

2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2314

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2314
1/27/2023

A bill relating to common carrier use of eminent domain; relating to common carrier use of eminent domain.
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3:40 PM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Magrum, Beard, Boehm, Kannianen and Kessel.

Discussion Topics:

- Pipelines
- Carbon Dioxide
- Landowners
- Public Service Commission
- Common Carrier Status

3:40 PM Senator Magrum introduced the bill and provided written testimony #17500.

3:51 PM Troy Coons, Chairman, Norwest Landowners Association, spoke in favor of the bill and provided written testimony #17767.

3:55 PM Derrick Braaten, Legal Counsel, Northwest Landowners Association, spoke in favor of the bill.

3:39 PM Susan Doppler testified in favor of the bill and provided written testimony #17266.

4:01 PM Jerol Gohrick, rancher farmer, gave oral testimony in favor of the bill.

4:04 PM Julie Fedorchak, North Dakota Public Service Commission, testified opposed to the bill and provided written testimony #17269.

4:17 PM Jack Schuh, General Counsel, North Dakota Public Service Commission, answered questions from the committee.

4:20 PM Jason Bohrer, Lignite Energy Counsel, spoke opposed to the bill and provided written testimony #17314.

4:24 PM Ron Ness, North Dakota Petroleum Counsel, spoke in opposition to the bill and provided written testimony #17427.

4:26 PM Jeff Skaare, Sequestration Director of Land Legal and Regulatory Affairs for Summit Carbon Solutions, testified opposed to the bill and provided written testimony #17232.

4:34 PM Chairman Patten closed the public hearing.

Additional written testimony:

Julia Stramer #14898

Rebekah Oliver #15031

Larry and Cheryl Stockert #15644

Dan and Sue McLean #15845

Diane and Loren Staroba #16374

Lon Klusman #16741, #16669

Jerry Waswick #16772

David Moch #17002

Ryan Carter #17137

John Warford #17161

Joshua Teigen #17180

Adam Dunlop #17238

Eliot Huggins #17270

Bill Breimeier #17297

Jessica Pulver #17310

David Degenstein #17347

Greg Schonert #17351

4:34 PM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2314
2/10/2023

A bill relating to common carrier use of eminent domain; relating to common carrier use of eminent domain.
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4:23 PM Chairman Patten opened the meeting.

Chairman Patten, and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Committee action

.4:27 PM Senator Magrum moved to adopt amendment #20527.
Motion seconded by Senator Beard.

4:30 PM Senator Magrum spoke on the bill and provided written testimony #20589, 20590.

4:40 PM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	N
Senator Keith Boehm	N
Senator Jordan L. Kannianen	N
Senator Greg Kessel	N

Motion failed 1-5-0.

4:42 PM Senator Magrum moved to adopt amendment with 75% and 85% language.

4:43 PM Motion fails due to a lack of a second.

4:43 PM Senator Kessel moved to Do Not Pass the bill.

Motion seconded by Senator Kannianen.

4:44 PM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

Senator Patten will carry the bill.

This bill does not affect workforce development.

4:44 PM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2314: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2314 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2314

Committee Members

This is in support of SB 2314.

This bill makes logical sense: it sets up a public hearing (s) before the decision is made to grant a pipeline common carrier status

The PSC should welcome public transparency— especially on a subject like eminent domain.

Gives local governments and local residents more of an opportunity to weigh in on large pipeline projects, current regulatory structure is too restricted with the only public hearing being on the issuance of a permit.

Summit Carbon Solutions (SCS) is planning to cross our cropland with a pipeline that has no useful purpose for mankind. CO2 is a hazardous material that is dangerously unregulated in a pipeline. Untested with no previous pipeline history to learn from, SCS is planning to cross 5 states in order to pipe the CO2 underground in ND. Has ND become the dumping ground for the country? What will the future of ND look like if we allow this to happen? Does one really own their property in ND?

The whole project is a federal money grabbing scheme. It is a make-work “Green Deal” invention for a select group of self serving bureaucrats in order to become billionaires at landowner’s expense.

The first easement contract that we received from SCS in July of 2021 was an insult regarding compensation and terms. After taxes, my compensation amount figured to be about \$23.00 per year for 99 years, not even enough to pay the legal fees. We also received a letter from SCS lawyer stating that we would be sued if we did not allow entrance to our property. The SCS agents have communicated with us using misinformation, confusion, misleading and contradictory language, and threats. We are now finding ourselves buried in paperwork and meetings, and paying a lawyer every month.

Our land is a 4th generation owned property. It should not be held hostage for next 99 years. My children and grandchildren should have the right use, protect, and better the land without a toxic pipeline cutting through it.

We are asking you to help ND landowners. Please vote YES on SB 2314.

Thank you for the consideration.

Julia Stramer
Hazelton, ND
Emmons County

DO PASS - SB 2314

Members of the Senate Energy and Natural Resources Committee,

Please render a DO PASS on Senate Bill 2314. Thank you for your consideration of this important bill, and for your service to North Dakota.

Sincerely,

Rebekah Oliver

District 11

Testimony in Support of Senate Bill 2314
Senate Energy and Natural Resources Committee

Mr. Chairman and members of the Committee, we are Larry and Cheryl Stockert, and live North of Bismarck in Burleigh County. We support Senate Bill 2314 because:

1. Carbon dioxide pipelines should not be given the right to exercise eminent domain as a common carrier. Carbon dioxide pipeline technology, which transports deadly hazardous liquid material, is in its infancy with superficial safety regulations. Large diameter carbon dioxide pipelines have not been independently and scientifically proven safe. Eminent domain would be equivalent to a private corporation playing Russian Roulette with our lives and the lives of anyone within the identified "Kill Zone". The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) is currently developing new safety regulations as existing regulations are not adequate. PHMSA stated, "The safety of the American people is paramount and we're taking action to strengthen CO₂ pipeline safety standards to better protect communities, our first responders, and our environment."
2. An 85% landowner agreement threshold is appropriate in the case of carbon dioxide pipelines. Ensuring landowner's safety and rights to their land is critical. North Dakota needs to do this right; doing it right does not mean taking our citizen's land without their consent.
3. Boards of County Commissioners in North Dakota should be given authority to enact a higher percentage of landowner's consent for common carrier easements.
4. Boards of County Commissioners in North Dakota should be notified and public hearings conducted in every county affected by any common carrier permit application for their proposed project.

Let's "do it right" for all, not just for corporations! We are asking for a YES vote on Senate Bill 2314.

Thank you for the opportunity to comment.

Larry and Cheryl Stockert

Please note that we are in favor of SB 2209, SB 2212, SB 2228

We were called and told by Summit Carbon (with no personal names given) that we were going to have a pipeline on our land. When we told them we did not want this on our land, they said fine they would just take it by eminent domain. Period. Even Senator Hoeven feels this should be voluntary.

We bought this land several years ago as a retirement investment. We both had full time jobs off the farm as well as about 100 head of sheep, and then about 100 head of cows. We eventually sold the sheep because they were labor intensive and kept the cows. As you can imagine we did not have a lot of free time. Weekends were spent trying to catch up on all of the work we didn't get done during the working hours on our jobs. But this was OK. We were working to pay off the land for our retirement. As mother nature has her own plan, we sold the cows during the drought. At our age (67 & 68) it was not feasible for us to restock. We were able to completely pay off the land. This gave us to opportunity to rent the pastures to other younger families. Now a private company that stands to make billions of dollars tells us they are taking our land and putting a pipeline on it that will devalue any retirement funds we may have wished for. This does nothing for my neighbors except puts a dangerous element in their backyards. This company states that they are in compliance with PHMSA regulations, but what they would like to do is completely new and regulations are not, as yet, fully adequate.

We are not the only people that do not like this in our neighborhood. Six townships have passed resolutions opposing eminent domain. We are also not the only state that does not want this (see SD, IA, NE).

In the United States, eminent domain is the power of the government to take away someone's private property. But the Fifth Amendment places two strict limits on eminent domain. First, private property can be taken only for "public use," or public works projects, like roads and bridges. Second, even if a property is taken for a public use, the owner must be paid "just compensation." (Institute for justice.)

Sue & Dan McLean

Menoken ND

To the Honorable members of the Energy and Natural Resources committee in support of SB 2314.

