazon to buy carbon credits

to green wash their own public relations images See Reference Walsh, 2022; Clayton, 2021.

If there were technologies out there that were economic and viable, where you could take the CO2 and turn it into a brick or a usable building material and it was classified as permanent sequestration, that opens up all sorts of possibilities. Without a project like the Summit Carbon pipeline, it's not as viable. But our hope is that through this project and other developments and science, that it opens up even more possibilities for potential beneficial reuse See Reference (Chris Hill on behalf of Summit/Walsh 2022).

> In addition to the burden of property value loss and complexity to the business of operating a farm, coercing landowners to install a hazardous liquid pipeline forces them to assume severe safety risks to the people, crops, livestock, and native flora and fauna. Transporting carbon dioxide in pipelines requires pressures in excess of 1400 psi to maintain liquid phase. Even gas escaping from a pin hole leak can result in full pipe rupture causing a catastrophic release of dense gas that settles into low-lying areas where the colorless, odorless gas can remain undetected for long periods of time. Material safety data indicates CO2 concentrations <10% can cause a person to lose consciousness while prolonged exposure to high concentrations can lead to asphyxiation and death.

In a study by Gale and Davison, we learn that during an 11-year period [1990-2001], the U.S. EOR CO2 pipeline network experienced 0.32 “incidents” per 1000 km of pipeline. At that rate a 37,000 km pipeline network would experience 37 * 0.32 = 11.8 “incidents” per year, or about one per month on average. In a quantitative risk assessment of pipeline failures in 2010, Joris Koornneef reported on 11 different assessments of the failure rate of CO2 pipelines; the average (mean) rate was 4.4 per 10,000 km of pipeline per year. At that rate, a 37,000 km pipeline system would experience an average of 16 failures each year, or one failure every 3 weeks for the entire lifetime of the pipeline network. Reference Gale and Davison study.

In 2013, DNV Spadeadam produced a video showing the rupture of a buried 8" dense phase CO2 pipeline. In the video one can see that the gas settles into low lying areas and does not merely disperse into the air. The test shows a visible section of the earth white with crystals, presumably solid CO2 and ice considering an adiabatic expansion of a compressed gas results in a significant decrease in the temperature of the surrounding environment. Reference DNV Spadeadam, 2022.

In February 2020 a buried dense phase CO2 pipeline ruptured near Sartartia, MS and resulted in the nearby town being evacuated, 45 people hospitalized, and several victims suffering from the long-term effects of oxygen deprivation (Zagat, 2021). In that instance the source stream, the Jackson Dome, contained <1.5 % impurities (Peltier, 2018) including hydrogen sulfide which further compromised mechanical design safety and complicated environmental safety and health hazards.

The South Dakota Public Utilities Commission should not grant the permit to Summit before PHMSA publishes their updated safety standards specifically for CO2 pipelines. The PUC should not grant the permit to Summit without the same due diligence that requires archeological surveys for all other electrical, water and all other pipelines. Nor should they grant the permit without a legally binding commitment from Summit, their third-party contractors and any future owners to shoulder full liability for the safety of the pipeline, the landowners, tenants, and farm operations as well as the surrounding communities.

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/Karin Wommack

Karin Wommack individually & on behalf of Patricia K. Deeg Trust

/s/ Kristin Regan

Kristin Regan individually & on behalf of Patricia K. Deeg Trust