

## IOWA UTILITIES BOARD

IN RE:  SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
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### FINAL DECISION AND ORDER

#### EXECUTIVE SUMMARY<sup>1</sup>

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed its petition, as revised, to construct, operate, and maintain approximately 688.01 miles of hazardous liquid pipeline through 29 Iowa counties. The hearing regarding Summit Carbon's petition occurred in Fort Dodge, Iowa, beginning on August 22 and concluding on November 8, 2023. During the hearing, the Board admitted tens of thousands of pages of testimony and exhibits, heard testimony from more than 200 witnesses, and admitted approximately 4,180 comments, objections, and letters of support filed in the docket, including approximately 600 comments filed after the deadline set by Iowa law.

After weighing numerous factors for and against Summit Carbon's petition, the Board found that the service to be provided by Summit Carbon will promote the public convenience and necessity. The Board found Summit Carbon could be vested with the right of eminent domain and, based upon this finding, the Board examined each of the 859 outstanding parcels subject to a request for eminent domain to determine, based upon the record, whether to approve, deny, or modify each request.

Additionally, as part of the order, Summit Carbon will be required to submit numerous revised exhibits as compliance filings for the Board's review, prior to the Board issuing the permit or Summit Carbon commencing construction. Several conditions will be attached to the permit as well, including but not limited to requiring Summit Carbon to obtain and maintain at least a \$100 million insurance policy, comply with certain construction methods, and ensure landowners and tenants are compensated for damages that may result from the construction of Summit Carbon's hazardous liquid pipeline.

Included with the order, Board Chair Helland issued a concurrence in part and dissent in part in which he agreed with all of the findings and conclusions except for a condition that prohibits Summit Carbon from beginning construction until it has obtained

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<sup>1</sup> The purpose of this executive summary is to provide readers a brief summary of the decision. While the executive summary reflects the order, it shall not be considered to limit, define, amend, or otherwise affect in any manner the body of the order, including the findings of fact and conclusions of law.

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agency-level approval for a route and sequestration site in North Dakota and a route in South Dakota. Board Chair Helland stated he would not have placed this condition on the permit as it gives away the Board's authority to another jurisdiction, contrary to the duties assigned to the Board by the Iowa Legislature.

Board Member Byrnes issued a concurrence in part and dissent in part in which he agreed with all of the findings and conclusions except for the approval of the lateral between the Quad County Corn Processors, Inc., facility in Ida County, Iowa, and the Green Plains Shenandoah facility in Fremont County, Iowa. Board Member Byrnes stated he does not find that portion of the route to be just and proper after weighing the evidence.

The concurrences in part and dissents in part do not impact the findings and conclusions of the order as all three Board members find the proposed service provided by Summit Carbon is in the public convenience and necessity and vest Summit Carbon with the right of eminent domain.

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## I. BACKGROUND

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed a petition, as revised, with the Utilities Board (Board) in Docket No. HLP-2021-0001 for a permit to construct, operate, and maintain approximately 688.01 miles of 6- to 24-inch diameter hazardous liquid pipeline in 29 counties in Iowa, to transport liquefied carbon dioxide. Summit Carbon is proposing to construct 34.94 miles of 6-inch, 192.64 miles of 8-inch, 150.06 miles of 10-inch, 145.07 miles of 12-inch, 20.53 miles of 16-inch, 95.24 miles of 20-inch, and 49.53 miles of 24-inch nominal diameter pipe. The proposed hazardous liquid pipeline would have a maximum operating pressure (MOP) of 2,183 pounds per square inch gauge (psig) with normal operating pressures ranging from 1,200 to 2,150 psig. Summit Carbon Exhibit C. The requested permitted pressure is 2,183 psig. *Id.* Summit Carbon's proposed hazardous liquid pipeline would be capable of transporting up to 12 million metric tons a year in Iowa with a nominal daily transportation volume of 16,290 metric tons per day. *Id.* The proposed hazardous liquid pipeline is to be located in Boone, Cerro Gordo, Cherokee, Chickasaw, Clay, Crawford, Dickinson, Emmet, Floyd, Franklin, Fremont, Greene, Hancock, Hardin, Ida, Kossuth, Lyon, Montgomery, O'Brien, Page, Palo Alto, Plymouth, Pottawattamie, Shelby, Sioux, Story, Webster, Woodbury, and Wright counties in Iowa.

On November 8, 2022, the Board issued an order setting a scheduling conference for December 13, 2022.

On February 17, 2023, the Board issued an order setting the procedural schedule and finding that Exhibit H, the petitioner's request to use the right of eminent domain, was in final form for purposes of 199 Iowa Administrative Code (IAC)

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13.3(1)(h). The order also set a technical conference for March 15, 2023, to further discuss the procedural schedule.

On May 19, 2023, the Board issued an order setting a partial procedural schedule, which modified the previous schedule set by order on February 17, 2023.

On June 16, 2023, the Board issued an order finalizing the entirety of the procedural schedule, including a tentative hearing date.

On July 12, 2023, the Board issued an order approving the eminent domain notices and formally setting the hearing date for Summit Carbon's hearing.

The hearing commenced at approximately 10 a.m. August 22, 2023, in Fort Dodge, Iowa and concluded at approximately 8 p.m. November 8, 2023. The hearing consisted of 25 hearing days during which time the Board received testimony from 229 witnesses, via live and stipulated testimony. The transcript is just under 7,500 pages. HT,<sup>2</sup> p. 7497. During the course of the hearing, the Board admitted tens of thousands of pages of testimony and exhibits. Unlike typical Board proceedings in which the prefiled testimony and exhibits are admitted at the beginning of the hearing, the testimony and exhibits were admitted prior to the witness being submitted for cross-examination. *Id.* at 48. In addition to admitting prefiled testimony and evidence, the Board took judicial notice of the staff reports, the underlying KMZ imagery, and a letter from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). HT pp. 45, 206, 7474-75. Furthermore, the Board admitted approximately 4,180 comments, objections, and letters of support that had

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<sup>2</sup> HT when used throughout this order will refer to the hearing transcript for the evidentiary hearing commenced on August 22, 2023.

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been filed on or before November 8, 2023, the close of the evidentiary record. HT  
p. 7477.

As of the close of the evidentiary hearing, there were a total of 219 parties to the proceeding. These parties are identified as follows:

- Summit Carbon Solutions, LLC (Summit Carbon)
- Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice
- Bold Iowa
- Sierra Club Iowa Chapter (Sierra Club)
- Iowa Farm Bureau Federation (Farm Bureau)
- Lewis & Clark Regional Water System, Inc.
- Hardin County Board of Supervisors (Hardin County BOS)
- Great Plains Laborers District Council
- Dickinson, Emmet, Floyd, Franklin, Kossuth, Shelby, Woodbury, and Wright County Boards of Supervisors (collectively, the Counties)
- Mary Moser, Jamie Moser, and Carmen Moser (collectively, the Mosers)
- State Representative Charles Isenhart
- LSCP, LLC; PLCP, LLLP; Quad County Corn Processors Cooperative; Corn, LP; Green Plains Inc.; Plymouth Energy, LLC; Golden Grain Energy, LLC; Homeland Energy Solutions, LLC; and Siouxland Energy Cooperative (collectively, Corn Processors)
- Iowans for a Growing Agricultural Economy (IGAE)
- Crawford County Board of Supervisors
- DAPEMA, LLC, and Greg & Erica Kracht Living Trust (collectively, Murray Landowners)
- Republican Legislative Intervenors for Justice (RLIJ)
- 155 individual landowners (collectively, Jorde Landowners)<sup>3</sup>
- Allen Hayek and Christine Hayek (collectively, the Hayeks)
- Bonnema Harvest Farms LP
- Estate of Bonnie Wallace
- Christopher Renihan
- Eldean Olson
- Gordon Garrison and Evalena Garrison (collectively, the Garrisons)
- Ivan L. Butt
- John Banwart
- Julie Kaufman and Leo Kaufman (collectively, the Kaufmans)
- Kerry Mulvania Hirth
- Larry Kalke
- Lisa L. Stuck and William L. Stuck (collectively, the Stucks)
- Revocable Trust of Lois Deiterman

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<sup>3</sup> These individual landowners are collectively represented by Brian Jorde and Christian Williams.



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- Margaret Jane Olson Black
- Margi Renihan
- Marsha Anne Fleming
- Naomi Senn Revocable Trust
- Raejean Schafer
- Rick A. Chipman
- Ruth B. Noelck
- Trevor Langenfeld
- Wendell King and Diane King (collectively, the Kings)
- Sonstegard Family Farms
- Loutomco, Inc.
- Kohles Family Farms, LLC (Kohles Family Farms)

On December 5, 2023, the Mosers filed their initial brief.

On December 13, 2023, the Stucks filed their initial brief.

Simultaneous initial briefs were filed on December 29, 2023, by Summit Carbon, OCA, Farm Bureau, Sierra Club, Jorde Landowners,<sup>4</sup> the Counties, Hardin County BOS, Corn Processors, the Kings, Kerry Mulvania Hirth, IGAE, the Garrisons, and the Estate of Bonnie Wallace. Simultaneous reply briefs were filed on January 19, 2024, by Summit Carbon, OCA, Farm Bureau, Sierra Club, Jorde Landowners, the Counties, Hardin County BOS, Kerry Mulvania Hirth, and IGAE in this matter.

## II. PRELIMINARY MATTERS

### A. Testimony

As it relates to the testimony filed by Jorde Landowners, the Board will only be citing to a select few persons, as the vast majority of the testimony submitted by Jorde Landowners is duplicative.<sup>5</sup> See HT, p. 5047; 5106; 5131 (demonstrating the same

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<sup>4</sup> Since the conclusion of the hearing, the following parties have joined Jorde Landowners: the Kaufmans; Loutomco, Inc.; Kohles Family Farms; the Hayeks; Douglas and Jill Williamson; and Kathryn Josephine Byars.

<sup>5</sup> Having reviewed the testimony, the testimony appears to have been a form with only a few open questions for each witness to provide their own, unique thought in response to the question.

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grammatical error in the prefiled testimony of the different witnesses). Given the duplicative nature of the testimony, the Board questions whether Jorde Landowners, who testified under oath, committed perjury by testifying that if asked the same questions in the prefiled testimony on the stand they would provide substantially the same answer. See *e.g.*, HT, p. 4238; 5076; 6013; 7410.<sup>6</sup> The Board also questions whether Jorde Landowners' attorney, Brian Jorde, violated the Iowa Rules of Professional Conduct with regard to the preparation and signing of testimony and the presentation of witnesses.

Furthermore, during the course of this proceeding, hundreds of individuals filed prefiled testimonies with the Board. However, at the conclusion of the hearing, the following persons or parties who filed prefiled testimony did not have their testimony admitted into the record as it was not moved for admission: for Bold Iowa, the prefiled testimony of Doug Fuller and John Davis; individually, the prefiled testimony of Margaret Jane Olson Black; for the Naomi Senn Revocable Trust, the testimony of Naomi Senn; individually, Gordon B. Garrison; and, individually, Marsha Fleming. In addition to these parties, Jorde Landowners also submitted prefiled testimony of behalf of the following persons who were not called to testify and were not subject to a stipulated admission: Nancy Dugan,<sup>7</sup> Gerald L. Gaul and Nancy M. Gaul, William Davelaar, Michael Main and Deborah Main, William Beck and Vickie Beck, Sylvia Spalding, Dorothy Sloma and Meghan Sloma, and Elizabeth H. Richards and Jane P. Richards. As these witnesses

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<sup>6</sup> These are only a representative sample of the nearly 100 Jorde Landowners witnesses who took the stand.

<sup>7</sup> In an email to Mr. Jorde on July 24, 2023, forwarded to the Board by Ms. Dugan on April 26, 2024, Ms. Dugan indicates she neither provided the responses nor signed the prefiled testimony submitted on her behalf by Mr. Jorde.

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were not called and their testimony was not admitted into the record, their testimony is therefore not a part of the record and will not be used in the Board's consideration of issues in this docket.

## **B. Jurisdiction**

Jorde Landowners' testimony asserts the Board lacks jurisdiction to hear and rule upon Summit Carbon's petition as Iowa Code chapter 479B governs liquefied carbon dioxide, not supercritical carbon dioxide, which is what Jorde Landowners assert Summit Carbon will be transporting. See e.g., Jorde Landowners Allan Direct, p. 41.<sup>8</sup> Additionally, in their briefs, Jorde Landowners, Sierra Club, the Stucks, the Kings, the Garrisons, and the Estate of Bonnie Wallace all assert the Board lacks jurisdiction over Summit Carbon's proposed hazardous liquid pipeline. Jorde Landowners Post-Hearing Initial Brief (IB), pp. 13-17; Sierra Club IB, pp. 9-10; the Stucks' IB, p. 1; the Garrisons' IB, p. 1, and the Estate of Bonnie Wallace IB, p. 1. The Board has already ruled upon this issue in an order denying a motion to dismiss, filed by Jorde Landowners. *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, *Order Denying Motion to Dismiss*, p. 12 (July 28, 2023). The Board's position has not changed.

*Assuming arguendo* that Summit Carbon's proposal is not under Iowa Code chapter 479B, then Summit Carbon's proposal would fall under the general statute of Iowa Code chapter 479, which has substantially the same requirements as Iowa Code chapter 479B, making it a pipeline. Iowa Code § 479.2(2) defines a pipeline to mean "a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or

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<sup>8</sup> When citing to prefiled testimony, the format of the citation will be party name, name of the witness, testimony type, and page number.

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gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.” Even following the arguments of Jorde Landowners *et al.*, the Board still retains jurisdiction to hear and rule on Summit Carbon’s petition.

### **C. Late-Filed Hearing Exhibits**

The Board’s rules at 199 IAC 7.23(4)(d) require hearing exhibits to be filed in the Board’s electronic filing system within three days of the close of the hearing. On November 30, 2023, which was 22 days after the close of the hearing, Jorde Landowners filed Jorde Landowners Hearing Exhibits 298, 588, and 622. On December 29, 2023, Jorde Landowners filed a motion for confirmation of exhibit admittance with the Board. Jorde Landowners state no party would be prejudiced by the Board’s admittance of these exhibits and no party objected to the exhibits at hearing. No party filed a response to Jorde Landowner’s motion. The Board is uncertain why Jorde Landowners waited 22 days to file the hearing exhibits, when the Board’s rule requires three days, and then an additional 29 days before requesting the Board admit them into the record. To not prejudice the rights of Jorde Landowners, the Board will grant Jorde Landowner’s motion and not strike these exhibits from the record.<sup>9</sup>

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<sup>9</sup> While the Board has granted the motion, the Board notes a waiver of 199 IAC 7.23(4)(d) would have been procedurally proper, rather than filing to confirm the exhibits are in evidence. The Board will discuss the perpetual nonconformance with the Board’s procedural rules later in this order.

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#### **D. Amicus Curiae**

On December 29, 2023, the Palo Alto County Board of Supervisors (Palo Alto BOS) filed a motion to allow it to file an amicus brief in this matter. Palo Alto BOS states it did not file intervention in this matter, but only seeks to brief the limited issue related to county zoning ordinances. The Board will acknowledge Palo Alto BOS' request to file an amicus brief on the narrow issue of county ordinances.

#### **E. Evidence**

The Board has reviewed all the filings, testimony, and evidence that has been admitted into the record. As stated on the first day of hearing, Board members who were unable to be present during the hearing have reviewed the testimony discussed during their absence. See HT, pp. 10-11. The Board has also read the simultaneous initial and reply briefs submitted by the parties. The entire record and legal arguments of the parties has been considered by the Board. If an argument or piece of evidence is not discussed in this order, the Board has found that argument or piece of evidence to be irrelevant or lacking in sufficient argument to warrant specific discussion.

#### **F. Proposed Findings of Fact**

Included in their reply briefs, Jorde Landowners, Sierra Club, and the Counties proposed a combined 115 findings of fact. Jorde Landowners Post-Hearing Reply Brief (RB) pp. 65-72; the Counties RB, pp. 37-40; and Sierra Club RB, pp. 26-32. Under Iowa Code § 17A.16(1), “[a] proposed or final decision shall include findings of fact and conclusions of law, separately stated.” The section goes on to state, “If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.” The Board has no rules on the submission of

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proposed findings of fact. See 199 IAC chapter 7. Additionally, the Board in its order setting a briefing schedule did not request proposed findings of fact. *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, *Order Establishing Briefing Schedule and Addressing Brief Page Limits* (Nov. 17, 2023). As the Board does not have a process for proposed findings of fact as referenced in § 17A.16(1), the Board will not address each proposed finding of fact. However, in the remainder of the order, the Board may address each finding of fact without making explicit reference.

### III. FINDINGS OF FACT

Iowa Code chapter 479B establishes requirements for issuing a permit for an interstate hazardous liquid pipeline. The Board has adopted rules in 199 IAC chapter 13 that establish requirements for a hazardous liquid pipeline permit. The relevant statutory and rule requirements for issuing a new hazardous liquid pipeline permit are addressed below:

#### A. Iowa Code § 479B.4 – Informational Meetings

Iowa Code § 479B.4 requires a company seeking to construct a hazardous liquid pipeline to “file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state.” Iowa Code § 479B.4(1). An informational meeting is required to be held in each county where real property rights will be affected, at least 30 days prior to the filing of a petition, and where the proposed hazardous liquid pipeline is projected to be five or more miles in length and be operated above 150 psig. *Id.* at § 479B.4(3); 199 IAC 13.2.

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Pursuant to Iowa Code § 479B.4(4), a hazardous liquid pipeline company is required to give “notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property.” Additionally, Iowa Code § 479B.4(5)(b) requires the hazardous liquid pipeline company to serve the notice, with return receipt requested, “not less than thirty days previous to the time set for the meeting, and [the notice] shall be published once in a newspaper of general circulation in the county.” The Board’s rules at 199 IAC 13.2(5)(c) require the notice to be published in a newspaper of general circulation “at least one week and not more than three weeks prior to the date of the meeting.”<sup>10</sup>

Summit Carbon’s request for informational meetings, filed on August 4, 2021, as revised on August 11, 2021, proposed 32 informational meetings be scheduled. The request included 31 in-person county meetings and one virtual meeting. The informational meetings began on September 13, 2021, and concluded on October 22, 2021. A total of 33 informational meetings were conducted as the Page County informational meeting was held twice due to the newspaper of general circulation for Page County not running the notice.

On September 9, 2021, Summit Carbon filed copies of the proofs of publication for Hardin and Story counties. The affidavit attached to the proof of publication for Hardin County states the notice was published on August 31, 2021, in the Eldora Herald-Ledger. The affidavit attached to the proof of publication for Story County states

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<sup>10</sup> Summit Carbon’s request for informational meetings was filed prior to the revisions enacted during the Board’s comprehensive review of 199 IAC chapter 13. The revisions enacted in Docket No. RMU-2020-0013 did not become effective until October 13, 2021. Therefore, the requirements for an informational meeting were subject to the previous chapter 13 rules effective on December 24, 2008, and the petition and remainder of Summit Carbon’s docket is subject to the current chapter 13 rules effective October 12, 2021.

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the notice was published on August 27, 2021, in the Ames Tribune. The informational meeting for Hardin County was held at 12 p.m. September 13, 2021, and the informational meeting for Story County was held at 6 p.m. September 13, 2021.

On September 10, 2021, Summit Carbon filed copies of the proofs of publication for Lyon and Sioux counties. The affidavit attached to the proof of publication for Lyon County states the notice was published on September 8, 2021, in the Lyon County Reporter. The affidavit attached to the proof of publication for Sioux County states the notice was published on September 8, 2021, in the Sioux County Index-Reporter. The informational meeting for Lyon County was held at 12 p.m. September 15, 2021, and the informational meeting for Sioux County was held at 6 p.m. September 15, 2021.

On September 15, 2021, Summit Carbon filed copies of the proofs of publication for Woodbury and Plymouth counties. The affidavit attached to the proof of publication for Woodbury County states the notice was published on September 1, 2021, in the Sioux City Journal. The affidavit attached to the proof of publication for Plymouth County states the notice was published on September 1, 2021, in the Daily Sentinel. The informational meeting for Plymouth County was held at 12 p.m. September 16, 2021, and the informational meeting for Woodbury County was held at 6 p.m. September 16, 2021.

On September 16, 2021, Summit Carbon filed copies of the proofs of publication for Cerro Gordo, Cherokee, O'Brien, and Floyd counties. The affidavit attached to the proof of publication for Cerro Gordo County states the notice was published on September 3, 2021. The affidavit attached to the proof of publication for Cherokee County states the notice was published on September 3, 2021, in the Chronicle Times.



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The affidavit attached to the proof of publication for O'Brien County states the notice was published on September 4, 2021. The affidavit attached to the proof of publication for Floyd County states the notice was published on September 7, 2021. The informational meeting for Cerro Gordo County was held at 1:30 p.m. September 20, 2021; the informational meeting for Floyd County was held at 6 p.m. September 20, 2021; the informational meeting for O'Brien County was held at 12 p.m. September 22, 2021; and the informational meeting for Cherokee County was held at 6 p.m. September 22, 2021.

On September 22, 2021, Summit Carbon filed copies of the proofs of publication for Dickinson and Emmet counties. The affidavit attached to the proof of publication for Dickinson County states the notice was published on September 8, 2021, in the Dickinson County News. The affidavit attached to the proof of publication for Emmet County states the notice was published on September 2, 2021, in the Estherville News. The informational meeting for Dickinson County was held at 12 p.m. September 23, 2021, and the informational meeting for Emmet County was held at 6 p.m. September 23, 2021.

On September 27, 2021, Summit Carbon filed copies of the proofs of publication for Palo Alto, Kossuth, Chickasaw, and Hancock counties. The affidavit attached to the proof of publication for Palo Alto states the notice was published on September 14, 2021, in the Emmetsburg Reporter-Democrat. The affidavit attached to the proof of publication for Kossuth County states the notice was published on September 9, 2021, in the Kossuth County Advance. The affidavit attached to the proof of publication for Chickasaw County states the notice was published on September 14, 2021, in the New

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Hampton Tribune. The affidavit attached to the proof of publication for Hancock County states the notice was published on September 8, 2021, in the Leader. The informational meeting for Palo Alto County was held at 12 p.m. September 27, 2021; the informational meeting for Kossuth County was held at 6 p.m. September 27, 2021; the informational meeting for Hancock County was held at 1 p.m. September 28, 2021; and the informational meeting for Chickasaw County was held at 1 p.m. September 29, 2021.

On October 1, 2021, Summit Carbon filed copies of the proof of publications for Clay, Crawford, Greene, Ida, Pottawattamie, and Boone counties. The affidavit attached to the proof of publication for Clay County states the notice was published on September 21, 2021, in the Daily Reporter. The affidavit attached to the proof of publication for Crawford County states the notice was published on September 21, 2021, in the Denison Review. The affidavit attached to the proof of publication for Greene County states the notice was published on September 23, 2021, in the Jefferson Herald. The affidavit attached to the proof of publication for Ida County states the notice was published on September 22, 2021, in the Ida County Courier. The affidavit attached to the proof of publication for Pottawattamie County states the notice was published on September 29, 2021, in the Daily Nonpareil. The affidavit attached to the proof of publication for Boone County states the notice was published on September 23, 2021, in the Boone News Republican. The informational meeting for Boone County was held at 12 p.m. October 4, 2021; the informational meeting for Greene County was held at 5 p.m. October 4, 2021; the informational meeting for Ida County was held at 12 p.m. October 5, 2021; the informational meeting for Crawford County was held at 6 p.m.

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October 5, 2021; the informational meeting for Pottawattamie County was held at 6 p.m.

October 6, 2021; and the informational meeting for Clay County was held at 12 p.m.

October 8, 2021.

On October 5, 2021, Summit Carbon filed a copy of the proof of publication for Shelby County. The affidavit attached to the proof of publication for Shelby County states the notice was published on September 21, 2021, in Harlan Publishing, LLC d/b/a Harlan Newspapers. The informational meeting for Shelby County was held at 12 p.m. October 6, 2021.

On October 8, 2021, Summit Carbon filed copies of the proofs of publication for Montgomery, Mills, Fremont, Franklin, and Wright counties. The affidavit attached to the proof of publication for Montgomery County states the notice was published on September 28, 2021, in the Red Oak Express. The affidavit attached to the proof of publication for Mills County states the notice was published on September 29, 2021, in the Opinion-Tribune. The affidavit attached to the proof of publication for Fremont County states the notice was published on September 22, 2021, in the Valley News. The affidavit attached to the proof of publication for Franklin County states the notice was published on September 29, 2021, in the Hampton Chronicle. The affidavit attached to the proof of publication for Wright County states the notice was published on September 30, 2021, in the Wright County Monitor. The informational meeting for Mills County was held at 12 p.m. October 11, 2021; the informational meeting for Fremont County was held at 6 p.m. October 11, 2021; the informational meeting for Wright County was held at 12 p.m. October 13, 2021; the informational meeting for Franklin

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County was held at 5 p.m. October 13, 2021; and the informational meeting for Montgomery County was held at 6 p.m. October 14, 2021.

On October 14, 2021, Summit Carbon filed copies of the proofs of publication for Webster and Hamilton counties. The affidavit attached to the proof of publication for Webster County states the notice was published on October 8, 2021, in the Messenger. The affidavit attached to the proof of publication for Hamilton County states the notice was published on October 8, 2021, in the Messenger. The informational meeting for Hamilton County was held at 12:30 p.m. October 15, 2021, and the informational meeting for Webster County was held at 6 p.m. October 15, 2021.

On October 21, 2021, Summit Carbon filed a copy of the proof of publication for Page County. The affidavit attached to the proof of publication for Page County states the notice was published on October 13, 2021, in the Valley News. The informational meeting for Page County was held at 12 p.m. October 22, 2021.<sup>11</sup>

Summit Carbon's Petition Exhibit G provides an affidavit that the informational meetings were held in the above described counties and specifies the time and place for each informational meeting. Summit Carbon's Petition Exhibit G also includes copies of the mailed notice letter and the published notices attached to the affidavit, in compliance with the rules in effect at the time the informational meetings were scheduled.

No party is contesting this issue.

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<sup>11</sup> The October 22, 2021 Page County informational meeting was the second informational meeting in Page County. The first informational meeting was held at 12 p.m. October 14, 2021; however, due to a publication error, the October 14 meeting did not meet the requirements of Iowa Code § 479B.4(5)(b) and a second meeting was scheduled to comply with these requirements.

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The Board finds that Summit Carbon has complied with the requirements established by Iowa Code § 479B.4 and the Board's chapter 13 rules in effect at the time Summit Carbon requested its informational meetings.

**B. Iowa Code § 479B.5 – Petition Requirements**

Iowa Code § 479B.5 establishes the information to be included in a verified petition. The Board's rules at 199 IAC 13.3 establish filing requirements and exhibits to be filed with the petition. Each requirement will be discussed below.

**1. Iowa Code §§ 479B.5(1) and (2)**

Iowa Code §§ 479B.5(1) and (2) require the petition to state the name of the company applying for the petition and the company's principal place of business. Summit Carbon's revised petition identifies Summit Carbon as a corporation existing under the laws of Delaware, with its principal place of business at 2321 North Loop Drive, Suite 221, Ames, Iowa 50010.

No party is contesting this issue.

The Board finds Summit Carbon has met the requirements of Iowa Code §§ 479B.5(1) and (2).

**2. Iowa Code § 479B.5(3)**

Iowa Code § 479B.5(3) requires the petition to include a legal description and map of the proposed hazardous liquid pipeline route. The Board's rules at 199 IAC 13.3(1)(a) and (b) establish Exhibits A and B, respectively, to meet these requirements. Board rule 199 IAC 13.3(1)(a) establishes the minimum requirements for the contents of the legal description, and 199 IAC 13.3(1)(b) describes the characteristics and what is to be included in the map. Eric Schovanec, on behalf of Summit Carbon, states he

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participated in the preparation of Exhibits A and B. Summit Carbon Schovanec Direct, p. 3.

No party is contesting that Summit Carbon did not file an Exhibit A and B.

The Board finds Summit Carbon has met the requirements of § 479B.5(3) and 199 IAC 13.3(1)(a) and (b). This finding is solely for the purposes of compliance with Iowa Code § 479B.5(3) and 199 IAC 13.3(1)(a) and (b). It is not a finding as to the route approved by the Board, which will be discussed later in this order.

### **3. Iowa Code § 479B.5(4)**

Iowa Code § 479B.5(4) requires “[a] general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.” To comply with this statutory provision, the Board’s rules at 199 IAC 13.3(1)(f)(2)(1), Exhibit F, require a statement of the nature of the lands, waters, and public or private facilities where the proposed pipeline will cross, and 199 IAC 13.3(1)(e)(1) requires consents or documentation to be filed as it relates to public highway authorities or railroad companies.

In its Exhibit F, section 2, which Summit Carbon witness Jon Schmidt participated in preparing, Summit Carbon describes the general nature of the lands or waterways it will cross. Summit Carbon Schmidt Direct, p. 2. Summit Carbon asserts its proposed hazardous liquid pipeline will cross 378.81 feet, or 0.07 miles, of public land. Summit Carbon Exhibit F, section 2.4. Summit Carbon’s Exhibit F breaks down the crossing of public land as follows: 2.0 feet in Cerro Gordo County, 179.60 feet in O’Brien County, 4.0 feet in Hardin County, 99.55 feet in Story County, 83.59 feet in Webster County, 4.07 feet in Crawford County, 4.0 feet in Shelby County, and 2.0 feet

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in Woodbury County. Summit Carbon Schmidt Direct, p. 6; Summit Carbon Exhibit F, section 2.4, Table 3. Summit Carbon states it will either bore or horizontal directional drill (HDD) each area where it crosses public land. *Id.* Mr. Schmidt testifies, “No tribal or federal lands are planned to be crossed by the [proposed] pipeline route. . . .”

Summit Carbon Schmidt Direct, p. 6.

As it relates to waters and wetlands, Summit Carbon states its proposed route would cross 24 eight-digit hydrologic unit code watersheds, identified as follows: Big Papillion-Mosquito, Blackbird-Soldier, Boone, Boyer, East Fork Des Moines, East Nishnabotna, Floyd, Keg-Weeping Water, Little Sioux, Lower Big Sioux, Maple, Middle Cedar, Middle Des Moines, Monona-Harrison Ditch, Rock, Shell Rock, South Skunk, Upper Cedar, Upper Des Moines, Upper Iowa, Upper Wapsipinicon, West Fork Cedar, West Nishnabotna, and Winnebago. Summit Carbon Exhibit F, section 2.3. In addition to the 24 watersheds, Summit Carbon’s proposed route crosses “68 named waterbodies and multiple unnamed wetland and waterbody features. . . .” *Id.* Summit Carbon states it is proposing to cross 0.48 miles of wetlands or waterbodies in Cerro Gordo County, 0.29 miles in Cherokee County, 0.99 miles in Chickasaw County, 0.71 miles in Clay County, 0.27 miles in Crawford County, 0.15 miles in Dickinson County, 0.14 miles in Emmet County, 0.74 miles in Floyd County, 0.05 miles in Franklin County, 0.09 miles in Fremont County, 0.02 miles in Greene County, 0.42 miles in Hancock County, 0.66 miles in Hardin County, 0.36 miles in Ida County, 0.59 miles in Kossuth County, 0.12 miles in Lyon County, 0.30 miles in Montgomery County, 0.39 miles in O’Brien County, 0.05 miles in Page County, 2.10 miles in Palo Alto County, 0.30 miles in Plymouth County, 0.38 miles in Pottawattamie County, 0.13 miles in Shelby County, 0.34 miles in

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Sioux County, 0.14 miles in Story County, 0.22 miles in Webster County, 0.19 miles in Woodbury County, and 0.85 miles in Wright County. Summit Carbon Exhibit F, section 2.3, Table 2.

Summit Carbon states its proposed pipeline would impact 8,881.42 acres of land over the 688.01-mile route. Summit Carbon Exhibit F, section 2.1. Mr. Schmidt testifies the proposed pipeline route would mainly impact agricultural lands. Summit Carbon Schmidt Direct, p. 8. Mr. Schmidt testifies agricultural lands make up approximately 95 percent of the lands crossed. *Id.* Specifically, 92.1 percent, or 8,161.87 acres, is composed of row crops; 2.56 percent, or 239.10 acres, is composed of hay fields; and 0.9 percent, or 85 acres, is composed of grasslands used for pastures. *Id.*; Summit Carbon Exhibit F, section 2.1, Table 1. As it relates to the remaining approximately 5 percent of lands impacted, 1.1 percent is wetland. Summit Carbon Schmidt Direct, p. 8. Furthermore, Summit Carbon's proposed route would impact approximately 7.20 acres of developed high-intensity land; 27.58 acres of developed medium-intensity land; and 60.75 acres of developed low-intensity land. Summit Carbon Exhibit F, section 2.1, Table 1. Mr. Schmidt further testifies approximately 30.88 acres of forest land would be impacted in Iowa. Summit Carbon Schmidt Direct, p. 9; Summit Carbon Exhibit F, section 2.1, Table 1. Mr. Schmidt testifies shrub and woody vegetation would periodically be removed from above the proposed hazardous liquid pipeline, approximately 15 feet on either side of the centerline of the proposed hazardous liquid pipeline. Summit Carbon Schmidt Direct, p. 9.

In addition to describing the usage of the lands, Summit Carbon states its proposed hazardous liquid pipeline would cross six landform regions. Summit Carbon



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Exhibit F, section 2.2. Summit Carbon asserts the proposed hazardous liquid pipeline would cross the Missouri Alluvial Plain, Loess Hills, Northwest Iowa Plains, Des Moines Lobe, Southern Iowa Drift Plain, and Iowan Surface. *Id.*; Summit Carbon Schmidt Direct, pp. 4-5.

Iowa Code § 479B.5(4) also requires a general description of the public or private highways a proposed hazardous liquid pipeline will cross. In Summit Carbon's Exhibit E, filed pursuant to 199 IAC 13.3(1)(e)(1), Summit Carbon identifies 13 public highways that its proposed route would cross. Summit Carbon states its proposed route would cross U.S. Highway 18 in Lyon County, U.S. Highway 75 in Sioux County, U.S. Interstate 29 in Woodbury County, Iowa Highway 17 in Wright County, U.S. Highway 59 in Crawford and Pottawattamie counties, U.S. Highway 30 in Crawford County, Iowa Highway 175 in Ida County, Iowa Highway 60 in Sioux County, Iowa Highway 14 in Floyd County, U.S. Highway 18 in Floyd and Chickasaw counties, and U.S. Highway 63 in Chickasaw County.

No party is contesting this issue.

The Board finds Summit Carbon provided a general description of the lands to be crossed by its proposed hazardous liquid pipeline in compliance with Iowa Code § 479B.5(4).

#### **4. 199 IAC 13.3(1)(e)**

In addition to 199 IAC 13.3(1)(e) requiring information related to public and private highways, this provision of the Board's rules requires a company to provide information related to railroad crossings; other permits necessary for construction from other state agencies; and other permits necessary from federal agencies. This

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provision of the Board's rules allows for a company to "file a statement that it will obtain all necessary consents or file other documentation of the right to commence construction prior to commencement of construction of the pipeline." It also allows for a company to "request board approval to begin construction on a segment of a pipeline prior to obtaining all necessary consents for construction of the entire pipeline."

In Summit Carbon's Exhibit E, Summit Carbon provides a list of the railroad permits it needs to obtain as well as the counties in which the crossing occurs. In total, Summit Carbon states it will need 42 railroad crossing agreements. Summit Carbon Exhibit E, section 2. Summit Carbon also states it will require permits from the Iowa Department of Natural Resources (IDNR) and the Iowa Department of Transportation (IDOT). *Id.* at section 3. Lastly, Summit Carbon's Exhibit E states Summit Carbon will need to obtain federal permits from the U.S. Army Corps of Engineers. *Id.* at section 4.

In his direct testimony, OCA's Scott Bents states Summit Carbon has not obtained all the required permits for its proposed project. OCA Bents Direct, p. 7. Mr. Bents goes on to note that the Board's rules do not require Summit Carbon to have all permits before filing its petition. *Id.* (citing 199 IAC 13.3(1)(e)(2)). Mr. Bents does question why Summit Carbon "placed a 'Federal and State Permit Tracker' in Table 4 of its Exhibit F, which does not appear to be the Board's required location for tracking state and federal permits." *Id.* Mr. Bents recommended "[Summit Carbon] explain its reasoning for not placing all its permit tracking information in Exhibit E as required by the Board's rules in 13.3(1)(e), and . . . [Summit Carbon] submit updates to the Board on the status and finalization of the permits prior to commencement of construction." *Id.*

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In direct testimony submitted by Leo Gallentine, he describes the use and process for applying for drainage district permits. Hardin County BOS Gallentine Direct, pp. 4-6. Mr. Gallentine recommends “the Board impose certain conditions on any permit issued to Summit [Carbon], including that Summit [Carbon] actually takes all the steps to fully comply with the applicable Drainage District permit requirements.” *Id.* at 3. Mr. Gallentine testifies Iowa Code chapter 468 grants certain authority to drainage districts and their trustees as it relates to how to regulate and use drainage districts. *See id.* at 5-6. Mr. Gallentine testifies Summit Carbon is fully aware of Hardin County’s drainage district crossing permit requirements, but is requesting a waiver or variance from the Global Positioning System (GPS) tracking requirement for all vehicles in excess of 8,000 pounds. *Id.* at 7. Mr. Gallentine testifies this GPS tracking requirement is necessary for the following reason:

[If] a sinkhole due to a tile collapse a number of years after construction, requiring GPS tracking would allow the District Trustees to determine if this collapse was in an area of traffic from pipeline construction or not. This in turn would determine if the cost of repair was to be paid by Summit [Carbon] or to be solely bore [sic] by the landowners within the Drainage District.

*Id.* at 7-8.

On August 10, 2023, the Iowa Northern Railway Company (Iowa Northern) filed an objection to Summit Carbon’s request for eminent domain. In its objection, Iowa Northern states the rail line was constructed initially in the 1800s by the Burlington, Cedar Rapids & Northern Railway, who was ultimately consolidated with the Chicago, Rock Island & Pacific Railroad system. Iowa Northern asserts it purchased the rail line at issue in 1984 from the Rock Island Trustee after the Chicago, Rock Island & Pacific

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Railroad went bankrupt. Iowa Northern states it has not granted Summit Carbon permission to cross its right-of-way.

In rebuttal testimony to Mr. Bents, Mr. Schovanec testifies the reason for having two different trackers stems from the nature of the permit and whether approval is actually necessary. Summit Carbon Schovanec Rebuttal, p. 2. Mr. Schovanec testifies the consents are listed in Exhibit E, and the “Federal and State Permit Tracker” in Exhibit F primarily focuses on environmental consultations or authorizations. *Id.* Mr. Schovanec testifies the environmental consultations or authorizations “are not necessarily items for which written consents are issued by the agencies. . . .” *Id.* at 3. As it relates to updates provided to the Board prior to commencing construction, as recommended in Mr. Bents’ testimony, Mr. Schovanec states “Summit [Carbon] intends to do so.” *Id.* Mr. Schovanec testifies there are two specific issues Summit Carbon has with Mr. Gallentine’s recommendation that would make compliance with the applicable drainage district permit requirements a condition imposed by the Board. First, as it relates to Hardin County’s drainage application, Mr. Schovanec states the first issue is the mandatory requirement to go below existing drainage district tile lines. Summit Carbon Schovanec Rebuttal, pp. 3-4. Mr. Schovanec testifies there may be situations and circumstances where it is more appropriate to cross above, rather than go below, a drainage tile. *Id.* at 4. Second, Mr. Schovanec testifies Summit Carbon does not agree with the requirement to have GPS tracking on any vehicle or equipment heavier than 8,000 pounds. *Id.* Mr. Schovanec testifies Hardin County’s rationale for requiring the GPS tracking is better addressed by another section of the drainage district permit application that requires televising the tile line before and after construction. *Id.* Mr.

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Schovanec testifies the Board's rules in 199 IAC chapter 9 already require the televising of tile lines over the entire working easement, which will reveal any impacted drains. *Id.* Furthermore, Mr. Schovanec testifies "nearly every piece of equipment heavier than a pickup truck has a gross weight of 8,000 pounds, including almost all typical farming equipment that crosses drainage district tile lines. . . ." *Id.* Mr. Schovanec repeats this position at hearing but did state that Summit Carbon could comply if it "absolutely had to." HT, pp. 2064-65.

In its initial post hearing brief, Hardin County BOS reiterates Mr. Gallentine's condition to require Summit Carbon to obtain a drainage district crossing permit for Hardin County. Hardin County BOS IB, pp. 7-9. Additionally, Hardin County BOS recommends the Board require Summit Carbon to obtain permits from Hardin County for field entrance construction and county road right-of-way crossings. *Id.* at 9-10. Hardin County BOS states "[p]ermits of this nature are fundamental to preservation of county infrastructure and operations and must be included as a precondition for any permit issued by the Board." *Id.* at 10.

The Board has reviewed the information and finds Summit Carbon has complied with the requirements of 199 IAC 13.3(1)(e). As noted by Mr. Bents, the Board's rules do not require all the permits to be obtained at the time of the permit, but they are required prior to commencing construction. 199 IAC 13.3(1)(e)(2). Summit Carbon's petition and testimony by Mr. Schovanec establish this requirement. Summit Carbon Petition, section VI; Summit Carbon Schovanec Rebuttal, p. 3. The Board will require Summit Carbon to continuously update Exhibit E as it obtains consents and the "Federal and State Permit Tracker" in Exhibit F as compliance filings with the Board. The Board

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does not find issue with the location of the two different tracking tables, but will require both to be updated as consents, permits, authorizations, or consultations occur resulting in Summit Carbon either receiving a consent, permit, or authorization, or a determination that a consent, permit, or authorization is not needed after consulting with a particular entity.