We are retired farmers living in Fargo and own land in Richland County. We are being actively sued by Summit Carbon Solutions (SCS) pipeline for access to two parcels of our prime tillable farmland. We have had minimal communication with SCS and have stated that we have no interest in allowing their pipeline to run across our property. Their minimal communication has been a lawsuit against us, making it necessary for us to “lawyer-up” at our personal expense. **Our land is not for sale!** We don’t accept that an international, private pipeline company should have the right to **take** our land for their own use—while using government incentives to make billions off our backs. All in the name of the public good! This pipeline has been designated as a hazardous-waste pipeline. Transporting this gas and burying it in North Dakota doesn’t appear to be of public benefit. The biggest benefit is to the builders and their investors making large profits at taxpayer expense. The questions of “for the public good” need to be addressed and not left to just 3 or 4 members of the Public Service Commission or the Industrial Commission.

Our hope is that you are willing to take a stand against using eminent domain for the purpose of constructing these kinds of projects by private companies. At the very least, supporting legislation that limits their ability to do so, without a larger amount of voluntary landowner participation and additional public input.

We believe that SB2314 addresses these issues. We would appreciate your support, voting YES.

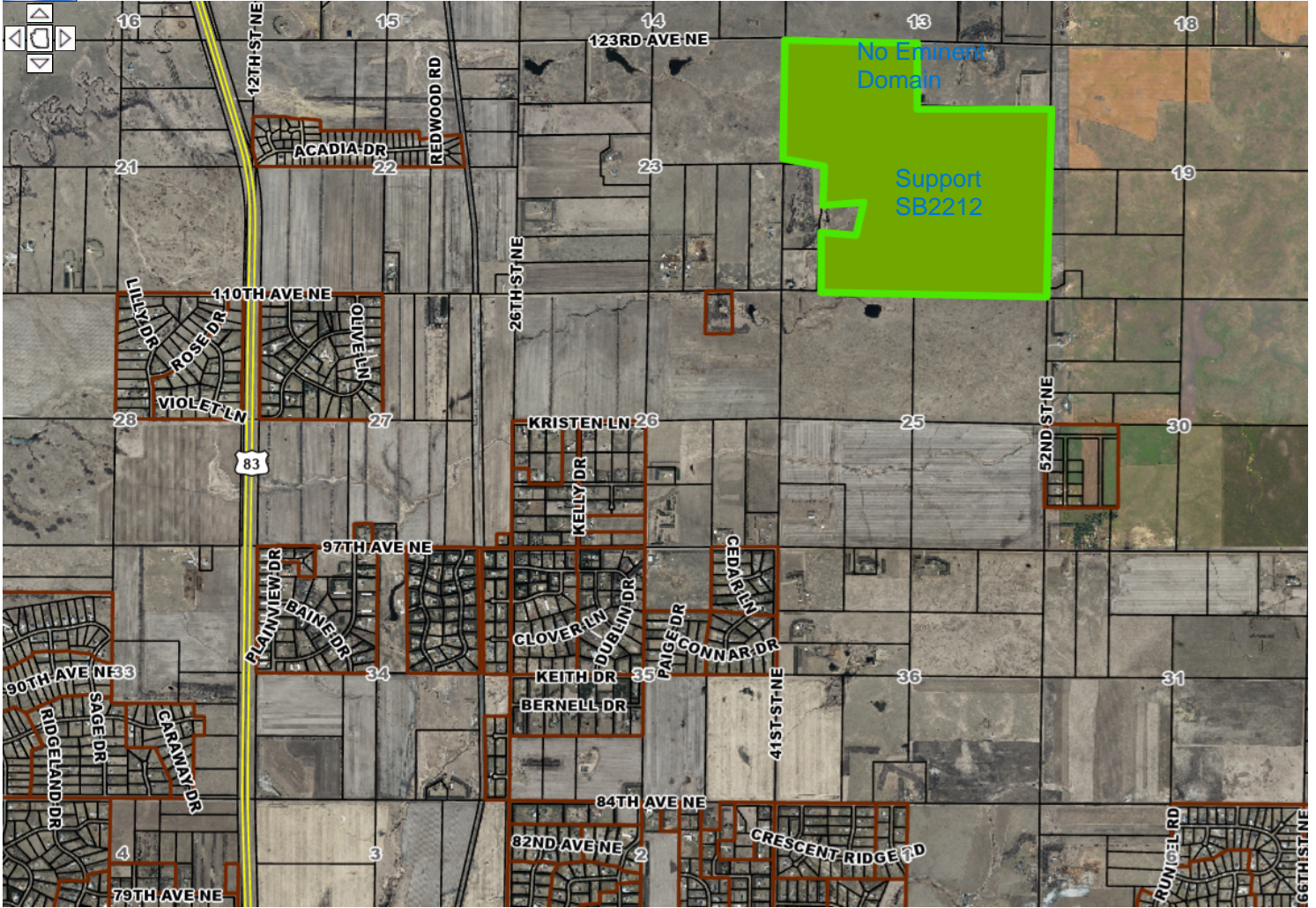
Loren & Diane Staroba
Fargo, North Dakota



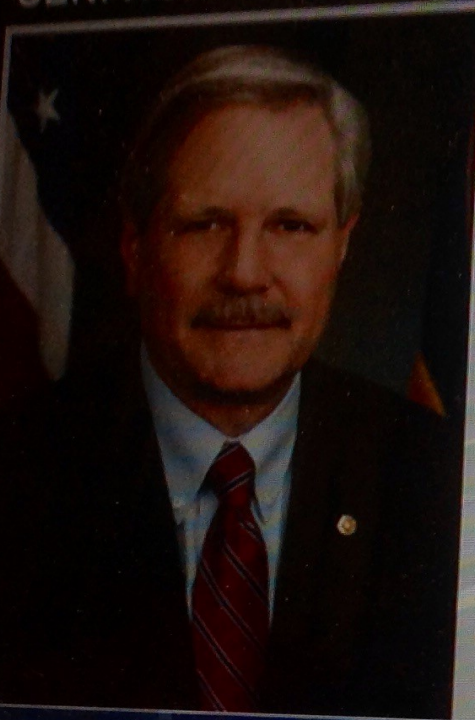
Parcel Viewer

Search all layers listed under the dropdown arrow.

- Basemap
- Map Layers
- Draw
- Measure
- Zoom To



CARBON CAPTURE SEN. HOEVEN RAISES CONCERN



"PRIVATE PROPERTY RIGHTS MUST BE RESPECTED AND PARTICIPATION IN THE SUMMIT CARBON SOLUTIONS PROJECT SHOULD BE VOLUNTARY, AND [I AM] CONCERNED ABOUT THE USE OF LITIGATION TO COMPEL ACCESS TO PRIVATE PROPERTY."

SEN. JOHN HOEVEN
(R) NORTH DAKOTA

CARBON CAPTURE LAWSUIT

26, 2022 at 7:34 AM CDT



College **SAVE**

Bank of North Dakota's 529 Plan

Tell them ab
\$100 match!



SB2314-Opposed

The PSC should be in charge of the permits and hearings. It's a State permit and the State should be left to manage the permits and hold hearings, not the County.

Jerry Waswick

was@drtel.net

701-678-2431

Gwinner, ND

MEMBERS OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

I am in strong support of **SB 2314** which helps prevents companies from developing projects such as the Summit Carbon Solutions CO2 pipeline. It will help eliminate the taking and use of our native grassland and farmland.

I understand that oil pipelines, highways, and transmission lines ect. are for the good of the people of North Dakota. This CO2 pipeline is a safety concern, and is not for the common good of the citizens of North Dakota.

This bill will help create a better process for determining who qualifies for common carrier status.

Thank you for your support of a **YES** vote on **SENATE BILL 2314**.

David Moch

Hazelton, ND

Emmons County



Tharaldson | Ethanol

Ryan Carter & Brad Kjar
Co-Chief Operating Officers
Tharaldson Ethanol
3549 153rd Ave SE
Casselton, ND 58012

January 25, 2023

The Honorable Dale Patten
Chairman
Senate Energy and Natural Resources Committee
North Dakota Legislature
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

RE: SB 2251 – OPPOSE
SB 2313 – OPPOSE
SB 2212 – OPPOSE
SB 2209 – OPPOSE
SB 2228 – OPPOSE
SB 2317 – OPPOSE
SB 2314 – OPPOSE



Tharaldson | Ethanol

Dear Mr. Chairman and members of the Senate Energy Committee,

Our names are Ryan Carter and Brad Kjar, and we have the privilege of serving as co-Chief Operating Officers for Tharaldson Ethanol in Casselton. As you may know, our facility is the ninth largest ethanol manufacturing facility in the United States and produces a high-octane, clean burning fuel that reduces our nation's dependence on foreign oil, while utilizing our locally grown, renewable agricultural resources. In total, our plant produces 175 million gallons of ethanol every year.

