



Senator Jeffery J. Magrum

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**COMMITTEES:**  
Finance and Taxation  
Energy and Natural Resources

01/30/2025

Good morning, Chairman Patten and committee members.

For the record I am Senator Jeff Magrum Representing District 8.

I stand before you to introduce SB2322. The goal of 2322 is to prevent the use of Eminent Domain for Green New Deal Projects in ND. As Industry continues to expand Green New Deal projects the concern is that property rights for landowners will see an increase of attacks on their property rights. This law change will pre-empt threats of Eminent Domain when Industry Representatives meet with our property owners. This law change will encourage Industry to treat property owners with dignity and respect to get their projects done. Landowners in ND should not have to fear negotiations with Industry representatives. Landowners in ND should be able to negotiate contracts without fear of eminent domain hanging over their heads. This change will encourage peaceful development instead of the civil unrest that we have been seeing, turning neighbors against neighbors. North Dakota has been very supportive of Industrial development. The threat of Eminent Domain has increased landowner fatigue and anger. If we as a state Legislature want to continue to promote and support continued industrial development, we must protect our landowners from Combative and predatory practices by taking away the big stick of Eminent Domain. In the end we will likely see Industry and property owners work together in harmony.

As far as Common Carrier Status, recently the South Dakota Supreme Court ruled that Summit Carbon Solutions does not qualify as a Common Carrier because it doesn't allow for buying and selling to the general public. They also ruled that Carbon Dioxide is not a commodity.

Our ND Constitution addresses this question Article 1. Section 16.

Thank you for your consideration and I humbly ask for a do pass recommendation on SB2322.

**CHAPTER 49-19**  
**COMMON PIPELINE CARRIERS**

**49-19-01. Definition of common pipeline carriers.**

Every person:

1. Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, coal, or carbon dioxide by pipelines;
2. Owning, operating, managing, or participating in the ownership, operation, or management of, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline, or any part of any pipeline, for the transportation of crude petroleum, gas, or coal bought from others from any oil, gas, or coal field or place of production, to any distributing, refining, or marketing center or reshipping point;
3. Engaged in the business of producing, purchasing, transporting for hire or transporting for sale within this state of natural gas, which is transported through pipelines, or any part of a pipeline, the right of way for which is granted or secured under the provisions of this chapter or, subject to chapter 32-15, through the exercise of the right of eminent domain; or
4. Made a common carrier by or under the terms of a contract with or in pursuance of the laws of the United States, is a common carrier and is subject to the provisions of this chapter as a common pipeline carrier.

**49-19-02. Pipeline carriers - Special powers of commission.**

The commission shall take reports from and may investigate the books and records kept by any pipeline carrier in connection with its business, and may require such company to make monthly reports duly verified under oath showing the total quantity of crude petroleum owned by such carrier and of that held by it in storage for others, and its unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum of any particular pipeline, but it may make public the aggregate amounts held by all the pipelines making such reports and their aggregate storage capacity.

**49-19-03. Enforcement of orders by commission.**

The commission shall hear and determine complaints, require attendance of witnesses, and institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

**49-19-04. Reservation in gas franchises.**

No city or other public corporation hereafter shall grant to any person a franchise to furnish natural gas to the public in this state without making a reservation therein that a percentage of native natural gas shall be used by such person if and when the same is produced in commercial quantities.

**49-19-05. Percentage of native natural gas to be used.**

Whenever native natural gas is produced in this state in commercial quantities, any person having a franchise to furnish gas to the public, which franchise is dated after March 9, 1933, shall use fifty percent, or its equivalent, of native natural gas as developed if the source thereof is located not more than six miles [9.66 kilometers] from any established gas pipeline.

**49-19-06. Gas in commercial quantities - What constitutes.**

Any gas well of two hundred fifty thousand cubic feet [7079.21 cubic meters] volume and two hundred pounds [90.72 kilograms] of rock pressure shall constitute a well producing native natural gas in commercial quantities under the provisions of this chapter.



**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA**

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In the Matter SCS Carbon Transport LLC )  
Acceptance of Provisions of North Dakota )  
Century Code § 49-19-12 )

Case No. \_\_\_\_\_

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**ACCEPTANCE OF PROVISIONS OF  
NORTH DAKOTA CENTURY CODE § 49-19-12**

Upon approval by the North Dakota Public Service Commission (“Commission”) for construction of a proposed carbon dioxide (“CO<sub>2</sub>”) pipeline project, SCS Carbon Transport LLC (“SCS”) will own and operate a pipeline located within the State of North Dakota and will be engaged in the business of transporting CO<sub>2</sub> for others by such pipeline in accordance with the definition of a common carrier. *See* N.D.C.C. § 49-19-01.

North Dakota Century Code § 49-19-12 provides in relevant part that “[e]very common pipeline carrier which shall have filed with the commission its acceptance of the provisions of this chapter has, subject to chapter 32-15, the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline.”