As it relates to the recommendation of Mr. Gallentine to require Summit Carbon to comply with the requirements of the drainage district permits, the Board will not make that a condition of its permit, should the Board grant Summit Carbon a permit. As shown in Gallentine Direct Exhibit 1, Summit Carbon is already working through the permitting process in Hardin County and, therefore, there is no need for double compliance. As it relates to the provisions within the Hardin County drainage permit application, the Board takes no position on the issues or requirements contained therein.<sup>12</sup> Therefore, the Board will not apply Mr. Gallentine's recommendation to Summit Carbon's permit, should the Board grant Summit Carbon a permit.

#### **5. Iowa Code § 479B.5(5)**

Iowa Code § 479B.5(5) describes the requirements for a company seeking to build facilities for the underground storage of hazardous liquids. Summit Carbon is not seeking a permit to build facilities for the underground storage of hazardous liquids in Iowa. Summit Carbon Petition, p. 1. However, during the course of the hearing, testimony was provided that discussed the possibility of sequestering carbon dioxide in Iowa. See, e.g., HT pp. 1996-97; Summit Carbon Pirolli Direct, p. 7; Isenhardt Clark Direct, p. 4.

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<sup>12</sup> Further discussion about county compliance will be addressed in Section III.B.7 below.

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While Summit Carbon is not petitioning for underground hazardous liquid storage, thus making this provision of Iowa law inapplicable, the Board's inclusion of this section in the order is to note that should Summit Carbon seek to begin to store carbon dioxide in Iowa in the future, it would need to obtain permission from the Board, as well as any applicable federal permissions, before doing so.

#### **6. Iowa Code § 479B.5(6)**

Iowa Code § 479B.5(6) requires a company petitioning the Board for a hazardous liquid pipeline to include a description about the use of alternative routes. The Board's rules state, at 199 IAC 13.3(1)(f)(2)(2), that Exhibit F is to include a general statement about the possible use of alternative routes. On July 14, 2022, the Board issued an order requiring Summit Carbon to, among other items, "file additional information, be that additional maps or a more descriptive narrative, explaining the possible alternative routes that have been considered for the hazardous liquid pipeline in Iowa" as Exhibit L3. On August 15, 2022, Summit Carbon filed Exhibit L3.

In Exhibit F, Summit Carbon states it used "Geographic Information System (GIS) programs to determine a preferred pipeline route based on multiple datasets." Summit Carbon Exhibit F, section 3.0. Summit Carbon states these datasets included engineering, environmental, and land use. *Id.* "The routing software considers a multitude of possible routes and optimizes for the information provided including the avoidance of certain features" *Id.* In Exhibit L3, Summit Carbon provided additional information as to what was contained within the dataset as well as providing its weighting table for each data point as an attachment. Summit Carbon Exhibit L3, pp. 2-3; Summit Carbon Exhibit L3 attachment. In the attachment to Exhibit L3, Summit

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Carbon identifies approximately 298 different variables it considered as part of routing consideration. Summit Carbon Exhibit L3 attachment. Once the GIS route was completed, Summit Carbon employed expert consultants to review the proposed route to “avoid or minimize features identified as moderate risk, and exclude features identified as high risk, while following undeveloped open areas and existing corridors and considering constructability, engineering, and environmental issues.” Summit Carbon Exhibit F, section 3.0. Summit Carbon asserts these individuals refined the proposed route “to better avoid conservation easements, better avoidance of wind turbines and underground wind turbine collection systems, and to better facilitate the use of HDD where appropriate, as well as highly local modifications to accommodate landowner preferences over their specific parcels.” *Id.*

In its Exhibit L3, Summit Carbon states alternative routes between the mainline and the ethanol plants that did not minimize the overall length of the proposed hazardous liquid pipeline were eliminated from consideration as they did not meet the need or purpose of the proposed project. Summit Carbon Exhibit L3, p. 2. Summit Carbon asserts the Board has previously identified that increasing the total length of a pipeline in Iowa impacts more land and landowners. *Id.*; see *In re: Dakota Access, LLC*, Docket No. HLP-2014-0001, Final Decision and Order, p. 67 (March 10, 2016) [hereinafter *Dakota Access Order*]. Furthermore, in Exhibit L3, Summit Carbon states its review of the proposed route generally included minimizing the number of corner clips, “increasing distance from field-observed sites of environmental sensitivity, and aligning better for various types of crossings.” Summit Carbon Exhibit L3, p. 3.



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In his direct testimony, Mr. Bents testifies that Summit Carbon did consider alternative routes “consistent with the requirements and Board precedent on this matter.” OCA Bents Direct, pp. 7-8.

During cross-examination, Murray Landowners sought to confirm that Summit Carbon did not provide the Board with any alternative routes. HT, pp. 2105-06. Mr. Schovanc testifies “[t]he existing alignment is the only route that is part of [Summit Carbon’s] petition.” *Id.* at 2106.

The Counties states in its initial post-hearing brief that Summit Carbon’s petition is inadequate and omits material information about the use of possible alternative routes. The Counties IB, p. 30. The Counties state the statement by Summit Carbon is not “very useful to the Board or to the public. . . .” *Id.* at 30-31. The Counties assert Summit Carbon’s petition should have included additional information about the routing determinations related to the trunk line that stretches from Ida County to Fremont County for only one ethanol plant, or the way the route enters or is near to Charles City, Earling, or Sioux City when there is no ethanol plant in those cities. *Id.* at 31. Additionally, the Counties state Summit Carbon’s statement about alternative routes should have included information about the possible sequestration in Iowa. *Id.* at 31-33.

Having reviewed the information, the Board finds that Summit Carbon has met the requirements of Iowa Code § 479B.5(6) and 199 IAC 13.3(1)(f)(2)(2). The Board’s rules on this issue require a “general statement” about the possible use of alternative routes. While Summit Carbon did not provide the Board with a preferred route, alternative route one, alternative route two, etc., Summit Carbon did explain how it arrived at its proposed route based upon a review of its GIS and its experts’ analysis of

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the GIS produced routes. Summit Carbon Exhibit F, section 3.0; Summit Carbon Exhibit L3. Furthermore, Summit Carbon's GIS dataset was based on approximately 298 datapoints with different weights to produce a route within Summit Carbon's criteria for a general proposed route for its proposed hazardous liquid pipeline. See Summit Carbon Exhibit L3 attachment.

While the Board finds Summit Carbon has provided a general statement of possible alternative routes, this finding does not approve the route. The Board will discuss whether it will approve, deny, or require modifications to the proposed route in Section III.E below.

#### **7. Iowa Code § 479B.5(7)**

Iowa Code § 479B.5(7) requires a hazardous liquid pipeline company to describe the relationship of the proposed hazardous liquid pipeline to the present and future land use and zoning ordinance. The Board rule at 199 IAC 13.3(1)(f)(2)(3) describes this requirement in terms of the petition documentation.

In its Exhibit F, Summit Carbon states its proposed hazardous liquid pipeline is consistent with present and future land uses. Summit Carbon Exhibit F, section 4.0. Mr. Schovanec testifies, "Summit Carbon reviewed the land uses, and reviewed the county ordinances in place during the time the [p]etition was being prepared." Summit Carbon Schovanec Petition Staff Report, p. 4. Mr. Schovanec continues by testifying the "reviews indicated that the land uses were appropriate for a pipeline." *Id.* Mr. Schovanec testifies Summit Carbon met with officials in every impacted county, and none raised concern about future land uses. *Id.*

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In testimony, Neil Hamilton, on behalf of the Counties, testifies Summit Carbon reviewed the comprehensive plans and zoning ordinances for each of the impacted counties, but chose not to explain how the project impacts local land use priorities. The Counties Hamilton Direct, p. 18. Mr. Hamilton testifies that no Summit Carbon witness discussed how the proposed hazardous liquid pipeline relates to county comprehensive plans or zoning ordinances. *Id.* at 17. In his direct exhibit 1, Mr. Hamilton provides a copy of Data Request (DR) 30 sent by OCA to Summit Carbon. *Id.* at 18. Mr. Hamilton testifies Summit Carbon's response inadequately summarizes the impact on land use in the affected counties. *Id.* Mr. Hamilton testifies the use of a permanent easement by Summit Carbon for a hazardous liquid pipeline will prevent the building of new structures within the easement corridor and prevent housing development by communities, as well as permanently affect land use values, local tax base, tourism, and the migration of residents to a county, all of which Mr. Hamilton testifies county planning and zoning requirements consider. *See id.* at 18-19. To ensure compliance with county planning and zoning requirements, Mr. Hamilton recommends the Board treat "zoning permits in the same manner as all other types of permits and make obtaining them a precondition of the Board's permit." *Id.* at 22. Mr. Hamilton testifies this would be similar to the Board's decision in Dakota Access. *Id.* at 21.

In addition to general assertions that Summit Carbon's petition failed to comply with Iowa Code § 479B.5(6), Mr. Hamilton testifies to specific examples of non-

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compliance in Shelby, Kossuth, Emmet, Floyd, Dickinson, Wright, Woodbury, and Hardin counties.<sup>13</sup>

In his rebuttal testimony, Mr. Schovanec asserts Mr. Hamilton misunderstands how the existence of an underground pipeline does not impact present and future land uses. Summit Carbon Schovanec Rebuttal, p. 7. Mr. Schovanec testifies that there are presently more than 45,000 miles of underground pipelines in Iowa. *Id.*; *see also* Summit Carbon Schovanec Rebuttal Exhibit 1 (a 1999 map of the underground pipelines in Iowa produced by the Board). Furthermore, Mr. Schovanec testifies on rebuttal “[t]hese pipelines exist among and adjacent to residences, churches, business, schools, and the like.” Summit Carbon Schovanec Rebuttal, p. 7. In support of this assertion, Mr. Schovanec, in his Rebuttal Exhibit 3, provides aerial photography of instances throughout Iowa where both pipelines and hazardous liquid pipelines are located within populated areas and where development has occurred around these pipelines.

The Mosers assert the Palo Alto County ordinance governing floodplain construction also prohibits Summit Carbon’s proposed hazardous liquid pipeline from being constructed across their property. The Mosers Carmen Moser Direct p. 6; the Mosers IB p. 4. Specifically, the Mosers assert section five of the ordinance prohibits the construction. The Mosers Carmen Moser Direct p. 6.

In its initial brief, the Counties assert Summit Carbon has provided inadequate or inaccurate information related to land use and zoning ordinances. The Counties IB,

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<sup>13</sup> Hardin County BOS is a separate party to this proceeding and not a part of the Counties; however, as explained at hearing, Mr. Hamilton was appearing for both the Counties and Hardin County BOS. HT, p. 3343.

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p. 34. The Counties state nowhere in Summit Carbon’s petition documents or in testimony does Summit Carbon “discuss a comprehensive plan or a zoning ordinance in effect in any of the counties through which the [proposed hazardous liquid] pipeline passes.” *Id.* at 35. The Counties state the record contains numerous examples in which Summit Carbon’s proposed hazardous liquid pipeline “is not consistent with or appropriate under county land use plans and zoning ordinances.” *Id.* at 39. The Counties state, “Shelby, Kossuth, Emmet, Floyd, Dickinson, Wright, Woodbury, and Hardin counties all require a permit in order to use agricultural land for purposes of an industrial use, including a pipeline. . . .” *Id.* The Counties state Summit Carbon’s absence of stating the relationship to present and future land use and zoning should be weighed against Summit Carbon. *Id.* at 39. The Counties recommend the Board condition Summit Carbon’s permit on it first obtaining all necessary permits, including county permits, before commencing construction. *Id.* at 79-80. The Counties also recommend the Board condition the permit to not allow Summit Carbon to commence construction until the resolution of all pending zoning litigation. *Id.* at 81.

In their initial briefs, Sierra Club and Hardin County BOS support the arguments made by the Counties. Sierra Club IB, pp. 87-93; Hardin County BOS IB, p. 3. Palo Alto County’s amicus brief restates the arguments made by the Counties. Palo Alto Amicus Curiae Brief, pp. 1-2.

In its initial brief, IGAE states a county’s attempt to regulate Summit Carbon’s proposed hazardous liquid pipeline conflicts with the Board’s authority. IGAE IB, p. 16. IGAE argues Iowa Code § 474.9 provides the Board general supervision of all pipelines,

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which the Iowa Supreme Court has held includes the power to overrule local officials who would frustrate a uniform state system. *Id.* at 17-18 (citing *State ex rel. Iowa State Bd. of Assessment and Review v. Local Bd. of Rev. of City of Des Moines*, 283 N.W. 87, 94 (Iowa 1938)). IGAE asserts the term “general supervision” has become a legal term of art. *Id.* at 18. IGAE states the Iowa Supreme Court has held courts will “assume the legislature knew the existing state of the law and prior judicial interpretations of similar statutory provisions.” *Id.* at 18-19 (citing *Jahnke v. City of Des Moines*, 191 N.W.2d 780, 787 (Iowa 1971)). IGAE states the provisions of Iowa Code chapter 479B reinforces this argument due to the verbiage of Iowa Code § 479B.1 and Iowa Code § 479B.7(1). *Id.* IGAE asserts it is the Board that is responsible to “examine the proposed route of the pipeline” and “consider the petition and any objections” toward the ultimate “determination regarding the application” that the Board will make. . . . The Board’s final order will determine, as it finds “just and proper” the “location and route” of the pipeline. *Id.* IGAE asserts the Counties are provided a vehicle by which they may participate in the Board’s process, but it is ultimately the Board’s decision as to the location and route of Summit Carbon’s proposed hazardous liquid pipeline. *Id.* at 20 (citing *Goodell v. Humboldt County*, 575 N.W.2d 486, 503 (Iowa 1998)).

In its initial brief, Summit Carbon states, “The Board need not, and should not, give any weight to these [county] ordinances which have been found to impermissibly violate the state regulatory scheme, and the terms of which are preempted by federal law as well.” Summit Carbon IB, p. 49 (citing *William Couser et al. v. Story County*,

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*Iowa et al.*, 4:22-cv-00383-SMR-SBJ, 2023 WL 8366208 (S.D. Iowa Dec. 4, 2023)).

Summit Carbon states having “a single state process rather than numerous Balkanized county processes and regulations” is the intent behind Iowa Code chapter 479B. See *id.*

In its reply brief, the Counties state:

Summit [Carbon] has not met that obligation, and that fact must be weighed against Summit [Carbon] in the balancing test. For example, given that Summit [Carbon] stated in discovery that it had reviewed the comprehensive plans and zoning ordinances of all counties in its footprint, and given that all counties, particularly Woodbury County and Hardin County, had permit requirements in their zoning ordinances that applied to Summit[] [Carbon’s] project prior to submitting its application in this proceeding, Summit [Carbon] had an obligation to disclose those requirements to the Board and to the public so the permit process and especially the routing process could consider these county requirements.

The Counties RB, p. 26.

In its reply brief, IGAE states “the Board should not encourage political subdivisions to use their legitimate permitting authority as a subterfuge for frustrating its authority to grant a pipeline permit.” IGAE RB, pp. 15-16. IGAE argues “cities, counties, and drainage districts in the project footprint cannot use their permitting authority in bad faith to deny Summit [Carbon] the ability to construct the [proposed hazardous liquid] pipeline.” *Id.* at 16 (citing *U.S. Cellular Corp. v. Bd. of Adj. of City of Des Moines*, 589 N.W.2d 712 (Iowa 1999)). IGAE asserts, “Permitting decisions made in regular order under neutral rules are acceptable. A Summit [Carbon]-specific process is not.” *Id.* IGAE concludes by stating:

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The Board need not order Summit [Carbon] to follow every other law or regulation that apply to it. Summit[] [Carbon's] obligation to comply stems from the validity of those laws and regulations, not the Board's direction to be a law-abiding company. A requirement to obtain permits is not itself objectionable. But to the extent local officials want the Board to give its imprimatur to an effort to use local permits to frustrate the Board's authority, the Board should expressly decline.

*Id.* at 17.

In its reply brief, Summit Carbon states “underground pipelines are consistent with nearly all present and future land uses and the record clearly demonstrates that reality.” Summit Carbon RB, p. 46. Summit Carbon also reiterates its position regarding the Board's ability to locate Summit Carbon's route rather than allowing counties to dictate the routing decision. *Id.*

Having reviewed the information, the Board finds Summit Carbon has complied with the requirements of Iowa Code § 479B.5(7) and 199 IAC 13.3(1)(f)(2)(3). A plain reading of these requirements provides that a hazardous liquid pipeline company need only state the relationship its proposed project has to present and future land use, which Summit Carbon has done. While the Counties assert a detailed analysis of each county's zoning and land use is required, the Board disagrees. See *The Counties Hamilton Direct*, p. 17; *the Counties IB*, p. 35.

On December 4, 2023, Chief Judge Stephanie Rose for the Southern District of Iowa issued a ruling in *William Couser et al. v. Story County, Iowa et al.*, which permanently enjoined Story County from enforcing its zoning ordinances enacted to regulate the siting of hazardous liquid pipelines in the county. Civil No. 4:22-cv-00383-



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SMR-SBJ, 2023 WL 8366208, at \*16 (S.D. Iowa Dec. 4, 2023).<sup>14</sup> The items at issue stemmed from ordinances passed by the Story County Board of Supervisors that placed zoning requirements on hazardous liquid pipelines as it related to setback requirements, emergency response plants, construction methods, minimum cover requirements, critical natural resource area protection requirements, and rezoning consultations. *Id.* at \*2-5. The court held the county's attempt to regulate the siting of a hazardous liquid pipeline via zoning was preempted by the Board's authority under Iowa Code chapter 479B. *Id.* at \*11-12. The court held implied preemption applied to setback requirements, minimum cover requirements, trenchless construction methods, and authorization requirements under Iowa Code chapter 479B, and express preemption under federal law invalidated the setback and emergency response provisions. *Id.* at \*15-16.

While the Board takes no position on the outcome of the case, the Board does find the case useful in explaining the requirements of Iowa Code § 479B.5(7) as it relates to a petition. Under Iowa law, the hazardous liquid pipeline company is to state the relationship of its proposed project to present and future land use and zoning. Iowa Code § 479B.5(7). As the court in *Couser* made clear, the Board has siting authority over hazardous liquid pipelines to ensure “uniform distance and siting standard[s] throughout the state.” Civil No. 4:22-cv-00383-SMR-SBJ, 2023 WL 8366208, at \*11 (S.D. Iowa Dec. 4, 2023). Therefore, the requirement of Iowa Code § 479B.5(7) is to

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<sup>14</sup> On the same date, Chief Judge Rose issued a ruling in *Summit Carbon Solutions, LLC v. Shelby County, Iowa, et al.*, which permanently enjoined Shelby County from enforcing its zoning ordinances enacted to regulate the siting of hazardous liquid pipelines in the county. Case No. 1:22-cv-00020-SMR-SBJ, 2023 WL 8367947, \*4 (S.D. Iowa Dec. 4, 2023). Both cases are on appeal before the United States Court of Appeals for the Eighth Circuit.

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provide the Board with information as it relates to how the proposed project will interact with present and future land use and zoning, not necessarily how it complies. If and to what extent it complies is a decision for the Board to make as it examines the routing of the pipeline. As stated by Chief Judge Rose, a “pipeline is not a single structure that may be placed in one location within the . . . [c]ounty's land area.” *Id.* at \*10. The Board must examine the overall route and location to determine where the proposed hazardous liquid pipeline should be routed, and having information as it relates to the relationship of a proposed hazardous liquid pipeline to current and future land use and zoning is one piece to the complex routing puzzle the Board is tasked with deciding.

Therefore, the Board finds Summit Carbon has complied with the requirements of Iowa Code § 479B.5(7) and 199 IAC 13.3(1)(f)(2)(3) and will not require the information or conditions recommended by Mr. Hamilton be submitted by Summit Carbon. As it relates to the Mosers’ assertion, the Board does not find a prohibition in the floodplain ordinance in section five that would prohibit pipeline construction. See The Mosers Carmen Moser Direct Exhibit 12, pp. 15-21. Reading section five, there is no prohibition the Board can find that would prohibit Summit Carbon’s ability to construct its proposed hazardous liquid pipeline. *Id.* The applicable provision for Summit Carbon’s proposed hazardous liquid pipeline is related to “all development” in a floodplain, which only requires it “[b]e designed and adequately anchored to prevent flotation, collapse or lateral movement[;]” [u]se construction methods and practices that will minimize flood damage[;]” and “[u]se construction materials and utility equipment that are resistant to flood damage.” *Id.* at 16. However, if the ordinance did prohibit Summit Carbon’s

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construction, the ordinance may run afoul of preemption arguments similar to those in *Couser*.

The Counties and Hardin County both request the Board place permit conditions of compliance with the county permitting requirements in the Board's order. See, e.g., the Counties RB, pp. 26-27. As stated earlier in the order, Summit Carbon is already working with counties on permits. The Board will not place any additional conditions on Summit Carbon's petition as it relates to this point. The Board agrees with IGAE, "Summit[] [Carbon's] obligation to comply stems from the validity of those laws and regulations. . . ." IGAE RB., p. 17. The Counties also request the Board place a condition on Summit Carbon's permit to prevent construction from commencing until the conclusion of all pending zoning litigation. The Board will not make this a condition on issuance of a permit as counties already have other legal mechanisms by which to halt construction during the pendency of the zoning litigation, if they so choose.

Summit Carbon asserts county zoning ordinances do not apply to its proposed hazardous liquid pipeline project. The Board takes no position on the issue raised by Summit Carbon. However, the Board will state Iowa Code § 479B.9 allows the Board to determine the location and route of the hazardous liquid pipeline as it deems just and proper. Any county permit that would alter Summit Carbon's location and route, if approved, would conflict with the Board's decision as to the just and proper location and route. Should any conflict arise between the Board's decision regarding Summit Carbon's permit and a county's permitting requirement, the proper venue for such a conflict would be a court of general jurisdiction with subject matter jurisdiction. This is already happening.

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### **8. Iowa Code § 479B.5(8)**

Iowa Code § 479B.5(8) requires the hazardous liquid pipeline company's petition to include a statement regarding the inconvenience and undue injury that may result to property owners as a result of the proposed hazardous liquid pipeline. Exhibit F, 199 IAC 13.3(1)(f)(2)(4).

In its Exhibit F, Summit Carbon provides a general statement regarding the inconveniences and undue injuries that may result due to its proposed construction of a hazardous liquid pipeline. Summit Carbon Exhibit F, section 5.0. Summit Carbon asserts "traffic and construction equipment, typical temporary construction-related or maintenance-related noise and activities, as well as temporary disruption to the land, all of which are anticipated and common inconveniences," are possible inconveniences and undue injuries that may result due to construction. *Id.* Summit Carbon further asserts its proposed hazardous liquid pipeline "is being designed and constructed, and will be operated and maintained, to meet or exceed applicable [PHMSA] regulations in an effort to avoid and minimize the chance of an emergency involving the pipeline that could result in inconvenience or undue injury." *Id.* Furthermore, Summit Carbon states it included a statement of damage claims in its notices of the informational meetings, as well as including the statement in Exhibit G. *Id.* Summit Carbon asserts this document included information about crop loss and damage related to compaction, ruts, and erosion and identified the manner of damage payments and dispute resolution. *Id.*

In its initial brief, the Counties state Summit Carbon has provided inadequate information about the inconvenience or undue injury that may result from Summit Carbon's proposed hazardous liquid pipeline. The Counties IB, pp. 39-40.

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The Counties assert there is nothing routine about Summit Carbon's proposed project and Summit Carbon should have also stated:

human health and safety, present and future property values, present and future economic development, crop losses, livestock health and safety, disruption of farming practices, soil loss and compaction, violations of CRP [Conservation Reserve Program] agreement terms, interference with tile and other drainage infrastructure, and compatibility with existing utility infrastructure. That list of inconveniences does not account for the inconveniences that property owners have already endured, such as the time, stress, and legal costs related to this proceeding and to protecting their property from potential condemnation.

*Id.* at 40.

Over the course of this proceeding, the Board has heard from hundreds of landowners about the impacts Summit Carbon's proposed hazardous liquid pipeline will have on their properties. The Board will address these general concerns later in this order as part of its analysis of the public convenience and necessity of Summit Carbon's proposed hazardous liquid pipeline. As it relates to specific inconveniences or undue injury assertions, the Board will address those on a landowner-by-landowner basis later in the order, if applicable, should the Board determine Summit Carbon's proposed hazardous liquid pipeline will promote the public convenience and necessity and Summit Carbon should be vested with the right of eminent domain.

The Board has reviewed Summit Carbon's petition and finds it complies with the requirements of Iowa Code § 479B.5(8) and 199 IAC 13.3(1)(f)(2)(4). While the Counties assert a litany of additional information needs to be provided because this is not a routine project, the Board disagrees. While this may be the first liquefied carbon dioxide pipeline to come before the Board, the Board has considered pipeline petitions previously and fails to identify any drastic difference between the baseline project being

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proposed by Summit Carbon and the numerous pipeline petitions that have come before it.

Therefore, as it relates to the narrow requirements of Iowa Code § 479B.5(8) and 199 IAC 13.3(1)(f)(2)(4) of stating inconveniences and undue injuries landowners may experience as a result of the proposed hazardous liquid pipeline, the Board finds Summit Carbon has complied with this requirement.

**9. Iowa Code § 479B.5(9)**

Iowa Code § 479B.5(9) requires an affidavit attesting that the informational meeting was held in each affected county, along with providing the date and time of such meetings. The Board's rules at 199 IAC 13.3(1)(g), Exhibit G, require copies of the notice letter, corridor map, and published meeting notices attached to the affidavit.

In Summit Carbon's Exhibit G, Summit Carbon includes an affidavit signed by Jake Ketzner averring that he was responsible for certain team members participating in each of the informational meetings. Mr. Ketzner's affidavit asserts copies of the notice letter, corridor map, published notice, and proof of publication were attached to his affidavit. Lastly, Mr. Ketzner's affidavit states the informational meetings were held in each affected county.

No party is contesting this issue.

The Board finds Summit Carbon has complied with the requirements of Iowa Code § 479B.5(9) and 199 IAC 13.3(1)(g).

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**C. Iowa Code § 479B.6 — Hearing Requirements**

Iowa Code § 479B.6(1) requires the hearing to be set by the Board and for published notice to occur for two consecutive weeks in each county where the proposed hazardous liquid pipeline is to be located. Iowa Code § 479B.6(2) requires the hearing to be not less than 10 and no more than 30 days from the date of the last publication. Additionally, if the proposed hazardous liquid pipeline is to be more than five miles in length, the hearing must be held in the county seat of the county located at the midpoint of the proposed hazardous liquid pipeline. On March 18, 2022, the Board issued an order requesting briefing and comments and setting an oral argument as to how to determine the midpoint of Summit Carbon's proposed hazardous liquid pipeline. *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, *Order Addressing Location of Hearing and Scheduling Oral Argument*, p. 2 (Mar. 18, 2022). In the order, the Board stated, "Because of the configuration of the proposed pipeline, with one primary line and several trunk lines, the midpoint of this proposed pipeline is not as easily determined as it would be if the line were only a single line." *Id.* After the oral argument held on April 12, 2022, the Board issued an order stating Webster County would be the location of the hearing on Summit Carbon's petition, based upon the agreement of the parties who participated as well as its reasonable compliance with the legislative intent of Iowa Code § 479B.6. *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, *Order Addressing Motions, Granting Petition to Intervene, Requesting Comment, and Requiring Filings*, pp. 14-16 (June 17, 2022).

The Board's rules at 199 IAC 13.4(3) establish the requirements for the hearing notice. The published hearing notice is to include a map of the hazardous liquid pipeline

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route or a telephone number and address through which an interested person may obtain a copy of the map at no cost. 199 IAC 13.4(3).

On August 17, 2023, Summit Carbon filed copies of its proofs of publication for the hearing, showing the notice of hearing was published on the following dates in newspapers of general circulation: Boone County on July 27 and August 3, 2023, in the Boone News Republican; Cerro Gordo County on July 28 and August 4, 2023, in the Globe Gazette; Cherokee County on July 29 and August 5, 2023, in the Cherokee Chronicle; Chickasaw County on July 27 and August 3, 2023, in the New Hampton Tribune; Clay County on July 28 and August 4, 2023, in the Spencer Daily Reporter; Crawford County on August 2 and 9, 2023, in the Bulletin-Review; Dickinson County on August 3 and 10, 2023, in the Dickinson County News; Emmet County on July 27 and August 3, 2023, in the Estherville News; Floyd County on July 28 and August 4, 2023, in the Charles City Press; Franklin County on August 2 and 9, 2023, in the Hampton Chronicle; Fremont County on July 27 and August 3, 2023, in the Fremont-Mills Beacon-Enterprise; Greene County on July 27 and August 3, 2023, in the Jefferson Herald; Hancock County on August 2 and 9, 2023, in the Leader; Hardin County on August 5 and 12, 2023, in the Times Citizen; Ida County on August 2 and 9, 2023, in the Holstein Advance; Kossuth County on August 3 and 10, 2023, in the Kossuth County Advance; Lyon County on August 2 and 9, 2023, in the Lyon County Reporter; Montgomery County on August 2 and 9, 2023, in the Red Oak Express; O'Brien County on July 22 and 29 and August 5, 2023, in the N'West Iowa Review; Page County on August 2 and 9, 2023, in the Southwest Iowa Herald; Palo Alto County on August 3 and 10, 2023, in the Emmetsburg Reporter-Democrat; Plymouth County on July 28 and



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August 4, 2023, in the Le Mars Sentinel; Pottawattamie County on July 29 and August 5, 2023, in the Daily Nonpareil; Shelby County on July 28 and August 4, 2023, in the Harlan Newspapers; Sioux County on August 3 and 10, 2023, in the Sioux County Capital-Democrat; Story County on July 26 and 27 and August 11, 2023, in the Ames Tribune; Webster County on August 3 and 10, 2023, in the Dayton Leader; Woodbury County on July 29 and August 5, 2023, in the Sioux City Journal; and Wright County on August 3 and 10, 2023, in the Belmond Independent.

Under Iowa Code § 479B.6(2), the last date of publication based upon the hearing commencing on August 22, 2023, ranges from July 23 to August 12, 2023. All of the above date ranges for the second publications fall within the July 23 to August 12, 2023 time range. However, Iowa Code § 479B.6(1) requires the hearing notice to be published “for two consecutive weeks, in a newspaper of general circulation in each county through which the proposed pipeline . . . will extend.” Of the above listed publication notices, all but one strictly complies with the requirements of Iowa Code §479B.6(1). The outlier is the hearing notice for Story County. Story County’s notice was published on July 26 and 27 and August 11, 2023. These dates are not two consecutive weeks apart. July 26 and 27 are a day apart and July 27 and August 11 are 15 days apart. To strictly adhere to the two-consecutive-week publication requirement, additional notice would have needed to be published on either August 2, 3, or 4, 2023. That did not occur, based upon the information provided by Summit Carbon.

The Iowa Supreme Court in *Brown v. John Deere Waterloo Tractor Works*, stated:

“[S]ubstantial compliance” with a statute means actual compliance in respect to the substance essential to every

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reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

423 N.W.2d 193, 194 (Iowa 1988) (citing *Smith v. State*, 364 So.2d 1, 9 (Ala. Crim. App. 1978)). The Board finds it reasonable, in light of the Iowa Supreme Court's statement in *Brown*, to find Summit Carbon has substantially complied with the required notice provisions for Story County. The intent of the two-consecutive-week language is to ensure interested persons, who would not get notice any other way, in that county are given more than one chance to be given notice of a pending hearing before the Board. The Iowa legislature's inclusion of a multi-week, multiple-publication requirement shows it intended to give multiple chances to interested persons to read and learn about a pending hearing. Applying this intent, the Board finds Summit Carbon's publication on July 26 and 27 and August 11, 2023, to provide multiple chances for interested persons to become aware of the Board's proceeding via the published notice, as the legislature intended when it enacted Iowa Code § 479B.6(1). Therefore, between strict compliance and substantial compliance, the Board finds Summit Carbon published the hearing notice in compliance with Iowa Code § 479B.6 and 199 IAC 13.4(2) and (3).

For parcels subject to a request for eminent domain, the Board's rules at 199 IAC 13.4(4) require additional notice to those affected persons. In addition to the published notice, the hazardous liquid pipeline company shall serve a copy of the "notice of hearing on the landowners and any affected person with an interest in the property over which eminent domain is sought" and a copy of Exhibit H for the affected property. 199

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IAC 13.4(4). The notice sent to eminent domain landowners and affected persons is to be mailed via certified United States mail, return receipt requested, no later than the first day of publication of the hearing notice. *Id.* The hazardous liquid pipeline company is to provide a certificate of service to the Board, not less than five days prior to hearing, “showing all persons and addresses to which notice was sent by certified mail, the date of the mailing, and an affidavit that all affected persons were served.” *Id.*

On August 17, 2023, Summit Carbon filed a proof of mailing stating it sent notices via United States certified mail, return receipt requested, to all owners of record and parties in possession of the land over which eminent domain was sought. Summit Carbon provided an affidavit from Mr. Schovanec, a certificate of service, and a list of the persons or legal entities that were served notice. The included list of persons or legal entities that were served notice is 166 pages long and contains approximately 4,763 mailing entries. Mr. Schovanec avers the notice required to be sent to eminent domain landowners under 199 IAC 13.4(4) “was served on all affected persons known through due diligence. In some cases where multiple potential addresses were reflected in county records or other online sources, notice packets were mailed to multiple addresses.” In the certificate of service, signed by Mr. Schovanec, it states copies of the official notice, notice of eminent domain proceedings, and applicable Exhibit H filings were sent via certified mail to all affected persons between July 20 and July 22, 2023, shown on the included mailing list. The certificate of service states subsequent mailings occurred when additional information was made available to Summit Carbon, such as through returned mail.

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Additionally, on August 17, 2023, Summit Carbon provided copies of its proofs of publication for the eminent domain notices, showing the notice was published in Boone County on August 3, 2023, in the Boone News Republican; Cerro Gordo County on August 3, 2023, in the Globe Gazette; Cherokee County on August 4, 2023, in the Cherokee Chronicle; Chickasaw County on August 3, 2023, in the New Hampton Tribune; Clay County on August 4, 2023, in the Spencer Daily Reporter; Crawford County on August 2, 2023, in the Bulletin-Review; Dickinson County on August 3, 2023, in the Dickinson County News; Emmet County on August 3, 2023, in the Estherville News; Floyd County on August 4, 2023, in the Charles City Press; Franklin County on August 2, 2023, in the Hampton Chronicle; Fremont County on August 3, 2023, in the Fremont-Mills Beacon-Enterprise; Greene County on August 3, 2023, in the Jefferson Herald; Hancock County on August 9, 2023, in the Leader; Hardin County on August 3, 2023, in the Eldora Herald-Ledger; Ida County on August 2, 2023, in the Ida County Courier; Kossuth County on August 2, 2023, in the Bancroft Register; Lyon County on August 2, 2023, in the Lyon County Reporter; Montgomery County on August 2, 2023, in the Red Oak Express; O'Brien County on August 5, 2023, in the N'West Iowa Review; Page County on August 9, 2023, in the Southwest Iowa Herald; Palo Alto County on August 3, 2023, in the Emmetsburg Reporter-Democrat; Plymouth County on August 2, 2023, in the Le Mars Sentinel; Pottawattamie County on August 3, 2023, in the Daily Nonpareil; Shelby County on August 4, 2023, in the Harlan Newspapers; Sioux County on August 2, 2023, in the Sioux County Index-Reporter; Story County on August 3, 2023, in the Ames Tribune; Webster County on August 3, 2023, in the

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Messenger; Woodbury County on August 3, 2023, in the Sioux City Journal; and Wright County on August 3, 2023, in the Wright County Monitor.

The Board finds Summit Carbon has complied with the requirements of Iowa Code § 479B.6 and 199 IAC 13.4. The hearing was held in Fort Dodge, which is the county seat of Webster County. HT, p. 8. The affidavit from Mr. Schovanec, a certificate of service, and a list of the persons or legal entities that were served notice establish Summit Carbon complied with the requirements of 199 IAC 13.3(4). Lastly, the proofs of publication establish strict and substantial compliance, as described above, as it relates to the hearing notice published pursuant to Iowa Code § 479B.6 and 199 IAC 13.4(2) and (3).

**D. Iowa Code § 479B.7 – Objections**

Iowa Code § 479B.7(1) allows that “[a] person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.” Iowa Code § 479B.7(2) requires all objections to be filed five days prior to the hearing, but the Board may permit the late filing of objections so long as the Board grants the company seeking to construct a hazardous liquid pipeline a reasonable amount of time to respond to the late-filed objections. On the first day of the hearing, the Board admitted all the comments, objections, and letters of support filed on or before August 17, 2023. HT, p. 35. On the last day of the hearing, the Board admitted the comments, objections, and letters of support filed between August 18 and November 8, 2023. HT, p. 7477. The number of comments, objections, and letters of support admitted total approximately 4,180 from August 25, 2021, to November 8, 2023. Objections, comments, or letters of support

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filed after the close of the evidentiary record are not a part of the record and therefore will not be considered by the Board.

Having reviewed these filings, the Board agrees with the staff reports filed in this docket as it relates to the organization and breakdown, generally, of the comments, objections, and letters of support filed in this docket. The categories that encompass a large majority of the comments are: business practices of Summit Carbon, additional documentation from third-party sources, effects on the land, effect the proposed project will have on climate change, eminent domain, informational meeting issues, receiving inadequate information, actions the Board undertook during the pendency of the proceeding, requests to release landowner lists, legislative issues and concerns, monetary issues, pipeline alternatives, procedural concerns related to Board actions, purpose of the proposed project, restricted mail issues, route location, and safety.

These issues raised by thousands of lowans, as well as issues raised by the parties to this proceeding, will be used by the Board to determine whether Summit Carbon's proposed hazardous liquid pipeline meets the requirements of Iowa Code § 479B.9 and is in the public convenience and necessity.

**E. Iowa Code §§ 479B.8 and 479B.9 – Route Determination**

Iowa Code § 479B.8 allows the Board to examine the proposed route of a hazardous liquid pipeline and requires the Board to “consider the petition and any objections,” while further adding the Board “may hear testimony to assist the board in making its determination regarding the application.” The first sentence of Iowa Code § 479B.9 allows the Board the ability to “grant a permit in whole or in part upon terms,

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conditions, and restrictions as to location and route as it determines to be just and proper.”<sup>15</sup>

Between February 6 and August 9, 2023, Board staff observed the physical route of Summit Carbon’s proposed hazardous liquid pipeline route via publicly accessible places. This observation was used to identify any potential issues that were not or are not easily identified using aerial imagery.

This section of the order is establishing the overall route of Summit Carbon’s proposed hazardous liquid pipeline route, which will be dependent upon the Board finding Summit Carbon has complied with Iowa Code § 479B.9. If the Board determines Summit Carbon’s proposed hazardous liquid pipeline is in the public convenience and necessity and that Summit Carbon should be vested with the right of eminent domain, any specific routing determinations will be made by the Board at that point in the order. This section of the order addresses the macro level route for Summit Carbon’s proposed project.

### **Summit Carbon**

Summit Carbon’s petition identifies several segments of its proposed hazardous liquid pipeline. See Summit Carbon Exhibit B, Part 1 of 6. Summit Carbon has identified the following segments as part of its proposed route: Main Line, Trunk Line 1, Trunk Line 2, Trunk Line 2A, Trunk Line 3, Trunk Line 4, Trunk Line 4B, Trunk Line 5, Lateral Line 1, Lateral Line 1A, and Lateral Line 2. *Id.*

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<sup>15</sup> A discussion on whether the proposed hazardous liquid pipeline will promote the public convenience and necessity is provided in Section III.I.

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In his direct testimony, James Powell testifies Summit Carbon used GIS-based software “to determine an optimal route that minimizes the total length of the route to the extent possible . . . while avoiding a list of human, environmental, cultural and geological features.” Summit Carbon Powell Direct, pp. 6-7. Mr. Powell further testifies a desktop review was conducted that included “subject matter experts, consultation with state and federal agencies, collection of data in the field, and . . . discussions with landowners, all of which ultimately inform the route.” *Id.* at 7.

In his direct testimony, Mr. Schovanec provides further detail on the routing process. See Summit Carbon Schovanec Direct, pp. 3-4. Mr. Schovanec testifies the GIS inputs are derived from “publicly available and purchased datasets.” *Id.* at 4. Mr. Schovanec testifies these inputs include “engineering (e.g., existing pipelines, railroads, karst, powerlines, etc.); environmental (e.g., critical habitat, wetlands, state parks, national forests, brownfields, national registry of historic places, etc.); and land (e.g., dams, airports, cemeteries, schools, mining, and military installations, etc.).” *Id.* As it relates to the desktop analysis, Mr. Schovanec testifies a 1,500-foot corridor was used by subject matter experts “to determine additional opportunities to minimize impacts and to flag potential constructability issues.” *Id.*

During his cross examination, Mr. Powell testifies Summit Carbon would accept a condition on the permit requiring approval of the main line through North and South Dakota as well as the sequestration site in North Dakota before construction would begin in Iowa. HT, p. 1717.