I am writing today to express our opposition to several bills that have been proposed this legislative session, including SB 2251, SB 2313, SB 2212, SB 2209, SB 2228, SB 2317, and SB 2314. These bills, along with others that may be proposed this year, would fundamentally alter North Dakota's regulatory landscape, shift the state away from its traditional pro-business, pro-growth approach to public policy, and prevent North Dakota from continuing to be the national leader in an emerging industry that will benefit our economy long-term.

Tharaldson Ethanol is one of 32 plants across the Midwest that joined Summit Carbon Solutions carbon capture, transportation, and storage project. This multi-billion-dollar private infrastructure investment will allow Tharaldson and Summit's other partners to sell their product at a premium in the growing number of states and countries that have adopted low carbon fuel standards. While opinions may vary on these types of policies, the ability of ethanol manufacturers to access these markets is absolutely vital to ensuring the long-term viability of the industry as a whole. Some renewable fuel leaders in the Midwest have even characterized carbon sequestration as "a matter of life and death" for ethanol manufacturers. We agree.

The ethanol industry contributes \$640 million to North Dakota's GDP every year, supports 10,000 jobs in the state, and, critically, purchases approximately half the corn grown in North Dakota. The stronger the ethanol industry, the better it is for corn growers here in our state and the broader ag economy that is so critical to our way of life. However, the flip side of that coin is true as well. If the industry is not able to access low carbon fuel markets in the years to come, it will undermine the competitiveness of the industry and put all those benefits at risk. And simply put, we believe the bills cited in this testimony would likely produce that outcome.



Tharaldson | Ethanol

For years, existing businesses in North Dakota and businesses considering investing in the state have enjoyed a predictable regulatory environment and the confidence that the rules would not change in the middle of the game. Summit Carbon Solutions developed a business model based on those rules and rightfully should be able to expect the state won't now, two years later, undertake a complete overhaul of the regulations around infrastructure projects.

With more than 30,000 miles of pipeline already in operation in North Dakota and policymakers across the political spectrum supporting efforts to permanently and safely store carbon dioxide, it's important now more than ever that we maintain the state's regulatory process that is rigorous, comprehensive, and has consistently worked for all stakeholder groups. Despite what some may say, landowners are embracing this project. Hundreds of North Dakota landowners have signed easement agreements with Summit Carbon Solutions, accounting for 85% of the area where the company will safely sequester CO2 and more than 58% of the proposed pipeline route, with many additional landowners currently considering agreements.

Thank you for your consideration on these issues and please don't hesitate to contact me if you have any questions.

Sincerely,

Ryan Carter and Brad Kjar

Co-Chief Operating Officers

Tharaldson Ethanol

3549 153rd Ave SE

Casselton, ND 58012

Mr. Chairman and members of the Senate Energy and Natural Resources Committee,

My name is John Warford, Sr and am an affected landowner in Burleigh County.

I am in support of SB 2314 and ask a do pass from the committee.

This is a common sense bill to set up public hearings to grant a pipeline common carrier status.

The PSC should welcome more public transparency.

This bill also gives local governments and local residents a chance for public testimony on pipeline projects; current regulatory structure is too restricted with the only public hearing being on the issuance of the permit.

Thank you.



Testimony in Opposition of
House Bill No. 2314
Education and Environment Division of the House
Appropriations
January 27, 2023

TESTIMONY OF

Josh Teigen, Commissioner, ND Department of Commerce

Mr. Chairman and members of the committee. My name is Josh Teigen and I have the privilege of serving as the Commissioner for the ND Department of Commerce and by statute also the chair of the EmPower ND Commission.

I am here today in opposition of 2314 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

ND prides itself on a being a business-friendly state. A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business.

Both Commerce and EmPower ND believe this bill to be harmful to the future of our economy. There is so much opportunity on the horizon and by enacting policies such as this, we signal to the world that ND is changing course and taking a stance of regulation over innovation. The passage of this bill will cause us to lose critical investments that will contribute to a better quality of life and economic opportunity for all citizens of ND.

Mr. Chairman and members of the committee, on behalf of EmPower ND and the ND Department of Commerce, I strongly urge you to vote no on this bill.

Summit Carbon Solutions Testimony on Senate Bill 2314
January 27, 2023, 9:30 (11:00) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman

Jeff Skaare – Director of Land Summit Carbon Solutions
Opposition to SB 2314

Chairman Patten, and fellow Senate Committee Members.

My name is **Jeffrey Skaare**. I am the **Sequestration Director of Land Legal and Regulatory Affairs** for **Summit Carbon Solutions**. I am an attorney by education, and a certified professional landman by trade. Born, raised and educated in North Dakota, I have dedicated the majority of my professional career to the development of ND's vast mineral resources. I have witnessed first-hand the need for, and the buildout of, the necessary infrastructure to develop North Dakota's vast natural resources. I have personally overseen the acquisition, build out and operation of over 300 miles of pipeline within North Dakota. In my past employment, I was involved in the acquisition, reclamation, and operation of those same pipelines. I became involved in the Summit Carbon Solutions project because I believe that the two most important industries to North Dakota, namely Agriculture & Energy, will need to find a carbon management solution to continue to thrive. We have reviewed proposed Senate Bill No. 2314 and we oppose for the following reasons:

- 1.) The enactment of this bill singles out CO₂ – with no justification for the separation.
- 2.) The enactment of this bill creates another layer of bureaucracy.
- 3.) The enactment of this bill creates uncertainty in whether 100% is required (thus removing the right of Eminent Domain altogether); and
- 4.) The enactment of this bill is an additional burden upon the PSC and is a waste of State resources.

I would like to address each of these points in turn.

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January 27, 2023, 9:30 (11:00) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman**

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2314

First, this bill singles out CO₂ without justification. CO₂ is a resource for North Dakota. Lyn Helms addressed this with both the Senate and the House Energy and Natural Resources Committees on Friday January 13, 2023, highlighting the need for additional future CO₂ pipelines. In his presentation¹ at 8:44:00, Lyn Helms explains that if we were to capture all the stationary CO₂ sources in ND, that would amount to ~3% of the CO₂ needed for enhanced oil recovery. His presentation at 8:51:01, also suggests that proper allocation of this resource would unlock ~ 10 billion barrels of oil in twenty years in the Williston Basin. It is clear from listening to his presentation that CO₂ pipelines are vital to our State's continued economic development and the future of North Dakota's Agriculture and Energy Sectors. The proposed Senate Bill 2314 singles out CO₂ pipelines in a manner that is detrimental to North Dakota's future.

Secondly, proposed Senate Bill 2314 creates a second layer of bureaucracy for every entity that endeavors to invest in CO₂ infrastructure. Every entity would need to learn from each individual County Commissions their percentage determination. Nothing in this legislation suggests that the County Commission cannot change this percentage at any time. The proposed legislation's benchmark measure, (i.e., the number of landowners) is uncertain. For example, let's assume a CO₂ pipeline is proposed to cross three tracts of land. A husband-and-wife own tract 1 tract together as joint tenants, the husband owns tract 2 individually, and the wife owns tract 3 individually. Would this count as 1, 2 or

¹ https://video.ndlegis.gov/en/PowerBrowser/PowerBrowserV2/20230113/-1/28323#info_

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Senator Dale Patten, Chairman

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2314

3 landowners? What if that same family decides to divide that land out to additional limited liability companies? What if the father owns certain parcels with one son and other parcels with his daughter? Would that further change the number of landowners?

Allowing the County Commission to set the goal posts is a clear signal to the market that North Dakota is not open for business. This creates uncertainty in project development and another layer of government. In a time when we are seeking less government intrusion, we are creating additional, unnecessary layers. Which brings me to my third point.

Third, the enactment of this bill gives County Commissions the right to remove Eminent Domain altogether by requiring 100% acquisition. This is another “end-run” on Senate Bill 2212 and an attempt to remove Common Carrier status altogether. This gives County Commissions essentially the right to shut down economic development based on the smallest of parcels. This would discourage development and investment in North Dakota for future infrastructure.