SCS, pursuant to North Dakota Century Code § 49-19-12, as a common carrier, accepts the provisions of Chapter 49-19 of the North Dakota Century Code. This acceptance by SCS is hereby filed with the Commission.

Dated this 24th day of June, 2022.

SCS Carbon Transport LLC



James Pirolli, Chief Commercial Officer

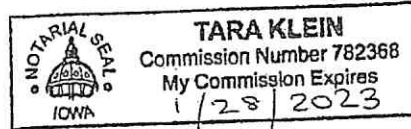
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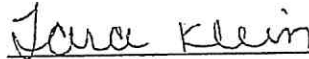
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COUNTY OF STORY

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The foregoing instrument was acknowledged before me this 24th day of June, 2022, by James Pirolli, Chief Commercial Officer of SCS Carbon Transport LLC, a limited liability company, on behalf of the company.



Notary Public

My Commission Expires: 1/28/2023

June 24, 2022

**HAND DELIVERED**

Mr. Steve Kahl  
Executive Secretary/Director of Administration  
North Dakota Public Service Commission  
600 E Blvd Ave Dept 408  
Bismarck, ND 58505-0480

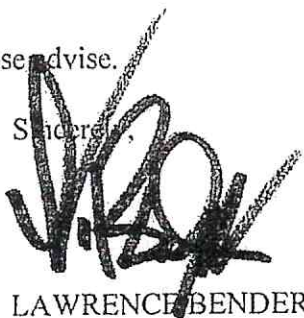
**RE: SCS Carbon Transport LLC  
Acceptance under NDCC §49-19-12**

Dear Mr. Kahl:

Pursuant to the provisions of Section 49-19-12 of North Dakota Century Code, please find enclosed herewith an original and five (5) copies of the SCS Carbon Transport LLC Acceptance of Provisions of North Dakota Century Code §49-19-12.

Also enclosed herewith is a CD containing this letter and the above-referenced document in PDF format.

Should you have any questions, please advise.

Sincerely,  
  
LAWRENCE BENDER

LB/kl  
Enclosures

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1 PU-22-260 Filed 06/24/2022 Pages: 3  
Acceptance of Provisions of N.D.C.C. Section 49-19-12  
SCS Carbon Transport LLC  
Lawrence Bender, Fredrikson&Byron, P.A.

## ARTICLE I DECLARATION OF RIGHTS

**Section 1.** All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

**Section 2.** All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

**Section 3.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Section 4.** Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

**Section 5.** The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

**Section 6.** Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

**Section 7.** Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

**Section 8.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

**Section 9.** All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

**Section 10.** Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval



forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

**Section 11.** All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

**Section 12.** In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

**Section 13.** The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.

**Section 14.** The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.

**Section 15.** No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

**Section 16.** Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

## AI Overview

[Learn more](#)



On August 22, 2024, the South Dakota Supreme Court ruled that Summit Carbon Solutions (SCS) is not a common carrier. This ruling means that SCS cannot use eminent domain to survey or build its proposed carbon dioxide pipeline in South Dakota.

### Explanation

- The court ruled that SCS did not prove it is a common carrier, which is necessary for using eminent domain.
- The court also ruled that carbon dioxide is not a commodity.
- The ruling was a victory for landowners and those who opposed the pipeline.

### Impact

- The ruling complicates SCS's efforts to build its pipeline.
- SCS must get permission from all states where the pipeline would run, including Iowa and Nebraska.
- SCS must work with landowners to secure the necessary permits.

South Dakota Supreme Court sides with landowners, says ...Based on facts, either observed and verified firsthand by the reporter, or reported and verified from knowledgeable sources. What ...



InForum



## Conclusion

[¶76.] We hold that on this record the circuit courts erred in granting summary judgment because SCS has not demonstrated that it is a common carrier holding itself out to the general public as transporting a commodity for hire. The circuit courts also erred in denying Landowners' motions to continue because further discovery was central to Landowners' ability to resist summary judgment. Landowners are entitled to additional discovery within the scope of SDCL 15-6-26,

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including depositions and the production of unredacted documents related to SCS's offtake agreements and business model under terms prescribed by the courts. [¶77.] In order to provide clarity on remand, we also determine that SDCL 21-35-31 only authorizes limited pre-condemnation standard surveys, as defined herein. As a result, we conclude that this statute, as strictly interpreted herein, is constitutional under the takings and due process clauses of the state and federal constitutions because limited pre-condemnation standard surveys are a longstanding background restriction on property rights. In addition, SDCL 21-35-31, read in conjunction with South Dakota Constitution article XVII, § 18, guarantees a jury determination of any damages caused during the surveys and thus comports with South Dakota's unique constitutional guarantees regarding property rights.

[¶78.] We reverse the grant of summary judgment and remand for further proceedings consistent with this opinion.

[... ] JENSEN, Chief Justice, and SALTER and MYREN, Justices, and WIPF PFEIFLE, Retired Circuit Court Judge, concur.

[¶80.] WIPF PFEIFLE, Retired Circuit Court Judge, sitting for DEVANEY, Justice, who deemed herself disqualified and did not participate.