At hearing, Mr. Schovanec testifies that while not impossible, routing Summit Carbon’s proposed hazardous liquid pipeline along property lines instead of bisecting a



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property adds “significantly more pipe” and encumbers more land, which causes more disturbance to the soil. *Id.* at HT, p. 2077.

In its reply brief, Summit Carbon states the Board should reject the proposals from the Counties to: deny the route segment from Ida County to Fremont County, require a two-mile setback requirement from non-ethanol participating cities, and require a 1,000-foot setback requirement from occupied structures. Summit Carbon RB, p. 53. Summit Carbon argues the Counties’ argument takes “an overly narrow view” of the term “public convenience and necessity.” *Id.* Summit Carbon asserts the Counties’ argument for denying the segment from Ida County to Fremont County is based upon the fact the segment is only a portion of Summit Carbon’s overall proposed system. *Id.* Summit Carbon states this would be true of any branch line. *Id.* Summit Carbon asserts:

The Counties fail to acknowledge that the [p]roject benefits . . . still exist with respect to that branch line. The benefits to the ethanol plant in Fremont County and the commodity and land prices in that area are realized by the construction of the branch line. The environmental benefits in the form of reduced emissions are realized by the ethanol plant in Fremont County. The economic benefits from construction of the branch line will still be realized, both during construction and in the future in the form of increased tax revenues in all the counties that are traversed.

*Id.* at 53-54. Summit Carbon argues the Counties’ argument is based upon there currently being only one ethanol plant on the trunk line. *Id.* at 54. Summit Carbon states it cannot determine the future as it relates to including additional emitters at this section of its proposed system. *See id.*

As it relates to the Counties’ proposed two-mile setback from non-ethanol participating cities, Summit Carbon states the Counties’ own proposal directly

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contradicts their argument that development is inconsistent with the existence of underground pipelines. *Id.*; see The Counties Hamilton Direct, p. 19. Summit Carbon argues the Counties' proposal is attempting to enforce their county zoning requirements through the Board's order. See *id.* at 54-55. Summit Carbon argues the 1,000-foot setback requirement is another example of the Counties attempting to enforce zoning provisions. *Id.* at 55.

### **Farm Bureau**

In his direct testimony, Timothy Johnson provides the Board with information as it relates to routing. Farm Bureau Johnson Direct Revised, p. 2. Mr. Johnson testifies only one high population area (HPA) was identified within 1,000 feet of Summit Carbon's proposed hazardous liquid pipeline route. *Id.* at 5. Mr. Johnson testifies HPA is defined by the United States Census Bureau as "Urban Areas containing 50,000 or more people with a population density of at least 1,000 people per square mile." *Id.* Mr. Johnson testifies Summit Carbon's proposed hazardous liquid pipeline route intersects 15 other populated areas (OPA) within 1,000 feet of Summit Carbon's proposed hazardous liquid pipeline. *Id.* at 6. Mr. Johnson testifies OPA is defined by the United States Census Bureau as "All [Census Designated Places]/Incorporated Places that lie outside of the boundaries of Census Urban Areas containing 50,000 or more people with a population density of at least 1,000 people per square mile." *Id.* at 5-6.

In addition to providing the Board with information as it relates to HPAs and OPAs, Mr. Johnson also testifies as to the proposed location of Summit Carbon's proposed hazardous liquid pipeline and structures. Mr. Johnson testifies there are 58 animal feeding operations within 1,000 feet of Summit Carbon's proposed route. *Id.* at

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9. Mr. Johnson testifies there are 495 structures within 400 feet of Summit Carbon's proposed route. *Id.* Specifically, Mr. Johnson testifies there are "112 houses, 4 trailers, 7 businesses, 18 industrial buildings, 36 animal feeding operations, 119 barns, 131 sheds, 3 greenhouses, 19 garages, 13 abandoned structures and 33 ethanol plant buildings within 400 feet of the proposed pipeline route." *Id.* at 9-10.

In its initial brief, Farm Bureau recommends the Board require Summit Carbon to "route farther away from a structure or other feature when the Board determines it to be 'just and proper.'" Farm Bureau IB, pp. 37-38. Farm Bureau states the Board should require a uniform 400-foot setback distance from occupied residences or livestock facilities. *Id.* at 41. Farm Bureau asserts this uniform setback requirement:

is necessary to minimize both temporary and long-term impacts of the proposed project, such as noise, dust, traffic and nuisance conditions. If Summit [Carbon] believes a route change should not be made around a particular structure, Summit [Carbon] may seek to route closer to the affected structure with the consent of the owner or with Board approval of a permit amendment.

*Id.*

### **Jorde Landowners**

In his direct testimony, Curtis Jundt, testifying on behalf of Jorde Landowners, testifies any setback should be "thousands of feet" and "[t]o suggest 500 feet or anything close to that [as] an appropriate setback is irresponsible." Jorde Landowners Jundt Direct, p. 10.

Numerous Jorde Landowners testify that Summit Carbon should be forced "to move the route along property boundaries and away from structures and any sensitive land features." *E.g.*, Jorde Landowners Lavelle Direct, p. 42; Jorde Landowners Schelling Direct, p. 39. In addition to the general statement, several Jorde Landowners

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provided additional testimony further clarifying their routing request. The Benita A. Schiltz Revocable Trust (Schiltz Trust); JCD Beyer Family Farms, LLC (JCD Farms); and Craig R. Beyer and Patricia A. Beyer (collectively, the Beyers), all filed testimony in which they testify Summit Carbon should not be allowed to construct portions of proposed Trunk Line 4. Jorde Landowners Schiltz Trust Direct, p. 33; Jorde Landowners JCD Farms Direct, pp. 28-29; and Jorde Landowners the Beyers Direct, pp. 46-47. The Schiltz Trust testifies Summit Carbon “should be required to re-route the pipeline to prevent the taking of land by eminent domain.” Jorde Landowners Schiltz Trust Direct, p. 33. The Schiltz Trust further testifies Summit Carbon should not be allowed to travel through counties that do not have an ethanol plant signed on to be part of its project. *Id.* The Schiltz Trust testifies the Board should not approve approximately 126 miles of pipe in proposed Trunk Line 4, which would run through Montgomery, Pottawattamie, Shelby, and Crawford counties. *Id.*

Both JCD Farms and the Beyers testify that the Board should not allow for the construction of the proposed hazardous liquid pipeline to extend to the Quad County Corn Processors plant in Galva, Iowa, and Green Plains in Shenandoah, Iowa. Jorde Landowners JCD Farms Direct, pp. 28-29; Jorde Landowners the Beyers Direct, pp. 46-47. They testify that they “question the long term viability of Quad County Corn Processors.” Jorde Landowners JCD Farms Direct, p. 28; Jorde Landowners the Beyers Direct, p. 46. In support of this assertion, JCD Farms and the Beyers point to a civil penalty consent decree between Quad County Corn Processors and the United States Environmental Protection Agency (EPA) in which the EPA agreed that Quad County Corn Processors had “a limited ability to pay a penalty.” Jorde Landowners JCD

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Farms Direct Attachments 23 and 24; Jorde Landowners the Beyers Direct Attachments 24 and 25. JCD Farms and the Beyers recommend Trunk Line 4 should stop at the Little Sioux Corn Processors plant near Marcus, Iowa and not continue south. Jorde Landowners JCD Farms Direct, p. 29; Jorde Landowners the Beyers Direct, p. 47. As it relates to the Green Plains plant, JCD Farms and the Beyers testify that it is the only facility for 120 miles of proposed hazardous liquid pipeline. *Id.* They testify eliminating these two ethanol plants from Summit Carbon's proposed project footprint would eliminate the need to construct approximately 150 miles of pipe across Iowa farmland. *Id.*

The testimony of the Delmar Baines Revocable Trust (Baines Trust) and Dennis L. Valen requested the Board deny Summit Carbon the right to construct its proposed project from the Green Plains Superior plant north to the Minnesota border. Jorde Landowners Baines Trust Direct, p. 43; Jorde Landowners Dennis L. Valen Direct, pp. 10-12. The Baines Trust and Mr. Valen testify that approving these sections of Summit Carbon's proposed project would be approving a pipeline to nowhere, as Summit Carbon has yet to file for a permit in Minnesota to connect those sections to ethanol plants there. Jorde Landowners Baines Trust Direct, p. 43; Jorde Landowners Dennis L. Valen Direct, pp. 10-12. Furthermore, Mr. Valen questioned why Summit Carbon needs to move carbon dioxide south through his property when Summit Carbon is proposing to store the carbon dioxide in North Dakota. Jorde Landowners Dennis L. Valen Direct, p. 12.

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**Wendell King and Diane King**

In direct testimony, the Kings testify Summit Carbon should be required to route “along property boundaries and away from structures and any sensitive land features.”

The Kings the Kings Direct, p. 29.

**The Counties**

In their initial brief, the Counties state Iowa Code § 479B.9 allows the Board to grant the permit in whole or in part. The Counties IB, p. 72. The Counties state the Board “is not required to find that every individual trunk line promotes the public convenience and necessity. If some portions of the line promote the public convenience and necessity and others do not, the Board should not approve those segments of the proposed route.” *Id.* at 72-73. The Counties assert:

If the purposes of the project are to maximize the production of ethanol at a premium price and to maximize the sequestration the carbon dioxide from that production, then the production of less ethanol and the sequestration of less carbon at the end of any given trunk line, then the fewer the public benefits there are to constructing that segment of the line.

*Id.* at 73. The Counties argue the route between Ida County and Fremont County should be denied as the benefits are marginal to Summit Carbon while the impacts to the landowners are the same. *See id.*

In addition to requesting the Board deny the section from Ida County to Fremont County, the Counties also recommend the Board require Summit Carbon to route its proposed hazardous liquid pipeline outside of the two-mile extra-territorial buffer enacted in Iowa Code §§ 357A.2 and 414.23 for all cities and rural water associations, except for those places where there is a need to connect to an ethanol plant. *Id.* at 74.

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The Counties state it is public policy already in Iowa to afford cities a two-mile extra-territorial buffer to allow for a city to control the land outside of their current corporate limits for potential development. See *id.* The Counties argue the Board should require Summit Carbon to abide by this two-mile buffer. The Counties state Mr. Powell, at hearing, “pointedly refused to change the route around the Iowa cities of Charles City and Earling.” *Id.*; HT, pp. 1734-40. The Counties assert:

the Board should impose a routing condition that establishes a two-mile economic development buffer zone around all Iowa cities where Summit [Carbon] does not need to connect to a partner ethanol plant. However, at a minimum, the Board should withhold approval of the route segments currently proposed near the cities of Sioux City, Earling, Westphalia, Rockford, and Charles City until alternative routes are proposed.

The Counties IB, p. 75. The Counties state there is an administrative procedure already in place to accommodate these routing changes via 199 IAC 13.7(2). *Id.* at 74-76.

Lastly, the Counties recommend the Board implement a 1,000-foot setback requirement for occupied structures. *Id.* at 77. The Counties state the Board has received evidence recommending setback distances ranging from 1,000 feet to 4,000 to protect human health. *Id.* at 76-77. The Counties assert PHMSA does not review or approve the routing criteria used by Summit Carbon in selecting its route; the routing is within the purview of the Board. *Id.* at 78. The Counties state using the same siting criteria for a liquefied carbon dioxide pipeline as was used for an oil pipeline is not “just and proper.” *Id.* The Counties argue the Board should implement this uniform setback requirement, except where it is functionally impractical. *Id.* at 79.

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### **Board Discussion**

The Board has reviewed the evidence and parties' positions and will approve the overall route of Summit Carbon's proposed hazardous liquid pipeline, subject to any modifications made later in this order as it relates to individual routing changes. The Board finds Summit Carbon's proposed macro route to be just and proper. The Board will not include a standardized setback requirement for the entirety of Summit Carbon's proposed project as there may be different modifications necessary based upon the property in question. The Board finds it to be a more reasonable approach to look at siting criteria on a case-by-case basis to better ensure proper siting of Summit Carbon's hazardous liquid pipeline. The Board has previously discussed in this order the impacts of pipelines related to counties and will not reproduce the discussion except to say the Board is not convinced about the impacts on cities that were raised by the Counties. Therefore, the Board will not require Summit Carbon to accommodate the Counties' request to modify the route to accommodate cities' two-mile extra-territorial buffers.

As it relates to the proposals to deny select portions of Summit Carbon's proposed project, the Board will not adopt these requests. Adopting the arguments surrounding the proposed denial of the Ida County to Fremont County segment would effectively prohibit the construction of any pipeline in Iowa ever, as any segment or lateral would always be a small portion of a pipeline system. The Board agrees it can grant, deny, or modify a hazardous liquid pipeline permitted route as it deems just and proper — including denying a lateral — under Iowa Code § 479B.9. However, the Board is unpersuaded by the arguments of Lateral 4 providing a service to one ethanol plant that makes up only a portion of the liquefied carbon dioxide Summit Carbon



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proposes to transport. Additionally, adopting this approach would single out the Fremont County ethanol plant and dismiss the needs of the ethanol plant in Fremont County as well as any benefit derived from Summit Carbon's proposed hazardous liquid pipeline.

"[P]ipeline[s] [are] not single structure[s]. . . ." *Couser*, Civil No. 4:22-cv-00383-SMR-SBJ, 2023 WL 8366208, at \*10. While the Board will neither adopt uniform setback distances nor deny the Ida County to Fremont County segment, the Board will condition the construction of certain segments based upon certain conditions occurring. Summit Carbon will not be allowed to begin construction in Iowa unless and until the North Dakota and South Dakota public utility commissions have approved a route and until North Dakota has permitted Summit Carbon's sequestration site. See HT, p. 1717 (explaining Summit Carbon would accept this condition). This condition precedent for construction must be met for the entirety of Summit Carbon's proposed project, except for Trunk Line 3, Trunk Line 5, and Lateral Line 2. For Trunk Line 3, Summit Carbon will be allowed to commence construction from the main line to the Superior Ethanol Plant upon meeting the first condition of having obtained the necessary agency level permits in North Dakota and South Dakota; however, Summit Carbon will not be allowed to commence construction north of the Superior Ethanol Plant until it has received a permit from the Minnesota Public Utility Commission for a route in Minnesota to connect to ethanol plants there. This same condition applies to Lateral Line 2. As it relates to Trunk Line 5, Summit Carbon will be allowed to commence construction from the main line to Plymouth Energy; however, Summit Carbon will not be allowed to commence construction from Plymouth Energy south to the Iowa-Nebraska border until

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Summit Carbon has obtained the necessary authority to construct a pipeline to an ethanol plant in Nebraska.

The Board finds that requiring these conditions to be met prior to construction commencing will alleviate the concerns raised by witnesses regarding construction of a “pipeline to nowhere.” Summit Carbon will be required to notify the Board once it has established a necessary condition precedent to begin construction. Summit Carbon will be required to identify which condition it is satisfying with its filing along with what section or sections Summit Carbon intends to commence construction. In addition to this notification, once Summit Carbon begins construction on any portion of its proposed hazardous liquid pipeline, and continuing until restoration is complete, Summit Carbon will be required to file a construction update every 30 days with the Board. The construction update is to include the county in which the construction is taking place, the mileage, and the construction activity by feet and percentage complete.<sup>16</sup> Once Summit Carbon has completed construction in a county, it will be required to file as-built maps along with its notice of construction completed for that county.

Furthermore, the Board is approving Summit Carbon’s route, which consists of 34.94 miles of 6-inch, 192.64 miles of 8-inch, 150.06 miles of 10-inch, 145.07 miles of 12-inch, 20.53 miles of 16-inch, 95.24 miles of 20-inch, and 49.53 miles of 24-inch nominal diameter pipe. Should the Board grant Summit Carbon a permit, the permit will specifically enumerate these mileages as what Summit Carbon is allowed to construct, consistent with the route described in Summit Carbon’s Exhibit A. The Board

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<sup>16</sup> See *In re: NuStar Pipeline Operating Partnership L.P.*, Docket No. HLP-2021-0002, *Weekly Construction Report* (Nov. 7, 2023).

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understands the route may fluctuate during construction and the as-built filings may show different mileage lengths compared to what the permit may show. The Board will condition Summit Carbon's permit, if granted, on Summit Carbon seeking an amendment if any of the above listed mileages of pipe change by more than two miles across the entirety of the 688.01-mile route in Iowa, so long as there are no other triggering events as stated in 199 IAC 13.9(1).

As an example, should Summit Carbon be granted a permit and if construction commences, at any time during construction Summit Carbon would determine it will install 36.96 miles of 6-inch nominal diameter pipe instead of the currently proposed 34.96 miles, and the length increase would not be a triggering event under 199 IAC 13.9(1), Summit Carbon would still be required to seek an amendment due to this condition imposed by the Board.

Furthermore, if Summit Carbon sought to convert two or more miles of pipe across the entirety of Summit Carbon's proposed hazardous liquid pipeline in Iowa from its currently proposed diameter to another diameter, that would require Summit Carbon to petition the Board for an amendment. As an example, if Summit Carbon seeks to increase one mile of 6-inch diameter pipe to 8-inch, and one mile of 8-inch to 6-inch, the change, totaling two miles, would require Summit Carbon to seek an amendment. The changes cannot be netted out to avoid needing an amendment.

The Board finds this condition to be just and proper as ensuring where, what length, and what diameter of pipe is installed are important factors the Board must consider when it weighs whether Summit Carbon's petition will provide a service that will promote the public convenience and necessity.

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**F. Iowa Code § 479B.13 – Financial Conditions**

Iowa Code § 479B.13 requires a hazardous liquid pipeline company to:

satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state.

The Board's rules at 199 IAC 13.3(1)(d), Exhibit D, expand upon the statutory requirement by allowing the Board to "require additional surety or insurance policies to ensure the payment of damages resulting from the construction and operation of a hazardous liquid pipeline in a county."

**Summit Carbon**

In its Exhibit D, Summit Carbon provides a true copy of a surety bond. The bond is bound to the State of Iowa c/o Iowa Utilities Board in the amount of \$250,000 for an indefinite amount of time. Summit Carbon Exhibit D. In his rebuttal testimony, Mr. Powell testifies Summit Carbon will obtain insurance "prior to commencing operations and will maintain at least \$35 million in general liability insurance coverage for the duration of its operations." Summit Carbon Powell Rebuttal, p. 2.

In its reply brief, Summit Carbon states the Board should deny the request for Summit Carbon to provide proof of financial ability to pay decommissioning as requested by Hardin County BOS. Summit Carbon RB, p. 67. Summit Carbon states there is no legal requirement that it fund decommissioning costs for the removal of a pipeline. *Id.* Summit Carbon asserts the Iowa Legislature has already determined the

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amount of financial surety required and Summit Carbon has committed to maintaining \$35 million in general liability insurance. *Id.*

Furthermore, Summit Carbon notes the default under both Iowa law and PHMSA requirements is to abandon in place. *Id.* (citing Iowa Code § 479B.32 and 49 CFR 195.402(c)(10)). Summit Carbon asserts this is good policy as removing a pipeline would cause another round of disruption to the land. *Id.*

### OCA

In Mr. Bents' direct testimony, he testifies Summit Carbon provided proof of a \$250,000 surety bond. OCA Bents Direct, p. 15. However, Mr. Bents notes this amount was set "in 1995 by the seventy-sixth Iowa General Assembly, and is neither indexed to inflation nor has it ever been adjusted in the twenty-eight years since it was established." *Id.* Mr. Bents asserts OCA asked Summit Carbon to provide additional information on its ability to pay damages related to its proposed project, to which Summit Carbon stated it would "procure and maintain 'All Risk' Property insurance and Third Party Liability insurance consistent with best industry practice, as required by law, and in compliance with counterparty insurance requirements, including those of financing parties or contained in agreements with landowners." *Id.* Mr. Bents testifies the inclusion of the phrase "as required by law" could limit the amount of coverage Summit Carbon would need to carry to the \$250,000 bond requirement in Iowa Code § 479B.13. *Id.* at 15-16. Mr. Bents states that under Iowa Code § 479B.9 and 199 IAC 13.3(1)(d), the Board may place conditions or require additional surety or insurance policies on Summit Carbon's proposed hazardous liquid pipeline. *Id.* at 16. Mr. Bents notes the Board in Dakota Access required it "to obtain and maintain a general liability

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policy in an amount of no less than \$25 million and provide proof of such insurance to the Board prior to commencing operations.” *Id.* (citing *Dakota Access Order*, at pp. 69-70). Mr. Bents recommends the Board require Summit Carbon to obtain and maintain adequate liability insurance, but he did not make a recommendation to the amount the policy should be executable for, due to a lack of evidence available to OCA. *Id.* Lastly, Mr. Bents testifies that OCA has “broader concerns about the risk of uncompensated loss resulting from a potential incident on the line.” *Id.* at 17. During cross-examination, Mr. Bents testifies the term “uncompensated loss” was dealing with issues related to indemnification. HT, p. 3339.

In its initial brief, OCA states “the Board should require Summit [Carbon] to obtain and file for Board approval general liability insurance and require Summit [Carbon] to maintain this insurance at all times while the pipeline is in operation.” OCA IB, p. 13. OCA asserts, “Without seeing the insurance terms, it is unclear whether \$35 million would be adequate. After Summit [Carbon] files the terms of its insurance, the Board can fully consider the adequacy of the insurance, including coverage limits.” *Id.* Additionally, OCA states that unlike in Dakota Access, there is no trust fund to provide backstop funding. *Id.*

### **Murray Landowners**

In his direct testimony, David Skilling, on behalf of DAPEMA, LLC, recommends Summit Carbon be required to “provide liability insurance that has extremely high limits of liability to cover loss of several lives. . . .” Murray Landowners Skilling Direct, p. 11. Mr. Skilling further recommends Summit Carbon be required to name all property owners as additional insured parties on the liability insurance. *Id.* Mr. Skilling testifies

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this is necessary due to potential lawsuits that could occur in the event of a rupture.<sup>17</sup>  
*Id.* at 10-11.

In their initial brief, Murray Landowners state Summit Carbon's \$35 million insurance policy would not be tied to inflation. Murray Landowners IB, pp. 17-18; HT, pp. 1803-04. Murray Landowners recommend the following conditions be applied to Summit Carbon's proposed insurance coverage: The amount must be more than \$35 million; the amount should be adjusted for inflation every five years, with a specific measurement of inflation defined by the Board; the policy must allow landowners to be named as additional insured parties; all affected landowners must receive notice of the policy and the ability to be named as an additional insured party; notice of the policy should be published at least as frequently as the term of the insurance coverage; and, if Summit Carbon fails to have insurance, the permit should be suspended and notice provided to landowners. *Id.* at 18.

### **Jorde Landowners**

In direct testimony filed by James Fetrow and Margaret Fetrow (collectively, the Fetrows), on behalf of the James D. Fetrow Revocable Trust and the Margaret A. Fetrow Revocable Trust, the Fetrows recommend the Board require Summit Carbon to "add each landowner and inhabitant and tenant on each affected property to Summit[] [Carbon's] insurance policy all as additional insureds." Jorde Landowners the Fetrows Direct, p. 21; see Jorde Landowners Gary Marth and Sandra Marth Direct, p. 21; Jorde Landowners Patricia Moore Direct, p. 20. The Fetrows testify this inclusion is necessary

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<sup>17</sup> The Board is aware of the issue of insurance coverage for landowners and will address that argument later in the order.

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to ensure Summit Carbon is “solely responsible for any injuries or damages of any kind either directly or indirectly caused by any release of [carbon dioxide] from [its] pipeline other than those caused by criminal acts of the landowners.” Jorde Landowners the Fetrows Direct, p. 20; see Jorde Landowners Gary Marth and Sandra Marth Direct, p. 21; Jorde Landowners Patricia Moore Direct, p. 20.

In the direct testimony of Jean Kohles, on behalf of Kohles Family Farms, Ms. Kohles questions whether there was an escrow account being held for the payment of damages during the operation of Summit Carbon’s proposed hazardous liquid pipeline as well as for the removal of the proposed hazardous liquid pipeline in the event it is abandoned. Kohles Family Farms Kohles Direct, pp. 7-8. Ms. Kohles testifies to the need for an escrow account in the event insurance does not cover any resulting damage or there are no funds to remove the proposed project at the end of its useful life. *See id.*

### **Hardin County BOS**

Hardin County BOS in its initial brief recommends the Board require Summit Carbon to calculate and file the estimated cost to remove its proposed hazardous liquid pipeline. *See* Hardin County BOS IB, pp. 10-11. Hardin County BOS states no evidence was presented by Summit Carbon, or any other party, about the costs associated with removing the pipe after it has been abandoned. *Id.* at 10. Hardin County BOS asserts this calculation should establish the ongoing proof of financial security Summit Carbon, or its successors, should be required to maintain to operate the proposed hazardous liquid pipeline in Iowa. *Id.* at 11.



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### **Board Discussion**

The Board has reviewed the information and finds that Summit Carbon has submitted a surety bond in the amount of \$250,000 pursuant to the requirements of Iowa Code § 379B.13 and 199 IAC 13.3(1)(d). As it relates to additional insurance, Summit Carbon proposed to obtain and maintain a \$35 million insurance policy. The Board finds \$35 million to be unacceptable for Summit Carbon's proposed project in Iowa.

In Dakota Access, the Board found a minimum of \$25 million in insurance was necessary for the 346 miles of 30-inch diameter crude oil pipeline. *Dakota Access* at pp. 4, 69-70. Summit Carbon is proposing to construct 688 miles of pipe in Iowa. This is essentially two times the amount of pipe Summit Carbon is proposing to construct compared to Dakota Access. In another recent Board decision, the Board determined a 13.74-mile long hazardous liquid pipeline was to obtain and maintain a \$2.5 million insurance policy for its project. *In re: NuStar Pipeline Operating Partnership L.P.*, Docket No. HLP-2021-0002, *Final Decision and Order*, p. 3; 27 (April 26, 2023) [hereinafter *NuStar Order*].

Applying these decisions, the comparable amount of insurance would be between \$50 million and \$125 million based upon the mileage of Summit Carbon's proposed hazardous liquid pipeline.<sup>18</sup> Additionally, Summit Carbon has yet to construct, operate, and maintain any pipeline, and therefore it does not have the necessary assets or insurance in place as would a company that has already constructed a pipeline. The

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<sup>18</sup> The Board used rough estimates to calculate these numbers. Summit Carbon is approximately twice as long as Dakota Access and approximately 50 times the length of the recent NuStar hazardous liquid pipeline.

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Board finds a number in between these amounts to be reasonable, given the lack of evidence presented to the Board to otherwise calculate the requisite amount of insurance that Summit Carbon should be required to be maintained.

Should the Board approve the permit, the Board will require Summit Carbon to obtain and maintain a general liability policy in an amount of no less than \$100 million and provide proof of such insurance to the Board prior to commencing construction of its proposed project in Iowa. The \$100 million insurance policy should cover any and all damages related to the construction, operation, and maintenance of Summit Carbon's hazardous liquid pipeline in Iowa. The entirety of the \$100 million policy should be reserved for damages that may occur within the state of Iowa. If Summit Carbon obtains an insurance policy for its entire 2,000-mile long proposed hazardous liquid pipeline, the insurance must clearly state there is at least \$100 million specifically reserved for the Iowa portion of the proposed project. The Board finds this condition to be just and proper for the granting of Summit Carbon's permit.

The Board will not require Summit Carbon to add each landowner and tenant as an additional insured party to Summit Carbon's insurance policy. By making the insurance a continuous requirement as a condition of Summit Carbon's permit, Summit Carbon will be required to maintain at least this amount of insurance to ensure landowners have the ability to receive payment, if necessary. The Board will not require Summit Carbon to adjust the insurance policy amount for inflationary changes during the period for which the permit is effective. The insurance policy may be reexamined during the renewal process, if necessary, and any revisions to the policy amount may be a part of that decision.

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Lastly, the Board will not require Summit Carbon to submit a decommission calculation as requested by Hardin County BOS. The Board agrees with Summit Carbon that abandoning in place is the default selected by pipeline companies and farmers alike so as to not disturb the soil again. Additionally, Iowa law already has contemplated this requirement in Iowa Code § 479B.32(4), which states “the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property.” Iowa law already places this responsibility on the company to be prepared to remove an abandoned pipe and should thus act accordingly to prepare for such eventuality.

**G. Iowa Code § 479B.20 – Land Restoration**

Iowa Code § 479B.20 establishes the requirements for land restoration standards during and after hazardous liquid pipeline construction. The Board has enacted 199 IAC chapter 9 to establish standards for agricultural land restoration. This is a required part of the petition pursuant to 199 IAC 13.3(1)(i), Exhibit I, “[T]he [B]oard may impose additional or more stringent standards as necessary to address issues specific to the nature and location of the particular pipeline project.” 199 IAC 9.1(1).

**Summit Carbon**

As part of its petition, Summit Carbon submitted its proposed Agricultural Impact Mitigation Plan (AIMP) as Exhibit I. In his direct testimony, Mr. Schovanec asserts he was responsible for preparing Exhibit I. Summit Carbon Schovanec Direct, p. 3. Mr. Schovanec testifies Summit Carbon would use best management practices (BMP) during the construction of the proposed hazardous liquid pipeline and would also be following its Environmental Construction Plan (ECP). Summit Carbon provided a draft

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copy of the ECP to the Board on April 13, 2022. Mr. Schovanec testifies, “The ECP identifies generally recognized BMPs that will be implemented to minimize and mitigate impacts, particularly to wetlands, waterbodies, and agricultural areas.” Summit Carbon Schovanec Direct, p. 7. However, Mr. Schovanec clarifies that if there is a difference between the AIMP and the ECP, the AIMP will control agricultural land in Iowa. *Id.*

In response to testimony filed by other parties, Mr. Schovanec testifies the term “wet conditions” should not be changed. Summit Carbon Schovanec Rebuttal, p. 5. He states the term wet conditions “is taken verbatim from the Board’s Chapter 9 Rules and . . . provides an adequate definition that provides a list of indicators of wet conditions that are readily identifiable.” *Id.* Furthermore, Mr. Schovanec testifies the AIMP already grants the county inspector the authority to determine whether wet conditions exist, thus halting construction in the areas where wet conditions exist. See *id.* Mr. Schovanec states that modifying the term “wet conditions” as recommended by other parties would “impart[] unnecessary subjectivity into the definition.” *Id.*

Mr. Schovanec’s rebuttal testimony also states the Board should not incorporate the requirements of the American Society of Agricultural and Biological Engineers ASAE EP511. *Id.* Mr. Schovanec testifies, “ASAE EP511 conflicts with numerous provisions of state and federal law, including requirements related to depth of cover, topsoil stripping, rock removal, final grading and seeding, and other provisions.” *Id.* Mr. Schovanec testifies the provisions in ASAE EP511 “are less protective of the landowner and land” compared to the Board’s rules on agricultural land restoration. *Id. at 6.*

However, Mr. Schovanec did agree with the recommendation of Mr. Kruiuzenga to incorporate the requirements of ASAE S313.3 and ASAE EP542.1. *Id.* Mr. Schovanec

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testifies he does not object to the use of a cone penetrometer for measuring soil resistivity for purposes of decompaction as recommended by Mr. Kruiuzenga. *Id.*

Lastly, Mr. Schovanec testifies the suggestion by Mr. Kruiuzenga to remove the last full sentence of section 6.15 from the AIMP should be disregarded. *See id.* Mr. Schovanec states this language comes directly from the Board's rules, and no reason was offered as to why it should not be incorporated into the AIMP. *Id.* Mr. Schovanec testifies the assertion the last sentence of section 6.15 conflicts with section 6.4 of the AIMP is incorrect, as "[t]he topsoil could be removed from the traveled way before wet conditions occur. . . ." *Id.*

In rebuttal testimony by Aaron DeJoia, on behalf of Summit Carbon, Mr. DeJoia acknowledges there will be a temporary impact to yields due to the pipeline construction. Summit Carbon DeJoia Rebuttal, p. 5. He further acknowledges there is "a small percentage of fields [that] will have yield losses in excess of the expected and enhanced reclamation techniques [that] are typically required on those properties." *Id.* at 13; see HT, p. 2518.

Mr. DeJoia testifies the process of deep ripping serves two important functions during the restoration process. Summit Carbon DeJoia Rebuttal, pp. 6-7. He testifies the first function is to remove compaction that occurred during the construction process. *Id.* at 7. The second "is to create a roughened subsoil surface that will be receptive for the placement of the topsoil and minimize a potential restrictive interface or discontinuity." *Id.* Mr. DeJoia testifies "[t]he roughened subsoil will increase the rate at which subsoil and topsoil will interact and begin to function . . . as a complete unit and crop productivity will be restored." *Id.*

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Mr. DeJoia also testifies that he took issue with the research papers referred to by the Counties' witness Matt Liebman. See *id.* at 7-9. He testifies that Theresa Brehm and Steve Culman's "paper titled 'Soil degradation and crop yield declines persist 5 years after pipeline installations' is misleading."<sup>19</sup> *Id.* at 8. Mr. DeJoia testifies, "The paper does not reference any data for growing years 2022 or 2023, which would be years 4 and 5 post-construction." *Id.* Mr. DeJoia states the yield losses identified in the paper "are consistent with what a reclamation scientist would expect yield losses to be after 2 and 3 years post-construction completion." *Id.* Furthermore, Mr. DeJoia questions the validity of the data collected for the paper because the data was collected from fields farmers requested. *Id.* He stated this has the potential for selection or population bias in the results. *Id.* However, importantly, Mr. DeJoia does not have issue with the analysis or collection of potentially biased data, as the results demonstrate "the reclamation is working within the pipeline [rights-of-way] sampled." *Id.* at 8-9.

As it relates to the Brehm and Culman research paper "Pipeline installation effects on soils and plants: A review and quantitative synthesis,"<sup>20</sup> Mr. DeJoia asserts the paper is "useful for understanding previous research that has been conducted generally, [but] the information cannot be used without a qualitative review of the data within each individual paper." *Id.* at 9. Mr. DeJoia testifies the paper lacks "information regarding construction techniques, weather during construction, and many other site-specific factors that influence reclamation and return of crop productivity along pipeline

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<sup>19</sup> Hereinafter referred to as Brehm and Culman, *Soil Degradation*.

<sup>20</sup> Hereinafter referred to as Brehm and Culman, *Pipeline Installation*.

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[rights-of-way,] . . . [and] in seven of the eight studies the pipelines were installed prior to 1980 . . . or they were located in China.” *Id.*

In response to testimony provided by Loren Staroba, on behalf of Jorde Landowners, Mr. DeJoia states the pipelines discussed in the attachments to the testimony indicated the pipelines were constructed 25 to 45 years ago and were constructed using the “single lift” method compared to the BMP of a “double lift method.” *Id.* at 6. Mr. DeJoia testifies the “double lift” method is what is required by the Board’s rules. *Id.*

In response to testimony recommending the implementation of using the “ball test” to determine whether wet conditions exist, Mr. DeJoia testifies that using the ball test or the ribbon test to determine wet conditions “could severely delay progress and cause issues with reclamation.” *Id.* at 9. Mr. DeJoia testifies the determination for wet conditions should be whether there is 30 percent or more of standing water on the construction right-of-way. *Id.* at 9-10. Mr. DeJoia does agree that “decompaction activities should be limited to appropriate soil moisture conditions to allow for proper decompaction activities.” *Id.* at 10. Mr. DeJoia recommends the following language be added to the AIMP:

The Agricultural Inspector will test the consistency of the surface soil to a depth of approximately 4 to 8 inches using the Field Plasticity Test procedure developed from the Annual Book of ASTM Standards, Plastic Limit of Soils (ASTM D-4318).

1. Pull a soil plug from the area to be tilled, moved, or trafficked to a depth of 4-8 inches.
2. Roll a portion of the sample between the palms of the hands to form a wire with a 12 diameter of one-eighth inch.
3. The soil consistency is:
  - A. Tillable (able to be worked) if the soil wire breaks into segments not exceeding 3/8 of an inch in length.

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B. Plastic (not tillable) if the segments are longer than 3/8 of an inch before breaking.

4. This Procedure is to be used to aid in determining when soil conditions are dry enough for decompaction [activities to proceed.

5. Once the soil consistency has been determined to be of adequate dryness, the plasticity test is not required again until the next precipitation event.

*Id.*

During questioning at hearing, Mr. DeJoia testifies wet conditions should not be found when there is 30 percent or less of the right-of-way with standing water because there are numerous construction activities — welding, laying pipe, bending pipe — that occur that can have little traffic across the right-of-way. HT, p. 2523. Mr. DeJoia testifies:

The more important fact of this is that if [Summit Carbon is] not allowed . . . to continue [construction activities], [the] fear, from a crop/soil/protective/environmental resource protection, is that the longer soils stay out of place, being that the topsoil is off and stockpiled, the greater chance [there is] for erosion, for microbial activity to be decreased, for other processes to occur that then create other challenges for reclamation.

*Id.* at 2524. Mr. DeJoia further clarifies his proposed change to the definition of “wet conditions” would only take effect once the topsoil had been removed. *Id.* at 2544. Mr. DeJoia testifies his proposed modification is “to give [the county inspector] an idea of what ponded water is” to assist them in making the ultimate decision as to whether wet conditions exist. *Id.* at 2547.

Mr. DeJoia’s testimony did support the recommended changes of utilizing ASAE S313.3 instead of the Standard Penetrometer Test (SPT), ASTM S1586-11. Summit Carbon DeJoia Rebuttal, p. 11. Mr. DeJoia “recommend[s] utilizing the cone penetrometer testing methods outlined in the Methods of Soil Analysis Part 4 Physical



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Methods (Dane and Topp, 10 2002) Portion 2.8.3.4 'Hand Pushed Portable Penetrometer.'" *Id.* Mr. DeJoia testifies, "Soil water content can have a significant impact on the final readings" and, therefore, recommended section 6.9 of the AIMP be revised to include:

soil penetrometer data will be obtained from . . . each zone of the [right-of-way] (working, trench and traffic) and an additional area(s) adjacent to the edge of the [right-of-way] that has not been trafficked (control). For decompaction to proceed, all readings within the [right-of-way] must be less than 300 PSI, or, if the control is greater than 300 PSI, the [right-of-way] readings must be equal to or less than the control readings.

*Id.* at 12.

As it relates to the study conducted by Iowa State University after the construction of Dakota Access, Mr. DeJoia testifies, "The impacts to [the soil's] physical properties observed in the journal article and thesis are not unexpected and are mostly in the range that will not have negative impacts on crop yields." *Id.* at 12.

As it relates to ensuring compliance with 199 IAC 9.5(4), Summit Carbon has engaged Ellingson Companies/Ellingson Drainage (Ellingson). Summit Carbon Ellingson Rebuttal, p. 6. Mr. Jeremy Ellingson testifies Summit Carbon will have direct control over Ellingson, rather than through a subcontractor. *Id.* Mr. Ellingson testifies, "Ellingson will have personnel with every Summit [Carbon] contractor spread during construction to locate and mark tiles, oversee any temporary repairs that are needed during construction, and then make final repairs." *Id.* at 7.

In its reply brief, Summit Carbon states it has no objection to the Board "[r]equiring Summit [Carbon] to finalize and file its [ECP] with the Board and order compliance with the ECP where it does not conflict with Chapter 9 of the Board's Rules

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or the AIMP.” Summit Carbon RB, p. 72. Summit Carbon also states it does not object to the requirement proposed by Farm Bureau to make it file a winter construction plan with the Board, if Summit Carbon anticipates constructing during the months of December through March. *Id.* Lastly, Summit Carbon states it would not object to being required to amend its land restoration plan “to include the 30% standing water observation and ribbon test for wet conditions suggested by Summit [Carbon] Witness DeJoia.” *Id.* Summit Carbon states all other proposed modifications should be rejected by the Board.

As it relates to the depth of its proposed hazardous liquid pipeline, Summit Carbon states it has committed to a four-foot minimum, but there likely will be numerous places where pipe is proposed to be deeper. *Id.* at 68. Summit Carbon asserts installing its proposed hazardous liquid pipeline deeper results in additional disturbance to the land as more soil is removed from the trench, additional workspace is needed in order to segregate the soils, and it increases the number of drainage tiles potentially disturbed. *Id.*

### **OCA**

In the direct testimony of Mr. Bents, he testifies Summit Carbon’s land restoration plan complies with 199 IAC chapter 9. OCA Bents Direct, p. 18. Mr. Bents did recommend “the Board provide additional guidance regarding construction in wet conditions.” *Id.* Mr. Bents recommends the Board “identify an objective standard or test for ‘wet conditions,’ in order to remove subjectivity around the current definition.” *Id.* at 20. At hearing, Mr. Bents testifies as to the “ball test” recommended by the Counties’ witness, Mr. Liebman, and the 30 percent threshold recommended by Mr. DeJoia. HT,

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p. 3298. Mr. Bents testifies that a compromise between the two may be appropriate.

*Id.* Mr. Bents' testimony recommends using:

the ball test before removing the topsoil, . . . and then once the trench has been dug, in the interest of getting the soil back in there as quickly as possible to avoid erosion and degradation of microbial activity like Witness DeJoia discussed, [county inspectors] could switch to using the 30 percent standing water methodology.