Fourth, as opposed to proposed Senate Bill 2209, Senate Bill 2314 creates a new section of Century Code requiring Public Service Commission to hold a public hearing in every County that is “*potentially* impacted by the Common Carrier’s proposed project”. Every county in the State of North Dakota is potentially impacted by every decision of the North Dakota Public Service Commission. To require a Statewide, County by County review of every project is a tremendous burden on the Public Service Commission. In enacting Chapter 49-22 titled, **Energy Conversion and Transmission Facility Siting Act**, the Legislature has already declared in 49-22-02 entitled, Statement of Policy, “*The legislative*

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January 27, 2023, 9:30 (11:00) A.M.
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Senator Dale Patten, Chairman**

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2314

assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.” To require the North Dakota Public Service Commission to hold hearings in all potentially impacted County Seats is an undue burden and a waste of State resources.

It is for these reasons that we oppose the enactment of Senate bill number 2314 and request a recommendation of **DO NOT PASS**.

Thank you.



Testimony of Adam Dunlop, Executive Vice President of Midwest Ag Energy

North Dakota Ethanol Producers Association

Opposition of SB 2122, 2209, 2228, 2317, and 2314

January 27, 2023

Chairman Patten and members of the Senate Energy and Natural Resources committee,

I am Adam Dunlop, Executive Vice President of Midwest Ag Energy which owns and operates ethanol plants located in Underwood and Spiritwood. Midwest Ag Energy is a member of the North Dakota Ethanol Producers Association (NDEPA), which represents North Dakota's six ethanol plants, industry stakeholders and associated businesses. NDEPA is here today to oppose Senate Bills 2122, 2209, 2228, 2317, and 2314. These bills would be detrimental—and in some cases fatal—to the ethanol industry with respect to any future advancements in the carbon (CO₂) markets. North Dakota's legislature has diligently invested immense resources in research and development to advance the CO₂ markets and opportunities in ND, and it has spent 15 years creating a legal, tax, and regulatory regime to encourage investment in the CO₂ markets. Each of these bills could unilaterally undo the very thoughtful and at times groundbreaking work you have invested in safe and permanent CO₂ storage.

North Dakota's ethanol industry contributes nearly \$1.7 billion annually to the state's economy and provides thousands of direct and indirect jobs. Thanks to North Dakota's innovative private sector and supportive state government, the state's ethanol production capacity is 550 million gallons per year, which is more than five times the production a decade ago. The plants produce 2.4 million tons of CO₂ annually. Red Trail Energy in Richardton has been capturing and storing the CO₂ it produces for about a year. They were the first Class VI injection well approved by a state regulator with EPA primacy. Midwest Ag Energy's Blue Flint plant has been working on its CO₂ project for the past several years and will have an operational CO₂ project this summer. Tharaldson Ethanol has signed onto the Summit Carbon Solutions pipeline which will be able to capture CO₂ from various Midwest ethanol plants and store it in central North Dakota.

There is a tremendous advantage to capturing and storing North Dakota's CO₂ emitted from the ethanol plants. There are a couple of powerful economic factors at play: (1) the ability to capture more revenue with low-carbon ethanol and (2) 45Q tax credits. The ethanol produced from these plants can be sold to developed and emerging low carbon fuels markets that are willing to pay a premium for low carbon fuel. Low carbon ethanol is often sold at a premium—around 20-30 cents more a gallon. Assuming a \$.20 lift in every gallon ethanol, at 550 million gallons of production in the state, assuming all CO₂ from ND's ethanol plants be permanently stored, that would amount to an additional \$110M (550M X \$.20) in increased annual revenue. That revenue supports North Dakota's agriculture economy. Those who permanently store carbon can also utilize the 45Q tax credit which is currently valued at \$85/ton. ND Ethanol plants produce 2.4 million tons CO₂ annually, the 45Q tax credit on this volume could generate \$204M per year in federal tax credits taken directly to the plant's bottom line (2.4M x \$85). The 45Q tax credit is available for 12 years. Also, lower carbon-intensity scores at a plant enables it to pay a higher price for corn in their area, which translates directly into a better economy for our farmers in ND. These are game-changing opportunities for ND agriculture.

With regard to the eminent domain bills, Senate Bill 2212 completely repeals common carrier status for CO₂ projects, Senate Bill 2209 creates an 85% threshold for eminent domain and gives county commissioners authority to set higher percentages, and Senate Bill 2314 gives the Public Service Commission (PSC) authority to determine common carrier status and eminent domain limitations. Our industry work extremely hard to be sure that landowners are treated fairly and appropriately- they are our suppliers for corn and customers for distillers grains. We all share benefits if we're able to successfully build and operate these projects. Eminent domain, simply put, is not a desired tool, but vocal small minorities of protestors should not be given veto power over any linear infrastructure that allows our state to compete and prosper.

Similarly, with regard to the amalgamation bills, Senate Bill 2228 repeals amalgamation for CO₂ storage, and Senate Bill 2317 creates an 85% threshold for amalgamation. Similar to eminent domain, NDEPA understands that amalgamation is never the first mode of action, but it is a tool that must be utilized at times avoid property rights of the minority outweighing the property rights of the majority on project development. Again, the industry aims for 100% consent from landowners on these projects but there are instances that amalgamation is the voice of the majority. Significantly raising this threshold would absolutely hinder all CO₂ projects across North Dakota.

Addressing a carbon-constrained future is a critical public purpose. Our two major industries, agriculture and energy, cannot survive and thrive without them. Additional, hindering projects for the ethanol industry would put the 550 million gallons of ethanol produced by home grown corn in North Dakota's at a disadvantage on the national level. Thank you for your time today and on behalf of NDEPA I respectfully urge a 'Do Not Pass' on SB 2212, 2209, 2228, 2317, and 2314.

Committee Chairman Senator Patten and committee members I'm here to testify regarding SB2314

My name is Susan Doppler; I'm here for myself and other family members. We are landowners in Burleigh County. We are in support of SB2314

The proposed changes in the common carrier legislation provides and allows for all the people being affected, whether personally or in general, to have a voice before decisions are made by the PSC commission. The process of hearing testimony only after the granting of common carrier status for pipelines seems slanted in favor of the pipeline carrier. What kind of justice would there be if the courts would issue a verdict before all the facts and testimonies were given.

By having hearings in each county affected, and requiring signatures of 85% of the landowners it brings awareness to the public of a pipeline request. It also allows the county commissioners in the counties affected to be a part of the decision making process, along with providing an opportunity to confirm that the common carrier has the financial resources needed to complete the proposed project and for considering any issues raised during the public hearing.

Our forefathers came to this country to have freedom of religion, and to own and possess land and not live under the rule of a king. They came according to the United States Declaration of Independence well known phrase for "Life, Liberty and pursuit of Happiness"-- given to all humans by their Creator, and which governments are created to protect. SB2314 will establish laws that would provide guidelines that aren't vague, allow counties and people to have an input in the decision making process, and it would be more than checking off the boxes. We ask you to approve SB2314. Thank you

Senate Bill 2314

Presented by: Julie Fedorchak
Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Dale Patten, Chairman

Date: January 27, 2023

TESTIMONY

Mister Chairman and committee members, I am Julie Fedorchak, a member of the Public Service Commission, and I'm here to testify in opposition to this bill on behalf of the Public Service Commission (Commission).

The right to own property and use it as you see fit is a fundamental principle of the United States. Efforts by the government to infringe on this need to be limited and scrutinized carefully. At the same time, the Commission recognizes the need for and value of carefully enacted tools such as eminent domain that support development of a broader public good. This process at times impacts private property in ways that property owners oppose. This bill establishes parameters under which a developer of a carbon dioxide pipeline can pursue eminent domain. The Commission believes this question is best addressed by the legislative body and has no position relating to this issue.

The Commission does oppose the procedure and requirement for Commission approval to use eminent domain as proposed by this bill. The state's eminent domain process is a process of last resort, and in the Commission's experience companies have used eminent domain sparingly. Aside from the

current storm over the Carbon Solutions project, we have received very few complaints about utilities or others exercising eminent domain in excessive ways.

This bill would dramatically alter the process by adding a second, redundant review to the eminent domain process. Energy infrastructure developers would endure multiple layers of permitting and review prior to construction.

To give an example, an intrastate natural gas pipeline or crude transmission line across the state would be required to file a siting application with the Commission. The Commission would hold multiple siting hearings across the state relating to the proposed route and corridor. Once a corridor and route are approved, if any landowners oppose crossing their property, the Commission would then be required to hold another series of public meetings in every county to determine whether the pipeline should be permitted to exercise eminent domain authority. Once that process is complete, the company would need to go through the court's procedure to exercise eminent domain and set compensation.

The requirement of Commission approval for the use of eminent domain could add a substantial amount of additional time to the construction and development of the state's energy infrastructure. One could only imagine how this would have impacted the development of the Bakken during the most recent boom.