*Id.*

In addition to requesting guidance on wet conditions, Mr. Bents testifies there could be perceived ambiguity in 199 IAC 9.5(12). *Id.* at 18. Mr. Bents testifies the first sentence appears to make “the decision about construction in wet conditions sound like a collaboration, while the second sentence states the county inspector makes the final call.” *Id.* at 19. Mr. Bents recommends the Board make clear it is the county inspector who has the final say. *Id.* Furthermore, with regard to 199 IAC 9.5(12), Mr. Bents recommends the Board make clear the penultimate sentence of this rule is not a second option for constructing in wet conditions. *Id.* at 19-20. Mr. Bents testifies it is OCA's position “that removing and stockpiling soil from the traveled way, as well as installing mats or padding in order to facilitate construction in wet conditions, are techniques that must be first approved by the county inspector before the pipeline company can implement them.” *Id.* at 20.

### **The Counties**

The Counties' witness Mr. Liebman provides testimony regarding “the available research on the effects of pipeline construction on soil health and crop yields and to make recommendations for appropriate permit conditions that will prevent damage to soil and crop yields to the greatest extent possible.” The Counties Liebman Direct, p. 3.

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Mr. Liebman testifies the results of Brehm and Culman, *Pipeline Installation*, showed “pipeline installation resulted in soil degradation via increased compaction and soil mixing and decreased aggregate stability and soil carbon content relative to adjacent, undisturbed areas.” *Id.* at 5. Mr. Liebman testifies the five most important findings from Brehm and Culman, *Pipeline Installation*, are:

- i. Pipeline construction increased soil resistance to penetration (which is an indicator of soil compaction and impedance of root growth);
- ii. Decreased soil aggregate stability (which is an indicator of loss of beneficial soil structure and increased erosion potential);
- iii. Increased soil temperature; and decreased water infiltration;
- iv. Average reductions in corn grain and soybean yields were 10.5% and 23.6%, respectively; and
- v. In some studies, crop yield reductions were found to persist at least 10 years after pipeline construction.

*Id.* As it relates to Brehm and Culman, *Pipeline Degradation*, Mr. Liebman testifies the paper demonstrated “significant degradation” in the soil from the pipeline construction, and “current best management practices of pipeline installation and remediation employed by three companies were insufficient to combat widespread soil degradation and crop yield loss.” *Id.* at 6 (citing Brehm and Culman, *Pipeline Degradation*) (internal quotations omitted). Mr. Liebman’s testimony states the results of the Brehm and Culman studies are consistent with other results he has seen, including the Iowa State University study done after construction of the Dakota Access pipeline. *Id.*

Mr. Liebman testifies, “Trafficking by heavy machinery when soil moisture levels are above a soil’s plastic limit often results in compaction, poor soil structure, [and] low crop productivity.” *Id.* at 7. Mr. Liebman testifies, “Subsoil compaction due to heavy machinery operations is difficult to alleviate, even with deep tillage.” *Id.* Mr. Liebman

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asserts he expects depressed yields to last from between five and ten years on many farms. *Id.* at 8. Mr. Liebman testifies ensuring construction does not occur in wet conditions is critical to avoid compaction. *See id.* In order to determine whether wet conditions exist, Mr. Liebman recommends using the ball test. *Id.* In order to conduct the ball test, he testifies:

A handful of soil is taken from the area that would be subject to machinery traffic and the handler tries to shape it into a ball. If it molds easily and sticks together, or if it can be squeezed into a long thread, the soil is too wet for machinery operations. If it crumbles readily, it is probably dry enough for field traffic, tillage, and heavy machinery operations.

*Id.* “Construction activities should be conducted when soil tests indicate that a soil is friable, not plastic.” *Id.* at 11.

In his surrebuttal testimony, Mr. Liebman responds to criticisms made by Mr. DeJoia. The Counties Liebman Surrebuttal, p. 2. Mr. Liebman testifies the studies by Brehm and Culman are accurate and reflect modern practices. *See id.* As it relates to Brehm and Culman, *Pipeline Degradation*, Mr. Liebman testifies, contrary to the assertions of Mr. DeJoia, that “it is reasonable to assume that at least some of the fields they studied were in their fifth year after pipeline construction” and the title is, therefore, not misleading to readers. *Id.* at 3. Mr. Liebman asserts there is no bias in the results from Brehm and Culman, *Pipeline Degradation*, as the results of that study align with other research results on the issue, and Mr. DeJoia did not provide any data supporting his bias accusation. *Id.* at 4. Lastly, Mr. Liebman reiterates his recommended inclusion of the ball test as the method for determining wet conditions. *See id.* at 4-5. Mr. Liebman asserts the ball test is similar to the field plasticity test described by Mr. DeJoia. *Id.* at 5.

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The Counties' witness Cole Kruizenga testifies he works for ISG Field Services (ISG) and has been hired by many counties as the county inspector, should Summit Carbon's proposed project be approved. The Counties Kruizenga Direct, p. 2. Mr. Kruizenga testifies there are three main issues he observes while inspecting:

- (1) damage to tile and drainage infrastructure caused by working in wet conditions;
- (2) soil compaction and other long-term damage caused by working in wet conditions; and
- (3) a lack of clarity regarding the authority of a county inspector to halt construction when necessary.

*Id.* at 4. Mr. Kruizegna testifies the Board's rules for wet conditions do "not contain an objective or quantitative standard that both the county inspectors and the pipeline company can agree has been met." *Id.* at 5. Mr. Kruizenga testifies a "less subjective standard would better prevent disputes during the construction and inspection process." *Id.* Furthermore, Mr. Kruizenga testifies the Board's rules do not provide clear criteria for when a county inspector is to halt construction. *Id.* at 6.

In his testimony, Mr. Kruizenga recommends the Board modify the term "wet conditions" to include two conditions. *Id.* The first condition is that wet conditions are presumed if standing water is visible. *Id.* The second condition is "if the preexisting soil moisture and the total accumulated rainfall in the area are such that the local soils are at or above their plastic limit, then wet conditions should be presumed to exist." *Id.* Mr. Kruizenga testifies the plastic limit would be determined by using the ball test. *Id.* As it relates to halting construction in wet conditions, Mr. Kruizenga testifies that once a presumption of wet conditions is met, construction is automatically halted until the county inspector determines wet conditions no longer exist. *Id.* at 6-7.

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Additionally, Mr. Kruizenga recommends several revisions to Summit Carbon's AIMP. *Id.* at 7-8. In addition to enacting the presumptions of wet conditions, Mr. Kruizenga testifies the Board should modify the definition to include the following language: "Conditions in which construction and excessive rutting may negatively impact the long[-]term agricultural productivity of the land." *Id.* at 7. Mr. Kruizenga recommends the Board require Summit Carbon to provide more information as to how "backfilling and structural support of repaired tile will be conducted" in section 6.7(f) of the AIMP. *Id.* Mr. Kruizenga testifies, "This provision should specify what manner of backfilling will be allowed or disallowed and what material will be used." *Id.* Mr. Kruizenga recommends the Board require Summit Carbon to follow the ASAE EP511 standards for drain tile repair, as incorporating these standards would allow county inspectors to inspect the work properly. *Id.* Mr. Kruizenga recommends the exhibits in Appendix A of the AIMP be modified to match the requirements of ASAE EP511. *Id.* at 8.

Mr. Kruizenga's testimony recommends the Board change the reference in section 6.9 of the AIMP from ASTM D1586-11 to ASAE S313.3 'Soil Cone Penetrometer' and ASAE EP542.1 'Procedures for Using and Reporting Data Obtained with the Soil Cone Penetrometer.' *Id.* Lastly, Mr. Kruizenga recommends modifying section 6.15 of the AIMP to include his wet conditions proposal and to remove the last paragraph of section 6.15. *Id.* Mr. Kruizenga testifies that the last paragraph of section 6.15 contradicts with section 6.4, specifically the "removal" paragraph. *Id.*

During the hearing, Mr. Kruizenga stresses the importance of having clear guidelines for wet conditions, but notes the change to the Board's rules regarding

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agricultural land restoration have improved to clearly show the county inspector has the authority to shut down construction in wet conditions. See HT, pp. 3549-50.

**Jorde Landowners**

In the direct testimony of Richard McKean, on behalf of Jorde Landowners, he testifies, “Drainage tile installation and repair is not a field where you can earn a degree from a university or a trade school.” Jorde Landowners McKean Direct, p. 3. Mr. McKean asserts Ellingson will not “be able to adequately repair the tile in a timely fashion.” *Id.* at 6. Mr. McKean testifies that tile grades must be exact in order for proper drainage to occur, with most tile grades being one-tenth of one percent or two-tenths of one percent fall. *Id.* at 4. Mr. McKean testifies should Ellingson place “the tile inside a solid pipe or solid steel culvert so it [does not] settle in the pipeline trench or excavated area, . . . drainage in that area [will be lost] and water will not be able to enter the drainage tile.” *Id.* Furthermore, Mr. McKean testifies that if “sand or sandbags [are used] under the drainage tile, . . . the natural ability of the soil to hold water and nutrients for the com crop [is lost].” *Id.* Additionally, Mr. McKean testifies when opening the trench, “it forces dirt into both ends of the cut tile. If there is enough water flowing, the water will force the tile back open. If it is muddy and mucky in the trench, the tile will seal off and you won't be able to see it.” *Id.* at 5.

In direct testimony, Mr. Staroba provided attachments showing the impacts of having a pipeline installed across land. Jorde Landowners Staroba Direct Attachments 1 and 2. Mr. Staroba testifies these pipelines were installed 25 to 45 years ago in North Dakota. Jorde Landowners Staroba Direct, p. 1. Also included with Mr. Staroba's testimony was a copy of Brehm and Culman, *Pipeline Degradation*, which Mr. Staroba



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testifies establishes that yield suppression can occur for more than five years post pipeline construction. *See id.* at 2-3.

In her direct testimony, Maureen H. Allan testifies landowners should not be prohibited from using the easement during construction or maintenance. Jorde Landowners Allan Direct, p. 16; *see* Jorde Landowners McDonald Direct, p. 16. Ms. Allan testifies the “restrictions chill the natural use of the property and negatively affects the value of the property and poses a threat of serious injury to [her] social and economic condition. . . .” *Id.* Furthermore, Margaret A. Thomas testifies cultivation in her area “is at least six . . . feet below ground level.” Jorde Landowners Thomas Direct, p. 42; *see* Jorde Landowners Allan Direct, p. 43. In the testimony by Douglas Gunion, *et al.*, on behalf of Gunion Family Farm, LLC, and the Busch Family Trust, Mr. Gunion adopts and incorporates the findings of the Iowa State University Dakota Access study. Jorde Landowners Gunion *et al.* Direct, p. 37; *see* Jorde Landowners Thomas Direct, p. 37; Jorde Landowners Allan Direct, p. 37. Lastly, Mr. Gunion testifies Summit Carbon is proposing to only construct its proposed hazardous liquid pipeline 48 inches below ground, which is above the frost line for Greene County. Jorde Landowners Gunion *et al.* Direct, p. 46; Jorde Landowners Gunion *et al.* Direct Attachment 24. Mr. Gunion testifies that having the proposed hazardous liquid pipeline above the frost line will result in it moving, which will damage any drainage system repaired during construction. Jorde Landowners Gunion *et al.* Direct, p. 46. Mr. Gunion recommends the Board require Summit Carbon to bury its proposed hazardous liquid pipeline below the frost line. *Id.*

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Jorde Landowners initial brief states:

Nearly every Jorde Landowner familiar with the level of cultivation in their respective area testified in pre-filed testimony that the depth is “at least six . . . feet below ground level.” Summit [Carbon] provided no evidence to the contrary. Given that [f]ederal law requires “... all pipe must be buried so that it is below the level of cultivation” if the [Board] were to approve a [p]ermit, a condition should be uniform depth of cover to ground level to top of pipe of at least six . . . feet everywhere in Iowa.

Jorde Landowners IB, p. 134.

### **Farm Bureau**

On behalf of Farm Bureau, Steven Roquet provided testimony regarding his experience with land restoration stemming from Dakota Access. Farm Bureau Roquet Direct, p. 3. Mr. Roquet testifies, to his knowledge, Dakota Access did not perform a top soil survey. *Id.* at 4. Mr. Roquet testifies the new requirement to conduct a top soil survey prior to commencing construction is a good change “because it allows for a diplomatic conversation about the depth of the topsoil before the pressures of the construction process set in for the contractor.” *Id.* While conducting the top soil survey prior to commencing construction is a good start, Mr. Roquet testifies, “The topsoil should be removed to color change and stockpiled separately.” *Id.* at 6. Mr. Roquet testifies that if there is a disagreement about topsoil depth between Summit Carbon and the landowner, the county inspector should have the authority to settle the dispute. *Id.* Mr. Roquet testifies the Board’s changes to demonstrate the county inspectors have the authority to halt construction is a positive change. *Id.* at 8. County inspectors “need the authority to stop construction if required by the circumstances based on the agricultural

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land restoration rules and [to] be comfortable asking the . . . Board for assistance when needed.” *Id.*

In its initial brief, Farm Bureau proposed several conditions related to the land restoration plan filed by Summit Carbon. Farm Bureau states the Board should make compliance with the land restoration plan a condition of Summit Carbon’s permit. Farm Bureau IB, p. 13. Farm Bureau states the Board should require the last paragraph of section 6.15 of Summit Carbon’s land restoration plan to be amended to restate the prohibition against removing topsoil in wet conditions for clarification purposes for Summit Carbon’s contractors. *Id.* at 15. Farm Bureau also states “preventing proper decompaction” should be added to the second paragraph of section 6.15. *Id.* Farm Bureau also recommends section 6.15 be amended to include both the 30 percent standing water observation and the ball or ribbon test as objective tools to be used by the county inspectors. *Id.* at 17. Farm Bureau states having both options will ensure construction does not occur during wet conditions because simply using the 30 percent standing water test fails to consider the fact that soils can be saturated with 10 percent or less of standing water. *Id.* Farm Bureau acknowledges the county inspectors will still need to have to exercise their best professional judgment, but the inclusion of the objective tests will provide a baseline to prevent lasting soil damage. *Id.* at 17-18. Farm Bureau also requests the Board require section 6.15 to be modified to specifically state county inspectors have the ability:

to limit construction activities in addition to halting construction during wet conditions in other circumstances after consulting with Summit [Carbon] and the landowner or farm tenant. Varying weather conditions, soil conditions, soil properties, construction equipment needs in the easement area and varying phases of construction will necessitate the inspector

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to utilize their best professional judgment to decide when to limit construction activities, the type of construction activities that may continue, when not to start construction in the area and when to halt construction.

*Id.* at 18.

Farm Bureau requests the Board require Summit Carbon's proposed hazardous liquid pipeline system to not interfere with a properly functioning drainage tile system.

*Id.* at 19. Farm Bureau states Mr. Powell testifies Summit Carbon "would place the pipeline at a depth of four feet with a minimum clearance of twelve inches and preferred separation of twenty-four inches from underground drainage tile." *Id.*; HT, pp. 1687-88.

Farm Bureau states Mr. Powell committed to burying the proposed hazardous liquid pipeline six feet deep if the landowner requests it to be deeper due to drainage tile.

Farm Bureau IB, p. 19. Farm Bureau requests the Board modify section 6.7(a) to require Summit Carbon "to inquire of each landowner and person in possession under a lease, where Summit [Carbon] [has not] already been informed through this proceeding or otherwise, about the location and depth of tile along the proposed route." *Id.* Farm Bureau states this would align with the testimony of Mr. Ellingson as well as provide Summit Carbon with advanced notice, where possible, about the location of drainage tile along its route. *Id.*

Farm Bureau requests the Board modify section 6.7(d)(6) to require a visual record of all repairs be maintained and available to the landowner or person in possession of the property under a lease. *Id.* at 19-20.

Farm Bureau requests section 6.7(g) be "amended to include the option of the landowner using a contractor of their choice for the repair and that Summit [Carbon] will be responsible for the repair or installation of additional tile to achieve the proper

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functioning of the drainage tile system for the lifetime of the pipeline.” *Id.* Farm Bureau states Summit Carbon committed to allowing landowners to use their own contractor and pay the costs stemming from Summit Carbon’s proposed hazardous liquid pipeline, both during construction and after the proposed hazardous liquid pipeline has been in the ground. *Id.*; HT, 1711.

Farm Bureau states Mr. Schovanec testified on behalf of Summit Carbon to include the ECP as part of Summit Carbon’s land restoration plan, and any conflict between the ECP and the land restoration plan would result in the more stringent requirement being followed. Farm Bureau IB, p. 21; HT, pp. 2251-52. Farm Bureau states Mr. Schovanec agreed to modify the ECP to clarify the seed mixes used for vegetative cover. Farm Bureau IB, p. 21; HT, pp. 2254-56. Farm Bureau also states Mr. Schovanec agreed to modify the first paragraph on page 25 of the draft ECP to add federal contracts, guidance, and regulations dictating the type of seed mix that is to be used. Farm Bureau IB, p. 21. Farm Bureau requests the Board require Summit Carbon to amend and finalize the ECP and file it in the docket. *Id.* Farm Bureau requests the Board ensure “compliance with the ECP be included as a permit condition and companion to the AIMP, with the more stringent requirements between the two documents to control in the event of a conflict.” *Id.*

Lastly, Farm Bureau requests the Board require Summit Carbon to submit a winter construction plan if Summit Carbon “decides to continue disturbance construction activities for the proposed pipeline project in the winter months.” *Id.* at 33. Farm Bureau requests the Board require Summit Carbon to file its proposed winter

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construction plan on or before August 1 in order for it to be reviewed and approved by the Board prior to entering the winter construction period. *Id.*

### **Board Discussion**

The Board has reviewed the information and finds that Summit Carbon has submitted a land restoration plan as required by Iowa Code § 479B.20 and 199 IAC 13.3(1)(i). The Board, however, will require Summit Carbon to make several revisions to the AIMP before Summit Carbon may commence construction, should the permit be granted. First, there are several clerical errors within the AIMP the Board will require Summit Carbon to fix. These items are in section 1 of the AIMP. The Board will require Summit Carbon to correct the total mileage of its proposed hazardous liquid pipeline in Iowa as well as the proposed diameter range.

Second, section 2 of the AIMP states, “Summit [Carbon] will provide a copy of any such separate agreement to the county inspector and the . . . Board.” When filing such agreements, the Board will require Summit Carbon to file them in the docket with the document title being the landowner’s name first followed by the county name. Summit Carbon will be required to have any separate land restoration on file with the Board prior to commencement of construction on the impacted parcel.

Third, Summit Carbon will be required to continually update Appendix C to the AIMP until Summit Carbon has obtained the names of, and contact information for, all county inspectors.

Fourth, the Board will require Summit Carbon to modify section 6.9 of its AIMP to remove the references to the ASTM D1586-11 standard protocol and replace it with ASAE S313.3 “Soil Cone Penetrometer” and ASAE EP542.1 “Procedures for Using and

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Reporting Data Obtained with the Soil Cone Penetrometer,” as recommended by Mr. Kruizenga and supported by Mr. Schovanec and Mr. DeJoia. The Counties Kruizenga Direct, p. 8; Summit Carbon Schovanec Rebuttal, p. 5; Summit Carbon DeJoia Rebuttal, p. 11. The Board will also approve the language changed to section 6.9 as stated in Mr. DeJoia’s rebuttal testimony. Summit Carbon DeJoia Rebuttal, p. 12. The Board will not require Summit Carbon to modify the AIMP to include references to ASAE EP511 as requested by Mr. Kruizenga. The Board finds the requirements of ASAE EP511 would interfere with other decisions made by the Board and would require extensive modification to comply with the requirements imposed by the Board in this order as well as what has been approved in the AIMP.

Fifth, the Board will not require Summit Carbon to modify its AIMP as requested by Mr. Roquet to require topsoil removal to the color change. Farm Bureau Roquet Direct, p. 6. The Board finds the current requirements of taking three soil samples every 500 feet will provide better data as to how far topsoil should be removed versus comparison by color change. The Board does agree that if there is a dispute between the landowner and Summit Carbon as to what the topsoil removal depth is, the county inspector is the person who will have the final say as to the depth of topsoil Summit Carbon is required to remove.

Sixth, the Board will also require the modification of the term “wet condition” and section 6.15 of the AIMP. The Board will implement the compromise identified by Mr. Bents at hearing. HT, p. 3298. Prior to the removal of topsoil, the ball test, as described by Mr. Liebman, will be used to determine whether wet conditions exist and construction is to be halted. The Counties Liebman Direct, p. 8. Once the topsoil has

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been removed and separated, the proposal by Mr. DeJoia of utilizing a 30 percent threshold of ponded water will be used to determine whether wet conditions exist and construction should be halted. Summit Carbon DeJoia Rebuttal, pp. 9-10.

The Board finds this approach addresses the compaction concerns of landowners while also ensuring construction continues so long-term effects of having an open trench do not occur. As was pointed out by the Iowa State University Dakota Access study and Brehm and Culman's studies, there are yield impacts to installing a pipeline, and ensuring as minimal a disturbance as possible in compliance with the approved land restoration plan will assist in minimizing the impact as much as possible.<sup>21</sup> The Board will not require any other suggested modification to the term "wet condition." The Board understands the desire to create an objective test, but given the vast variability in the soils of Iowa, some subjectivity will necessarily need to be a part of the wet condition calculation. The Board will require Summit Carbon to add the term "preventing proper decompaction" to the second paragraph of section 6.15, as requested by Farm Bureau, as compaction is a major issue stemming from pipeline construction. The Board will not require any other proposed modification to section 6.15.

The Board does find it important to address concerns raised by Mr. Kruiuzenga and stated by Mr. Bents that the county inspector has the sole authority to determine whether wet conditions exist on a given parcel. While the pipeline company and

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<sup>21</sup> Further discussion on the impact to landowners in relation to the public convenience and necessity will be discussed later in this order.



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landowner may provide their input, it is the county inspector alone who makes the final determination, as stated in 199 IAC 9.5(12).

The Board acknowledges the many pages of testimony that have been devoted to wet conditions and the authority to halt construction if wet conditions exist. The Board emphasizes the county inspector has the authority to halt construction if there is any noncompliance with Iowa Code § 479B.20, 199 IAC chapter 9, the AIMP, or an independent land restoration plan. The Board's rules at 199 IAC 9.8 make clear the county inspector's authority as well as the authority of the county boards of supervisors in these issues. Furthermore, Iowa Code § 479B.20(5) states:

If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan or line location, or with an independent agreement . . . the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties under section 479B.21.

Seventh, Jorde Landowners request Summit Carbon's proposed hazardous liquid pipeline be buried at a depth of six feet rather than the proposed four feet due to cultivation activities. Jorde Landowners IB, p. 134. Jorde Landowners state no evidence was produced to contradict this statement about landowners cultivating six feet deep on their property. Along the same line of thought, Farm Bureau recommends Summit Carbon be bound by the commitments of Mr. Powell related to clearances of drainage tile and Summit Carbon's willingness to place its proposed hazardous liquid pipeline six feet deep to avoid being in line with drainage tile. Farm Bureau IB, p. 19. The Board agrees with Farm Bureau and will bind Summit Carbon to its word about clearances from drainage tile as well as going six feet deep to avoid being in line with

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the drainage tile system in a field by making this a condition to the permit. This will be a condition to the permit. As it relates to Jorde Landowners' claim, the Board finds the testimony about cultivating six feet deep in Iowa to be blatantly false. While no evidence was presented that cultivation does not occur at six feet deep, the very fact the Board has an entire chapter of its administrative rules devoted to land restoration disproves this statement. If farmers were cultivating at depths of six feet, there would be little concern about the mixing of topsoil and subsoil as the cultivation practices would already be mixing the soil types. Therefore, the Board will not require a blanket requirement for Summit Carbon to locate its proposed hazardous liquid pipeline six feet deep, as placing Summit Carbon's proposed hazardous liquid pipeline deeper means creating additional disturbance to the land.

Eighth, the Board will not require Summit Carbon to revise section 6.7(a) as proposed by Farm Bureau. While the Board finds the contact and outreach to be prudent, the Board does not find it necessary to include this requirement in the AIMP. The Board will require Summit Carbon to revise section 6.7(d)(6) to include language that the visual record created during the televising is to be retained and provided to the county inspectors as part of their inspection process, as well as to the landowner or person in possession of the property under a lease, upon request. The Board also will require Summit Carbon to revise section 6.7(g) to include language as suggested by Farm Bureau that clarifies the landowner may select their own contractor to make repairs.

Ninth, the Board will require Summit Carbon to modify and finalize the ECP as requested by Farm Bureau and file it with the Board. The Board finds having both the

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ECP and AIMP will be beneficial to landowners impacted by Summit Carbon's proposed hazardous liquid pipeline. The Board will require Summit Carbon to add a section to the AIMP incorporating by reference the ECP filed in the docket. Summit Carbon will be required to state it will follow the requirements of the AIMP and ECP, and where the two documents conflict, the more stringent requirement controls. By incorporating the ECP into the AIMP, county inspectors will have the ability to use and ensure compliance with both documents.

Finally, the Board will require Summit Carbon to file a winter construction plan on or before August 1 any year it seeks to construct during the months of December through March. While Summit Carbon currently states it has no plans to construct in Iowa during the winter, as the Board is aware, plans change. See HT, p. 2283. Should Summit Carbon file a winter construction plan, the Board will review the plan, and any comments filed in relation to the winter construction plan, similar to the AIMP, and will issue an order regarding the winter construction plan. The requirement for filing a winter construction plan is not limited to the first year of construction, but rather is applicable during any year of construction where Summit Carbon seeks to construct in Iowa between December and March. For example, should Summit Carbon begin construction in 2025 but not need to construct between December and March, no winter construction plan will be required to be on file and approved by the Board. However, if construction continues into 2026 and Summit Carbon determines it seeks to construct during the winter, then Summit Carbon will be required to file a winter construction plan on or before August 1, 2026, for the Board's review and approval.

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#### **H. Iowa Code § 479B.27 – Damage Agreement**

Iowa Code § 479B.27 requires a hazardous liquid pipeline company to file with the Board a document showing how damages that result from the construction of the hazardous liquid pipeline will be paid. Under 199 IAC 13.2(5)(11), the Board requires the statement of damage claims to be mailed with the notice of the informational meeting.<sup>22</sup>

In Summit Carbon's Exhibit G, Summit Carbon filed a copy of the statement of damage claims included in its informational meeting notice. Summit Carbon's Exhibit G includes how it proposes to compensate for damages caused to crops, compaction, ruts, erosion, or washout of soil. Exhibit G also explains how damage to pastures, timber, fences, improvements, livestock, terraces, field tiles, farm equipment, and other areas that may occur as a result of pipeline construction will be addressed. Summit Carbon's Exhibit G also advises landowners on the dispute resolution procedure. Under Iowa Code § 479B.30, should an agreement not be reached as it relates to damages, a landowner may, within 90 days after the county declares construction to be complete where the property impacted by damages is located, file a petition with county board of supervisors requesting a compensation commission determine the amount of damages arising out of the hazardous liquid pipeline construction.

In his direct testimony, Mr. Bents testifies Summit Carbon did file its "statement of damage claims as required by Iowa Code § 479B.27 and 199 IAC 13.2(5)(a)(11) and 13.3(3)." OCA Bents Direct, p. 11.

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<sup>22</sup> This rule reference is to the rules currently in effect. The rule requirement in effect at the time of the informational meeting was found in 199 IAC 13.3(4)(a).

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In its initial brief, Farm Bureau states Summit Carbon's approach to paying the landowner crop damages places the farm tenants in an untenable situation of either having to absorb the loss or have an awkward conversation with their landowner. Farm Bureau IB, p. 24. Farm Bureau asserts paying the landowner, who is not farming, ahead of time for future crop damages or other damages is not a substitute for paying the rightful possessor of the crops or land that was damaged. *Id.* at 25. Farm Bureau requests the Board require Summit Carbon to modify its statement of damage claims "to explain whether and how it will address farm tenants' future crop yield losses where it has paid the landowner in advance. Going forward, Summit [Carbon] should directly pay the owner of the crop for future crop yield deficiencies." *Id.*

Farm Bureau also requested the Board require Summit Carbon to update its statement of damage claims to address the plethora of different damages that may arise due to Summit Carbon's proposed hazardous liquid pipeline. *Id.* at 27. Farm Bureau states Iowa Code § 479B.29 lists several items not included in Summit Carbon's statement of damage claim, as well as other issues, such as irrigation, that Summit Carbon's statement of damages claims also does not include. *Id.* at 26-27.

Lastly, Farm Bureau requests the Board require Summit Carbon to modify its statement of damage claims to include damages that result from a landowner's inability to remain eligible for Natural Resources Conservation Service (NRCS) programs, Farm Service Agency (FSA) requirements, or CRP programs. *Id.* at 27-32. Farm Bureau states Summit Carbon has agreed to attempt to restore wetlands according to NRCS and FSA requirements using industry best practices. *Id.* at 29 (citing Farm Bureau Hearing Exhibit 3, at p. 3). Farm Bureau states Summit Carbon has committed to

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compensating landowners who lose their federal farm program eligibility, grants, government subsidies, or forfeiture or partial disenrollment in CRP programs. *Id.* at 29, 32.

In its reply brief, Summit Carbon states the requests made by Farm Bureau are already covered by existing law and the proposed modification to the statement of damage claim misunderstands the purpose of the statement of damage claims. Summit Carbon RB, p. 69. Summit Carbon states Iowa Code § 479B.17 “makes clear that a pipeline company must compensate the owner of crops for all damages caused by entering, using, or occupying the lands.” *Id.* (internal quotations omitted). Summit Carbon asserts this is true irrespective of when the crop damage is realized, even if the damages occur after year three. *Id.* Furthermore, Summit Carbon states Iowa Code §§ 479B.29 and 479B.30 list compensable damages, without limitation on when the damages occurred. *Id.* Summit Carbon states there is no reason to repeat the requirements by Iowa law, but if the Board does seek to impose these requirements on Summit Carbon, it should not require Summit Carbon to amend its statement of damage claims. *Id.* at 70. Summit Carbon states the statement of damage claims is intended to be sent at the outset of the project, prior to the informational meetings. *Id.*

The Board finds Summit Carbon complied with the requirements of Iowa Code § 479B.27 and 199 IAC 13.3(3). The Board will not require Summit Carbon to update its statement of damage claims as requested by Farm Bureau. While the Board finds the statement of damage claims does provide a benefit beyond simply being a pre-informational meeting piece of information, as suggested by Summit Carbon, the Board finds updating the statement of damages claim to be a fruitless endeavor at this

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junction. The Board will instead hold Summit Carbon to its word. While Iowa law clearly identifies what damages are compensable, the Board finds repeating the damages and ensuring Summit Carbon complies to be beneficial for landowners.

Summit Carbon will be required to compensate landowners for damages that occur as a result of Summit Carbon's proposed hazardous liquid pipeline construction as defined by Iowa Code § 479B.29 and 479B.30. Summit Carbon will be required to compensate landowners for any damages that result in loss of federal farm program eligibility, loss of government subsidy, loss of a grant, or partial forfeiture or partial disenrollment in CRP, irrespective of whether the landowner signed a voluntary easement.

#### **I. Public Convenience and Necessity**

Iowa Code § 479B.9 states, "A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity." The meaning of "public convenience and necessity" was examined by the Iowa Supreme Court in *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829 (Iowa 2019).

As it relates to the term "public convenience and necessity," the Iowa Supreme Court held:

The words are not synonymous, and effect must be given both. The word "convenience" is much broader and more inclusive than the word "necessity." Most things that are necessities are also conveniences, but not all conveniences are necessities. . . . The word "necessity" has been used in a variety of statutes. . . . It has been generally held to mean something more nearly akin to convenience than the definition found in standard dictionaries would indicate. So it is said the word will be construed to mean not absolute, but reasonable, necessity.

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*Id.* at 840-41 (quoting *Thomson v. Iowa State Commerce Comm'n*, 15 N.W.2d 603, 606 (Iowa 1944)). The court held the Board's use of a balancing test was not irrational, illogical, or wholly unjustifiable. *Id.* at 841.

In order to determine whether the proposed hazardous liquid pipeline promotes the public convenience and necessity, the Board will conduct a balancing test for the factors at issue in this case. Each factor will be discussed in turn, to allow the Board to ultimately weigh and determine whether Summit Carbon's proposed hazardous liquid pipeline will promote the public convenience and necessity.

When examining the factors, the Board can consider out-of-state benefits or detriments that may result due to Summit Carbon's proposed project. *Dakota Access Order*, p. 21. In *Dakota Access*, the Board held it could consider impacts outside the state of Iowa without specific legislative language. The Board stated that considering only Iowa specific impacts would be "a burden on interstate commerce and therefore, violate the Commerce Clause of the U.S. Constitution." *Id.* (citing *Application of Nebraska Public Power District, etc.*, 354 N.W.2d 713, 718 (South Dakota 1984)).

Furthermore, the Board is required to examine all the evidence and arguments presented by the parties. *Env'tl. Law & Policy Ctr. v. Iowa Util. Bd.*, 989 N.W.2d 775, 784 (Iowa 2023); *Dakota Access Order*, p. 108. As the Board has already stated, it has reviewed all the evidence and arguments, but it will only be examining the factors that have the most significance to the Board's overall conclusion on whether to grant Summit Carbon's request for a permit.



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## 1. National Issues

After review of the evidence, the Board has identified three significant national issues: federal tax credits, low carbon fuel markets, and climate change. The Board will discuss each of these topics in turn.

### a. Federal Tax Credits

#### Summit Carbon

In direct testimony provided by James Pirolli, he testifies the funding for Summit Carbon's proposed project comes from private investors and lenders and "[n]o federal funding will be required or obtained to install the transportation system, or any aspect of the five-state project." Summit Carbon Pirolli Direct, p. 7. While no federal funding will be used to construct the proposed project, Mr. Pirolli does testify Summit Carbon will be eligible to receive the federal 45Q tax credit (26 USC § 45Q). *Id.* at 8. Mr. Pirolli states the amount of the 45Q tax credit, following the passage of the Inflation Reduction Act, is "\$85 per qualifying metric ton of carbon oxides permanently sequestered." *Id.* Mr. Pirolli testifies that support for the 45Q tax credit has "traditionally received bipartisan support." *Id.* In addition to the 45Q tax credit, Mr. Pirolli testifies there may be additional federal tax credits that Summit Carbon could utilize should the proposed project be approved. *See id.* at 8-9. Mr. Pirolli testifies Summit Carbon is exploring whether it may qualify for 45Z (26 USC § 45Z), clean fuels production credits; 40B, sustainable aviation fuel credits; and clean hydrogen credits. *Id.*

In his rebuttal testimony, Mr. Pirolli provides additional detail on the tax incentives. Summit Carbon Pirolli Rebuttal, pp. 3-4. Mr. Pirolli testifies tax "credits are not cash up front. . . ." *Id.* at 4. Mr. Pirolli testifies, "The revenue from the tax programs

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would only begin once the project is up and running, capturing carbon.” *Id.* Mr. Pirolli asserts “the tax credits are part of an intentional, bipartisan federal policy meant to encourage projects that will capture and sequester carbon dioxide.” *Id.* Mr. Pirolli continues by stating Summit Carbon’s proposed “project is an example of the federal policy working as it is supposed to. . . .” *Id.* Mr. Pirolli states, “The federal tax credits are a future incentive based on a future result.” *Id.*

In rebuttal testimony by Brigham A. McCown, he testifies “both Democratic and Republican administrations, along with Congress, have increased incentives to capture and sequester carbon.” Summit Carbon McCown Rebuttal, p. 4. Mr. McCown testifies, “Congress [has] sought to accelerate, not delay infrastructure projects via their legislative actions. United States’ public policy is to accelerate, not delay, carbon capture projects.” *Id.*

At hearing, Mr. Pirolli further testifies, in response to questioning by Jorde Landowners about the long-term viability of the 45Q tax credit program, that it is an example of the “types of programs [that] are designed to incentivize investment in renewable energy infrastructure and other critical types of infrastructure. [They are] very similar to the wind and solar credits that are out there.” HT, p. 1893. Mr. Pirolli testifies the structure of the 45Q tax credit program “incentivizes investment which is partially recouped by the investor paying a lower tax rate in the future.” *Id.* He testifies this mechanism does not increase the national debt as it does not create immediate costs to the taxpayer. *See id.*

During questioning by the Counties, Mr. Pirolli testifies the owner of the capture equipment is the entity eligible to claim the 45Q tax credit, whereas the producer of the

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low carbon fuel is the entity eligible to claim the 45Z tax credit. HT, p. 1942. He further testifies an entity must select to use either the 45Q or 45Z tax credit in a given year, meaning there is no double dipping allowed under the federal tax credit scheme. *Id.* at 1944.

In its initial brief, Summit Carbon states, “The Board has long considered policy objectives in analyzing whether a project promotes the public convenience and necessity.” Summit Carbon IB, pp. 21-22 (citing *NuStar Order*, pp. 44-45; *Dakota Access*, at p. 27; *In re: MidAmerican Energy Co. (Wind VII)*, Docket No. RMU-2009-0003, *Final Decision and Order*, pp. 17-18 (Dec. 14, 2009), *aff’d sub nom NextEra Energy Res., LLC v. Iowa Util. Bd.*, 815 N.W.2d 30 (Iowa 2012)). Additionally, while anecdotal, Summit Carbon notes tax credits, such as the 45Q or those for wind and solar development, are often extended beyond the initial time frame passed by Congress. Summit Carbon RB, p. 18.

### **Jorde Landowners**

In testimony by Tom McDonald and Susan McDonald (collectively, the McDonalds), on behalf of TSL Farms, they testify the “[United States] is already in likely insurmountable debt. . . .” *E.g.* Jorde Landowners the McDonalds Direct, p. 2; see Jorde Landowners Neil R. Dahlquist Direct, p. 2. The McDonalds testify they are unable to see “any net benefit to this project simply by looking at the financial burden it represents for all Iowans and all Americans.” *Id.* The McDonalds’ testimony states the 45Q tax credit was first enacted in 2008, with a maximum credit of \$20 per metric ton sequestered. *Id.* at 30. They state the credit was increased in 2018 to \$50 per ton sequestered and then increased again in 2022 to \$85 per metric ton. *Id.* The

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McDonalds testify a person seeking to collect the 45Q tax credit may do so for 12 years without a cap on the amount of credit earned through the tax credit. *Id.* The McDonalds testify the person receiving the 45Q tax credit can transfer these credits to other entities, essentially “converting this tax credit into a federal grant.” *Id.* The McDonalds testify that, doing quick math, Summit Carbon stands to collect more than \$1 billion per year in 45Q tax credits. *Id.* The McDonalds question “when is it conservative to support the corporate welfare that is the 45Q and 45Z tax credits. . . .” *Id.* at 38.

In their initial brief, Jorde Landowners state Summit Carbon stands to collect \$18.36 billion in tax credits over the current 12-year life span of the 45Q tax credit. Jorde Landowners IB, p. 29. They assert the Board must begin its analysis by starting in a negative \$18.36 billion hole and working toward zero. *Id.* at 20. Jorde Landowners further argue the fact that 45Q tax credits being allowable for 12 years means the Board would be approving a proposed hazardous liquid pipeline for only 12 years and the Board must weigh the impacts against a 12-year time frame, rather than an indefinite time frame. *See id.* at 31.

**Rep. Charles Isenhardt**

In his direct testimony, Rep. Isenhardt testifies the Board “should not recognize a circular argument that the pipelines benefit the public simply because federal taxpayers are subsidizing it. . . .” Rep. Isenhardt Isenhardt Direct, p. 2. On cross-examination at hearing by the Counties, Rep. Isenhardt testifies the Board should consider the 45Q and 45Z tax credits to be “a cost to the taxpayer. . . .” HT, p. 3801. While recognizing the cost to the taxpayer, Rep. Isenhardt testifies “on an absolute basis, those credits [are] a

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good investment based on the net life cycle atmospheric carbon reduction that would result from the project.” *Id.*

### **Republican Legislative Intervenors for Justice**

In direct testimony provided by Senator Sandy Salmon, on behalf of RLIJ, Sen. Salmon testifies she is “concerned with responsible use of public funds.” RLIJ Salmon Direct, p. 4. She asserts using “hard-earned tax contributions of lowans to force landowners to relinquish property rights is unconscionable.” *Id.*

On cross-examination by the Counties, Sen. Salmon testifies, “The issue of the tax credits is . . . an extraneous issue to the questions that would be before the Board.” HT, p. 3852. She further testifies that “tax credits are always considered a cost.” *Id.* at 3853.

### **Wendell King and Diane King**

In their direct testimony, the Kings provided substantially the same testimony as provided by the McDonalds above. The Kings the Kings Direct, pp. 2, 22-23, and 28.

### **Board Discussion**

The Board has reviewed this evidence and finds that since 2008<sup>23</sup> it has been federal policy to incentivize the capturing and sequestration of carbon dioxide. The Board has no authority to change federal tax law. While some parties assert this factor is extraneous to the Board’s decision, the Board finds otherwise. See HT, p. 3852. The fact the federal government is incentivizing this technology, similar to the governmental incentivization of wind, solar, and ethanol, does weigh into the Board’s balancing as to

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<sup>23</sup> That time frame encompasses the presidencies of George W. Bush, Barack Obama, Donald Trump, and Joseph Biden.

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whether Summit Carbon's proposed project will provide a service that will promote the public convenience and necessity.