The Commission does not see the value or the ultimate public benefit gained by this additional layer of bureaucracy. On the contrary, the public harm could be significant as it would no doubt slow down, complicate and otherwise jeopardize the production of fossil fuels and additional electricity infrastructure

needed to maintain the reliability of our energy systems and our state's strong energy industry.

Finally, the requirement to consider "any issues raised during the public meetings" is vague in guidance on whether to grant or deny the use of eminent domain. In the event that the legislature finds it appropriate for the Commission to hear and deliberate over "any issues" presented, we request that criteria be provided to guide whether approval or denial is warranted.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions.

Testimony of Dakota Resource Council

SB 2314

January 27, 2023

Chairman Patten, Vice-Chairman Magrum, and members of the committee:

My name is Eliot Huggins and I am testifying on behalf of the Dakota Resource Council and our members. Thank you for allowing me to testify in support of SB 2314.

I would like to focus my testimony specifically on section two of this proposed legislation:

SECTION 2. Section 49-19-12.1 of the North Dakota Century Code is created and enacted as follows: 49 - 19 - 12.1. Approval for use of eminent domain - Notice - Hearing. 1. A common carrier may not exercise eminent domain without first having obtained approval from the commission. 2. Upon receipt of a common carrier's filing of acceptance of the provisions of this chapter, the commission shall hold a public hearing in the county seat of each county potentially impacted by the common carrier's proposed project. 3. Before approving a common carrier's use of eminent domain, the commission shall: a. Review the general location of the proposed project; b. Confirm the common carrier has the financial resources needed to complete the proposed project; and c. Consider any issues raised during the public meetings related to the proposed project

DRC and our members think it is an excellent bill that would allow for more public participation in matters that go before the Public Service Commission. There has been much discussion surrounding the proposed Summit Carbon Solutions Pipeline here in North Dakota— and many valid points have been raised by all parties that are here today. I want to highlight that in South Dakota for projects like Summits: public hearings are required throughout the pipeline route before the official proceedings occur. In Iowa: the IUB must hold a public hearing in each county before being allowed to obtain voluntary easements. Let's open this process up to the public when making hard decisions about what projects constitute a public use and what projects should have the right to eminent domain. Any utility or pipeline company can also make their case to the commission at the public hearing. This section of legislation still allows for common carriers to exercise eminent domain and it doesn't eliminate the official PSC hearing process— all it does is give the public and local governments a greater opportunity to address the PSC early on in the process. Under this legislation: the PSC still has the final say and broad discretion to grant a project common carrier status.

I respectfully request the committee render a DO PASS on SB 2314. I am happy to answer any questions.

Chairman Patten & members of the Energy and Natural Resources committee,

I support Carbon Capture and Sequestration as I feel it is vitally important to the future of North Dakota's two most important industries, agriculture and energy.

Summit Carbon Solutions is an innovation project which offers landowners an opportunity to develop their pore space as well as providing tax revenue for local government.

As a landowner in the project area, I believe Senate Bills 2209, 2213, 2212, 2228, 2317, and 2314 as well as House Bills 1384 and 1466 are short-sighted and interfere with my property rights. I urge you to vote NO on these bills.

Thank you for your consideration,
Bill and Norma Breimeier, landowners

Honorable Chairman Patten & members of the Energy and Natural Resources committee,

Thank you for the opportunity to testify. I am a fourth-generation landowner in Oliver County. Many of my family and friends make their living in the energy and agriculture industries which are vastly important to our state and the people who live in it. Carbon Capture and Storage projects are an essential step in maintaining and growing these industries. SB 2212, 2314, and 2209 will hinder the opportunity for this growth. In addition, they threaten the property rights of the majority. Please take into consideration these rights and vote no on these bills.

Sincerely,

Jessica Pulver Biesterfeld



January 27, 2023

Chairman Patten and Senate Energy and Natural Resources Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in opposition of Senate Bill 2314. The Lignite Energy Council consists of over 250 members representing lignite mines, electric utilities, independent power producers and contractor suppliers in the Upper Midwest. The lignite industry accounts for over 13,000 direct and indirect jobs, over \$5.4 billion in economic development and millions in state, county and local tax revenue.

For the past two decades, the Lignite Energy Council has worked with the legislature, state agencies and stakeholders to create a legal, tax, and regulatory framework to support development of carbon capture technology for the electric power that would position North Dakota to lead the nation in CO2 development. There is a long list of legislation that has been thoughtfully designed, debated and passed into law that includes conformity with federal laws, the fee structure at the North Dakota Industrial Commission, the long-term accountability for CO2 storage, Class VI primacy for pore space and the critically important state investments into research, and development to name a few policies that our industry has helped place into law.

We are pursuing this technology because it has the potential to create another top five industry in North Dakota, and to preserve and enhance the coal industry in the new carbon economy. We have pursued this path because ever tightening federal regulations around carbon emissions threaten the longevity of the lignite industry and we now have a tremendous opportunity to mitigate that risk. In North Dakota, we are blessed not only with an 800 year supply of our lignite natural resources, but we also have some of the best geology in the whole world for the underground storage of carbon emissions. This combination provides the tremendous opportunity to lower our carbon emissions while providing us with economic and regulatory certainty in the future that we will be able to continue to deliver affordable and reliable energy to the citizens of our state.

The language found in SB2314 creates additional risk for power sector carbon capture projects. LEC believes that the laws that have been carefully crafted in the Century Code should not be repealed or changed before they have the opportunity to work. We are proud of the community relations that our power plants and mines have built over the many decades that our industry has been in operation. Strong landowner relationships are the only way that these projects move forward and we have achieved high levels of landowner support while coexisting with the current laws. The future of our economy depends on moving the commodities we produce to market through critical infrastructure. The CO2 economy will provide public goods through the reduction of regulatory risk for the energy industry, the development of value-added products made from CO2 and the ability to supply CO2 for enhanced oil recovery to continue the petroleum production that provides over 50% of our state's tax revenues.

For these reasons, the Lignite Energy Council opposes SB2314 and we respectfully ask that the committee move to give this legislation a "Do Not Pass" recommendation.

Thank you for your consideration,
Jason Bohrer, President and CEO

1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

📞 701.258.7117

🌐 www.lignite.com

@ LEC@lignite.com

**David & Vicki Degenstein
Written Testimony
Senate Energy and Natural Resources Public Hearing**

January 26, 2023

Dear esteemed members of the Senate Energy & Natural Resources Committee:

As longtime residents of Mercer County and landowners in Oliver County, we write to you today to share our enthusiastic support of carbon capture and utilization, as it is vitally important to two of North Dakota's most important industries--agriculture and energy. This legislative session is of critical importance to our ability as a state to be responsive to innovations that help our industries and in turn, help our people.

You will be reviewing proposed legislation that seeks to impede, damage and even cripple our ability as a state to be nimble and innovative and support trailblazing efforts that are at the very fiber of the roughrider spirit we as North Dakotans possess. As you consider Senate Bills 2209, 2313, 2212, 2228, 2317 and 2314, and House Bills 1384 and 1466, please know of our staunch opposition to each bill and our encouragement for you to stand in opposition. Your NO vote will demonstrate your commitment to a vibrant North Dakota that is committed to solutions that benefit our state and our people; and not to poor policy that is clearly motivated by greed and self-interest or worse, by ignorance.

Thank you for voting NO and representing your constituency well.

Best wishes for a productive session,

**David & Vicki Degenstein
Hazen, ND**

Good evening, Chairman Patten and Energy and Natural Resources committee members,

Thank you for the opportunity to provide testimony on SB 2314, in which I am in favor of. This bill will allow more public transparency for “common carrier” projects that will affect private landowners in their respective county. SB 2314 would allow the public to provide input on projects on a local level and allow county commissioners and residents to collectively determine the use of eminent domain for private projects that only benefit those directly invested. Please vote yes on SB 2314 and help strengthen private property rights for North Dakotans.

Thank you,

Greg Schonert



100 West Broadway, Ste. 200 | P.O. Box 1395 | Bismarck, ND 58501-1395
701.223.6380 | ndpc@ndoil.org | www.NDOil.org

Senate Bill 2314
Testimony of Ron Ness
Senate Energy and Natural Resources Committee
January 27, 2023

Chairman Patten and members of the Committee, my name is Ron Ness, president of the North Dakota Petroleum Council (NDPC). The North Dakota Petroleum Council represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition to Senate Bill 2314.