Furthermore, the federal government created this tax credit mechanism to incentivize the capture and sequestration of carbon dioxide, rather than directly funding it, which demonstrates the federal government wants to see results before providing the tax credit. See Summit Carbon Pirolli Rebuttal, p. 4. Tax credits are only realized should Summit Carbon meet the federal requirements of successfully capturing and sequestering carbon dioxide. See *id.*; see also 26 USC § 45Q. Should Summit Carbon successfully sequester carbon dioxide in conformance with federal law, it is only then that it will be able to realize the 45Q tax credit and pay down its federal tax bill. This simply means the federal government will receive less money in tax revenue from Summit Carbon, and not a direct increase to the national debt. Cf. Jorde Landowners McDonald Direct, p. 2; The Kings the Kings Direct, p. 2.

Lastly, while the current 45Q tax credits are only collectible for 12 years, the Board finds this does not impact the Board's decision. The federal government has made a decision about the length of the tax credit, and the Board cannot conjecture as to what the thinking was for the time frame. It is possible the 12 years could be extended, reduced, or modified by the federal government. The federal government could have also selected the 12-year time frame to allow these types of projects to begin operation before becoming a self-sustaining industry. The only part the Board is considering is the 12-year time frame itself, and the Board finds this to not impact the Board's decision.

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Overall, the Board finds this factor weighs heavily in favor of granting Summit Carbon's petition for hazardous liquid pipeline permit.

## **b. Low Carbon Fuel Markets**

### **Summit Carbon**

In its Exhibit F, Summit Carbon states its proposed project would allow “participating ethanol plants to reduce their carbon footprint by as much as fifty percent (50%) putting them on the path towards producing a net-zero carbon fuel.” Summit Carbon Exhibit F, section 1.0. Summit Carbon asserts this “improves ethanol’s environmental impact and improves its ability to compete in low carbon fuel markets. . . .” *Id.* Summit Carbon states its proposed project will allow for “significant growth opportunit[ies] for low carbon fuels, such as ethanol, into the future.” *Id.* Summit Carbon asserts without those participating ethanol plants in Iowa having access to Summit Carbon’s proposed project, due to the lack of proven subsurface geologic formations in Iowa, these ethanol plants would be at a significant long-term disadvantage to ethanol plants where such subsurface geologic formations exist. *Id.*

In his direct testimony, Mr. Powell testifies there is high demand for Summit Carbon’s proposed project by the ethanol plants in the Upper Midwest to allow them “to secure competitive access to low carbon fuel standard markets predominantly found on the West Coast of the United States.” Summit Carbon Powell Direct, p. 5. Mr. Powell testifies the ethanol plants see “a significant opportunity for existing ethanol plants to remain competitive, share value with their shareholders, and benefit their communities. . . .” *Id.*

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In his direct testimony, Mr. Pirolli reiterates Summit Carbon's statements in its Exhibit F. Summit Carbon Pirolli Direct, pp. 3-4. Mr. Pirolli testifies that these low carbon fuel markets currently exist in California, Oregon, Washington, and parts of Canada. *Id.* at 8. Mr. Pirolli testifies, "Other domestic and international [low carbon fuel] markets have been proposed and are expected in the future." *Id.* In his rebuttal testimony, Mr. Pirolli made clear "[o]ne of the key purposes of the project is to expand and extend the duration of the market for ethanol produced in Iowa and surrounding states, as demand increases for . . . ethanol in low-carbon fuel standard markets. . . ." Summit Carbon Pirolli Rebuttal p. 2.

At hearing, Mr. Powell testifies, in response to questioning by Jorde Landowners, about California's proposal to phase out internal combustion engines over the next ten years and that California is just one market for low carbon ethanol. See HT, pp. 1638-41. Mr. Powell testifies Summit Carbon expects "many other states in this country [to] adopt low-carbon fuel standards. . . ." *Id.* at 1640. Mr. Powell also testifies there is a market in Europe for low carbon fuels. *Id.* Mr. Powell provides additional domestic markets that are considering adopting low carbon fuel standards. *Id.* at 1790. Mr. Powell identifies these additional markets as Colorado, Iowa, New Mexico, Texas, and Minnesota. *Id.* Mr. Powell testifies that he has no specific source to identify Iowa as examining such a standard. *Id.*

During his cross-examination, Mr. Pirolli testifies that should California "stop selling internal combustion vehicles in 2035. . . . the liquid fuel demand out there for gasoline and ethanol and diesel . . . [is] still substantial out there in 2040 and 2050." HT, p. 1933.



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**Sierra Club**

Sierra Club witness Mark Z. Jacobson testifies he is unsure whether Summit Carbon's capture proposal would be sufficient to meet California's low carbon fuel standard. Sierra Club Jacobson Direct, p. 18. Based on his calculation, the ethanol plants receiving service from Summit Carbon would likely have an emission rate between 56.2 and 85.2 grams of carbon dioxide equivalent per megajoule of energy (g-CO<sub>2</sub>e/MJ), which would be below the 88.25 g-CO<sub>2</sub>e/MJ requirement for 2023 but above the 79.55 g-CO<sub>2</sub>e/MJ requirement for 2030. *Id.* at 18-19. Irrespective of Summit Carbon's capture potentially having emissions too high to sell into the California market, Mr. Jacobson testifies "the California Air Resources Board has set new regulations (Advanced Clean Cars II Regulations) that require all new passenger cars, trucks, and SUVs sold in California to be zero emission." *Id.* at 19. Mr. Jacobson asserts the way to meet such a standard is for the new vehicles to "be either battery-electric, hydrogen fuel cell-electric, or plug-in hybrid electric." *Id.* He testifies this requirement stems "from Executive Order N-79-20 (2020) that required all new passenger vehicles in California to be zero emissions by 2035." *Id.* Mr. Jacobson testifies the regulations require zero emissions, which would likely preclude the use of any combustion fuel. *Id.*

In its reply brief, Sierra Club states Iowa ethanol is already being sold in low carbon fuel markets and there is nothing currently preventing Iowa ethanol from being sold into those markets. Sierra Club IB, p. 28 (citing Summit Carbon Broghammer Deposition, pp. 12-14).

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**Jorde Landowners**

In direct testimony by Carolyn Raffensperger, Ms. Raffensperger provided as Attachment No. 2 to her testimony a copy of an op-ed she co-authored on issues surrounding Summit Carbon's proposed project. Jorde Landowners Raffensperger Direct, p. 1. Within her attachment, Ms. Raffensperger argues California's low carbon fuel standard is incentivizing ethanol production, which would increase, rather than reduce, greenhouse gases. Jorde Landowners Raffensperger Direct Attachment No. 2, pp. 1-2. Ms. Raffensperger argues in the attachment the California low carbon fuel standard would not achieve a reduction in the emission of carbon dioxide. *Id.* at 2. Sheri Deal-Tyne, on behalf of Jorde Landowners, also provides a copy of this op-ed as she was the co-author referenced by Ms. Raffensperger. Jorde Landowners Dealy-Tyne Direct, p. 1.

Kent Pickrell, on behalf of the Kent R. Pickrell Revocable Trust and the Greg Pickrell Separate Property Trust, testifies Summit Carbon would not actually sell any ethanol to California, but would rather sell the carbon credits. Jorde Landowners Pickrell Direct, p. 52. Mr. Pickrell asserts the West Coast does "not need or want Iowa's ethanol." *Id.* Mr. Pickrell testifies, "The world is going to quickly move beyond ethanol to wind, solar, and hydro power." *Id.* at 33.

**Board Discussion**

Having reviewed the evidence, the Board finds low carbon fuel markets should be included in the Board's balancing test regarding Summit Carbon's petition. Several parties assert Summit Carbon will not be able to produce ethanol to the standards required by California, or they simply stand opposed to the stated purpose of

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California's low carbon fuel standard, regardless of the ethanol standards. See Sierra Club Jacobson Direct, p. 18; Jorde Landowners Raffensperger Direct Attachment No. 2, p. 2. Nonetheless, the evidence should still be considered and weighed by the Board.

As it relates to low carbon fuel markets, there is clear evidence of the growing number of markets for which these fuels will be desired. California is the largest market, but with several other West Coast states and Canadian provinces already enacting such requirements, and numerous other states considering doing so, it is clear there will be a market for low carbon fuel. As noted by Mr. Jacobson, California has implemented a prohibition on internal combustion engines for new passenger vehicles beginning in 2035. Sierra Club Jacobson Direct, p. 19. The key word in the previous sentence is "new." The Board finds the testimony of Mr. Pirolli persuasive when he stated there would be a liquid fuels market in California through at least 2050. HT, p. 1933. A change in the requirement for new passenger vehicles sold in California is just that, a change to new passenger vehicles. No evidence was offered that indicates a ban on the use of vehicles that have been previously sold or vehicles that are brought into the state. Furthermore, the restriction only applies to new passenger vehicles and not any of the remaining categories of vehicles sold and used in the state of California. Therefore, the potential for Summit Carbon's partnered ethanol plants to be able to sell into a low carbon fuel market is a factor that will be considered.

While evidence that Iowa ethanol is already sold in low carbon fuel markets is not dispositive to the argument, this factor weighs against Summit Carbon's proposal. This argument shows there is a current market for ethanol plants to provide low carbon fuel and a demand from consumers for the product. While plants may currently be able to

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sell into low carbon fuel markets, according to Mr. Jacobson's testimony, the requirements will be getting more stringent for what qualifies as a low carbon fuel. Sierra Club Jacobson Direct, pp. 18-19. Having an ethanol plant connect to the proposed pipeline will likely mean an ethanol plant can continue to meet the carbon threshold limit and still be able to compete in the low carbon fuel market.

The Board finds this factor weighs slightly in favor of Summit Carbon's petition. The Board finds that already being able to sell into the market reduces the overall positive to Summit Carbon's petition, but does not weigh against it.

### **c. Climate Change**

#### **Summit Carbon**

In its Exhibit F, Summit Carbon states its proposed project "will also play an important role in reducing greenhouse gas emissions in the effort to combat climate change." Summit Carbon Exhibit F, section 1.0. Summit Carbon asserts its proposed project will be "capable of moving up to 18 million metric tons of [carbon dioxide] every year for safe and permanent storage, which is the equivalent of removing approximately 3.9 million cars from our roads on an annual basis." *Id.* Summit Carbon states "governments, industries, and consumers [are] seek[ing] to reduce carbon emissions. . . ." *Id.*

In his direct testimony, Mr. Pirolli reiterates the statements made in Summit Carbon's Exhibit F. Summit Carbon Pirolli Direct, p. 6. Mr. Pirolli explains in his testimony the life cycle of how carbon dioxide enters the atmosphere as a result of producing ethanol. *Id.* Mr. Pirolli testifies Summit Carbon's proposed project would capture the anthropogenic carbon dioxide from the fermentation process, ensuring it

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does not enter into the atmosphere. See *id.* Under Summit Carbon's current proposal, Mr. Pirolli testifies Summit Carbon anticipates capturing 3.28 million metric tons per year from its 12 partnering ethanol plants in Iowa. *Id.* Mr. Pirolli testifies that environmental attributes are one of the primary revenue streams for Summit Carbon. *Id.* at 8. Mr. Pirolli testifies Summit Carbon's proposed project could allow for the sale of carbon credits to companies that cannot otherwise reduce their carbon emissions to meet the standards set for themselves or those placed upon them. *Id.*

At hearing Mr. Powell testifies, in response to questioning by Jorde Landowners, "Summit [Carbon] [does not] take a position on climate change." HT, p. 1624.

However, Mr. Powell testifies "there is an environmental benefit . . . of removing those greenhouse gases from the process before [they are] emitted into the atmosphere." *Id.* at 1625.

In its initial brief, Summit Carbon states, contrary to other parties' assertions, Summit Carbon's proposed project provides a net reduction in greenhouse gas emissions, after accounting for emissions necessary to operate the proposed project. Summit Carbon IB, p. 21; HT, p. 1956 (stating a 10 percent discount is used to determine the net reduction).

In its reply brief, Summit Carbon asserts opposing parties identify two lines of thinking as it relates to the environmental attributes of Summit Carbon's proposed project: "either (1) because the Summit [Carbon proposed] [p]roject will only address a portion of the total amount of atmospheric emissions, it is not worth doing; or (2) the Summit [Carbon proposed] [p]roject is bad because it supports ethanol, which in turn supports internal combustion engines, which are bad." Summit Carbon RB, p. 16.

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Summit Carbon admits its proposed project will only sequester a small percentage of total carbon dioxide emissions, but the arguments presented by opposing parties, Summit Carbon states, “are illogical and suggest avoiding helpful developments because they fall short of some perfect but impossible goal of those advocates.” *Id.* Summit Carbon states, “Reducing emissions will require a large number of diverse approaches. . . .” *Id.* Lastly, Summit Carbon states Iowa Code § 159A.1(2) has a legislative finding and decree that states, “It is necessary . . . to reduce atmospheric contamination of this state’s environment from the combustion of fossil fuels. . . .”

### **Sierra Club**

In his direct testimony, Mr. Jacobson testifies that “spending \$5.6 billion on pipes and carbon capture from ethanol refineries to power flex-fuel vehicles (FFV) is a significant opportunity cost. It substantially increases consumer costs and carbon dioxide and air pollution emissions in the five states at issue . . . relative to a viable alternative.” Sierra Club Jacobson Direct, p. 7. Mr. Jacobson asserts that if the \$5.6 billion investment was made in “onshore wind and/or solar photovoltaics . . . to power battery-electric vehicles (BEVs), drivers in the five states would likely save \$75.9 billion to \$126 billion over 30 years on fuel. . . .” *Id.* Mr. Jacobson testifies this investment in “wind electricity for BEVs will likely reduce 2.5 to 4.2 [times] the carbon dioxide emissions as will capturing carbon from ethanol [plants]. . . .” *Id.* at 8. Mr. Jacobson testifies “even building wind electricity to replace coal plants will likely save more carbon dioxide than will the Summit [Carbon] plan.” *Id.* Furthermore, Mr. Jacobson testifies, “The overall upstream air pollution emissions of ethanol are greater than are those of gasoline. . . .” *Id.* at 16. Mr. Jacobson asserts this is based upon the air pollution

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resulting from the energy used at the ethanol plant as well as the transporting of the ethanol via truck, train, or barge. *Id.* Lastly, Mr. Jacobson testifies that “corn-ethanol carbon-dioxide-equivalent emissions may be higher or lower than those of gasoline.” *Id.* at 13. Mr. Jacobson asserts that if FFVs are replaced with BEVs, it would result in 2.5 to 4.2 times the avoided carbon dioxide proposed to be captured by Summit Carbon’s proposed project. *Id.* at 14. Furthermore, Mr. Jacobson testifies this is due to BEVs eliminating 100 percent of tailpipe air pollutants. *Id.* at 16.

In its initial brief, Sierra Club asserts sequestering the 18 million metric tons per year of carbon dioxide proposed by Summit Carbon would result in a “minuscule” amount of carbon dioxide sequestered compared to the amount generated. Sierra Club IB, p. 39. Sierra Club also states there was no evidence presented contrary to Mr. Jacobson’s testimony, so his testimony and analysis are unchallenged. *Id.* at 42.

### **Jorde Landowners**

In the op-ed attached to Ms. Raffensperger’s testimony, she states, “Ethanol is 24 [percent] more carbon-intensive than traditional fuel.” Jorde Landowners Raffensperger Direct Attachment 2, p. 2. Ms. Raffensperger also states, “Building ethanol infrastructure locks in ethanol and gasoline for decades, reducing incentives for investors or policymakers to shift towards more sustainable transportation.” *Id.*

As a part of her direct testimony, Ms. Deal-Tyne includes as Attachment 3 an article she published detailing her opinions with regard to carbon capture. Jorde Landowners Deal-Tyne Direct Attachment 3. In it, Ms. Deal-Tyne states there could be more carbon dioxide eliminated “by utilizing existing and accessible renewable energy like wind, solar, efficiency [sic], and other readily scalable and available strategies.” *Id.*

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at 5. She asserts, “It is reckless to spend money on unproven technologies that contribute negligible benefit or, worse, disproportionately impact already disenfranchised communities.” *Id.* She recommends focusing “funding on renewable energy projects and infrastructure” instead. *Id.*

Mr. Pickrell testifies:

It is widely acknowledged that fossil fuels must be phased out to protect the planet. The future of clean energy lies in renewable sources such as solar, wind, and hydro power. These sources offer multiple benefits, including reduced greenhouse gas emissions, improved air quality, and long-term sustainability. Investments and advancements in clean energy technologies have been increasing, with governments, businesses, and individuals around the world recognizing the need for a transition to cleaner and more sustainable energy sources. Why would Iowa want to buck the global shift toward renewable energy?

Jorde Landowners Pickrell Direct, p. 34. In attachments included with the testimony, there is further support of the clean energy shift away from fossil fuels, including ethanol, that were adopted in testimony. *E.g., Id.* pp. 37, 44; Jorde Landowners Gary Marth and Sandra Marth Direct, pp. 30, 36; Jorde Landowners Joan Mersch *et al.* Direct, pp. 30, 36.

In their direct testimony, the Hayeks testify there is no “need to cater to states pushing an expensive climate agenda.” The Hayeks the Hayeks Direct, p. 3.

In their initial brief, Jorde Landowners state Summit Carbon has failed to produce evidence on a litany of points Jorde Landowners identify are necessary for the Board to reach a conclusion about the impacts Summit Carbon’s proposed hazardous liquid pipeline will provide to the environment. Jorde Landowners IB, pp. 32-33.



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In their reply brief, Jorde Landowners assert “it is not likely Summit [Carbon] could reach one of its primary drivers of reaching California’s low carbon fuel market given the California Air Resources Board has set new regulations that will likely preclude E85 or any fuel that produces tailpipe emissions.” Jorde Landowners RB, p. 24 (citing Sierra Club Jacobson Direct, p. 13) (internal quotations omitted).

**Rep. Charles Isenhart**

In his direct testimony, Rep. Isenhart testifies “the project is intended to keep heat-trapping greenhouse gases out of the atmosphere, which leads to climate change and weather disasters.” Rep. Isenhart Isenhart Direct, p. 1. Rep. Isenhart testifies the National Conference of State Legislatures adopted an amendment to its climate change directive at the annual meeting in 2022 regarding carbon capture and storage. *Id.* at 2. The directive asserts the federal government should not allow unverified carbon capture and storage incentives to be used by those who transport carbon dioxide via interstate pipelines unless there is a proven net life-cycle reduction in atmospheric carbon and any disturbed land is returned to normal after construction is complete. *See id.* Rep. Isenhart testifies absent proof of a net life-cycle reduction in carbon dioxide, the pipeline “may serve little public purpose.” *Id.* Rep. Isenhart recommends the Board “seek evidence that this pipeline will have significant net climate benefit. . . [and] the Board should require [Summit Carbon] to show that less costly, less intrusive, or more efficient alternative(s) to the pipeline are not available.” *Id.* at 2-3.

**Wendell King and Diane King**

In their direct testimony, the Kings testify, “Iowa’s governments do not agree that climate change exists and have not adopted policies to mitigate it.” The Kings the Kings

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Direct, p. 24. The Kings assert there is no “provision in Iowa state law or local ordinances that mention or even recognize the existence of climate change, much less impose carbon reduction goals.” *Id.* The Kings testify Summit Carbon is seeking state approval for a project based upon “a policy objective with which the State of Iowa does not agree.” *Id.*

Testifying at hearing, Mr. King states:

[F]armers are very aware of climate change and what [it is] doing to their . . . environment. . . . This is a worldwide crisis. This is something that needs to be addressed. And, while I think carbon capture and sequestration is a very important part of that process, my whole thought about this is that the pipeline need not be part of that.

HT, p. 3947.

**Lisa L. Stuck and William L. Stuck**

In their direct testimony, the Stucks testify the carbon dioxide produced by “ethanol plants are minimal and . . . plants and trees need carbon to thrive.” The Stucks the Stucks Direct, p. 2.

**Kerry Mulvania Hirth**

In her direct testimony, Ms. Hirth testifies ethanol production creates carbon dioxide as a byproduct. Hirth Hirth Direct, p. 4. She testifies this carbon dioxide “is directly responsible for 120-degree days in Phoenix . . . and countless other conditions that threaten the existence and quality of life of all living beings across the globe.” *Id.* Ms. Hirth testifies, “Carbon capture and storage technology is not scalable and will have virtually no effect on the climate.” *Id.* at 3. She testifies Summit Carbon’s proposed project will not prevent the oncoming drought, which will make it harder to grow corn. *Id.*

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On cross-examination by the Counties, Ms. Hirth testifies that “the effects of climate change are extremely harsh.” HT, p. 4045. She continues by stating “the carbon capture from ethanol plants [is not] going to impact those conditions whatsoever. [It is] not rational to think that it could possibly do that.” *Id.*

### **Lois Deiterman Revocable Trust**

In his direct testimony, Randall Bobolz, on behalf of the Lois Deiterman Revocable Trust, testifies that “the amount of carbon [Summit Carbon] . . . want[s] to capture is a drop in the bucket.” Lois Deiterman Revocable Trust Bobolz Direct, pp. 2-3. Mr. Bobolz testifies the amount of carbon dioxide proposed to be captured by Summit Carbon is “meaningless, especially when compared to the rest of the world.” *Id.* at 3.

### **Board Discussion**

After reviewing the evidence, the Board finds the factor of climate change is one that will be weighed as part of the Board’s overall conclusion as to whether Summit Carbon should be granted a permit. While there is no official policy for the state of Iowa as it relates to climate change, there is a state policy “to reduce atmospheric contamination of this state’s environment from the combustion of fossil fuels.” Iowa Code § 159A.1(2). Furthermore, there is a greater acceptance and understanding of the impacts anthropogenic carbon dioxide has on the Earth’s climate.

While Sierra Club’s testimony on this issue may have been more relevant in other Board dockets, it nonetheless shows there is potential to reduce the amount of carbon dioxide released into the atmosphere. See *generally* Sierra Club Jacobson Direct. Sierra Club’s argument that the Board should deny Summit Carbon its petition

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so it can construct \$5.5 billion in wind and solar generation is not convincing.<sup>24</sup> The Board is not even certain how it could force Summit Carbon to disregard its plans for its proposed project and require the company to construct the wind and solar proposed by Sierra Club. Iowa Code chapter 479B deals with hazardous liquid pipeline permits. There is no language in this chapter that gives the Board the authority to tell a company to not build a hazardous liquid pipeline, but rather build this different piece of infrastructure. While the Board has the ability to deny the permit, there is no guarantee Summit Carbon would take the funds it is proposing to use to construct its proposed hazardous liquid pipeline and instead build the wind and solar proposed by Sierra Club as an alternative.

Contrary to the assertions of Sierra Club and Rep. Isenhardt, there is not a requirement for Summit Carbon to establish that its proposed project establishes a net climate benefit or that its proposed project complies with a least-cost principle. *See id.*; *see also* Rep. Isenhardt Isenhardt Direct, pp. 2-3. Therefore, the Board will not consider a least-cost principle, but rather the Board will take a holistic approach to determine whether this factor weighs for or against Summit Carbon's request.

The Board also finds perplexing the arguments surrounding the idea that since Summit Carbon is only capturing a small fraction of the total carbon dioxide emissions, the project should be rejected. *See* Sierra Club IB, p. 39. Summit Carbon's proposed

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<sup>24</sup> The Board notes that on December 14, 2023, it approved MidAmerican Energy Company's (MidAmerican) request for advanced ratemaking on nearly \$4.5 billion worth of new wind and solar generating facilities in the state of Iowa. *In re: MidAmerican Energy Company*, Docket No. RPU-2022-0001, *Rehearing Final Order and Concurrence*, p. 15-18 (Dec. 14, 2023). On December 18, 2023, MidAmerican accepted the advanced ratemaking principles approved by the Board. *In re: MidAmerican Energy Company*, Docket No. RPU-2022-0001, *Acceptance of Advanced Ratemaking Principles*, p. 1 (Dec. 18, 2023).

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project has never been touted as the magical cure of capturing all of the carbon dioxide emission in the world. See HT, p. 1625. However, the Board agrees with Summit Carbon that reducing emissions will require a number of diverse approaches. Summit Carbon RB, p. 16. Diversification is a principle that the Iowa Legislature is familiar with and supports. See, e.g., Iowa Code § 476.53. Nonetheless, the Board still finds this factor worthy of being considered as part of the balancing test.

As it relates to this factor, the Board finds it weighs in favor of Summit Carbon's petition. While it is beyond the scope of the Board's authority to affirm or deny the existence of climate change, there is sufficient evidence to demonstrate both at the federal and state level there are policies aimed at reducing carbon dioxide emissions that contribute to climate change. See, e.g., 26 U.S.C. § 45Q; Iowa Code § 159A.1(2). The Board finds Summit Carbon's proposed hazardous liquid pipeline will contribute to the reduction in "atmospheric contamination," thus providing an overall benefit to Iowans. Iowa Code § 159A.1(2).

## **2. State Issues**

The Board has identified two state issues, ethanol and economic impact, which will be part of the balancing test of Summit Carbon's petition. Each will be discussed in turn.

### **a. Ethanol**

#### **Summit Carbon**

In its Exhibit F, Summit Carbon states one of the main benefits of its proposed project is the positive impact it will have on Iowa's ethanol and agricultural industry. Summit Carbon Exhibit F, section 1.0. Summit Carbon asserts ethanol plant

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interconnections to its proposed hazardous liquid pipeline would enhance the ethanol plants' "long-term environmental and economic sustainability." *Id.* Summit Carbon states, "The ethanol industry supports approximately 340,000 jobs in the United States each year, including approximately 44,000 jobs in Iowa." *Id.* Summit Carbon states its proposed service would allow participating ethanol plants to compete in low carbon fuel markets and improve their environmental impact. *Id.*

Furthermore, Summit Carbon states it:

provides benefits not only for the ethanol industry, but for an even broader segment of the public — the agriculture industry with which it partners. As the . . . ethanol partners earn more for producing low-carbon renewable fuel, it strengthens the economic prosperity and long-term viability of ethanol, and as a result, benefits Iowa's family farms, and ultimately the entire state. The ethanol industry is the largest purchaser of Iowa corn, consuming approximately 53 [percent] of Iowa's corn crop each year. A stable ethanol industry provides Iowa's farmers with a reliable market for their corn and underpins the value of 26 million acres of Iowa farmland those crops are grown on.

*Id.*

In the direct testimony of James Broghammer, the Chief Executive Officer of Pine Lake Corn Processors, testifying on behalf of Summit Carbon,<sup>25</sup> Mr. Broghammer testifies, "Iowa ethanol uses approximately 1.6 billion bushels of Iowa Corn to produce 4.5 billion gallons of ethanol." Summit Carbon Broghammer Direct, p. 2. Mr. Broghammer testifies the Inflation Reduction Act provides incentives to lower the carbon footprint of U.S. ethanol producers by about two cents per gallon for each carbon intensity point below 50. *Id.* Mr. Broghammer testifies the average ethanol plant will be

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<sup>25</sup> The Board is unsure as to why Mr. Broghammer was called as a witness by Summit Carbon instead of the Corn Processors, which is also a party to this proceeding. Pine Lake Corn Processors is a part of that party.

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able to lower its carbon intensity score by about 30 points by connecting to Summit Carbon's proposed project. *Id.* at 3. Mr. Broghammer's testimony asserts "the total benefit for sequestering [carbon dioxide] through [carbon capture and storage] is nearly \$0.60/gallon of ethanol and that in turn calculates to \$1.80 per bushel." *Id.* (noting three gallons of ethanol are produced from one bushel of corn). Mr. Broghammer testifies ethanol has increased the demand for corn and pushed the price of corn to higher levels. *Id.* Mr. Broghammer cautions that should Summit Carbon's proposed project not be built, ethanol plant production would shrink because ethanol plants could not compete in the growing low carbon fuel markets, which would decrease the price of corn. *Id.* Mr. Broghammer asserts investors will pull capital funding out of Iowa ethanol plants and move it to areas where ethanol plants can take advantage of the Inflation Reduction Act incentives. *Id.* Mr. Broghammer testifies this would begin the decline in corn prices in Iowa. *See id.*

In his direct testimony, Mr. Powell testifies the "[d]emand for the [proposed] [p]roject is high and comes from a need for existing ethanol plants in the [U]pper Midwest to secure competitive access to low carbon fuel standard markets. . . ." Summit Carbon Powell Direct, p. 5. Mr. Powell testifies the proposed project "secures ethanol's place in the agricultural markets in the [U]pper Midwest and sustains the demand for corn, which secures corn prices and land values." *Id.* Mr. Powell testifies there is "a significant opportunity for existing ethanol plants to remain competitive, share value with their shareholders, and benefit their communities through employment, [and] tax contributions. . . ." *Id.* Mr. Powell asserts:

Keeping Iowa's ethanol industry competitive and expanding markets for Iowa ethanol supports corn prices by ensuring

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ethanol production remains a viable market for corn well into the future. In turn, strong corn prices support rural land prices in a very significant way. Ethanol production, attractive corn prices, additional rural jobs, and an incremental increase in the rural tax base are all of great importance to Iowa's rural and agricultural economy.

*Id.* at 5-6.

In his direct testimony, Mr. Pirolli identifies the main purpose of Summit Carbon's proposed hazardous liquid pipeline is to "support the longevity and competitiveness of the ethanol and agricultural industries. . . ." Summit Carbon Pirolli Direct, p. 3. Mr. Pirolli testifies, "The ethanol industry has proven to provide benefits on several fronts: energy independence, lower tailpipe emissions, and economic benefits to rural economies through job creation and better markets for corn." *Id.* at 4. Mr. Pirolli testifies that "this benefits Iowa's family farms by supporting a key market for their crop production. . . ." *Id.* Mr. Pirolli provides the same consumption numbers for ethanol as provided in Summit Carbon's Exhibit F — "approximately 53% of Iowa's corn crop each year" is used by ethanol producers. *Id.* at 5. This, Mr. Pirolli testifies, provides a stable ethanol industry, which in turn "provides Iowa's farmers with a reliable market for their corn and underpins the value of approximately 26 million acres of Iowa farmland. . . ."

*Id.*

In his rebuttal testimony, Mr. Pirolli testifies that "when corn is processed into ethanol, one-third becomes fuel ethanol, one-third becomes animal feed, and one-third is carbon dioxide. . . ." Summit Carbon Pirolli Rebuttal, p. 3. Mr. Pirolli testifies the carbon dioxide currently provides no value to the ethanol plant, and Summit Carbon's proposed project is seeking to allow ethanol plants to capitalize on the carbon dioxide and create a new revenue stream for the plant. *See id.* Mr. Pirolli testifies he expects a



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participating ethanol plant to “earn, on a net basis, an additional 10 to 35 cents per gallon.” *Id.* at 4. In support of his conclusion, Mr. Pirolli provides a copy of a report issued by the Iowa Renewable Fuels Association. *Id.* at 5; Summit Carbon Pirolli Rebuttal Exhibit 1.

On cross-examination by Jorde Landowners, Mr. Powell testifies Summit Carbon’s “purpose is to help the ethanol plant partners that [it has] contracted with to capture their [carbon dioxide] before it is emitted, transport it to North Dakota, and sequester it subsurface.” He testifies this “will allow [the ethanol plant] to significantly reduce their carbon intensity, which will then give them access to low-carbon fuel markets and hopefully sustain the livelihood of their businesses and the demand for corn in the communities in which they operate.” HT, p. 1614.

When questioned by Jorde Landowners as to whether any other market factors could impact the price of corn, Mr. Powell responds by stating there are others, “but the demand for corn . . . would be a contributing factor, a significant factor.” *Id.* at 1622. Mr. Powell testifies that “the demand for corn in Iowa currently is about 1.6 billion bushels” and that amount “produces about four and a half billion gallons of ethanol. So, as that increases, the demand increases.” *Id.* at 1620.

During cross-examination, Mr. Pirolli, in response to questioning by Jorde Landowners, agrees with Mr. Powell that there are other pressures that impact the price of corn. *Id.* at 1900-01. Mr. Pirolli agrees that as to “local, national, and international supply and demand to corn, it can include prices for alternatives, alternative crops, changes in governmental policies, damaging growing conditions such as plant disease and adverse weather conditions. . . .” *Id.* at 1901.

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In response to questioning by the Counties, Mr. Pirolli testifies his Rebuttal Exhibit 1 is not a Summit Carbon-specific report, but rather a report examining the potential impacts of carbon capture and sequestration as a whole as it relates to ethanol production. *Id.* at 1939-41. Mr. Pirolli further testifies his Rebuttal Exhibit 1 mainly deals with the impacts of 45Z tax credits on an ethanol plant, not 45Q. *Id.* at 1945. Mr. Pirolli testifies that while Summit Carbon cannot qualify for the 45Z tax credit, nonetheless, his Rebuttal Exhibit 1 demonstrates “the economic impact and importance of the ethanol industry in the state of Iowa. . . .” *Id.* Mr. Pirolli states that absent the approval of Summit Carbon’s proposed project, “the industry is going to be under pressure . . .” and it will have a negative economic impact on the state’s economy, down to the farm level. *Id.* Mr. Pirolli testifies ethanol plants can seek to utilize the 45Z tax credit until 2027, unless it is extended, otherwise ethanol plants would need to rely upon low carbon fuel markets or the 45Q tax credit. *See id.* at 1949-50.

When asked to clarify where the 53 percent of Iowa’s corn being used for ethanol came from, Mr. Pirolli testifies he did not have a specific source as the information is common knowledge, and the number is derived from several widely known sources. *Id.* at 1952. Mr. Pirolli testifies the number is based upon the corn production in Iowa from the United States Department of Agricultural and the ethanol production number is based upon reports to the EPA. *Id.*

During the cross-examination of Mr. Broghammer by Farm Bureau, Mr. Broghammer testifies the large number of ethanol plants in Iowa is due to the corn supply and supportive policies the state of Iowa has put in place related to ethanol production and sales. HT, p. 2022. Furthermore, Mr. Broghammer testifies he is

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unable to say for certain there will be a payment increase seen by farmers as a result of an ethanol plant connecting to Summit Carbon's proposed project. *Id.* at 2028.

In its initial brief, Summit Carbon states the Board has historically looked at demand for a project when weighing whether the proposed services are in the public convenience and necessity. Summit Carbon IB, p. 10. Summit Carbon states it has demonstrated there is a demand for its proposed service from the number of ethanol plants that are participating. *Id.* at 11.

In its reply brief, Summit Carbon argues the position taken by Jorde Landowners is anti-ethanol, which is in direct contradiction with the policy of the state of Iowa. Summit Carbon RB, p. 15.

### **Sierra Club**

As has been previously described in the above section regarding climate change, Mr. Jacobson testifies "corn-ethanol carbon-dioxide-equivalent emissions may be higher or lower than those of gasoline." Sierra Club Jacobson Direct, p. 13. Mr. Jacobson testifies switching to "BEVs eliminate 100 [percent] of air pollutants from the tailpipes of FFVs." *Id.* at 16. Mr. Jacobson testifies, "FFVs cause greater air pollution damage than do even gasoline vehicles on average throughout the U.S." *Id.* (internal citations omitted). Mr. Jacobson asserts that "the energy used in an ethanol refinery causes air pollution that BEVs avoid entirely. . . . [and FFVs] use far more land than does wind or solar producing electricity for BEVs." *Id.* Mr. Jacobson testifies there is a land use cost associated with growing corn for ethanol, which must be factored into the carbon identity of ethanol. *Id.* at 12-15.

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In the direct testimony of Silvia Secchi, on behalf of Sierra Club, she testifies that “corn is very much not an environmentally friendly technology.” Sierra Club Secchi Direct, p. 7. Ms. Secchi testifies there are three reasons why corn ethanol is not good for water resources and greenhouse gas (GHG) emissions:

1. Corn requires a lot of nitrogen fertilizer, whose production generates fossil fuel emissions;
2. Quite a bit of that nitrogen fertilizer leaches and runs off into [the] water[;] and
3. Because corn ethanol is not a very advanced technology, . . . a lot of land [is needed] to produce ethanol. . . .

*Id.* In addition to Ms. Secchi’s assertion as to why ethanol is bad for water and GHG emissions, she also testifies there is no evidence to support the claim that ethanol plants will leave Iowa if Summit Carbon’s proposed hazardous liquid pipeline is not approved. *Id.* Ms. Secchi testifies “ethanol production has peaked, and electric vehicles sales are growing faster than previously forecast.” *Id.* Ms. Secchi asserts this is the reason ethanol producers pushed for year-round E15 requirements. *Id.* Ms. Secchi asserts that, in her professional judgment, Summit Carbon’s proposed project is only being proposed to keep ethanol profitable, and, if the proposed project is denied, there will be no new construction of ethanol plants outside of Iowa. *Id.* at 8. Ms. Secchi testifies that in the short term, there will be no impact to ethanol producers should the proposed project not be approved. *Id.* She asserts in the medium term, ethanol demand will decrease and allow an offramp from corn dependence, regardless of whether the proposed project is approved. *Id.* Lastly, Ms. Secchi testifies that in the long term, farmers will be able to grow other, more profitable, crops, instead of corn for ethanol. *Id.*

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During cross-examination by the Counties, Ms. Secchi testifies Pirolli Rebuttal Exhibit 1 should be compared to a report issued by the national Renewable Fuels Association. HT, p. 3673. Ms. Secchi testifies the national report did not indicate “pipelines are do or die” for ethanol producers. *Id.* Ms. Secchi argues Pirolli Rebuttal Exhibit 1 demonstrates a need to increase production, which creates a situation where ethanol is nonviable in the long term and leaves farmers without a parachute. *Id.* at 3674. Ms. Secchi testifies:

The benefits for farmers are going to be very limited. Ethanol is a very capital-intensive enterprise. . . , [and] the market for corn in Iowa is not going to disappear. [There is] already . . . plenty of evidence that the government would come to the support of farmers if need be.

*Id.* Additionally, Ms. Secchi testifies ethanol was to be a bridge technology, but it demonstrated that it is not a viable technology. *Id.* at 3698. Ms. Secchi asserts there has been a “much higher uptake and much more technological development when it comes to electric vehicles. This is making [ethanol] technology even more obsolete and it [was not] really a good technology to start with.” *Id.*

In its initial brief, Sierra Club states Mr. Broghammer stated during his deposition that “his ethanol plant is already operating at maximum capacity and that even with a pipeline, he would not be buying any more corn.” Sierra Club IB, pp. 28-29. Sierra Club asserts the lack of the ability to produce more ethanol as a result of Summit Carbon’s proposed project demonstrates there will not be a benefit to Iowa corn producers. See *Id.* at 29. As it relates to Pirolli Rebuttal Exhibit 1, Sierra Club states the disclaimer at the front of the report should caution the Board’s reliance upon the report. *Id.* at 30. Sierra Club asserts there is no evidence the ethanol industry would leave Iowa if

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Summit Carbon's proposed project is not approved, especially given the abundance and availability of the corn crop in Iowa. *Id.* at 31-32.

**Jorde Landowners**

In the article by Ms. Raffensperger and Ms. Deal-Tyne, they assert there has been an increase in the use of nitrogen fertilizer for corn production, which has increased the amount of nitrous oxide into the atmosphere. Jorde Landowners Raffensperger Direct Attachment No. 2, p. 2; Jorde Landowners Deal-Tyne Direct Attachment No. 2, p. 2. They state, "Fertilizers used in corn production, including for ethanol, also cause vast water pollution extending from drinking water in Iowa to the Dead Zone<sup>26</sup> in the Gulf of Mexico." *Id.*

In direct testimony provided by Debra Wheeler *et al.*, Ms. Wheeler testifies Summit Carbon's claims that without its proposed project ethanol will cease in Iowa are baseless and are being spread to divide neighbors and communities. Jorde Landowners Wheeler *et al.* Direct, p. 32; see Jorde Landowners John and Karen Hargrens Direct, p. 26; Jorde Landowners Jann Reinig *et al.* Direct, p. 31. Ms. Wheeler testifies it should not be the job of the Board "to pick winners and losers in terms of private businesses and having their hand on the scale of competition and free markets." *Id.* Ms. Wheeler testifies the Board should not put any consideration into this factor. Jorde Landowners Wheeler *et al.* Direct, p. 32; see Jorde Landowners John and Karen

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<sup>26</sup> The Dead Zone is a portion of the Gulf of Mexico, also known as the hypoxia zone, where there is a reduced level of oxygen in the water, which reduces, or completely eliminates, wildlife in that area. *What is a dead zone?* Nat'l Ocean Serv. <https://oceanservice.noaa.gov/facts/deadzone.html#:~:text=%22Dead%20zone%22%20is%20a%20more,of%20oxygen%20in%20the%20water.&text=Less%20oxyg en%20dissolved%20in%20the,as%20fish%2C%20leave%20the%20area> (last visited June 24, 2024).

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Hargrens Direct, pp. 26-27; Jorde Landowners Jann Reinig *et al.* Direct, pp. 31-32. Ms. Wheeler asserts, “Iowa existed before the ethanol industry was created via massive government subsidies and Iowa will exist after the energy markets move on from ethanol to something else.” Jorde Landowners Wheeler *et al.* Direct, p. 32; see Jorde Landowners John and Karen Hargrens Direct, p. 27; Jorde Landowners Jann Reinig *et al.* Direct, p. 32.

In his direct testimony, Matthew L. Valen states, “The claim of the ethanol industry leaving Iowa is preposterous.” Jorde Landowners Matthew L. Valen Direct, p. 26. Mr. Valen testifies, “The corn availability and livestock to use byproducts will make it unrealistic for the ethanol industry to leave Iowa. The billions of dollars in infrastructure would cost 10 times as much to rebuild today elsewhere.” *Id.*

In her direct testimony, Chen Beverly Chow states that “ethanol is not going to play a major role in the energy industry, no matter what.” Jorde Landowners Chen Beverly Chow Direct, p. 26. Ms. Chow testifies it would be shortsighted to approve Summit Carbon’s proposed project given “electric vehicles and electric airplanes are the future of transportation.” *Id.* Ms. Chow asserts solar, wind, and nuclear will play a much larger role compared to ethanol in the future of the energy sector. *Id.*

In her direct testimony, Ms. Kohles testifies that “the need for soybeans could be significantly higher in the future due to their demand for newer, cleaner biofuels.” Kohles Family Farms Kohles Direct, p. 8. Ms. Kohles testifies “by 2024[,] [renewable] biodiesel production, which incorporates the use of agriculture crops as well, is expected to increase by 7.3 billion gallons, or approximately 11 [percent].” *Id.*; Kohles Family Farms Kohles Direct Attachment 10. Ms. Kohles, in her testimony, asserts

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“growing more soybeans will more than cover the loss of an [e]thanol plant closing and provide long, continuous revenue for the state. . . .” *Id.*

In their testimony, the Hayeks assert the claim about the decline in ethanol in Iowa absent Summit Carbon’s proposed project is a scare tactic. The Hayeks the Hayeks Direct, p. 3. The Hayeks testify the ethanol industry has been profitable and it will not shutter overnight. *Id.* The Hayeks assert ethanol will still be required for fuel given the dependency on ethanol for energy and jobs. *Id.*

In their initial brief, Jorde Landowners assert Summit Carbon failed to provide evidence related to the 10-to-35-cents per gallon revenue increase described by Mr. Pirolli. Jorde Landowners IB, p. 28. Jorde Landowners state absent such evidence, the Board cannot conclude any benefit to the ethanol industry. *See id.*

In its reply brief, Jorde Landowners assert Summit Carbon has created this demand for its proposed hazardous liquid pipeline and “[n]o ethanol plan in Iowa directly benefits from the proposed services. . . .” Jorde Landowners RB, p. 13. Jorde Landowners state the Board should not consider self-made demand when deciding if there is demand for Summit Carbon’s proposed project. *See id.*

**Kerry Mulvania Hirth**

Ms. Hirth’s testimony states the price of corn is influenced by things outside of ethanol. Hirth Hirth Direct, p. 1. Ms. Hirth testifies these outside influences include “price of crude oil, demand in China, public trust in the U.S. dollar, the [volatility] of the stock market, political conflicts in other nations, and the climate's effect on grain harvests across the globe.” *Id.* at 1-2.

In her initial brief, Ms. Hirth states:



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Summit [Carbon] has failed to present any evidence that its pipeline will save Iowa's ethanol industry. Summit [Carbon] relied heavily on two reports to prove that the pipeline will benefit Iowa's ethanol industry, but neither report actually supports Summit[] [Carbon's] claims. Additionally, Summit[] [Carbon's] own witnesses admitted at hearing that a connection cannot be made between Summit[] [Carbon's] proposed pipeline and the alleged economic benefits.

Hirth IB, pp. 7-8. Ms. Hirth further states the offtake agreements between Summit Carbon and the participating ethanol plants place the ethanol plants at a competitive disadvantage compared to nonparticipating ethanol plants. *Id.* at 5.

In her reply brief, Ms. Hirth further describes how the offtake agreements are a detriment rather than a benefit to participating ethanol plants. Hirth RB, pp. 2-5.

### **John Banwart**

John Banwart testifies, "The ethanol industry will survive without a carbon pipeline." Banwart Banwart Direct, p. 2.

### **The Counties**

In its initial brief, the Counties assert greater profits for the ethanol industry are not benefits to the public. The Counties IB, p. 46. The Counties assert only a project that provides lower prices to consumers can weigh in favor of the public convenience and necessity. *Id.* at 47. The Counties state the evidence provided by Summit Carbon relies upon increases to ethanol prices and corn prices due to its proposed hazardous liquid pipeline. *See id.* at 47-49. The Counties argue Summit Carbon's proposal increases food and fuel prices, both inside and outside of Iowa. *Id.* at 50. The Counties assert, "Any food production business that uses corn as an input would see increased costs. Trucking companies would pay more for fuel. All these industries would be forced to pass their higher input costs on, further increasing consumer prices." *Id.* at 51. The

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Counties assert these increases cannot be considered a benefit provided by Summit Carbon's proposed hazardous liquid pipeline. *Id.*

In its reply brief, the Counties assert Summit Carbon conflates the desire for ethanol plants to reduce the carbon intensity scores with the public convenience and necessity of its proposed hazardous liquid pipeline. The Counties RB, p. 15. The Counties assert Summit Carbon's proposal is neither publicly convenient nor necessary. *Id.* The Counties assert Summit Carbon's statement about no party refuting the demand for its project is incorrect due to the testimony of Ms. Secchi and Mr. Jacobson. *Id.* at 15-16. Lastly, the Counties assert increasing costs are bad for consumers. *Id.* at 16.

### **Corn Processors**

In its initial brief, Corn Processors state the ethanol plants consume 53 percent of Iowa's corn, employ approximately 44,000 Iowans, and provide significant economic benefits to Iowa's economy. Corn Processors IB, p. 1. Corn Processors assert Summit Carbon's proposed hazardous liquid pipeline "supports the longevity and competitiveness of the Iowa ethanol and agricultural industries, creates and preserves jobs, and stimulates economic productivity in Iowa." *Id.* Corn Processors state the reason the ethanol plants are seeking to utilize Summit Carbon's proposed hazardous liquid pipeline is to reduce their carbon intensity scores to allow them to compete in the market. *Id.* at 2-3. Corn Processors argue Summit Carbon's proposal would allow ethanol plants to meet the growing pressures to reduce emissions tied to transportation. *Id.* at 3. Corn Processors state Summit Carbon's proposal will allow them to "strengthen the economic competitiveness of Iowa's ethanol plants and allow for long-

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term continued production.” *Id.* Corn Processors assert lowering their carbon intensity score to “30 will result in revenue to ethanol plants in the range of \$0.10 to \$0.35 per gallon of ethanol produced.” *Id.* at 4. Corn Processors state an ethanol plant that is unable to access the service proposed by Summit Carbon “will likely have to pay higher prices for corn, without the benefit of the tax credit.” *Id.*

Corn Processors state:

Iowa farmers receive a premium for corn sold to ethanol plants, equaling \$254 million in additional revenue to those farmers. Without the pipeline, more than 44 [percent] of Iowa’s corn will need to find a new market outside of the state. This results in an increase in transportation costs exceeding \$800 million annually, an increase of \$0.35 per bushel, to be borne by Iowa farmers.

*Id.* at 6 (internal citations omitted).

### **Board Discussion**

The Board has reviewed this information and finds the impact to ethanol will be considered as a part of the Board’s weighing as to whether Summit Carbon should be granted a permit.

There is little question that Iowa ranks consistently as one of the top corn producing states in the nation, with more than half of its corn crop going toward the production of ethanol. See Summit Carbon Pirolli Direct, p. 5. Whether ethanol is good or bad is not a decision to be made by the Board. That is a decision for other policymakers in the state of Iowa and beyond. What is within the Board’s authority is to examine what impacts Summit Carbon’s proposed project may have upon the ethanol industry and whether those impacts weigh for or against the public convenience and necessity. Ethanol is inextricably tied to the current farming methods in Iowa. See HT,

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p. 3683 (describing an exchange between Ms. Secchi and OCA regarding the vitality of corn to the Iowa economy). Given the vast impact ethanol has on Iowa, the impacts Summit Carbon's proposed project could provide should be considered.

As pointed out by the Counties, Pirolli Rebuttal Exhibit 1 mainly addresses the impacts of the 45Z tax credit on ethanol plants and not the 45Q tax credit. *Id.* at 1945. The Board agrees this exhibit demonstrates little impact to Summit Carbon's proposed utilization of the 45Q tax credit; however, the Board does find the report generally demonstrates the interest and the steps ethanol plants are undertaking to lower their carbon intensity scores. While the Board has reviewed the report, and questions whether there is bias in the report, the report does project a decrease in ethanol sales ranging from nearly \$2 billion, on the low end, to over \$10 billion, on the high end, should carbon reducing techniques not be implemented by ethanol plants. Summit Carbon Pirolli Rebuttal Exhibit 1, p. 3. This would necessarily cause a chain reaction in the upstream inputs to ethanol, hurting the overall Iowa agricultural sector by applying common economic concepts. This potential supply chain collapse of the Iowa agricultural sector would likely have severe economic impacts to the cities, counties, and the state of Iowa, all of which would stand to lose hundreds of millions of dollars.

As it relates to the demand for the project, 12 Iowa ethanol plants have signed long-term offtake agreements with Summit Carbon. While Ms. Hirth argues the offtake agreements are a detriment to the ethanol plants, the Board is not convinced. If Ms. Hirth's position was correct, the Board suspects it would be highly unlikely these sophisticated, multimillion-dollar businesses would enter into agreements in which their financial situation is worse than prior to entering the agreements. Additionally, the

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argument that Summit Carbon created its own demand and, therefore, it should not be used by the Board, is unpersuasive. Summit Carbon is a business and is seeking to create a product in which others will utilize its business. Absent the monopolies the Board regulates, the Board is hard-pressed to think of a business that can sit idly by and expect customers to simply show up at its door. Summit Carbon's demonstration of demand from the 12 ethanol plants establishes it has viability and is not a pipeline to nowhere, which, as discussed earlier in this order, is a concern of many parties to this proceeding.

The Board is also unpersuaded by the arguments related to higher prices meaning this factor cannot be weighed in favor of Summit Carbon. See *The Counties IB*, pp. 47-50. As stated by Corn Processors, ethanol plants are already paying a premium for corn. *Corn Processors IB*, p. 6. Applying the Counties arguments, while not persuasive, that would mean prices are already higher due to the premium paid by ethanol plants for corn and, therefore, any increase has already happened.

Furthermore, as discussed extensively earlier in this order, governments, corporations, and citizens are pushing for lower carbon intensity fuels. See *supra* Sections III.I.1.a and III.I.1.b. While low carbon ethanol may be sold at a premium, it is a cost that governments, corporations, and citizens are willing to bear to achieve their desired goals. The public is pushing the ethanol industry, and other industries, in the exact direction Summit Carbon's proposed hazardous liquid pipeline is heading. Furthermore, this premium paid by ethanol plants for corn is enjoyed by farmers who are able to reap the benefits of the higher prices and receive a higher return on their product. See *Corn Processors IB*, p. 6.

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Reinforcing the viability of an industry that employs approximately 44,000 Iowans and consumes approximately 53 percent of Iowa's corn crop weighs in favor of Summit Carbon's petition. Overall, the Board finds this factor to weigh in favor of Summit Carbon's petition.

**b. Economics**

**Summit Carbon**

Summit Carbon states in its Exhibit F that its proposed project "will provide economic benefits in Iowa and in the five-state region." Summit Carbon Exhibit F, section 1.0. Summit Carbon states its \$5.5 billion investment "will generate between 14,000 and 17,000 jobs during construction, and 350 to 460 full-time jobs once operational." *Id.* Furthermore, Summit Carbon asserts its proposed project "will also result in significant tax revenue, including from the sale of goods and services during construction and long term[,] as required[,] to operate and maintain the pipeline, along with [s]tate and local community revenue from property taxes." *Id.* Summit Carbon argues more of these revenues will stay in Iowa and be reinvested in Iowa because Summit Carbon is based in Ames. *Id.*

Mr. Powell in his direct testimony testifies Summit Carbon expects to spend approximately \$990 million in Iowa during the construction of its proposed hazardous liquid pipeline. Summit Carbon Powell Direct, p. 6. Mr. Powell testifies Summit Carbon's proposed project is anticipated to "contribute \$73 million in taxes in Iowa during the construction phase, and another \$30 million per year in ongoing property taxes." *Id.*

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Mr. Pirolli, in his direct testimony, substantiates the claims made in Summit Carbon's Exhibit F. Summit Carbon Pirolli Direct, pp. 5-6.

In his direct testimony, Andrew Phillips from Ernst & Young, LLP, on behalf of Summit Carbon, testifies to the economic benefits that could occur should Summit Carbon's proposed project be approved. Summit Carbon Phillips Direct, p. 2.

Mr. Phillips included a copy of the report detailing those economic impacts that could occur should Summit Carbon obtain a permit and construct the pipeline. *Id.* at 3; Summit Carbon Phillips Direct Exhibit 1 (hereinafter E&Y Report). Mr. Phillips' testimony begins by explaining the main steps of the economic analysis. Mr. Phillips testifies the first step is to gather information related to the overall cost to build, operate, and maintain the proposed project, including the costs of materials and right-of-way easements. *Id.* Second, a multi-region economic input-output model is used to analyze and quantify the impact of the proposed project on the United States economy as a whole, as well as the five states where the project is to be located. *Id.* at 3-4.

Mr. Phillips testifies the third step was to use "customized IMPLAN models to estimate the economic impacts of the [proposed] [p]roject for each geographic region." *Id.* at 4.

Mr. Phillips notes the estimates in the E&Y Report use 2022 dollars. *Id.* The last step, as described in Mr. Phillips' testimony, is to assess the fiscal impacts of the construction and operation phases by determining the major types of taxes the proposed project would generate. *Id.*

Mr. Phillips' testimony provides further detail on the IMPLAN model. Mr. Phillips testifies it is a software program that at its heart "is an input-output dollar flow table called the Social Accounting Matrix (SAM)." *Id.* Mr. Phillips testifies the SAM measures

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the “economic relationships between government, industry, and household sectors.” *Id.* Mr. Phillips states this is in contrast to a normal input-output model that would only measure the relationship between the industry and household sectors. *Id.* Mr. Phillips testifies the IMPLAN model “uses these relationships to determine the total impact of the increased spending associated with project-related expenditures.” *Id.* Furthermore, Mr. Phillips testifies regional purchase coefficients are incorporated into the model to “determine the extent to which the direct expenditures will impact the remainder of the region’s economy.” *Id.* at 5. Mr. Phillips also testifies the IMPLAN model takes into account spending leakages that occur outside of the study area and typical commuting patterns of workers. *Id.*

As it relates to expenditures, Mr. Phillips testifies, “The IMPLAN model calculates the number of jobs, employee compensation and proprietor’s income, and industry output associated with the spending amounts in each of the IMPLAN sectors based on industry-to-industry, household-to-industry, and government-to-industry purchasing relationships in each state.” *Id.*

Mr. Phillips states in direct testimony that, based upon the IMPLAN model, he expects 62 percent of the approximately \$1 billion in costs to construct Summit Carbon’s proposed project in Iowa would be spent on local purchases. *Id.* For the overall project, Mr. Phillips testifies the E&Y Report estimates \$6.7 billion of production and sales, \$2.4 billion in labor income, and 11,427 jobs over the estimated three-year construction period across the entire footprint. *Id.* at 6. Mr. Phillips asserts that, upon operation, it is expected that Summit Carbon will employ 1,170 persons “generating



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\$101 million in labor income and benefits and more than \$419 million in gross economic output annually.” *Id.*

As it relates specifically to Iowa, Mr. Phillips testifies the state could experience a \$389 million increase in labor income, 2,018 jobs, and an overall economic output increase of \$1.15 billion during construction of the proposed hazardous liquid pipeline within Iowa. *Id.* at 7. Once the pipeline is operational, Mr. Phillips testifies Iowa could expect to see 324 jobs related to the operation and maintenance of the proposed hazardous liquid pipeline, which would generate \$27 million in labor income and a gross economic output of \$134 million dollars. *Id.* Furthermore, Mr. Phillips testifies Summit Carbon’s proposed hazardous liquid pipeline could generate approximately \$73 million in state and local taxes during construction and approximately \$42 million in state and local taxes annually once in operation. *Id.* at 8. Mr. Phillips testifies further Iowa-specific information can be found in section 5.1 of the E&Y Report. *Id.* Mr. Phillips states the information contained therein contains granular information to the county level. *Id.*

In his rebuttal testimony, Mr. Phillips states the economic impact of the proposed project had been updated between the filings of his direct testimony and rebuttal testimony. Summit Carbon Phillips Rebuttal, p. 3. Mr. Phillips testifies there was a significant increase in the total economic impacts for Iowa and the project overall within that time period. *Id.* Mr. Phillips testifies the expected capital expenditures for Iowa increased from approximately \$990 million to \$1.9 billion. *Id.* Mr. Phillips stated the reason for the increase was due to “scope changes, refined budget knowledge (budget re-base), inflation, increased cost due to project delay, and changes in contingency and

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interest and fees.” *Id.* Mr. Phillips testifies the updated economic analysis shows a greater impact to worker years and labor income, but the average annual jobs decreased. *Id.* at 4. Overall, Mr. Phillips testifies, “The total value added and gross output exceeds \$838 million and \$ 1.8 billion, respectively.” *Id.* The total labor income, excluding an estimated 473 out-of-state workers, is expected to be approximately \$459 million. *Id.*

In addition to providing an update as to the potential economic impact of Summit Carbon’s proposed hazardous liquid pipeline in Iowa, Mr. Phillips’ rebuttal testimony also addresses testimony provided by other parties. *See id.* at 5-11. In response to testimony by Ms. Secchi, Mr. Phillips testifies the E&Y Report did not “analyze environmental cost or credit environmental benefits of the pipeline project.” *Id.* at 5 (emphasis in original). Mr. Phillips testifies it is possible to include such analysis in a report, but that is not the purpose of an IMPLAN study, which is to examine “secondary and tertiary flows that multiply the impact of an injection of capital for a particular purpose into a particular geography.” *Id.* Mr. Phillips asserts IMPLAN was appropriate to use in this situation “because the construction of the pipeline will occur over a short period of time and direct impacts associated with the operation of the pipeline will be relatively small and stable on a year-to-year basis.” *Id.* at 6. Mr. Phillips also asserts the E&Y Report did not include out-of-state benefits in the calculation of benefits for Iowa. *Id.* at 7. Mr. Phillips testifies the IMPLAN model is calibrated to only show benefits from Iowa-sourced inputs and uses IMPLAN’s regional purchase coefficients to determine demand for a commodity supplied by in-state producers. *Id.* Mr. Phillips’ testimony estimates approximately 25 percent of the material and equipment needed for

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construction could be procured from Iowa producers. *Id.* Mr. Phillips testifies a similar analysis is done for in-state versus out-of-state workers. *Id.* at 8 (showing the assumed number of in-state workers to comprise 55 percent of the workers).

Mr. Phillips' testimony asserts Ms. Secchi's "testimony is factually incorrect with respect to the description of the economic impact model's geographical construction." *Id.* at 9. Mr. Phillips testifies the E&Y Report did not use a national economic impact model, but rather a multiregional economic impact model "that includes a two-region Iowa economic impact model dynamically linked to multiple state-level models for the other states with pipeline mileage, as well as a rest-of-United States model that captures impacts that fall outside of the five-state region." *Id.* Mr. Phillips states the two regions of Iowa were divided between counties that are proposed to have construction activities and those that are not. *Id.*

As it relates to the disclaimer contained within the E&Y Report, Mr. Phillips testifies, "The presence of a disclaimer does not negate the validity of the results or provide any indication regarding the magnitude of the ultimate outcome of the [proposed] [p]roject, including whether it will surpass or fall short of the anticipated impacts." *Id.* at 9. Mr. Phillips testifies the standard disclaimer avoids inappropriate use by third parties and clearly identifies known limitations within the report creating transparency. *Id.*

Mr. Phillips further testifies the E&Y Report adjusted the updated numbers provided by Summit Carbon before inputting them into the IMPLAN model. *Id.* Mr. Phillips testifies tax payments and right-of-way acquisition costs from the capital expenditure budget were removed as the report did not consider this an economic

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benefit. *Id.* Project management costs not expected to be incurred within the proposed hazardous liquid pipeline region were removed. *Id.* at 10. For the remaining expenditure categories, Mr. Phillips testifies the regional purchasing coefficients were applied to each category to reflect the economic activity within the region. *Id.* To address inflation, Mr. Phillips testifies it was manually removed to ensure proper reporting of employee productivity levels within the model. *Id.* Lastly, Mr. Phillips testifies the induced impacts to reflect local vs. non-local construction workforce were reduced, which resulted in removing 45 percent of the induced impacts. *Id.*

On cross-examination, Mr. Phillips testifies the E&Y Report does not consider economic costs, only economic contributions. HT, p. 2355. During questioning by Sierra Club as to the disclaimer at the beginning of the E&Y Report, which states the report was not designed for use or reliance by third parties for any purpose, Mr. Phillips testifies, "That is what the disclaimer says." *Id.* at 2359. Mr. Phillips testifies the IMPLAN model is not a cost-benefit analysis. *Id.* at 2360. Mr. Phillips testifies the E&Y Report did not consider the impacts of potentially higher corn prices to livestock producers, the impact of the 45Q tax credit, the ethanol industry, landowner development plants, or crop yields. *Id.* at 2361-62, 2364, 2365.

When questioned by the Counties as to why an IMPLAN model was used instead of a computable general equilibrium (CGE) model, given a CGE model is dynamic compared to IMPLAN, which is static, Mr. Phillips testifies the IMPLAN model is more transparent and allows for greater customization. *Id.* at 2375. Mr. Phillips testifies the analysis was conducted so as to not purely examine a carbon pipeline, but rather a package of purchases that can be individually analyzed. *Id.* On continued questioning

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by the Counties, Mr. Phillips testifies double counting occurred in the IMPLAN model when looking at the total gross economic output, whereas the value-added output does not. *Id.* at 2378. When questioned as to whether counties should build their budgets around the tax estimates contained within the E&Y Report, Mr. Phillips testifies counties should “expect a significant amount of property tax revenue to be generated.” *Id.* at 2390. Mr. Phillips testifies the tax estimates in the E&Y Report are conservative given the increase in the costs associated with the project. *Id.* During cross-examination by Jorde Landowners, Mr. Phillips testifies the E&Y Report is primarily based upon unverified numbers provided by Summit Carbon. *Id.* at 2400-02.

On cross-examination by Hardin County BOS, Mr. Phillips provides testimony regarding the taxation of Summit Carbon’s proposed hazardous liquid pipeline. *Id.* at 2396-98. Mr. Phillips testifies the value of Summit Carbon’s proposed hazardous liquid pipeline would be centrally assessed by the State of Iowa and then allocated to the different taxing districts based upon the presence of a facility or the number of pipeline miles located in that taxing district. *Id.* at 2396. Mr. Phillips testifies the tax is not a real property tax, but is more along the lines of a utility tax. *Id.* at 2397-98.

In its reply brief, Summit Carbon notes the IMPLAN model is the same model used in Dakota Access that was relied upon by the Board and approved by the Iowa Supreme Court in *Punttenney*. Summit Carbon RB, p. 48.

### OCA

In his direct testimony, Mr. Bents testifies, “OCA did not perform its own estimation of the significance of these benefits, the examples cited by [Summit Carbon] appear to be positive economic benefits for Iowa.” OCA Bents Direct, p. 21.

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In response to questioning by Ms. Hirth, Mr. Bents testifies he is not an economist. HT, p. 3319. On cross-examination by Jorde Landowners, Mr. Bents states his testimony on the economic impacts “is based strictly on the job creation from the construction and operation of the pipeline. [It is] not an analysis of any other economic impacts. *Id.* at 3334.

In its initial brief, OCA restates its position that it did not conduct its own economic analysis, but notes the testimony of Mr. Bents indicates Summit Carbon’s proposed hazardous liquid pipeline will include positive benefits. OCA IB, p. 9.

### **Sierra Club**

In the direct testimony of Ms. Secchi, she testifies the IMPLAN model only considers benefits but ignores costs, particularly environmental costs. Sierra Club Secchi Direct, p. 4. Ms. Secchi asserts the alleged benefits in the E&Y Report are largely transitory and limited to the construction period, and the real economic benefits will be much lower than what is estimated in the E&Y Report. *Id.* Ms. Secchi asserts only 16 Iowa-based welders worked on the Dakota Access pipeline. *Id.* Ms. Secchi also testifies the model used in the E&Y Report uses a national model that inflates the indirect and induced economic activity rather than using a model that considers only regional impacts. *Id.* at 4-5.

Furthermore, Ms. Secchi testifies the inclusion of the disclaimer at the beginning of the E&Y Report shows the report is only to be used for public relations purposes. *Id.* at 5. Ms. Secchi testifies, “When these benefit studies are conducted by independent parties that do not have to add such extensive disclaimers, the benefits are much smaller and accrue for much shorter periods.” *Id.*

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Ms. Secchi testifies Summit Carbon's proposed hazardous liquid pipeline "will have minimum positive economic impacts once [it is] installed, but the risks and long-term effects on land will be long-lasting." *Id.* at 6. Ms. Secchi asserts the long-term costs that were not included in the E&Y Report "include monetary costs of the subsidies that would fall on Iowa taxpayers, health risks to humans and animals, and environmental costs to the land." *Id.* Overall, Ms. Secchi's direct testimony asserts Summit Carbon's proposed project is not economically viable, if a proper assessment of the costs and benefits was conducted. *Id.* at 9.

On cross-examination, Ms. Secchi testifies cost-benefit analysis has been the typical way projects have been "argued to be in the public good." HT, p. 3671. Ms. Secchi testifies the economic report should have included costs independently verified by third-party experts. *Id.* Ms. Secchi asserts these costs could have included "things like the reduction in property values, the loss in yield and associated land values, things like the opportunity costs." *Id.* at 3672. Ms. Secchi testifies the E&Y Report should not be relied upon because there is no third party that independently verified the outcome. *Id.* at 3680. When questioned by Summit Carbon, Ms. Secchi testifies she did not perform her own economic study and she should not have to. *Id.* at 3676.

In its reply brief, Sierra Club states in *Dakota Access*, intervenors provided their own economic impact model as evidence for the Board to consider. Sierra Club RB, p. 7. Sierra Club states both *Dakota Access* and the intervenors in that case used the IMPLAN model. *Id.* Sierra Club asserts intervenors learned from *Dakota Access* and argue in Summit Carbon the IMPLAN model is faulty. *See id.*

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**Jorde Landowners**

In the direct testimony of the Fetrows, they testify Summit Carbon will not pay real property tax on any of the easements Summit Carbon obtains. Jorde Landowners the Fetrows Direct, p. 24; see Jorde Landowners John and Karen Hargens Direct, p. 23; Jorde Landowners Jann Reinig *et al.* Direct, p. 28. The Fetrows testify this will create a “ripple effect of less development, expansion, and property improvement.” *Id.* The Fetrows testify they “intend to protest [their] valuations and seek a reduction in property tax which will negatively affect that [sic] [s]tate. . . .” *Id.*

In their initial brief, Jorde Landowners assert the disclaimer contained within Summit Carbon Phillips Direct Exhibit 1 shows the Board should not rely upon the E&Y Report. Jorde Landowners IB, p. 25. Jorde Landowners state the Board should examine the net benefits or costs provided by Summit Carbon’s proposal. *Id.* at 26.

**Kerry Mulvania Hirth**

In her direct testimony, Ms. Hirth testifies any value added by Summit Carbon’s proposed project to the ethanol plants will flow out of Iowa and “reside in Summit[] [Carbon’s] board and shareholders, not in Iowa, or the people of Iowa, or anyone else, for that matter.” Hirth Hirth Direct, p. 3.

In her initial brief, Ms. Hirth states the Board cannot rely upon the E&Y Report as it was not independently verified. Hirth IB, p. 8. Ms. Hirth states the E&Y Report did not take economic costs into account and is too biased to be reliable. *Id.*

**The Counties**

The Counties state in their initial brief the Board may use trickle-down economic benefits as part of its balancing test for determining whether Summit Carbon’s proposed



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service is in the public convenience and necessity. The Counties IB, p. 52. However, the Counties assert, “The Board is a utility regulator, not an economic development agency, and so it should scrutinize this pipeline for more than its ripple effects.” *Id.* at 53 (internal quotations omitted). The Counties state there are several issues with the IMPLAN model, which should make the Board caution its use of the model. *Id.* The Counties assert the IMPLAN model is static and does not account for what happens in the real world as there is no way to check, absent analyzing post construction, the results of the economic model. *Id.* at 54. The Counties argue Summit Carbon should have provided multiple economic models from multiple firms for the Board’s consideration in this case to “increase the level of confidence in the figures Summit [Carbon] claims for the project.” *Id.*

The Counties also caution the Board from relying on the E&Y Report because the inputs came from Summit Carbon and were not independently audited or validated. *Id.* The Counties also state the E&Y Report does not include environmental costs or benefits, when the IMPLAN model is capable of calculating such costs. *Id.* at 58. The Counties assert, “The Board should view the cost estimates in the E[&]Y Study with the same skeptical eye it uses to scrutinize rate-regulated public utilities in general rate cases to determine whether these estimates are reasonable.” *Id.* at 55. The Counties state this proceeding “carries a degree of public importance that is similar to the regulation of public utilities.” *Id.* Lastly, the Counties reiterate it is Summit Carbon that carries the burden of proof, not the intervenors, and it is Summit Carbon’s responsibility to establish there are net benefits from the proposed project, not the intervenor’s responsibility to show there are none. *Id.* at 58.

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In its reply brief, the Counties assert there is no net benefit from Summit Carbon's proposed hazardous liquid pipeline after the true costs and benefits are weighed, due to the flawed IMPLAN model. The Counties RB, p. 18.

### **Board Discussion**

The Board has reviewed the evidence and finds this factor should be considered by the Board in determining whether Summit Carbon's proposed hazardous liquid pipeline meets the requirements of Iowa Code § 479B.9. While the E&Y Report did not include the costs, no evidence was provided to demonstrate the costs would be insurmountable to overcome the positive economic benefits Summit Carbon could provide to the state of Iowa. See, e.g., The Counties IB, p. 54. The Board agrees that Summit Carbon bears the burden of proof in this case. However, the Board finds it ironic that parties opposed to Summit Carbon assert the Board should trust their testimony without providing any evidence as to why their testimony is better than the economic model provided by Summit Carbon, beyond stating the model is incomplete or should not be trusted. A critique of Summit Carbon's evidence may impact the weight given that evidence, but contrary evidence would be required if the parties wished to tip this factor against the project.

Furthermore, the Board gives little weight to any of the arguments that tried to discredit the E&Y Report due to the inclusion of the disclaimer at the beginning of the report. As stated by Mr. Phillips, and seen in numerous other filings the Board reviews as part of its regulation of utilities, these disclaimers are standard. See HT, p. 2359. The disclaimer does not detract from the information contained within the report. The Board understands the report, like most reports, is subject to change once a project

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actually begins; however, the report is designed to provide information to the Board, and others, on the potential economic impacts Summit Carbon's project could have on the state of Iowa and beyond. As noted by Sierra Club, in Dakota Access, the Board was provided alternative economic analyses by intervenors to support their positions. Sierra Club RB, p. 7. While there is no requirement to do so, the Board questions why intervenors would not seek to provide the Board with alternative options when the opposing parties assert Summit Carbon's analysis is incorrect or biased and the Board should disregard the evidence. The Board emphasizes it is not shifting the burden from Summit Carbon to the opposing intervenors, but is stating the Board is not persuaded by the assertions of the opposing parties to the contrary of the evidence provided by Summit Carbon.

Lastly, while Summit Carbon will likely not be paying real property tax, Summit Carbon's proposed hazardous liquid pipeline will be centrally taxed by the State of Iowa and those taxes remitted back to the local taxing districts in which Summit Carbon's proposed hazardous liquid pipeline is located. This is not a new or revolutionary method for taxing linear infrastructure; it is how most linear infrastructure projects are taxed. While everything is hypothetical at this point, given Summit Carbon's project is merely proposed at this time, the E&Y Report demonstrates the amount of additional tax revenue counties could see, should Summit Carbon's proposed project be constructed, is not insignificant. The E&Y Report estimates that each county, on average, could see approximately \$1 million in increased funding should Summit Carbon's proposed hazardous liquid pipeline be approved and constructed. See Summit Carbon Phillips Direct Exhibit 1, p. 30.

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While the E&Y Report did not include the explicit costs of Summit Carbon's proposed hazardous liquid pipeline, the Board finds that even if they were included, the potential costs would not surpass the potential economic benefits. The Board finds this factor weighs in support of granting Summit Carbon a permit.

### **3. Impacts to Landowners**

Based upon the testimony, comments, and objections filed in this docket, the impact to landowners is a factor that should be considered as a part of the Board's analysis.

#### **Summit Carbon**

In its Exhibit F, Summit Carbon states the impact to landowners "includes traffic and construction equipment, typical temporary construction-related or maintenance-related noise and activities, as well as temporary disruption to the land. . . ." Summit Carbon Exhibit F, section 5.0. Summit Carbon states these types of impacts are routine for projects constructed under the Board's chapter 9 and 13 rules. *Id.* Summit Carbon asserts once the proposed hazardous liquid pipeline is buried, normal operations can return above it, except for where there are above-ground appurtenances. *Id.*

In his direct testimony, Summit Carbon witness Schimdt testifies, "During construction there will be short-term periods of increased noise, dust, and additional traffic on local roads as the construction spread moves through an area. None of these impacts will be significant or long-term." Summit Carbon Schmidt Direct, p. 5. Mr. Schmidt testifies that after construction, aerial patrols, with localized ground patrols near mainline valves and cathodic protection sites, will be some of the post-construction impacts of Summit Carbon's proposed project. *See id.* As it relates to agricultural

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lands, Mr. Schmidt testifies “construction will result in a temporary loss of crops during construction, for which Summit [Carbon] will compensate landowners. Summit [Carbon] will repair or restore any drain tiles, fences, and other features that are temporarily disturbed during construction.” *Id.* at 8. Mr. Schmidt testifies Summit Carbon will comply with the AIMP to restore the disturbed right-of-way. *Id.* Mr. Schmidt states in his direct testimony, “There will be no permanent impact to, nor maintenance of, the vegetation along the route in this community type except shrubs will not be allowed to grow over 15 feet high within 15 feet of either side of the centerline.” *Id.* at 8-9.

Mr. Schmidt testifies, “Woody vegetation in forested areas will be removed periodically above the pipeline (approximately 15 feet on each side of the centerline) to maintain visibility of the area above the pipeline for aerial pipeline observation and to permit access to all areas along the pipeline in the event of an emergency.” *Id.* at 9.

As it relates to impacts to wildlife on landowners’ property, Mr. Schmidt testifies he expects the short-term impacts to be minimal as Summit Carbon’s proposed hazardous liquid pipeline affects a small fraction of the available habitat. *Id.*

Mr. Schmidt testifies any long-term impact due to habitat loss would be minor, especially due to the route not impacting a lot of forests, which would require clear cutting. *Id.* Mr. Schmidt testifies there would be increased noise and human presence during construction, but he expects the impacts from this to be temporary and minor. *Id.* at 9-10. Mr. Schmidt testifies the long-term noise from pump stations will “be minor since there are so few and are sited mostly in agricultural land.” *Id.* at 10. Mr. Schmidt asserts there would be no significant impacts to wildlife or its habitat during routine maintenance activities. *Id.*

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In his direct testimony, Mr. Schovanec testifies Summit Carbon will follow the AIMP for agricultural land in Iowa. Summit Carbon Schovanec Direct, p. 7.

Mr. Schovanec testifies complying with the AIMP “will minimize impacts to farmland while maximizing restoration to its original state and its quick restoration to prior growing conditions.” *Id.* In addition to construction within the easement, Mr. Schovanec testifies Summit Carbon’s proposed hazardous liquid pipeline would need 38 temporary access roads and 78 permanent access roads. *Id.* at 9. Mr. Schovanec testifies the 78 permanent roads would provide access to 52 main line valves (MLV), eight launcher-receiver sites, and four pump stations. *Id.* Access roads would be 30 feet in width and constructed using gravel. *Id.* at 9-10. Mr. Schovanec testifies temporary access roads would be removed and restored consistent with the AIMP, unless otherwise agreed to by the landowner. *Id.* at 10. Mr. Schovanec states there would be yield impacts within the right-of-way; however, “the owner of the crops will be compensated in accordance with Iowa law and agreements with landowners.” *Id.*

Mr. Schovanec testifies no houses will be displaced along Summit Carbon’s route. *Id.*

As it relates to roads, Mr. Schovanec testifies, “Most paved roads will be bored, with the pipe being installed with trenchless methods resulting in no surface impacts outside of driving equipment across. Where the open cut method is used, the roads will be restored to their original condition or better.” *Id.*

Mr. Schovanec testifies the permanent impacts to land use would only be seen in areas where there are above-ground appurtenances or where the route passes through trees. *Id.* at 11. Mr. Schovanec testifies that “the 50-foot permanent operating

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easement will remain clear of trees but will be re-seeded with ground vegetation.” *Id.*

Furthermore, Mr. Schovanec testifies landowners would be prohibited from constructing permanent structures within the 50-foot permanent easement. *Id.*

Related to drain tile, Mr. Schovanec testifies the Board’s rules in chapter 9 “contain detailed requirements for addressing drain tile, including clearance requirements, and requirements for marking, completing, and documenting temporary and permanent repairs to drain tile, as well as drain tile repair inspection requirements.” *Id.* Mr. Schovanec testifies Summit Carbon has hired a tile contractor to repair any cut tile in compliance with the Board’s rules. *Id.*

In his rebuttal testimony, Mr. Schovanec provides three rebuttal exhibits and testimony regarding the impacts to land development. Summit Carbon Schovanec Rebuttal, pp. 7-9. Mr. Schovanec testifies Iowa has approximately 45,000 miles of existing underground pipeline, which has not prevented agricultural, residential, or commercial development. *Id.* at 7. In his Rebuttal Exhibit 3, Mr. Schovanec shows several examples where communities have grown and developed around existing pipelines. *Id.* at 8; Summit Carbon Schovanec Rebuttal Exhibit 3. Furthermore, Mr. Schovanec provides a case study from Dakota Access showing development near and around hazardous liquid pipelines. Summit Carbon Schovanec Rebuttal, p. 8; Summit Carbon Schovanec Rebuttal Exhibit 2. Mr. Schovanec asserts the “presumption[s] that the existence of an underground pipeline prohibits continued uses or prevents development in and around the pipeline right-of-way is simply not accurate.” Summit Carbon Schovanec Rebuttal, p. 9.

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In his testimony regarding the eminent domain staff report, Summit Carbon witness Micah Rorie states where land is in a CRP, Summit Carbon offers easement language to concerned landowners where “Summit Carbon will reimburse the landowner for any penalties or other loss of CRP income as a result of the easement.” Summit Carbon Rorie Exhibit H Staff Report, p. 6.

In response to numerous testimonies asserting landowners would be unable to get insurance should Summit Carbon’s proposed hazardous liquid pipeline be constructed on their property, Summit Carbon witness Pirolli testifies that he understands the insurance letters to state that the landowner’s insurance company would not cover the damage because Summit Carbon’s insurance would. Summit Carbon Pirolli Rebuttal, pp. 6-7. Mr. Pirolli states Summit Carbon’s “voluntary easement agreement has a provision where Summit [Carbon] indemnifies the landowner,” and it would not object to including that provision in the eminent domain easement terms. *Id.* at 7. Mr. Pirolli testifies this would in essence make Summit Carbon the insurer for damages related to its proposed hazardous liquid pipeline. *Id.*

As discussed previously in the order, Summit Carbon witness DeJoia acknowledges landowners will see a decrease in yields as a result of the construction, but complying with the AIMP will ensure yields are returned to normal. See Summit Carbon DeJoia Rebuttal, pp. 5-6.

Summit Carbon has hired Ellingson to be Summit Carbon’s drainage tile repair contractor. Summit Carbon Ellingson Rebuttal, p. 6. Mr. Ellingson testifies he has read the Board’s rules and the AIMP as it relates to tile repair, and these requirements will be followed when temporary and permanent repairs are made. *Id.* at 7. Mr. Ellingson



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testifies repaired drainage tile will be documented using GPS, photographs, and as-built maps. *Id.* Mr. Ellingson testifies he is not concerned about the number of repairs impacting the functionality of the existing drainage tile systems in fields because the repairs will be as good or better than the condition before. *Id.* at 8. Furthermore, Mr. Ellingson testifies occasionally it “makes sense for the landowner for us to install a system with new headers, mains, or laterals that run parallel to the pipe, rather than underneath it, to decrease the number of crossings.” *Id.* Mr. Ellingson testifies that these modifications, as well as drainage tile repairs that are required due to the actions of Summit Carbon, will be paid for by Summit Carbon. *Id.* Furthermore, Mr. Ellingson testifies landowners will be able to have new drain tile installed after the installation of Summit Carbon’s proposed project. *Id.* at 9. Mr. Ellingson testifies the only additional requirement will be for the drainage tile installer to contact 811 prior to commencing construction. *Id.*

On cross-examination, Mr. Schmidt testifies water features of major rivers and streams would not be significantly impacted from boring or HDD methods. HT, pp. 2930-31. As it relates to potential impacts to deer hunting, Mr. Schmidt testifies the construction and hunting periods do not usually overlap. *Id.* at 2931-32.

Mr. Schmidt further clarifies his prefiled testimony by stating he was referring to the use of agricultural land and not the productivity of the land in his testimony. *Id.* at 2943. Furthermore, Mr. Schmidt testifies his testimony was not to examine what, if any, impacts the water consumption by Summit Carbon may have on the environment. *Id.* at 2951.