This bill attempts to modify the existing law as to when a pipeline carrier may exercise the right to eminent domain and adds an additional requirement specific to a carbon dioxide common carrier pipeline. This bill would require that the North Dakota Public Service Commission (PSC) approve the use of eminent domain after a public hearing is held in every county seat of each county for any common carrier pipeline, and in addition, requires voluntary written consent from 85% of the landowners in a project area, or more than 85% of the landowners in a project area if the board of county commissioners specify a larger percentage is necessary before a carbon dioxide common carrier pipeline may use eminent domain.

Senate Bill 2314 would substantially alter existing law on the use of eminent domain by a pipeline carrier with an additional review and approval process through the PSC for the use of eminent domain, but also an additional requirement before the use of eminent domain to complete a project for a specific type of common carrier pipeline, namely a carbon dioxide pipeline that has been designated as a common carrier.

The use of eminent domain is rare and is typically considered as a last option available for a project. A project first needs to complete the extensive siting process through the PSC to obtain approval for the specific route and corridor. If Senate Bill 2314 is approved, then the common carrier pipeline project would include an additional process with the review and approval by the PSC for the use of eminent domain.

Additionally, there is another requirement created only for carbon dioxide common carrier pipelines that could cause the project to fail and not be completed because it must secure voluntary consents from 85% or more than 85% of the landowners within the project area before using eminent domain. A project that doesn't secure 85% or more consent within the project area would have to start over, find a new route and corridor, obtain new siting approval from the PSC through the siting process for that new route and corridor, and again seek review and approval for use of eminent domain which could be repeated over and over until the project secures the 85% or more consent to proceed.

It is also unclear and somewhat vague as to what is meant by 85%: whether it refers to the number of individuals who have title ownership to the land within the project area or is it based on the volume, such as the acreage and size of land that is owned within the project area by landowners in order to reach the 85% or more.

The use of eminent domain by a pipeline, including carbon dioxide pipelines, should not be restricted in such a manner particularly when the pipeline project has been designated as a common carrier. A pipeline designated as a common carrier must, without discrimination, accept, carry, or purchase, the product (oil, coal, gas, or carbon dioxide) of the state or of any person not the owner of any pipeline, operating a lease or purchasing oil, coal, gas, or carbon dioxide at prices and under regulations to be prescribed by the PSC (§ 49-19-11 NDCC).

The restrictions under SB 2314 on the use of eminent domain by having an additional process through the PSC for review and approval of the use of eminent domain, and then a requirement for 85% or more voluntary consent with a carbon dioxide common carrier pipeline could negatively impact and ultimately result in a pipeline project not being completed even though the pipeline was sited through the PSC process and designated as a common carrier for the public.

NDPC strongly opposes Senate Bill 2314 and urges a **Do Not Pass Recommendation**. Thank you for the opportunity to provide this information, and I would be happy to answer any questions.

Testimony of Senator Jeff Magrum
in favor of
SENATE BILL NO. 2314
Senate Energy and Natural Resources Committee
January 27, 2023

Chairman Patten and members of the committee,

I sponsored SB 2314 because I heard from many landowners that they were being told that developers could use eminent domain simply by filing a one-page piece of paper with the Public Service Commission. I understand that under existing law a court would still look at a developer's eminent domain authority, but because developers have been claiming that filing a document with the PSC gives them eminent domain authority. That is not true and this bill makes that clear, and also makes it clear that courts should consider a developer's common carrier status as part of any eminent domain proceeding.

I worked with legal counsel to develop an amendment to this bill, which would remove the requirement that the Public Service Commission hold hearings and make the decision on common carrier status, and move that decision to the courts where it is now. I would offer this amendment to the bill and request the committee vote to amend and then vote do pass on SB 2314 as amended.

I hope you will support this bill and vote do pass on SB 2314 as amended by my proposed amendment.

Thank you,
Senator Jeff Magrum

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.

From: Magrum, Jeffery jmagrum@ndlegis.gov

To: Patten, Dale dpatten@ndlegis.gov, Boehm, Keith kboehm@ndlegis.gov, Beard, Todd tbeard@ndlegis.gov, Kessel, Greg gkessel@ndlegis.gov, Kannianen, Jordan L. jkannianen@ndlegis.gov, Magrum, Jeffery jmagrum@ndlegis.gov

Date: Thu, Jan 26, 2023, 6:24 PM

It appears to mean any entity defined under federal law or contract as a common carrier is a common carrier under ND law and subject to the statutory provisions applicable to pipeline carriers

Here is the original language:

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatsoever;

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the State of North Dakota for the transportation of crude petroleum or gas to or for the public for hire, or engaged in the business of transporting crude petroleum or gas by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum or gas, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or high way; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for the transportation to or for the public hire, of crude petroleum, or gas, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier, required by law to transport crude petroleum or gas as a common carrier; or

(d) Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil or gas field or place of production, to any distributing, refining, or marketing center, or reshipping point thereof, of crude petroleum or gas, bought of others; or

(e) Engaged in the business of producing, purchase, transportation for hire or transportation for sale within this State of natural gas, which is transported through pipe lines or any part of a pipe line, the right of way for which is granted or secured

under the provisions of this Act or through exercise of the right of eminent domain; or
(f) Made a common carrier by or under the terms of contract with or in pursuance of
the law of the United States, is here by declared to be a common carrier and subject
to the provisions hereof.

John Bjornson

Director

North Dakota Legislative Council

600 East Boulevard Avenue

Bismarck, ND 58505

701-328-2916

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

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

Case No. _____

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

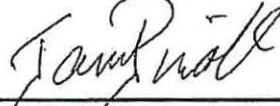
Upon approval by the North Dakota Public Service Commission (“Commission”) for construction of a proposed carbon dioxide (“CO₂”) pipeline project, SCS Carbon Transport LLC (“SCS”) will own and operate a pipeline located within the State of North Dakota and will be engaged in the business of transporting CO₂ 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

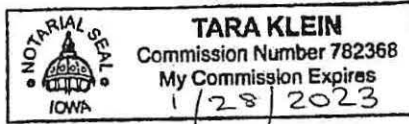
STATE OF IOWA

)

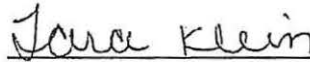
)ss.

COUNTY OF STORY

)



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**

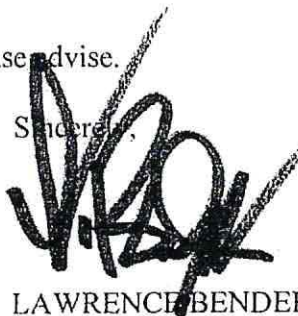
Dear Mr. Kahl:

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

76319704 v1

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.

Attorneys & Advisors
Main 701.221.8700
Fax 701.221.8750

Fredrikson & Byron, P.A.
1133 College Drive, Suite 1000
Bismarck, North Dakota 58501-1215

USA / China / Mexico
Minnesota, Iowa, North Dakota
fredlaw.com

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2314
Senate Energy and Natural Resources Committee
January 27, 2023

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2314 because we have heard from members and other landowners who are very upset by the threat of eminent domain as a negotiating tactic. This problem has not gone away and it is not only a problem in only one part of the state – landowners around the state are finding themselves forced to take unfavorable terms and unfair compensation because their choice is to take it or spend large sums and years of their lives on litigation.

Eminent domain is sometimes necessary for public projects with a public benefit. But in too many situations it is being used to force landowners to accept unfavorable terms rather than having a real negotiation, and that is not how eminent domain should be used. We support legislation that limits the use of eminent domain and encourages development to occur through private contracts.

While we believe that developers must prove their common carrier status in court to comply with Chapter 32-15 and the North Dakota Constitution, we also believe that this law makes this a clear requirement for developers up front. This is helpful and important because it would limit the use of eminent domain as a threat merely because the developer filed a one-page paper with the PSC, which we understand to be happening.

Thank you,

Troy Coons
Northwest Landowners Association

23.0287.03000

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2314

Introduced by

Senators Magrum, Dwyer

Representatives Heilman, S. Olson, Prichard

1 A BILL for an Act to create and enact section 49-19-12.1 of the North Dakota Century Code,
2 relating to common carrier use of eminent domain; and to amend and reenact section 49-19-12
3 of the North Dakota Century Code, relating to common carrier use of eminent domain.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 49-19-12 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-19-12. When pipeline carrier may exercise right of eminent domain.**

8 Every

9 1. ~~Subject to approval from the commission under section 49-19-12.1, every common~~
10 ~~pipeline carrier which shall have filed with the commission its acceptance of the~~
11 ~~provisions of this chapter has, subject to chapter 32-15, the right and power of~~
12 eminent domain in the exercise of which it may enter upon and condemn the land,
13 right of way, easements, and property of any person necessary for the construction,
14 maintenance, or authorization of its pipeline. The manner and method of such
15 condemnation, and the assessment and payment of the damages therefor are the
16 same as is provided by law in the case of railroads. The right of eminent domain
17 and the right to use public lands, highways, or roads for right of way for pipelines
18 shall be acquired only by compliance with the provisions of this chapter.

filing an acceptance of the provisions of this chapter and a finding by the trier of fact in a proceeding under chapter 32-15 that it is a common carrier pursuant to this chapter and subject to chapter 32-15 every common pipeline carrier shall have

19 2. Notwithstanding subsection 1, a carbon dioxide common carrier may not exercise the
20 right of eminent domain under subsection 1 until:

21 a. The common carrier has received written consent from eighty-five percent of the
22 landowners that would otherwise be subject to an eminent domain action under
23 this section; or

- 1 b. If a county elects to require written consent from more than eighty-five percent of
2 the landowners subject to an eminent domain action, the common carrier has
3 received written consent from the specified percentage of the landowners
4 required by the county.

5 **SECTION 2.** Section 49-19-12.1 of the North Dakota Century Code is created and enacted
6 as follows:

7 ~~**49-19-12.1. Approval for use of eminent domain - Notice - Hearing.**~~

- 8 ~~1. A common carrier may not exercise eminent domain without first having obtained~~
9 ~~approval from the commission.~~
- 10 ~~2. Upon receipt of a common carrier's filing of acceptance of the provisions of this~~
11 ~~chapter, the commission shall hold a public hearing in the county seat of each county~~
12 ~~potentially impacted by the common carrier's proposed project.~~
- 13 ~~3. Before approving a common carrier's use of eminent domain, the commission shall:~~
- 14 ~~a. Review the general location of the proposed project;~~
- 15 ~~b. Confirm the common carrier has the financial resources needed to complete the~~
16 ~~proposed project; and~~
- 17 ~~c. Consider any issues raised during the public meetings related to the proposed~~
18 ~~project.~~



August 24, 2022

VIA PERSONAL SERVICE

Bruce E. Doolittle
1245 68th St. SE
Hazelton, ND 58544

RE: Bruce E. Doolittle – Survey Access

Dear Mr. Malm:

Please find enclosed herewith the following:

1. Summons in Petition for Entry to Survey;
2. Petition for Entry to Survey (“Petition”); and
3. Voluntary Access Agreement.

The Petition has been filed in Emmons County District Court and seeks authority from the court to access your property for the purpose of conducting certain surveys. After receipt of the Petition, if you desire to allow voluntary access, please sign the Voluntary Access Agreement and return it to the undersigned in the enclosed self-addressed, stamped envelope.

Please be advised that SCS Carbon Transport, LLC intends to request a hearing on its Petition and to proceed with its request for a court order unless it receives a signed Voluntary Access Agreement.

Should you have any questions, please contact Julie DiMEO at (701) 290-4682 or jdimeo@summitcarbon.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Bender", is written over the word "Sincerely,".

LAWRENCE BENDER

LB/mlm
Enclosures
76950766 v1

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF EMMONS

SOUTH CENTRAL JUDICIAL DISTRICT

SCS Carbon Transport LLC,

Petitioner,

v.

Bruce E. Doolittle,

Respondent.

Case No. _____

SUMMONS

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED RESPONDENT:

[¶ 1] A Petition for Entry to Survey (“Petition”) has been filed against you for the purpose of obtaining access to the real property located in Emmons County, North Dakota, more particularly described in the Petition.

[¶ 2] You are hereby summoned and required to appear and defend against the Petition by serving upon the undersigned an answer or other proper response within twenty-one (21) days after the service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Petition.

DATED this 23rd day of August, 2022.

FREDRIKSON & BYRON, P.A.

By: 

Lawrence Bender, ND Bar #03908
1133 College Drive, Suite 1000
Bismarck, ND 58501
lbender@fredlaw.com
(701) 221-8700
Attorneys for SCS Carbon Transport LLC

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF EMMONS

SOUTH CENTRAL JUDICIAL DISTRICT

SCS Carbon Transport LLC,

Petitioner,

v.

Bruce E. Doolittle,

Respondent.

Case No. _____

PETITION FOR ENTRY TO SURVEY

Petitioner SCS Carbon Transport LLC (“Summit”), by and through its counsel, Fredrikson & Byron P.A., 1133 College Drive, Suite 1000, Bismarck, ND, for its Petition for Entry to Survey lands owned by the above-named Respondent, states and alleges as follows:

PARTIES

1. Summit is a limited liability company organized and in good standing under the laws of the State of Delaware and authorized to do business as a foreign limited liability company in the State of North Dakota. (Affidavit of Micah Rorie (“Rorie Aff.”) ¶ 3).

2. Upon information and belief, Respondent Bruce E. Doolittle (“Doolittle”) is resident of the State of North Dakota.

3. Respondent is the record owner of the lands located in Emmons County, North Dakota more particularly described on **Exhibit A** attached hereto. (Rorie Aff. ¶ 4).

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to Sections 32-15-06 and 27-05-06 of the North Dakota Century Code.

5. Venue is proper in this Court pursuant to Section 28-04-01 of the North Dakota Century Code.

STATEMENT OF CLAIM

I. The Summit Pipeline.

6. Summit is proposing to construct the Midwest Carbon Express pipeline system (the "Pipeline"), an approximately 2,000-mile long carbon dioxide transmission pipeline system ranging from four (4) to twenty-four (24) inches in diameter. The Pipeline will provide capacity to transport as much as twelve (12) million tons of carbon dioxide per year from ethanol plants located in Iowa, Nebraska, Minnesota, South Dakota and North Dakota. The carbon dioxide will ultimately be injected into a secure, underground geologic storage facility located in North Dakota. (Rorie Aff. ¶ 5).

7. The Pipeline is necessary to reduce carbon dioxide emissions and offers ethanol and other industrial plants a viable option to capture and permanently store carbon dioxide emissions because, unlike North Dakota, most states do not have proven subsurface geologic formations capable of economically storing the volume of carbon dioxide produced by such plants. (Rorie Aff. ¶ 6).

8. The Pipeline also represents the safest mode for transporting carbon dioxide. As compared to rail and truck transportation, pipelines are the safest and most efficient means to transport hazardous liquids, according to statistics compiled by the United States Department of Transportation. Pipelines are heavily regulated and are subject to intense scrutiny and oversight. Time and time again, pipelines have proven to be the safest and most reliable form of transporting hazardous liquids. (Rorie Aff. ¶ 7).

II. The Need for Access to Doolittle's Land.

9. Under Section 49-22.1-04 of the North Dakota Century Code, Summit may not begin constructing the Pipeline in North Dakota until it obtains a certificate of corridor

compatibility and route permit from the North Dakota Public Service Commission (“the PSC”). Summit intends to file its application with the PSC in October of 2022, and anticipates receiving a certificate of corridor compatibility and route permit sometime during the first quarter of 2023.

10. In order to obtain the certificate of corridor compatibility and route permit for the Pipeline, Summit must demonstrate to the PSC that the route is appropriate. The PSC’s decision with respect to the appropriateness of the route is guided by a nonexclusive list of statutorily enumerated factors, including, among others:

- Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
- The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
- The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.

N.D.C.C. § 49-22.1-09.

11. In order to gather the information that both Summit and the PSC need to evaluate the suitability of the proposed route, Summit must conduct various field surveys, investigations, and examinations of the proposed route to gather necessary information. Specifically, Summit needs to conduct centerline route surveys; archeological surveys; environmental (e.g., wetlands, wildlife, plants) surveys; geotechnical surveys; and any other surveys necessary to assess the suitability of the route and present information to the PSC. (Rorie Aff. ¶ 8).

12. For the past several months, Summit, by and through its affiliate Summit Carbon Solutions, LLC, has been meeting with landowners whose property will be crossed by the Pipeline to explain the project, answer their questions, and request access to their property for surveys and examinations. The vast majority of landowners whose property will be impacted by

the Pipeline have voluntarily permitted Summit to enter onto their property for the purpose of completing the necessary surveys. (Rorie Aff. ¶ 9).