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On cross-examination by the Counties, Mr. Schovanec clarifies the easement would prohibit development within the permanent easement. *Id.* at 2053. As it relates to his Rebuttal Exhibit 2, Mr. Schovanec testifies he is not a real estate agent or appraiser, but was offering the exhibit to show development does occur around pipelines. *Id.* at 2054-55.

On cross-examination by Jorde Landowners, Mr. Schovanec testifies there was a load analysis conducted for the pressures on Summit Carbon's project, which is proposed to be four feet deep. *Id.* at 2086. Mr. Schovanec testifies this information could be provided at a later date. *Id.* During the course of the hearing, a load analysis was introduced and admitted into evidence. Summit Carbon Hearing Exhibit 5; HT, p. 6266.

During cross-examination by Farm Bureau, Mr. Schovanec testifies there is no use for communities to use liquefied carbon dioxide, unlike a large natural gas transmission pipeline. *Id.* at 2247-48. Furthermore, Mr. Schovanec agrees there is a difference between choosing to locate near a pipeline compared to having one constructed nearby. *Id.* at 2249.

Additionally, Mr. Schovanec testifies contractors prefer to drill road crossings to avoid open-cutting roads. *Id.* at 2293. Mr. Schovanec testifies a vast majority of crossed roads and potentially all of them, will be drilled. *Id.*

Lastly, Mr. Schovanec testifies Summit Carbon's proposed hazardous liquid pipeline does present challenges to landowners. *Id.* at 2348.

During cross-examination by Jorde Landowners, Mr. Ellingson testifies Ellingson has a team of in-house drainage experts who work with Summit Carbon's engineers to

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address known landowner drainage tile issues and those that would occur during construction. *Id.* at 2431. Mr. Ellingson further testifies Ellingson does not provide a warranty to the impacted landowner, but to Summit Carbon. *Id.* at 2432. Mr. Ellingson testifies Ellingson's typical workmanship warranty is five years. *Id.* at 2434.

Mr. Ellingson also testifies Ellingson has leeway to make landowner modifications to the drainage tile, within the scope of the project, as it is being repaired. *Id.* at 2434-35.

On cross-examination by Farm Bureau in response to a question about the numerous landowner witnesses who raised concerns about their drainage tile, Mr. Ellingson states Ellingson installs 30 million to 40 million feet of drainage tile a year, has been in business for 53 years, and has conducted projects across the Midwest. *Id.* at 2447. Mr. Ellingson states if a drain tile repaired by Ellingson is not working as good as, or better than, before the construction, Ellingson "will come back and meet with the landowner and address any issues or concerns they have until [they are] happy." *Id.*

On cross-examination by Farm Bureau, Mr. Rorie testifies Iowa Code § 480.9 would be applicable to farmers who farm over Summit Carbon's proposed hazardous liquid pipeline. *Id.* at 2690. Asked by Farm Bureau, Mr. Rorie testifies any damages related to violations of CRP contracts would either be explicitly covered by the easement language or the damages would be other damages not listed, which Summit Carbon would have to pay. *Id.* at 2694-95. Mr. Rorie testifies this applies to landowners who did not sign voluntary easements as well. *Id.* at 2695. Mr. Rorie also testifies he was aware of Summit Carbon's commitment to compensate landowners should Summit Carbon's proposed project cause the landowner to be ineligible and removed from a federal farm program. *Id.* at 2696; Farm Bureau Hearing Exhibit 3.

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Questioned as to whether he knew that “[t]wo-thirds of the landowners are 65 and older and 37 percent are 75 and over” and Summit Carbon’s easement payment would impact their benefits, Mr. Rorie testifies it is true these landowners may receive less money from their benefit programs, but they would be receiving money from Summit Carbon. *Id.* at 2737-38. Mr. Rorie testifies Summit Carbon is willing to work with landowners to try to alleviate potential tax implications, within reason. *Id.* at 2738.

In its initial brief, Summit Carbon states it understands the concerns related to the impact to farms, but the concerns raised are common with most types of infrastructure projects. Summit Carbon IB, pp. 44-45. Summit Carbon asserts the Board should rely upon its rules in 199 IAC chapter 9 regulating land restoration, which establishes land can be repaired after a pipeline is installed. *Id.* at 46. Summit Carbon states the Board’s land restoration requirements are the strictest in the Midwest and were made more demanding after the Board’s 2021 overhaul of the rules to be more protective of farmland. *Id.* Summit Carbon argues Iowa law and its statement of damage claim already cover most of the issues raised by landowners during this proceeding. *See id.* Lastly, Summit Carbon states the issues raised with regard to farming over Summit Carbon’s proposed hazardous liquid pipeline are meritless as the load impact analysis shows heavy equipment can operate on ground above the proposed hazardous liquid pipeline. *Id.*

In its reply brief, Summit Carbon reiterates there will be temporary construction disruption, but these disruptions will not be an undue burden on the landowners and are no different than the types of disruptions Iowa law already accounts for and are typical for infrastructure projects before the Board. Summit Carbon RB, pp. 18-19. Summit

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Carbon states the indemnification language proposed to be added to the Exhibit H's is stronger than stated by Jorde Landowners and "its inclusion further insulates and expressly indemnifies landowners from any liability arising from Summit[] [Carbon's] use of its pipeline on a landowner's property." *Id.* at 21-22.

Summit Carbon states it would not oppose including conditions on a permit issued by the Board regarding ensuring landowners and tenants are made "whole if they are rendered ineligible for current federal farm programs as a result of construction of the [proposed hazardous liquid] pipeline on their property." *Id.* at 72. Summit Carbon states it does not object to a condition that it "compensate landowners if they have a current CRP contract in place that the FSA ends and/or requires the landowner to pay back past CRP contract payments because of the installation of the pipeline." *Id.* at 73. Lastly, Summit Carbon states it will "provide landowners and tenants access to their properties through any fencing or gates, and to ensure landowners or their tenant farmers will have access to all portions of the farm outside of the easement during construction and restoration." *Id.*

### **Jorde Landowners**

Jorde Landowners' witnesses identify several potential impacts to landowners should Summit Carbon's proposed project be approved. Those impacts will be addressed individually below.

In the direct testimony of Jorde Landowners witness McKean, he provides an analysis of field tile and some issues which, he asserts, landowners may encounter during and after construction of Summit Carbon's proposed hazardous liquid pipeline. Jorde Landowners McKean Direct, pp. 4-7. Mr. McKean testifies drain tile can range in

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depth from 12 inches to 15 feet, with most in the three- to six-foot depth range. *Id.* at 4. Mr. McKean asserts cutting many drainage tile lines, especially in pattern-tiled fields, at different angles and directions will make it “difficult or impossible to reroute the drainage tile and maintain original design characteristics.” *Id.* Mr. McKean testifies, should Summit Carbon’s drainage tile contractor place the drainage tile inside a solid pipe, drainage in that area will be lost. *Id.* Additionally, Mr. McKean asserts if sandbags are used to support the drainage tile, yield will be permanently impacted in that area. *Id.* Mr. McKean testifies that “a company the size of Ellingson won’t be able to adequately repair the tile in a timely fashion.” *Id.* at 6. Mr. McKean asserts these are repairs, not nice, neat new lines installed by machines, and it will take time to repair cut drainage tile. *Id.* Lastly, Mr. McKean testifies landowners may have issues finding a contractor to install drainage tile in fields where Summit Carbon’s proposed project is to be located. *Id.* Mr. McKean testifies that tile contractors will avoid these farms because of the liability. *Id.* at 7. Mr. McKean asserts, “Having the pipeline in the farm will make that future drainage project more expensive, if they can find a willing contractor.” *Id.*

In the direct testimony of Brenda Jairell *et al.*, Ms. Jairell testifies she will “have no insurance coverage should any damage or injury be caused by a carbon dioxide release from the hazardous pipeline as carbon dioxide is considered a ‘pollutant’ under [her] policy.” Jorde Landowners Brenda Jairell *et al.* Direct, p. 20; see Jorde Landowners Maureen Elbert Bechard *et al.* Direct, pp. 19-20; Jorde Landowners Lance and Sandra Kleckner Direct, p. 19. Ms. Jairell asserts she would be unprotected and exposed to liability. Jorde Landowners Brenda Jairell *et al.* Direct, p. 21; see also Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 20; Jorde Landowners Lance and

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Sandra Kleckner Direct, p. 19. Ms. Jairell testifies she would have to pay for her defense out of her own pocket and personally pay for any damages attributed to her actions. *Id.*

In addition to insurance concerns, Ms. Jairell testifies Summit Carbon's proposed project would "impair the health and the safety and welfare of the inhabitants." Jorde Landowners Brenda Jairell *et al.* Direct, p. 37; see Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 37; Jorde Landowners Lance and Sandra Kleckner Direct, p. 35. In support of her assertion, Ms. Jairell relies upon Ms. Deal-Tynes Direct Attachment 3. *Id.* Similarly, Ms. Jairell testifies Summit Carbon's proposed project "will pose a threat of serious injury to current future [sic] and social conditions. . . ." Jorde Landowners Brenda Jairell *et al.* Direct, p. 30; see Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 30; Jorde Landowners Lance and Sandra Kleckner Direct, p. 28. Ms. Jairell testifies the injury to social conditions arise from Summit Carbon's use of the federal tax credits "due to excessive state and local dependency on a politically unstable federal funding program." Jorde Landowners Brenda Jairell *et al.* Direct, p. 34; see Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 34; Jorde Landowners Lance and Sandra Kleckner Direct, p. 32.

Furthermore, Ms. Jairell testifies Summit Carbon's proposed hazardous liquid pipeline would cause "undue interference with the orderly development of each affected parcel, the surrounding parcels, and thereby the region." Jorde Landowners Brenda Jairell *et al.* Direct, p. 37; see Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 37; Jorde Landowners Lance and Sandra Kleckner Direct, p. 35. Ms. Jairell states she was "aware of property that had interest for purchase but did not get bids once it

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was discovered a [carbon dioxide] company sought to locate a hazardous pipeline on the land.” Jorde Landowners Brenda Jairell *et al.* Direct, p. 37; see Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 38; Jorde Landowners Lance and Sandra Kleckner Direct, p. 35.

Lastly, Ms. Jairell testifies she depends upon the farm for income and Summit Carbon’s proposed hazardous liquid pipeline would significantly impact the property in a negative way. Jorde Landowners Brenda Jairell *et al.* Direct, p. 3; see *also* Jorde Landowners Maureen Elbert Bechard *et al.* Direct, p. 3; Jorde Landowners Lance and Sandra Kleckner Direct, p. 3.

In the direct testimony of Lance and Sandra Kleckner, they testify their property is not typical row crop ground, but the land is used for growing trees. Jorde Landowners Lance and Sandra Kleckner Direct, pp. 2-3. The testimony asserts the trees support the family’s livelihood and without the income from the trees, there would not be sufficient funds to make farm payments. *Id.* at 3.

In the direct testimony of Marvin J. Leaders, on behalf of Loutomco, Inc., he testifies his impacted properties are commercial, agricultural properties that produce income. Loutomco, Inc., Leaders Direct, p. 3. Mr. Leaders further testifies if Summit Carbon were to bury its proposed hazardous pipeline “only five . . . feet below the surface,” he couldn’t “use any equipment with tires five . . . feet in diameter or larger in my operations for fear if [he] would sink, the tires could come in contact with the pipeline and directly expose me to great liability.” *Id.* at 17. Mr. Leaders asserts this would inhibit his “ability to stay competitive and utilize larger equipment” to work his land that it negatively impacts him by not allowing him “to be as efficient as possible and reduces



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my profitability.” *Id.* He states he would stop buying new equipment, which would hurt local businesses. *Id.* Overall, Mr. Leaders testifies Summit Carbon “has a negative impact on the [s]tate’s economy and poses a threat of serious injury to my social and economic condition, but it also substantially impairs my health, safety and welfare all the while unduly interfering with the orderly development of my land and therefore the region.” *Id.* Mr. Leaders testifies he would not invest in or develop his property in the same manner he normally would if Summit Carbon’s proposed hazardous liquid pipeline is constructed across his properties. *Id.* at 37. Mr. Leaders testifies his inability to obtain insurance to cover his property against certain claims should a release occur on his property is the main issue he sees. *Id.* at 37-38. Additionally, Mr. Leaders testifies Summit Carbon’s proposed hazardous liquid pipeline would be an “interference with the orderly development of each affected parcel, the surrounding parcels, and thereby the region.” *Id.* at 39. Mr. Leaders testifies he is “aware of property that had interest for purchase but did not get bids once it was discovered a [carbon dioxide] company sought to locate a hazardous pipeline on the land.” *Id.*

In her direct testimony, Ms. Kohles testifies she reinvests 100 percent of the net proceeds from her farm back into the farm, which will ultimately pay for retirement and her future medical care. Kohles Family Farms Kohles Direct, p. 2. Ms. Kohles testifies Summit Carbon’s route would prevent her from having access to the west side of her property while Summit Carbon is constructing. *Id.* at 3. Ms. Kohles also testifies Summit Carbon did not provide information related to weight restrictions that may be enforced over the proposed hazardous liquid pipeline. *Id.* Ms. Kohles asserts this could permanently deny her the ability to farm the west third of her land if [Summit Carbon]

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were to disallow this equipment to traverse its easement area after the construction phase is complete. *Id.*

Ms. Kohles' direct testimony also asserts Summit Carbon's proposed project will prevent her from using the easement during construction and cause her land to lose fertility. *Id.* at 5. Ms. Kohles testifies that, in addition to yield loss, Summit Carbon's proposed hazardous liquid pipeline would impact a waterway that runs through her property and would impact the drainage tile she recently had installed. *Id.* at 5-6.

Ms. Kohles testifies the existence of Summit Carbon's proposed project on her property would limit what can be done in the future on the property. *Id.* at 6. Mr. Kohles asserts Summit Carbon's existence "would remove adaptability for all future heirs or potential buyers to grow with the future times." *Id.* Furthermore, Ms. Kohles testifies the liability coverage from her insurance company is essentially useless because it would only protect her if she was liable for the rupture. *Id.* at 9; Kohles Family Farms Kohles Attachment 11.

In their direct testimony, the Hayeks testify they need the property to be productive in order to make farm payments. The Hayeks the Hayeks Direct, p. 2. They assert they "would likely be forced to live on a reduced income for years in order to repair the damage caused by the construction of a hazardous carbon pipeline." *Id.* The Hayeks testify Summit Carbon "will destroy our soil structure with heavy machinery impaction and require additional tillage to bring our soils back." *Id.* The Hayeks further testify their drainage tile will also be impacted and once drainage tile is disturbed it will never be the same. *Id.* The Hayeks testify they are on their third drainage tile contractor due to the existence of multiple interstate natural gas pipelines on the

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property. *Id.* at 3. The Hayeks state in testimony that drainage tile costs approximately \$2,000 extra per pipeline crossing of the existing interstate natural gas pipelines for and the Hayeks expects similar, if not higher, pricing for crossing a liquefied carbon dioxide pipeline. *Id.* Lastly, the Hayeks testify they have not received a definitive answer as to whether their insurance would cover damages stemming from a release on their property. *Id.* at 4.

On cross-examination by Sierra Club, Mr. Hayek testifies the farm proposed to be impacted by Summit Carbon has been no-till for 15 years and Summit Carbon's proposal would destroy the benefits of not tilling, essentially restarting the clock on the benefits of no-till. HT, p. 3991.

On cross-examination by Farm Bureau, Maureen Elbert Bechard testifies about social impacts stated throughout her testimony as they relate to people and their mental health. HT, p. 7198. Ms. Bechard additionally states Summit Carbon's proposed hazardous liquid pipeline is impacting communities by dividing them. *Id.* at 7199.

On redirect after questioning by Farm Bureau, Craig Byer asserts social conditions relate to "society and whether or not this pipeline has positive effects or negative effects on society in general. . . ." *Id.* at 6776.

On cross-examination by Farm Bureau, Ms. Jairell was questioned about the insurance letter included in her testimony. *Id.* at 7307. Ms. Jairell testifies the letter is from Dixon County Mutual and includes the questions raised by her and her father as well as the response from the insurance company. *Id.*

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On cross-examination, Mr. Leaders testifies he would remove any farm ground impacted by Summit Carbon's proposed hazardous liquid pipeline from the lease he has with any tenant until it is fully restored. HT, pp. 3977-78.

In their initial brief, Jorde Landowners assert disturbing ordinary farming practices will reduce crop yields and can occur for more than 45 years after pipeline construction. Jorde Landowners IB, p. 43. Jorde Landowners state Summit Carbon's indemnity language is also unassistive to landowners as it cannot bind third-party parties. *Id.* at 44. Jorde Landowners point to the lawsuit included with almost every testimony provided as evidence of a farmer being sued due to the farmer striking and damaging the pipeline. *Id.* Jorde Landowners acknowledge the farmer was liable in this situation due to the farmer's negligence for not calling 811 to have utilities located before digging. *Id.* Jorde Landowners state the proposed indemnification language only relates to damages arising from Summit Carbon's proposed hazardous liquid pipeline and not any claim related to the proposed hazardous liquid pipeline. *Id.* at 46.

In their reply brief, Jorde Landowners state landowners still have concerns about how modern farm equipment could impact Summit Carbon's proposed hazardous liquid pipeline. Jorde Landowners RB, p. 49. Jorde Landowners assert Iowa law is inadequate to protect Iowa landowners. *Id.* at 50. Additionally, Jorde Landowners state the impacts from Summit Carbon's proposed hazardous liquid pipeline are unique to Summit Carbon because they are unique to the landowners. *Id.* at 51. Jorde Landowners state these impacts include removing land from production, refusing to purchase new land with Summit Carbon's route located upon it, stopping the sale of corn to ethanol plants, and other losses. *Id.* at 54-58.

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As it relates to the insurance issue, Jorde Landowners assert Summit Carbon's reliance on already-existing pipelines in Iowa with landowners who have insurance misses the point because these policies have not been tested. *Id.* at 59-60. Jorde Landowners state the record is replete with testimony from landowners who state they are unable to get insurance. *Id.* at 60. Jorde Landowners assert the proposed indemnification language does nothing to protect landowners from a claim that a neighbor might bring against the landowner for damages that result in the death of cattle due to a carbon dioxide release. *Id.* at 63. Jorde Landowners reiterate Summit Carbon's proposed indemnification language cannot bind third-party claimants. *Id.* at 64.

### **The Counties**

In the direct testimony of Mr. Hamilton, he testifies Summit Carbon's proposed hazardous liquid pipeline:

requires a permanent easement that restricts future development in the easement corridor. This will prevent landowners from building new structures within the easement and will prevent communities from developing new housing or business developments wherever the easement corridor passes through the county. That is a significant impact on the use of the land by landowners and on the land use planning of counties.

The Counties Hamilton Direct, p. 18. Mr. Hamilton further testifies that the presence of Summit Carbon's proposed hazardous liquid pipeline "is likely to permanently affect housing development, land use values, local tax base, tourism, and the migration of residents to a county." *Id.* at 19.

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**Lisa L. Stuck and William L. Stuck**

In the Stucks' direct testimony, they testify crop farming is their only income. The Stucks the Stucks Direct, p. 1. The Stucks testify Summit Carbon's proposed hazardous liquid pipeline "will diminish their ability to expand their operation" and it would impact their, or their son's, ability to construct a machine shed, a hog confinement, or anything along those lines on the property. *Id.* at 2. Furthermore, the Stucks testify they contacted their insurance company, which informed them it will not insure them because of risks associated with a pipeline. *Id.* The Stucks testify they have no guarantee from Summit Carbon that it will pay for any damages or injuries resulting from its proposed project. *Id.*

On cross-examination, Lisa Stuck testifies she has concerns about her drainage tile lines. HT, p. 3897.

In their initial brief, the Stucks reiterate their concerns identified in their testimony and at hearing. The Stucks IB, pp. 4-6.

**Republican Legislative Intervenors for Justice**

As a sitting senator for the state of Iowa, Sen. Salmon testifies she has concerns about impacts to drainage tile and land restoration for landowners along the route. RLIJ Salmon Direct, p. 3.

In his direct testimony, Rep. Charles Thomson testifies "the authority and legitimacy of the state is undermined with direct and rapid negative impact on the welfare of the citizens." RLIJ Thomson Direct, p. 2. Rep. Thomson further testifies Summit Carbon's proposed project "requires a permanent easement that restricts future development in the easement corridor." *Id.* at 5. Rep. Thomson asserts, "This will

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prevent landowners from building new structures within the easement and will prevent communities from developing new housing or business developments wherever the easement corridor passes through the county.” *Id.* Rep. Thomson argues this “will permanently affect housing development, land use values, local tax base, tourism, and the migration of residents to a county.” *Id.*

### **Murray Landowners**

In the direct testimony of David Skilling, on behalf of DAPEMA, LLC, Mr. Skilling testifies that “an owner has exposure to landowner liability claims simply by owning the property.” Murray Landowners Skilling Direct, p. 10. Mr. Skilling asserts, “It is well-settled law that an owner of land is exposed to premises liability.” *Id.* Mr. Skilling testifies his “landowner insurance policy has a pollution exclusion. . . . If a pipeline ruptures, our insurance company is going to deny that claim as not being covered by our standard liability coverage.” *Id.* Mr. Skilling states that his insurance company would probably deny his coverage, forcing him to hire his own attorney to defend that claim and hope that somehow those lawsuits are fully paid by the pipeline company. *Id.* at 11.

### **Mary Moser, Jamie Moser, and Carmen Moser**

As it relates to their property, the Mosers testify any soil disturbed by Summit Carbon will be less productive. The Mosers Jamie Moser Direct, p. 3.

### **Estate of Bonnie Wallace**

In the direct testimony of Jearl Wallace, Mr. Wallace states he rents his land and receives the income. Estate of Bonnie Wallace Wallace Direct, p. 2. Mr. Wallace

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testifies he is concerned about damage to his source of income should Summit Carbon's petition be approved. *Id.*

### **Revocable Trust of Lois Deiterman**

Mr. Bobolz's direct testimony states Summit Carbon proposes to cross CRP and other government ground. Lois Dieterman Revocable Trust Bobolz Direct, p. 1.

Mr. Bobolz testifies his mother relies upon the income from the farm to pay for her assisted living expenses. *Id.* Mr. Bobolz testifies the potentially impacted land is highly erodible land, which causes him concern related to constructability. *Id.* at 2. Mr. Bobolz also testifies there is a nearby cattle operation that could be negatively impacted by Summit Carbon's proposed project should a release occur. *Id.*

On cross-examination, Mr. Bobolz testifies the other government programs identified in his direct testimony relate to government programs that promote wildflower and grass growth programs. HT, p. 4160.

### **John Banwart**

In his direct testimony, Mr. Banwart testifies there is a 48-inch drainage tile main that follows the same route as Summit Carbon's route. Banwart Banwart Direct, p. 1. Mr. Banwart testifies if the main breaks, nearly 1,200 acres of farm ground will be impacted and those impacted farmers "will have no recourse available to them since their land will not be under contract." *Id.* Mr. Banwart testifies that "disturbance of the soil to put the pipeline in will throw me out of the carbon credit program on my field." *Id.*

On cross-examination, Mr. Banwart reiterated his concerns related to damage to the 48-inch drainage tile main. HT, pp. 4191-92. He also testifies the drainage tile main is buried up to 14 feet deep in some places. *Id.* at 4194. Mr. Banwart clarified the



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damage other farmers could incur in the 1,200-acre drainage area would result from the water's inability to drain through the drainage tile main, not necessarily actual damage to the drainage tile lines. *Id.* at 4195. Furthermore, Mr. Banwart testifies his land would likely be removed from his carbon credit program because “the soil profile would get screwed up enough” that his land would not be sequestering as much carbon. *Id.* at 4197.

Mr. Banwart, on cross-examination, testifies his inability to impound water on his property would cause an economic hardship on him. *Id.* at 4203. Mr. Banwart testifies if he “could have irrigated and put an inch or two or more of water back on the farm, that would have made a huge difference in my yields.” *Id.*

### **Landowners, Commenters, and Objectors**

During the course of this proceeding, the Board has heard testimony from dozens of affected landowners and thousands of concerned citizens via comments, objections, and letters of support filed in the docket. The Board has heard or read these pieces of evidence, but will not individually address each one. Common themes contained within this evidence have been addressed by the parties stated above, and reproducing them here would not provide any additional, new arguments.

### **Board Discussion**

The Board has reviewed the evidence and finds the impacts to landowners due to Summit Carbon’s proposed hazardous liquid pipeline are a factor the Board must consider when weighing whether to approve Summit Carbon’s petition. There is little question Summit Carbon’s proposed hazardous liquid pipeline will impact landowners. However, the impacts from Summit Carbon’s proposed project can be mitigated through

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compliance with the AIMP or via the payment of damages by Summit Carbon.

Landowners have rightfully directed the Board's attention to yield issues and drainage tile issues should Summit Carbon's proposed hazardous liquid pipeline be approved.

The Board understands these concerns.

The Iowa Legislature has also recognized these concerns and has made land restoration during and after construction as well as for removal of a hazardous liquid pipeline an issue the Board must consider. Iowa Code § 479B.20. The Board's rules at chapter 9 are specifically designed to minimize the impacts from pipeline construction across agricultural lands; those rules also address drainage tile issues. To ensure compliance with the AIMP, Summit Carbon has directly hired Ellingson to be its drainage tile contractor. Summit Carbon Ellingson Rebuttal, p. 6. Furthermore, landowners may use their own drainage tile contractor to undertake repairs, with the costs of the repairs borne by Summit Carbon. *Id.* at 9.

As it relates to the insurance concerns by landowners, the Board has read the letters provided by the insurance companies and agrees with the statement made by Mr. Pirolli in his rebuttal testimony. The letters state the insurance companies would not cover damages that are a result of a failure of something owned or operated by Summit Carbon, but that they would cover the landowner if the landowner were at fault. Jorde Landowners Brenda Jairell *et al.* Attachment 25; Kohles Family Farms Kohles Attachment 11. Ensuring Summit Carbon has sufficient funds in the event of damages is one of the conditions the Board will place upon Summit Carbon's permit, as previously discussed in this order.

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To further alleviate concerns regarding insurance coverage, Summit Carbon has proposed to include indemnification language into the Exhibit H's. Throughout their briefs, Jorde Landowners assert this proposed language is faulty and would not protect landowners; however, the Board notes the lawsuit example relied upon by Jorde Landowners in their initial brief was brought due to negligence on behalf of the farmer who struck the pipeline. Jorde Landowners IB, p. 44. The cattle example in Jorde Landowners' reply brief also appears to be covered by the proposed indemnification language, as the loss of the cattle by the neighbor due to a carbon dioxide release would be a claim brought due to Summit Carbon's use of the easement. See Summit Carbon Hearing Exhibit 1. The Board is only including the above discussion on Jorde Landowners' hypothetical for demonstrative purposes and realizes that should an incident occur, the facts of the specific situation would control.

As it relates to farm equipment, the Board finds little risk will result from normal farming operations occurring around Summit Carbon's proposed hazardous liquid pipeline. As shown in Summit Carbon's Hearing Exhibit 5, there is little issue with crossing Summit Carbon's proposed project using modern farm equipment. The Board notes that should such equipment impact Summit Carbon's proposed hazardous liquid pipeline, which would be made of steel, then the clay and plastic drainage tile also would be impacted by the weight of the modern farm equipment.

Additionally, several landowners testified they would stop buying the latest machinery if the tire diameter exceeded the depth at which Summit Carbon proposes to bury its proposed project. See, e.g, Loutomco, Inc., Leaders Direct, p. 17. As pointed out by Farm Bureau, Iowa Code § 480.9 provides farmers and landowners with liability

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protection “if the damage occurred on the farmland in the normal course of the farm operation, unless the owner intentionally damaged the underground facility or acted with wanton disregard or recklessness in causing the damage to the underground facility.”

This means that should a farmer be conducting normal farming operations and somehow come into contact with Summit Carbon’s proposed hazardous liquid pipeline, the farmer would likely not be held responsible.

Lastly, several witnesses testified Summit Carbon’s proposed project would likely “permanently affect housing development, land use values, local tax base, tourism, and the migration of residents to a county.” The Counties Hamilton Direct, p. 19. The Board does not agree with these statements. While it is true no permanent structures could be built in Summit Carbon’s permanent easement, the Board finds the jump made in the witnesses’ testimony to this fact to be exaggerated. As shown in Schovanec Rebuttal Exhibit 3, development can, and does, happen in and around all types of pipelines, both hazardous and non-hazardous, in the state of Iowa. The Board is unwilling to affirm the issues faced by counties, development, taxes, migration, etc., would be directly related to Summit Carbon’s proposed hazardous liquid pipeline when the evidence shows development does occur despite the presence of a pipeline.

While Summit Carbon is trying to mitigate the impacts to landowners in numerous ways, there will, in fact, be impacts to landowners, both temporarily and permanently. The Board’s ability to modify the scope of any eminent domain, if granted, may further lessen the impacts to landowners. However, while the impacts have been mitigated to ensure the least possible impact, landowners still will be impacted.

Therefore, this factor weighs against Summit Carbon’s petition.

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#### 4. Safety

Consistently throughout this proceeding, numerous parties and objectors have identified safety as a factor the Board should consider as a part of its analysis. The parties' positions are described below.

##### **Summit Carbon**

In its Exhibit F, Summit Carbon states its proposed hazardous liquid pipeline:

is being designed and constructed, and will be operated and maintained, to meet or exceed applicable [PHMSA] regulations in an effort to avoid and minimize the chance of an emergency involving the pipeline that could result in inconvenience or undue injury. The methods for promptly and effectively addressing any such events will be fully addressed in the Facility Response Plan ("FRP") required under PHMSA rules and will be completed prior to commencement of operations on a timeline consistent with PHMSA requirements.

Summit Carbon Exhibit F, section 5.0. Summit Carbon states PHMSA has promulgated rules in 49 CFR parts 194 and 195 to regulate its proposed hazardous liquid pipeline.

*Id.* Furthermore, in Summit Carbon's Exhibit C, it states the proposed hazardous liquid pipeline will be manufactured out of carbon steel in accordance with American Petroleum Institute (API) Specification 5L. Summit Carbon also provides an addendum to Exhibit C further explaining the manufacturing details of its pipe. Summit Carbon Exhibit C Addendum 1.

In his direct testimony, Mr. Powell testifies Summit Carbon's proposed hazardous liquid pipeline is designed according to PHMSA's 49 CFR part 195 regulations, will meet or exceed all American Society of Mechanical Engineers (ASME) B31.4 standards, and will comply with other applicable technical standards. Summit Carbon Powell Direct, p. 8. Mr. Powell testifies the proposed hazardous liquid pipeline will have a design

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factor of 0.72, with higher design factors at crossings and above-ground facilities. *Id.* at 8-9. Mr. Powell testifies the pipe grade itself “will vary API 5L X-52 up to X-70 and comply with API 5L-PSL2.” *Id.* at 9. Mr. Powell testifies, “All material will be manufactured, constructed, and operated in accordance with applicable regulations.” *Id.* Mr. Powell asserts Summit Carbon does not intend to apply for any PHMSA waivers. *Id.*

As it relates to the Operations Control Center (OCC), Mr. Powell testifies the main OCC will be located in Ames and it will be continuously monitored by staff. *Id.* Mr. Powell testifies, “A secondary OCC will be located nearby in the unlikely event the primary OCC becomes inoperable.” *Id.* Mr. Powell testifies “the OCC will be manned by a pipeline operator 24 hours a day, 7 days a week, 365 days a year.” *Id.* at 10. Mr. Powell states the OCC would receive continuous information about the proposed pipeline from devices located at strategic points along its route by utilizing a Supervisory Control and Data Acquisition (SCADA) system. *Id.* Mr. Powell testifies the information from the SCADA system will be used in conjunction with a Real Time Transient Model (RTTM) leak detection system, which he describes as a real-time model that runs parallel to the actual pipeline in order to identify any issues or abnormalities that are occurring in the actual pipeline compared to what the RTTM is showing. *Id.* Should there be a sudden change in the operating pressure, alarms will sound in the OCC, according to Mr. Powell’s testimony. *Id.*

In addition to the remote monitoring at the OCC, “local automated control and manual overrides will be in place to control or operate the pipeline system should remote communications fail,” Mr. Powell testifies. *Id.* at 11. Mr. Powell also testifies

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Summit Carbon “personnel will be located in close proximity to remote operated facilities and will be trained to respond to abnormal conditions.” *Id.* Mr. Powell testifies in cases where the proposed hazardous liquid pipeline cannot be operated safely, it will be shut down until it is safe to resume operations. *Id.* Mr. Powell states the OCC will have operating procedures in place where “the control system will automatically initiate a shutdown without operator intervention including shutting down pumps and closing sectionalizing block valves.” *Id.*

During construction, Summit Carbon’s proposed hazardous liquid pipeline “will be subjected to rigorous inspection and testing to confirm mechanical integrity and compliance with regulatory requirements,” Mr. Powell states. *Id.* Mr. Powell asserts 100 percent of the welds will be inspected, whereas PHMSA requires only 10 percent to be inspected; the pipe coating will be tested; and the pipeline will be hydrostatically tested at 125 percent of the maximum operating pressure. *Id.*

After construction, Mr. Powell states the entire right-of-way of Summit Carbon’s proposed hazardous liquid pipeline “will be patrolled and visually inspected every two weeks, weather permitting, and not less than 26 times annually.” *Id.* at 12. Mr. Powell states these patrols are looking “for abnormal conditions, stressed or damaged vegetation, or dangerous activity (unauthorized excavation, unauthorized construction, etc.)” *Id.*

As for emergency response, Mr. Powell testifies Summit Carbon will develop and have a plan in place prior to placing the proposed hazardous liquid pipeline into operation, which is consistent with PHMSA’s regulations. *Id.* Mr. Powell asserts Summit Carbon “will coordinate with local emergency responders and local authorities

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to conduct training and emergency response drills to ensure preparedness.” *Id.* Along the same lines as emergency response, Mr. Powell testifies Summit Carbon will conduct community outreach and education programs that meet or exceed industry and regulatory requirements for public awareness and damage prevention, as well as installing signage to alert the public to the presence of an underground hazardous liquid pipeline. *Id.* at 12-13. Mr. Powell testifies Summit Carbon’s proposed hazardous liquid pipeline would be a part of the 811 One Call system. *Id.* at 13.

In response to testimony and objections related to the Denbury Gulf Coast (Denbury) incident in Satartia, Mississippi, Mr. Powell states PHMSA identified five key factors that contributed to that release. Summit Carbon Powell Rebuttal, p. 3.

Mr. Powell testifies the first three findings by PHMSA related to inadequate geohazard analysis and preparation by Denbury. *Id.* at 4. Mr. Powell states that related to its proposed project, Summit Carbon “has conducted a geohazard analysis across the entire route of the pipeline and implemented all mitigative measures identified by that analysis.” *Id.* Additionally, Mr. Powell testifies Summit Carbon would be applying its integrity management program (IMP) to its entire system, compared to the federal requirements, which necessitate it only for high consequence areas (HCAs). *Id.*

As to PHMSA’s fourth finding, regarding an inadequate dispersion model, Mr. Powell testifies Summit Carbon has conducted “a more robust dispersion analysis, including additional steps to identify areas [carbon dioxide] could potentially reach. . . .” *Id.* Mr. Powell testifies this step will help to avoid a result similar to what occurred in Mississippi. *Id.* at 5. Lastly, Mr. Powell testifies Summit Carbon will have a public awareness and emergency response plan that will include all potentially impacted



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communities to mitigate the fifth issue identified by PHMSA, where Denbury failed to notify local first responders. *Id.* Mr. Powell testifies this will ensure “first responders are alerted at the earliest possible moment of a pipeline failure.” *Id.*

In the direct testimony of Rod Dillon, he testifies he is providing additional testimony about Summit Carbon’s public awareness and emergency response regulations and planning, as well as describing how Summit Carbon will engage with first responders. Summit Carbon Dillon Direct, p. 2. Mr. Dillon testifies Summit Carbon’s public awareness, emergency response, and emergency training requirements are identified in 49 CFR 195.440, 195.402, and 195.403, respectively. *Id.* at 2-3. Mr. Dillon testifies Summit Carbon will have an emergency response in place prior to commencing operations, which complies with the requirements of PHMSA. *Id.* at 3.

Mr. Dillon testifies that “public safety is best achieved when the first responders and operations personnel are educated in the details of the response plan.” *Id.* Mr. Dillon states the education would cover roles in an emergency, awareness of potential hazards, an understanding of how carbon dioxide is affected by environmental conditions, and a basic understanding of how the proposed system would operate. *Id.* When developing an emergency response plan, Mr. Dillon states the “molecular composition and physical properties of the material being transported . . .; engineering design and operating procedures of the transportation system; geographical environment traversed by the transportation system (terrain, HCA locations, the proximity of other infrastructure, etc.); and location and availability of emergency

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response resources, among other information” are examined and included in the emergency response plan. *Id. at 4.*

Mr. Dillon asserts planning with local responders begins before the emergency response plan is required by PHMSA and Summit Carbon has already been engaging county emergency managers in each county where Summit Carbon’s proposed hazardous liquid pipeline is to be located. *Id.* Mr. Dillon testifies the county emergency managers “are aggregating first responder equipment needs that will be reviewed with Summit [Carbon] as soon as practical to confirm readiness prior to the operation. . . .” *Id.* Mr. Dillon’s testimony notes “[f]irst responders should have basic training to respond to all chemical emergencies. . . .” *Id. at 6.* Mr. Dillon states “Summit [Carbon] will schedule the preparedness training classes with the first responders in each county” once construction begins. *Id. at 5.* Mr. Dillon testifies “drills and exercises will be conducted with external stakeholders (first responders, agency representatives, etc.) and Summit [Carbon] operations personnel.” *Id.* Mr. Dillon testifies “[t]he primary activity of first responders in such a hypothetical situation will include isolating roads around the breach site to protect the public from entry and notifying residents downwind of the breach that may be affected” as well as conducting air monitoring. *Id. at 6.*

In his rebuttal testimony, Mr. Dillon agrees effective emergency preparedness requires transparency and open communication between a pipeline operator and emergency managers. Summit Carbon Dillon Rebuttal, p. 3. In response to testimony by Jack Willingham and Gerald Briggs, Mr. Dillon testifies the education and training programs for first responders “will include the Safety Data Sheets, pipeline construction, locations, and dispersion-related issues to help emergency response personnel

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understand the likely dispersion of [carbon dioxide] based on atmospheric conditions.”

*Id.* Mr. Dillon states the trainings would also be used to “collect further information regarding the capabilities and resources of the first responders. . . .” *Id.* Mr. Dillon provides a draft of Summit Carbon’s emergency response plan as his Rebuttal Exhibit 2.

Additionally, Mr. Dillon testifies, “Summit [Carbon] will provide trainings at least annually utilizing a combination of tabletop and field exercises so that first responders understand how these conditions could impact their response efforts, evacuation areas, staging areas, and other measures necessary during a response.” *Id.* at 4. Mr. Dillon states PHMSA only requires the training to occur annually, but Summit Carbon’s operations personnel will conduct training at least every six months and will supplement the annual first responder training as requested or needed. *Id.*

In response to testimony by Thomas Craighton, Mr. Dillon acknowledges the “varying degrees of readiness in Iowa communities, based on size of the community, other infrastructure and hazards existing in their communities, and other factors.” *Id.* To address this concern, Mr. Dillon states Summit Carbon “will take additional steps to ensure that each community has received the opportunity to training [sic] and other preparedness measures.” *Id.* at 5. Mr. Dillon testifies Summit Carbon will “purchase and provide to first responders [carbon dioxide] monitors. Summit [Carbon] will provide enough [carbon dioxide] air monitors to ensure that a monitor can be placed in every emergency manager truck, fire truck, law enforcement vehicle, and ambulance in the communities crossed by the pipeline.” *Id.* at 7. Mr. Dillon also states fire departments already have self-contained breathing apparatus (SCBA) due to existing community

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needs, but Summit Carbon will “provide funding grants to local first responders so that they can determine if SCBAs are their highest priority equipment need or if there is other equipment needed in their community.” *Id.* Mr. Dillon does not agree with Mr. Briggs’ recommendation that Summit Carbon provide electric utility task vehicles (UTVs) to first responders. *Id.* at 8.

In response to accusations that Summit Carbon’s emergency response plan lacks transparency, Mr. Dillon asserts Summit Carbon has engaged county emergency managers for more than two years prior to commencing construction. *Id.* Mr. Dillon asserts many of the county emergency managers “recognized this early coordination and agreed that training should begin closer to the start of operations.” *Id.* Mr. Dillon testifies the record is replete with statements about the volunteer nature of many of the first responder units located on Summit Carbon’s proposed hazardous liquid pipeline route and the volunteer turnover that can occur. *Id.* at 5. Mr. Dillon states conserving the volunteers’ time and resources for training purposes until closer in time to operation “best meets the overall goal of ensuring first responder preparedness.” *Id.*

As it relates to public outreach, Mr. Dillon testifies Summit Carbon will use Paradigm, a company that provides public awareness and damage prevention compliance services, as its pipeline awareness program provider. *Id.* at 6. Mr. Dillon testifies public outreach updates will occur quarterly via mailers to let the public and first responders know about the public awareness events. *Id.* As it relates to notifying communities in the event of an emergency, Mr. Dillon testifies Summit Carbon will use an electronic notification system to notify the public safety answering point in each county, in accordance with PHMSA regulations. *Id.* at 8. Mr. Dillon testifies Summit

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Carbon will rely upon the notification system and not upon odorizing the carbon dioxide, as odorants may become corrosive and impact the integrity of the pipe. *Id.* at 8-9.