13. Doolittle's lands, described in Paragraph 3, above, are expected to be crossed by the Project. Despite Summit's good faith efforts to negotiate entry, Doolittle has refused to permit entry onto the lands for the purpose of conducting the surveys. Summit needs to enter onto the lands as soon as possible in order to complete the field surveys and obtain a certificate of corridor compatibility and route permit in the first quarter of 2023, as anticipated. If the surveys are delayed, issuance of the certificate and route permit will be delayed, and the remainder of the project will be delayed as well. (Rorie Aff. ¶ 10).

III. The Right to Enter and Survey.

14. As operator of the Pipeline, Summit is a common carrier. In addition, Summit has filed its Acceptance of the Provisions of North Dakota's Energy Conversion and Transmission Facility Siting Act, N.D.C.C. ch. 49-19, with the PSC, which is attached as **Exhibit B** to this Petition. As a result, Summit "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." N.D.C.C. § 49-19-12.

15. In addition, Chapter 32-15 of the North Dakota Century Code expressly permits the exercise of the right of eminent domain "in behalf of . . . public uses," including "[o]il, gas, coal, and carbon dioxide pipelines . . . together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of

generating, refining, regulating, compressing, transmitting, or distributing the same”
N.D.C.C. § 32-15-02(10).

16. Because Summit has the statutory right and power of eminent domain to acquire property for the Pipeline, it also has the right to enter upon Doolittle’s land to conduct necessary examinations and surveys. Section 32-15-06 of the North Dakota Century Code authorizes those in the “category of persons entitled to seek eminent domain” to conduct pre-condemnation surveys and testing to determine whether the land is suitable for the proposed project. See *Alliance Pipeline L.P. v. Smith*, 2013 ND 17, ¶ 15, 833 N.W.2d 464; *Square Butte Elec. Coop. v. Dohn*, 219 N.W.2d 877, 883 (N.D. 1974).

17. Specifically, Section 32-15-06 provides such persons the right to “make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.” N.D.C.C. § 32-15-06. In situations where a property owner refuses to permit entry for pre-condemnation surveys and testing, the person or entity in charge of the proposed project is entitled to an order from a district court confirming its right to enter the property to conduct such surveys. *Alliance Pipeline L.P.*, 2013 ND 17, ¶ 19, 833 N.W.2d 464; *Square Butte Elec. Coop.*, 219 N.W.2d at 883.

18. Under North Dakota Century Code Section 32-15-06 and the Supreme Court’s decisions in *Alliance Pipeline* and *Square Butte*, because Summit is in the category of persons authorized by law to seek eminent domain, it is entitled to an Order of the Court confirming its right to enter onto Doolittle’s property to “make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries

resulting from negligence, wantonness, or malice.” N.D.C.C. § 32-15-06; *Alliance Pipeline L.P.*, 2013 ND 17, ¶ 19, 833 N.W.2d 464.

19. The surveys and examinations to be conducted by Summit will have little, if any, impact on Doolittle’s property. However, Summit will proceed with the surveys in a manner that is compatible with the greatest public benefit and the least private injury, compensate landowners or tenants for damages caused by survey activities, and comply with other reasonable restrictions imposed by the Court. (Rorie Aff. ¶ 11).

WHEREFORE, Summit requests an order of this Court confirming its right to enter upon the land described in Paragraph 3, above, for the purpose of completing necessary surveys and examinations, including:

- a. centerline route surveys;
- b. archeological surveys;
- c. environmental (wetlands, wildlife, plants, etc.) surveys;
- d. geotechnical surveys; and
- e. any other surveys necessary for evaluating the suitability of the route and compiling the information required by the PSC for issuance of a certificate of site compatibility and route permit.

DATED this 19th day of August, 2022.

FREDRIKSON & BYRON, P.A.

By: 

Lawrence Bender, ND Bar #03908
1133 College Drive, Suite 1000
Bismarck, ND 58501
lbender@fredlaw.com
(701) 221-8700
Attorneys for SCS Carbon Transport LLC

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Fredrikson & BYRON, P.A.

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.

Attorneys & Advisors
Main 701.221.8700
Fax 701.221.8750

Fredrikson & Byron, P.A.
1133 College Drive, Suite 1000
Bismarck, North Dakota 58501-1215

USA, China, Mexico
Minnesota, Iowa, North
fredlaw.com

Exhibit B

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

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

Case No. _____

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

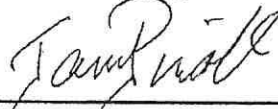
Upon approval by the North Dakota Public Service Commission (“Commission”) for construction of a proposed carbon dioxide (“CO₂”) pipeline project, SCS Carbon Transport LLC (“SCS”) will own and operate a pipeline located within the State of North Dakota and will be engaged in the business of transporting CO₂ 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

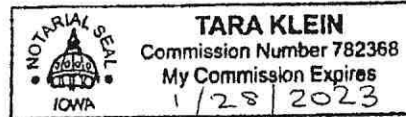
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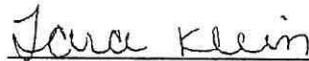
)ss.

COUNTY OF STORY

)



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

5. Summit is proposing to construct the Midwest Carbon Express pipeline system (“the Pipeline”), an approximately 2,000-mile long carbon dioxide transmission pipeline system ranging from four (4) to twenty-four (24) inches in diameter. The Pipeline will provide capacity to transport as much as twelve (12) million tons of carbon dioxide per year from ethanol plants located in Iowa, Nebraska, Minnesota, South Dakota and North Dakota. The carbon dioxide will ultimately be injected into a secure geologic storage facility located in North Dakota. A copy of a map showing the proposed route of the Pipeline through North Dakota is attached as **Exhibit B**.

6. The Pipeline is necessary to reduce carbon dioxide emissions and offers ethanol and other industrial plants a viable option to capture and permanently store carbon dioxide emissions because, unlike North Dakota, most states do not have proven subsurface geologic formations capable of economically storing the volume of carbon dioxide produced by such plants.

7. The Pipeline also represents the safest mode for transporting carbon dioxide. As compared to rail and truck transportation, pipelines are the safest and most efficient means to transport hazardous liquids, according to statistics compiled by the United States Department of Transportation. Pipelines are heavily regulated and are subject to intense scrutiny and oversight. Time and time again, pipelines have proven to be the safest and most reliable form of transporting hazardous liquids. A Fact Sheet describing the Pipeline and some of the benefits it will provide is attached and marked as **Exhibit C**.

8. Before beginning construction of the Pipeline, Summit needs to obtain regulatory approval from the North Dakota Public Service Commission (“the PSC”). To do so, it must identify a suitable route that meets the PSC’s criteria and also allows for efficient and cost-

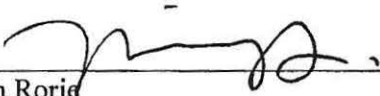
effective construction and operation of the pipeline. Using public and private data sets and GIS mapping software, Summit has identified a proposed route for the Pipeline. However, it needs access to the land itself in order to further evaluate the proposed route's suitability. Summit will gather additional data by conducting civil route surveys, archeological surveys, environmental (wetlands, wildlife, plants, etc.) surveys, geotechnical surveys, and other surveys and examinations as necessary.

9. Several months ago, Summit, by and through its affiliate Summit Carbon Solutions, LLC, began seeking permission from landowners to enter onto their property to conduct the necessary surveys. Although the vast majority of landowners voluntarily permitted Summit to enter onto their land, some, including Doolittle, refused.

10. Doolittle's land, described in Paragraph 4, above, is expected to be crossed by the Pipeline, and Summit needs to enter onto that land to complete its surveys. Despite its good faith efforts to negotiate entry, Doolittle has repeatedly refused, saying that he will not allow Summit to enter onto his land. Summit needs to complete its surveys on Doolittle's land as soon as possible in order to file its application with the PSC in October of 2022 and to obtain a certificate of corridor compatibility and route permit in the first quarter of 2023, as planned.

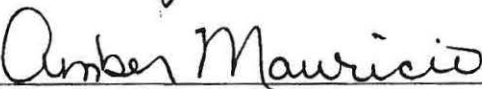
11. The surveys and examinations to be conducted by Summit will have little, if any, impact on Doolittle's property. However, Summit will proceed with the surveys in a manner that is compatible with the greatest public benefit and the least private injury, compensate landowners or tenants for damages caused by survey activities, and comply with other reasonable restrictions imposed by the Court.

Dated this 18th day of August, 2022.



Micah Rorie
Senior Director – Land Services
Summit Carbon Solutions, LLC

Subscribed and sworn to before me this 18th day of August, 2022



Notary Public
My Commission Expires: My Commission Expires Jan 26, 2028

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