In response to Mr. Briggs' testimony, Mr. Dillon states the conclusion Mr. Briggs reaches regarding the relative dangers of a carbon dioxide pipeline compared to a natural gas pipeline demonstrates that Mr. Briggs — and the public at large — have an acceptance of risk from natural gas pipelines. *Id.* at 9-10. Mr. Dillon testifies Summit Carbon's proposed project will transport an asphyxiant, but unlike natural gas, carbon dioxide is not flammable and does not have flashback risks. *Id.* at 10.

In the direct testimony of John F. Godfrey, he testifies 49 CFR Part 195 covers Summit Carbon's proposed hazardous liquid pipeline with "the same rigorous requirements that apply to other hazardous liquids, such as crude oil, anhydrous ammonia, and propane pipelines." Summit Carbon Godfrey Direct, p. 3. Mr. Godfrey testifies there are specific regulations that apply to carbon dioxide pipelines, and such pipelines must be designed to resist ductile fractures that occur due to the compressed nature of carbon dioxide transportation. *Id.* Mr. Godfrey testifies Summit Carbon will install heavier wall pipe and fracture arrestors throughout the system in compliance with PHMSA regulations. *Id.* Furthermore, Mr. Godfrey testifies PHMSA requires carbon dioxide pipelines to "conduct an air dispersion analysis to determine how an inadvertent CO<sub>2</sub> release from a pipeline could impact people and the environment." *Id.*

Mr. Godfrey testifies the air dispersion analysis incorporates local terrain in order to allow Summit Carbon and PHMSA to understand the potential consequences for a release. *Id.* This analysis assists Summit Carbon with selecting "appropriate preventive and mitigative measures including valve locations, emergency response planning and

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preparedness to reduce those potential consequences.” *Id.* at 3-4. Mr. Godfrey testifies Summit Carbon is also conducting a survey related to alternating current (AC) interference to ensure its cathodic protection system will operate correctly. *Id.* at 5.

As it relates to valve spacing, Mr. Godfrey testifies Summit Carbon will install valves based on HCA locations, pump stations, major river crossings, and sensitive water bodies. *Id.* at 6. Mr. Godfrey states Summit Carbon will also comply with “PHMSA’s newly adopted, more stringent valve spacing regulation that requires valves not to exceed 15 miles for pipeline segments that could affect HCAs and 20 miles for pipeline segments that could not affect HCAs.” *Id.* Mr. Godfrey also testifies Summit Carbon is exploring the use of emergency flow restriction devices. *Id.*

In response to the testimony of Jorde Landowners’ witness Mr. Richard Kuprewicz, Mr. Godfrey testifies carbon dioxide pipelines are not necessarily more prone to running ductile fractures when compared to other hazardous liquid pipelines or natural gas pipelines. Summit Carbon Godfrey Rebuttal, p. 3. Mr. Godfrey asserts Mr. Kuprewicz did not provide any data on this assertion or cite to a single instance where the claim was true. *Id.* Mr. Godfrey testifies ductile fractures are a well-known risk in the industry, but the risk can be properly managed through the use of proper pipe, crack arrestors, and other design and engineering features. *Id.*

In response to testimony provided Jorde Landowners’ witness Bill Caram, Mr. Godfrey asserts the document provided by Mr. Caram related to regulatory and knowledge gaps is misleading. *Id.* at 4. Mr. Godfrey states Mr. Caram’s document “makes it sound as though current requirements ignore [fracture propagation protections]; that simply is not true.” *Id.* Mr. Godfrey testifies:

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PHMSA regulations already require a [carbon dioxide] pipeline operator to have a fracture control plan. 49 CFR § 195.111. The fracture control plan, process, and records developed by pipeline operators are reviewed by PHMSA during inspection to ensure an operator has provisions to mitigate the effects of fracture propagation in carbon dioxide pipeline systems.

*Id.* at 5. Mr. Godfrey also states Mr. Caram’s testimony ignores information already provided by Summit Carbon. *Id.* Mr. Godfrey testifies Summit Carbon selected “materials with fracture control in mind, and that both fracture arresters and thicker-walled pipe will be used where engineering information suggests such mitigations would be appropriate.” *Id.* Mr. Godfrey also notes the document provided by Mr. Caram discusses risks from converting other pipelines into carbon dioxide pipelines, which is inapplicable in this situation as Summit Carbon is building a new pipeline. *Id.* Overall, Mr. Godfrey testifies, in response to Mr. Caram, carbon dioxide pipelines have been in operation in the United States for more than 40 years and have been “operated safely pursuant to the same stringent standards as other hazardous liquid pipelines regulated by PHMSA.” *Id.* Mr. Godfrey states “current PHMSA rules have specific provisions directed to [carbon dioxide] pipelines. The issues of concern that are unique to [carbon dioxide] pipelines are well known and understood, and the industry and standards bodies — including but certainly not limited to PHMSA — have addressed them and continue to address them.” *Id.*

Lastly, Mr. Godfrey testifies in response to testimony by a Jorde Landowner, Mr. John Abraham, noting Summit Carbon witnesses testified more fully on the dispersion modeling; however, Mr. Godfrey testifies Mr. Abraham “cherry-picks quotes

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from two scientific papers that actually confirm the performance of PHAST. . . .”<sup>27</sup> *Id.* at

7. Mr. Godfrey testifies Mr. Abraham’s main point is “only dispersion modeling based on Computational Fluid Dynamics (CFD) methods is acceptable in this case.” *Id.*

Mr. Godfrey asserts the papers cited by Mr. Abraham were prepared in conjunction with his company, DNV. *Id.* Mr. Godfrey testifies “non-CFD models have subsequently been validated against real-world tests conducted by DNV in 2015, 2017 and 2018.” *Id.*

In the direct testimony of Bryan Louque, he testifies his employer Audubon Field Solutions, LLC, conducted the vapor dispersion modeling and analysis for Summit Carbon. Summit Carbon Louque Direct, p. 2. Mr. Louque testifies CANARY was selected as the model for Summit Carbon’s proposed hazardous liquid pipeline. *Id.* at 5. Mr. Louque testifies that “modeling is used to comply with the requirement to identify whether the pipeline could affect an HCA, pursuant to 195.452(f)(1), and given the factors set out in Part 195 Appendix C, including vapor cloud behavior and terrain effects.” *Id.* Mr. Louque states Summit Carbon will also use the CANARY modeling results to inform other areas of its IMP,

including the risk analysis required by 195.452(e), 195.452(g) and 195.452(i), and the selection of preventive and mitigative measures to reduce risk under 195.452(i). . . . [and] to inform its development of the PHMSA-required public awareness program under 195.440 and the emergency response program under 195.402, 195.403 and 15 195.408(b)(4).

*Id.*

Mr. Louque testifies the modeling examines “weather, topography, product composition, product temperature and pressure, pipeline size and length, full flow

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<sup>27</sup> PHAST is a computer modeling software. See *Consequence Analysis PHAST Software*, DNV, <https://www.dnv.com/software/services/plant/consequence-analysis-phast/> (last visited June 24, 2024).



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duration, and valve spacing,” along with other variables when producing a vapor dispersion model. *Id.* at 6. Mr. Louque provides a more complete list of variables as his Direct Exhibit 1. *Id.*; Summit Carbon Louque Direct Exhibit 1.

Mr. Louque testifies Summit Carbon requested the vapor dispersion model go beyond the two-dimensional results and analyze “a pooling spill component to consider the effects of terrain on a potential release.” Summit Carbon Louque Direct, p. 7.

Mr. Louque testifies a digital elevation model was used to identify critical valleys along Summit Carbon’s route. *Id.* Mr. Louque testifies each critical valley, which is any valley that could transport carbon dioxide to a highly populated area (HPA) or other populated areas (OPA), to see if the overland flow model would intersect with an HPA or OPA. *Id.*

Mr. Louque testifies one finding in PHMSA’s Denbury report was the failure by Denbury to identify Satartia, Mississippi, as an area that could be impacted. *Id.* at 7-8. To avoid this, Mr. Louque testifies Summit Carbon “had a more robust vapor dispersion analysis performed” that included “modeling overland spread of [carbon dioxide] in critical valleys that could assist in the transport of a [carbon dioxide] release to HPAs and OPAs.” *Id.* at 8.

In his rebuttal testimony, Mr. Louque testifies, “Summit [Carbon] did not use PHAST software to perform any atmospheric vapor or terrain-aided vapor dispersion analyses as part of this project.” Summit Carbon Louque Rebuttal, p. 3. Mr. Louque testifies that Mr. Abraham’s testimony relating to PHAST is therefore irrelevant in this matter. *Id.* Mr. Louque testifies the CANARY model “uses a Gaussian plume model to evaluate the dispersion of [carbon dioxide] under site-specific, seasonal weather conditions.” *Id.* Mr. Louque asserts Summit Carbon’s modeling was conducted by

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using the worst-case climate data, as opposed to average climate inputs, to produce the most conservative dispersion phase. *Id.* at 3-4. In addition to CANARY, Mr. Louque testifies Summit Carbon used a Flo-2-D model to analyze overland flow and terrain-aided vapor dispersion. *Id.* at 4. Mr. Louque testifies Summit Carbon utilized Flo-2-D to provide better terrain and topographical features to the CANARY model. *Id.*

Mr. Louque testifies CANARY was applied to the entirety of Summit Carbon's proposed system and Flo-2-D was applied "where terrain and topography could cause the plume to impact an HCA." *Id.* Mr. Louque asserts he disagrees with Mr. Abraham's recommendation to require CFD modeling across the entire proposed system because the results of CFD modeling would provide little benefit from a risk and safety perspective when compared to the modeling combinations already completed by Summit Carbon. *Id.* at 4-5.

In response to testimony provided by Mr. Willingham, Mr. Louque testifies, "Summit [Carbon] has deployed widely accepted modeling methodologies and tools, including conducting atmospheric vapor dispersion modeling along the entire pipeline length, and supplemented that analysis with the overland spread [and] terrain-aided analysis where appropriate." *Id.* at 7. Mr. Louque states there is no sound scientific practices to support Mr. Willingham's assertion regarding Summit Carbon's dispersion model underestimating the results. *Id.* at 6-7.

In response to testimony by Mr. Craighton, Mr. Louque testifies the reliance on the Area Locations of Hazardous Atmospheres (ALOHA) software was misplaced. *Id.* 8. Mr. Louque testifies ALOHA is designed to be used in an emergency situation and

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does not allow for changes to the modeling for things such as the boiling point, source, or variable release rates. *Id.* at 8.

In his direct testimony, Mr. McCown provides additional information about the history of carbon dioxide pipelines in the United State, PHMSA's regulation of carbon dioxide pipelines, and the applicable regulations to which Summit Carbon must comply. Summit Carbon McCown Direct, pp. 5-17. Mr. McCown describes PHMSA inspections that include "Standard Inspections, Integrity Management Program (IMP) Inspections, Operator Qualification (OQ) Inspections, Control Room Management Inspections, New Construction Inspections, and Emergency Response Plan review and approval." *Id.* at 10. Mr. McCown states this is a non-exhaustive list of inspections performed by PHMSA. *Id.* Mr. McCown testifies these inspections review company documents, interview employees and contractors, and conduct in-field inspections. *Id.* at 10-11.

Mr. McCown asserts:

The U.S. has an excellent safety record when it comes to transportation, and that's especially true when transporting energy supplies and related products. That said, pipelines have an enviable safety record, 99.99% safe. According to PHMSA, pipeline systems are the safest means of moving large volumes of products.

*Id.* at 6.

In his rebuttal testimony, Mr. McCown testifies he does not agree with Mr. Kuprewicz and Mr. Caram that there are regulatory gaps regarding carbon dioxide pipelines, such as the one proposed by Summit Carbon. Summit Carbon McCown Rebuttal, p. 2. Mr. McCown asserts any concerns with safety "should be brought to the federal regulator with the proper jurisdiction over interstate pipelines." *Id.* Mr. McCown testifies the Board should not delay this proceeding until PHMSA issues new rules

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related to carbon dioxide pipelines. *Id.* at 3. Mr. McCown states PHMSA is not prohibiting carbon dioxide pipelines from operating because “[p]ipelines that comply with current regulations are not a threat to public safety, and are the safest way to transport hazardous liquids products at scale.” *Id.*

In W. Kent Muhlbauer’s direct testimony, he testifies Summit Carbon is using “quantitative risk assessment (QRA) methodology that identifies all potential threats to a pipeline’s integrity, evaluates their potential severity, and estimates possible consequences associated with a release.” Summit Carbon Muhlbauer Direct, p. 4. Mr. Muhlbauer asserts whereas PHMSA regulations “only require that an IMP and the associated risk assessment be performed for segments of the pipeline within HCAs, Summit [Carbon] has committed to apply its IMP to the entire route of the pipeline system.” *Id.* Mr. Muhlbauer testifies Summit Carbon has divided its proposed hazardous liquid pipeline into thousands of sections to independently assess risk for each section, which considers each section’s specific operating conditions and surroundings. *Id.* at 4-5. Furthermore, Mr. Muhlbauer testifies PHMSA only requires 20 input factors for compliant risk assessments, whereas Summit Carbon has used more than 200 inputs. *Id.* at 5.

Mr. Muhlbauer testifies Summit Carbon continuously makes updates to the risk assessment as route adjustments and design and construction features are finalized. *Id.* Mr. Muhlbauer states once the pipeline is in operation, Summit Carbon will review and update the risk assessment on a regular basis or “on an ‘as needed’ basis, as conditions change along the pipeline.” *Id.* Since Summit Carbon is applying its IMP to its entire route, Mr. Muhlbauer testifies Summit Carbon will “update its risk assessment

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whenever either conditions along the pipeline route create a meaningful change in risk or whenever any operational changes could create a change in risk anywhere on the system.” *Id.* Mr. Muhlbauer testifies Summit Carbon’s proposed hazardous liquid pipeline will have approximately one third of the risk levels when compared to other hydrocarbon pipelines. *Id.* at 6.

In his testimony, Mr. Michael Lumpkin testifies to the health effects of carbon dioxide. Summit Carbon Lumpkin Rebuttal, pp. 3-4. Mr. Lumpkin testifies a study conducted in 2022 “indicate[s] a lack of toxic effect and the ability to make escape-related decisions for exposures between 75,000 and 90,000 [parts per million (ppm)] in typical, healthy individuals.” *Id.* at 9. Mr. Lumpkin testifies, “Normal ambient oxygen concentration is 20.9 [percent] of air, with the balance consisting primarily of nitrogen, water vapor, trace gases, and other gases and particulates present due to local geography or pollution conditions.” *Id.* at 5. He additionally testifies that at “100,000 ppm [carbon dioxide] (a 10% CO<sub>2</sub> atmosphere) would result in an approximate oxygen level of 18.8 [percent] under standard conditions of temperature and pressure.” *Id.*

Mr. Lumpkin states

older studies inform the current National Institute for Occupational Safety and Health (NIOSH) Immediately Dangerous to Life and Health (IDLH) limit of 40,000 ppm for healthy people. A NIOSH IDLH limit is an air concentration at or below [that] which healthy workers may be exposed for [30] minutes without risk of permanent harm to health or ability to escape.

*Id.* at 7. Mr. Lumpkin testifies the 2022 study “is a solid study on which to base the classification of acutely inhaled [carbon dioxide] exposures of less than 100,000 ppm as

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non-toxic and suggests revisiting the present NIOSH limit of 40,000 ppm for healthy people.” *Id.* at 9.

In response to testimony by Mr. Schettler, Mr. Lumpkin testifies, “[Mr.] Schettler’s statements do not reflect that latest scientific research on this issue.” *Id.* at 10.

Mr. Lumpkin states Mr. Schettler appears to conflate the NIOSH IDLH level with the level at which respiration becomes distressing and the level at which confusion can occur due to impacts to the brain. *Id.* at 9. Mr. Lumpkin also states the table included with Mr. Schettler’s testimony “presents conclusions that do not reflect the best available scientific data.” *Id.* at 10. Mr. Lumpkin testifies he was the lead toxicologist who responded to Satartia, Mississippi, the day after the event. *Id.* at 11. Mr. Lumpkin asserts the health effects experienced by community members were “consistent with transient effects reported in the scientific literature for acute carbon dioxide exposure.” *Id.* Mr. Lumpkin asserts, “Without access to Mr. Burns’s medical records, including those from the emergency room visit he made immediately following the incident, Mr. Burns’s statements cannot be completely evaluated.” *Id.* at 12. Mr. Lumpkin, however, did state, “The effects that Mr. Burns describes, which he attributes to his exposure to the release in Satartia, simply do not comport with the data for the effect of acute [carbon dioxide] exposure on the human body.” *Id.* As it relates to the health effects raised by Ms. Raffensperger and Ms. Deal-Tyne, Mr. Lumpkin testifies their assertions are policy-focused and there is no scientific basis by which to reach their conclusions. *Id.* at 13.

Mr. Lumpkin testifies “inhalation of at least 75,000 ppm carbon dioxide by healthy individuals is unlikely to result in harm or reduction in decision making capacity.” *Id.*

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Mr. Lumpkin testifies Summit Carbon's 40,000 ppm and 80,000 ppm concentration buffers included in its vapor dispersion modeling lead to his conclusion that "there is no undue risk of adverse effects to human health from the operation of the proposed [Summit Carbon] pipeline system." *Id.*

During the hearing, two dispersion reports, two dispersion model maps, and shapefiles of the maps were admitted into the record. HT, pp. 3088, 3143, 3172, and 6054.

On cross-examination, Mr. Powell reiterates Summit Carbon is applying the PHMSA-required IMP to its entire proposed hazardous liquid pipeline — not just HCAs. *Id.* at 1609. Mr. Powell notes HCAs comprise "a very small percentage of Iowa. . . ." *Id.* Mr. Powell testifies PHMSA is the organization that oversees the technical and minimum safety requirements for a pipeline such as the one proposed by Summit Carbon and it should be trusted. *Id.* at 1653. Mr. Powell acknowledges PHMSA is in the beginning phases of examining what, if any, changes need to be made to its rules regarding carbon dioxide pipelines. *Id.* at 1654. However, Mr. Powell testifies "if PHMSA were concerned about [Summit Carbon's] project, or any of the other projects currently under development or the 5,300 miles of [carbon dioxide] pipeline that's currently in operation in this country, [it] could take other steps to address that." *Id.* at 1653-54. Mr. Powell further testifies, should Summit Carbon's proposed hazardous liquid pipeline be constructed prior to PHMSA implementing new rules, it would be grandfathered in for "design, installation, construction, initial inspection, [and] initial testing standards." *Id.* at 1655. However, if such changes are implemented in

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PHMSA's new rules, Mr. Powell asserts this would trigger a potential change in Summit Carbon's quantitative risk assessment. *Id.*

In response to questioning regarding his statement about not requesting any PHMSA waivers, Mr. Powell testifies Summit Carbon could request a waiver later in the process; however, Summit Carbon's intent is to not request any. *Id.* at 1662.

Mr. Powell states the Board "has the ability to impose whatever conditions on [Summit Carbon's] permit, if [it] were to receive one, that [the Board] choose[s] is of value." *Id.*

When questioned as to why Summit Carbon had not provided the results of the dispersion model to counties, Mr. Powell states Summit Carbon could share some information with the counties as it relates to the results of the studies while noting there are thousands of miles of pipelines already in Iowa and questioning whether the counties had received dispersion analysis or blast radius information for those pipelines. *Id.* at 1733-34.

Mr. Powell testifies Summit Carbon's public awareness program will use a wide corridor and inform persons who "could potentially be impacted from road closures, any type of business interruption, [and] direct affects obviously if the pipeline is crossing their property. . . ." *Id.* at 1777.

In response to questioning about using an odorant, Mr. Powell testifies Summit Carbon explored using an odorant but determined it would be introducing a risk into Summit Carbon's proposed system. *Id.* at 1829-30. Furthermore, Mr. Powell notes natural gas transmission lines do not use an odorant; only distribution lines use odorants. *Id.* at 1829.



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During his cross-examination, Mr. Dillon testifies that undertaking training of emergency response personnel, potentially two or more years before operation, would require updates to the training as the route is modified and as commencing operations draw closer. *Id.* at 3209. Mr. Dillon testifies Summit Carbon would provide funding grants to all first responder units in the proposed hazardous liquid pipeline path, including counties and cities. *Id.* at 3210. Mr. Dillon testifies when conducting the semi-annual emergency response trainings, Summit Carbon will go to each county to conduct the training. *Id.* at 3219. Mr. Dillon also clarifies the quarterly public awareness meetings will occur on a rotating basis in each affected county. *Id.* at 3238.

On cross-examination, Mr. Godfrey testifies pipeline pressure is “generally regulated at 72 percent of the specified minimum yield strength” with most failures occurring with pressures between 25 and 50 percent above the MOP. *Id.* at 3267. Mr. Godfrey testifies the proper selection of pipe and pump sizing as well as relief devices ensure proper MOP and limits the ability for exceeding the MOP. *Id.* at 3291. Mr. Godfrey testifies there is no way for a pump to go higher than what it is designed to do, and pipe size places a limit on the amount able to be transported. *See id.* at 3292.

During cross-examination, Mr. Louque further clarifies what a Gaussian model is. *Id.* at 2982. Mr. Louque testifies the “Gaussian model is a model that assumes a . . . core [carbon dioxide] concentration with dissipation at the edges . . . that are nonlinear and follow Gaussian equations or Gaussian diminishing returns. . . .” *Id.* Mr. Louque testifies in this particular case, there would be “a [carbon dioxide] core with a core of highly concentrated [carbon dioxide] that mixes, and the concentration of the [carbon dioxide] diminishes towards the edges of the plume.” *Id.* Mr. Louque testifies

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he was not aware of any data that demonstrated CFD models produce more accurate results compared to other models. *Id.* at 2983.

Mr. McCown testifies on cross-examination he “think[s] [there is] a misunderstanding, whether [it is] innocent or intentional, that the new [carbon dioxide] pipelines regulation is somehow going to dramatically change the regulatory regime for [carbon dioxide] pipelines.” *Id.* at 3432. Based upon his involvement in the pipeline universe, Mr. McCown testifies PHMSA’s proposed new rulemaking will explore updating emergency response and operational aspects of carbon dioxide pipelines, not engineering, technical, scientific, or metallurgical standards. *Id.* Mr. McCown testifies there is no grandfathering in for operational changes, trainings, emergency response requirements, recordkeeping, or inspections. *Id.* at 3474-75. Additionally, Mr. McCown agrees PHMSA is only able to enforce the minimum standards enacted in its regulations. *Id.* at 3446. Mr. McCown testifies PHMSA would not have authority to enforce compliance where a company states they are going above the federal minimum, but ultimately only comply with the PHMSA minimum. *See id.*

In response to questioning regarding the 2022 study, Mr. Lumpkin agrees the participants in the study were young, healthy individuals with no medical history particularly, did not smoke more than ten cigarettes a day, and had no other physical abnormalities. *Id.* at 3037. Mr. Lumpkin testifies the studies he relied upon did not include any women in the population sample. *Id.* at 3054. When questioned further, Mr. Lumpkin testifies his opinions in his testimony are based on human health, not policy. *Id.* at 3057.

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In its initial brief, Summit Carbon states the Board has considered the benefits of going above and beyond PHMSA requirements as a part of the Board's analysis relating to public convenience and necessity. Summit Carbon IB, p. 24 (citing *NuStar*, pp. 31-32; *Dakota Access*, pp. 57-58). Summit Carbon states it is going above and beyond PHMSA requirements related to girth welds, depth of cover, pipe wall thickness in certain locations, and applying its IMP to the entire system rather than only HCAs; and its entire system will be internally inspectable with in-line inspection tools across the entire system, rather than only HCAs. *Id.* at 24-25.

Summit Carbon asserts the two main points raised by opposition parties with regard to safety relate to PHMSA's pending new rules and that PHMSA's current rules are inadequate. *Id.* at 25-26. Regarding PHMSA's potential new rules, Summit Carbon states there is no reason for the Board to wait for new PHMSA rules as Summit Carbon will have to comply with the rules. *See id.* at 26. As it relates to the second issue regarding PHMSA's current rules viewed as inadequate, Summit Carbon begins by stating the Board cannot rule or decide to modify any of PHMSA's safety requirements. *Id.* Summit Carbon states the report from the Denbury incident did not cite a lack of federal regulation, rather it was Denbury's failure to follow federal regulations. *Id.* Summit Carbon states it has read the Denbury incident report and has made changes to its proposal accordingly. *Id.* at 26-28.

In its reply brief, Summit Carbon states the proposals in opposing parties' briefs are preempted by federal law as they relate to safety arguments. Summit Carbon RB, p. 22. Summit Carbon asserts Board actions of "less direct infractions," compared to the opposing parties' direct infractions, to federal preemption have all been struck down.

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*Id.* at 23 (citing *ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *N. Nat. Gas Co. v. Iowa Utils. Bd.*, 377 F.3d 817 (8th Cir. 2004)). Summit Carbon further states the unfamiliarity and fear tactics employed by opposing parties are similar to the ones used in Dakota Access. *Id.* at 24. However, Summit Carbon states some of those parties from Dakota Access now assert crude oil is not an issue, liquefied carbon dioxide is. *Id.* Summit Carbon states that “compared to other substances transported under the Board’s jurisdiction, [carbon dioxide] is not flammable, it is not explosive like hydrocarbon fuels, and it is not inherently toxic or dangerous; people are around [carbon dioxide] literally all the time.” *Id.* Summit Carbon states:

[D]espite the higher toxicity, flammability, and explosiveness of other products, Summit [Carbon] is not aware of the Board previously requiring dispersion models (or, for explosive products, blast zone studies) from any pipeline permit applicant. In fact, there is no evidence any landowner, local government, or first responder has ever requested such information from any other applicant. . . .

*Id.* at 26.

Turning to the air dispersion models, Summit Carbon asserts Jorde Landowners’ claim that the Board cannot rely upon the models because Summit Carbon did not provide the input data is false. *Id.* at 28. Summit Carbon states both the “Conservative” and “Mechanical” reports contained the inputs, but also went a step further to show the sensitivity and the reason Summit Carbon selected the input. *Id.* In addition to misstating the record on not providing the inputs, Summit Carbon also states Jorde Landowners misstated the record about Summit Carbon telling individuals to use the ALOHA software. *Id.* at 27-28. Summit Carbon states this statement is contrary to the rebuttal testimony of Mr. Louque. *Id.* (citing Summit Carbon Louque Rebuttal, p. 8).

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In its reply brief, Summit Carbon states it would agree to the following condition being placed upon it:

Requiring Summit [Carbon] to provide emergency management training to emergency responders before pipeline operation at Summit [Carbon]'s expense, including reviewing dispersion analysis results with first responders, reviewing emergency response plans with first responders, and to update that training at least annually; providing [carbon dioxide] monitors to all first response units along the pipeline route; and to comply with all other PHMSA regulations regarding emergency response.

*Id.* at 73.

### **The Counties**

In his direct testimony, Mr. Willingham testifies he is the director of the Yazoo County Office of Emergency Management, which is the county where Satartia, Mississippi, is located. *The Counties Willingham Direct*, p. 4. Mr. Willingham testifies he “determine[s] potential hazards in [Yazoo] County, create[s] hazard mitigation plans, and help[s] develop solutions when new potential hazards are identified.” *Id.*

Mr. Willingham provides testimony regarding his experiences and actions taken during the Satartia event. *Id.* at 4-7. Mr. Willingham testifies that “there are a lot of unknowns related to [carbon dioxide] pipelines, including the accuracy of dispersion modeling for [carbon dioxide] pipelines.” *Id.* at 8. Mr. Willingham testifies it is his “understanding from [a] [National Association of Regulatory Utility Commissioners] report that PHMSA is currently funding the development of a more robust dispersion model to identify the potential impact radius of [carbon dioxide] pipeline ruptures with greater accuracy, but that this modeling may not be completed for another two or three years.” *Id.* at 9.

Mr. Willingham testifies he is concerned about the impacts from carbon dioxide

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pipelines from a public safety perspective and from an emergency preparedness perspective. *Id.*

Mr. Willingham testifies, “There needs to be transparency from the pipeline operator and significant communication between the pipeline operator, the emergency responders, and other members of the community.” *Id.* Mr. Willingham testifies, “The primary reason why we were not effectively prepared for the Satartia pipeline rupture was due to the lack of communication, cooperation, and transparency by the pipeline operators with the emergency responders.” *Id.* Mr. Willingham testifies Summit Carbon’s proposed hazardous liquid pipeline is located in “rural locations [that] have many old farmhouses that are not airtight, so it is important for operators to ensure people in these rural areas know how to make a safe, airtight room that could be used in the event of a [carbon dioxide] pipeline rupture.” *Id.* at 10.

Mr. Willingham includes a copy of a letter from the Shelby County Board of Health and a copy of the objection filed by the Mayor of the City of Earling, Iowa, as exhibits to his direct testimony. *Id.*; The Counties Willingham Direct Exhibit 2; The Counties Willingham Direct Exhibit 3. Mr. Willingham asserts these communities raise valid concerns related to the location of Summit Carbon’s proposed operators’ locations. The Counties Willingham Direct, p. 11. Mr. Willingham states it was only “following the Satartia incident, the pipeline operator in my area made changes, improved communications and transparency, and cross-trained their employees so emergency responders will be closer in proximity to an incident wherever it occurs.” *Id.* Mr. Willingham testifies if Summit Carbon follows the plan proposed by Mr. Dillon, it “would cover a lot of what [he] think[s] is necessary for an effective emergency

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management plan related to a [carbon dioxide] pipeline.” *Id.* at 13. Mr. Willingham states for Summit Carbon’s plan to be effective, Summit Carbon “needs to be more transparent and have more extensive and open communication with emergency management directors.” *Id.* at 13-14. Mr. Willingham asserts:

[A]n effective emergency management plan should include the pipeline operator making a mass communication system of some type available to residents potentially affected by pipeline rupture and making a system such as Buxus available to first responders so they can receive immediate information about critical pipeline information in the event of a pipeline emergency.

*Id.* at 14. Furthermore, Mr. Willingham testifies Mr. Louque’s comment during his deposition, where Mr. Louque “indicated he would be surprised if individuals who were more than 1,000 feet away from the Satartia pipeline rupture had any symptoms of [carbon dioxide] exposure . . . obscure[s] from emergency management coordinators, first responders[,] and the public the true extent of potential dangers related to a [carbon dioxide] pipeline rupture.” *Id.* at 15. Mr. Willingham testifies the Board should either deny Summit Carbon’s petition or delay its decision “until after PHMSA develops updated safety regulations related to [carbon dioxide] pipelines.” *Id.* Mr. Willingham testifies if the Board does grant Summit Carbon’s petition, the Board should condition it upon emergency responders being provided proper training; odorant being added into the carbon dioxide stream; providing emergency responders with electric vehicles, air monitors, and quality SCBA; the implementation of a mass communication system for residents; requiring the use of a Buxus-type system for first responders; and requiring greater transparency between Summit Carbon and emergency management directors,

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first responders, and residents around the proposed hazardous liquid pipeline. *Id.* at 15-16.

During his cross-examination, Mr. Willingham testifies Denbury had a second incident related to its carbon dioxide pipeline in October 2020 where a valve froze open and bled off for approximately 24 hours. HT, p. 3569; Jorde Landowners Hearing Exhibit 584. Mr. Willingham testifies the release took place on a 24-inch pipeline, but the release itself was from an eight-inch portion of the pipeline. HT, p. 3569. When questioned whether any air monitoring was conducted on that release, Mr. Willingham states he did not “think there was any air monitoring going on because it was more of a smaller release right there and stayed right in that general vicinity.” *Id.* at 3579.

In order to alleviate the concerns raised by Mr. Briggs and Mr. Willingham, the Counties argue, in its initial post-hearing brief, the Board should condition the commencement of construction on Summit Carbon’s proposed hazardous liquid pipeline on PHMSA completing or terminating its proposed carbon dioxide rulemaking and on a requirement that Summit Carbon provide dispersion modeling, updated emergency response plans, necessary equipment, and appropriate training to every city, county, or emergency management agency in the pipeline footprint. The Counties IB, pp. 85-86.

In its reply brief, the Counties state the Board has denied its motion to strike Summit Carbon’s testimony regarding safety issues on judicial estoppel grounds; however, the Counties go on to state if the Board is to consider safety items, like the Board has in previous cases, the Board should have granted OCA’s request to require Summit Carbon to file its risk assessment, dispersion model, and emergency response plan back in August 2022. The Counties RB, pp. 19-20. The Counties state the



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information was eventually provided, but it was provided too late in the proceeding for parties to engage in discovery or offer expert testimony on the contents of the documents. *Id.* at 20.

### **Sierra Club**

In his direct testimony, Mr. Schettler describes the impacts carbon dioxide has on the human body. Sierra Club Schettler Direct, p. 4. Mr. Schettler testifies NIOSH “considers 4 [percent] carbon dioxide concentration in the ambient air to be immediately dangerous to life and health.” *Id.* (internal citations omitted). Mr. Schettler states, “Breathing 5-10 [percent] carbon dioxide can cause unconsciousness within a few minutes; a concentration of 30 [percent] can cause unconsciousness within seconds. More than 10 [percent] can cause death within 10 minutes. A concentration of 20-30 [percent] can cause death within one minute.” *Id.* at 5. Mr. Schettler testifies in the event of an “unintended release or pipeline rupture it will be important to recognize it immediately and notify anyone who could be located where unsafe carbon dioxide levels could accumulate so that they can get to safety. This will require an emergency notification system to be in place.” *Id.* at 6.

In its initial brief, Sierra Club states Summit Carbon identified the air dispersion models were not used to guide the siting of its route, which Sierra Club states is an issue. Sierra Club IB, pp. 51-52. Sierra Club states Mr. Powell’s testimony about the OCC leaves more questions than answers because he does not testify about how long it would take the OCC to notify first responders about an incident. *Id.* at 51. Sierra Club states Summit Carbon’s own proposed emergency response plan does not mention the role of first responders, nor how long Summit Carbon’s own personnel would have to

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arrive on the scene in the event of an incident. *Id.* at 64. Sierra Club also notes the record clearly establishes many of the communities that would respond to a potential release on Summit Carbon's proposed hazardous liquid pipeline are volunteer based and may not have the necessary training to respond. *Id.* at 64-65. Lastly, Sierra Club asserts Summit Carbon's argument that carbon dioxide pipelines are not more dangerous than crude oil, anhydrous ammonia, or natural gas is rebutted by the testimony of Mr. Willingham. *Id.* at 65.

### **Jorde Landowners**

In the direct testimony of Mr. Abraham, he testifies CFD is a more accurate modeling technique compared to a PHAST model. Jorde Landowners Abraham Direct, p. 7. Mr. Abraham testifies CFD does not have "tunable parameters that need to be carefully set. It can handle terrain and leaks that are not horizontal; it is able to simulate plumes that are not perfectly spherical or that have non-circular cross section. With CFD, the cloud does not move with a single velocity." *Id.* Mr. Abraham asserts that "the Board should not rely upon PHAST modeling or the data and buffers that flawed modeling provides." *Id.* at 8. Mr. Abraham testifies the Board should require a CFD modeling from Summit Carbon and then scrutinize the model. *Id.* at 8. Mr. Abraham asserts, "[B]ased on [PHAST] modeling, it is more likely than not that all of Summit[] [Carbon's] stated buffer distances, including initial routing, design and operations, emergency response, and public awareness are under reported, inaccurate, and unreliable given the major decisions the Board have to make." *Id.* at 9.

In the direct testimony of Mr. Jundt, he testifies there must "be an orderly shutdown to prevent a water hammer like effect and catastrophic failure upstream of

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any rupture. . . .” Jorde Landowners Jundt Direct, p. 5. Mr. Jundt testifies a water hammer effect can occur when an upstream valve is closed too quickly and there is a rapid pressure build-up on the pressurized side of the valve. *Id.* Mr. Jundt testifies the assertions made by Summit Carbon of being able to close a valve in two minutes are incorrect. *Id.* Mr. Jundt states he thinks it would be more along the lines of tens of minutes to more than 30 minutes before the valve is closed. *Id.* Mr. Jundt states there will be lag time between Summit Carbon’s monitoring and when the shutoff will occur. *Id.* at 6.

Mr. Jundt testifies carbon dioxide pipelines are newer and the industry does not have the years of experience that the natural gas pipeline industry has, which, in his opinion, makes carbon dioxide pipelines less safe. *Id.* at 8. Mr. Jundt testifies he “would prefer that the [carbon dioxide] were combustible.” *Id.* He also states natural gas is not an asphyxiant and disperses upwards at a quicker rate than carbon dioxide. *Id.* Mr. Jundt testifies the only warning of a release people would encounter would be a high velocity jet-like noise, which would be audible for miles, because carbon dioxide is colorless and odorless. *Id.* at 9. Mr. Jundt testifies, “The lighter the winds, the colder the ambient air temperatures along with humidity and other atmospheric conditions along with the topography can mean the longer it will take for a [carbon dioxide] plume to dissipate.” *Id.* at 10. Mr. Jundt recommends Summit Carbon be required “to develop[] additional first-ever public alert and emergency response measures. . . .” *Id.* at 11. Mr. Jundt also recommends including more main line valves in closer proximity to populated areas, which would reduce the volume of carbon dioxide in the pipe between valves. *Id.* at 11-12. Mr. Jundt acknowledges increasing the number of main line

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valves would increase the potential for a leak, but he thinks the benefits outweigh the harm. *Id.* at 12.

Included with the direct testimony of Mr. Kuprewicz is an attached article detailing his perceived shortcomings of PHMSA's regulations of carbon dioxide pipelines. Jorde Landowners Kuprewicz direct, p. 1. In his article, Mr. Kuprewicz states, "Current federal pipeline safety regulations, however, are not adequate to deal with the additional pipeline risks associated with the expected significant increase in associated [carbon dioxide] transmission pipelines under [carbon capture and storage]." Jorde Landowners Kuprewicz Attachment 2, p. 14. Mr. Kuprewicz identifies eight areas where he believes PHMSA needs to improve its regulation of carbon dioxide pipelines. *Id.* at 12-13.

In his direct testimony, Mr. Caram states there are "regulatory and knowledge gaps . . . related to [carbon dioxide] pipelines which underlies the need to not rush consideration of these projects without due diligence on missing regulatory framework." Jorde Landowners Caram Direct, p. 1. Included with his direct testimony, Mr. Caram includes an article in which he adopts the eight areas, identified by Mr. Kuprewicz, where they think PHMSA should improve its regulation of carbon dioxide pipelines. *Id.* at 1-2; Jorde Landowners Caram Direct Attachment 3, pp. 1-2.

In his direct testimony, Mr. Briggs describes the events he experienced during the Denbury incident. Jorde Landowners Briggs Direct, pp. 3-14. Mr. Briggs states it was his understanding that the plume from the Denbury incident traveled 24.8 miles. *Id.* at 16. Mr. Briggs testifies the symptoms he observed during the Denbury incident only result from the carbon dioxide and not from the hydrogen sulfide that was also present in that pipeline. *Id.* at 19. Mr. Briggs asserts the presence of hydrogen sulfide in the

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carbon dioxide stream helped to alert residents to the release of the carbon dioxide. *Id.* at 20. Mr. Briggs testifies, based on his experience, better outreach and education needs to be provided by pipeline companies; first responders need SCBAs; annual trainings, with refresher courses, should be provided by the pipeline companies; each first responder should have an air monitor; pipeline companies should have a coordinated warning system to notify first responders; equipment necessary to respond to a carbon dioxide emergency should be provided to first responder units that do not have the appropriate equipment; and electric UTVs should be provided by the pipeline companies. *Id.* at 19-20.

Mr. Briggs further testifies carbon dioxide pipelines pose a significant risk to public safety due to carbon dioxide's properties of being heavier than air. *Id.* at 21. Mr. Briggs states he is "not aware of a natural gas rupture directly affecting persons three or more miles away from the leak or rupture site as the [carbon dioxide] did in Sartartia." *Id.* Mr. Briggs states the entire community needs to be continually educated on what to do in the event of a carbon dioxide release. *Id.* at 23. Mr. Briggs asserts had the community known what to do, a warning could have been sent to inform people to stay in their homes, close air vents, and shut off the air conditioning or heating units to stop circulating air through their homes. *Id.* at 23.

In her direct testimony, Cassandra Adams states she was seven miles away from the location of the Denbury incident when it occurred. Jorde Landowners Adams Direct, p. 1. Ms. Adams testifies DeEmerris Burns, another Jorde Landowners witness, cannot remember his daily activities since the Denbury incident. *Id.* at 2. Ms. Adams states Mr. Burns was between 500 and 1,000 feet away from the pipe when it ruptured. *Id.* at

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1. Ms. Adams testifies she does “not believe there are conditions that can be placed upon these proposed hazardous [carbon dioxide] pipelines unless they are at a minimum one mile away from any residence or place where people regularly gather.”

*Id.* at 3.

In his direct testimony, Mr. Burns describes his experience the night of the Denbury incident. Jorde Landowners Burns Direct, pp. 1-2. Mr. Burns testifies, “There should have been more communication from the company. It should have been communicated from the company to the surrounding neighborhood, surrounding area.”

*Id.* at 2. Mr. Burns asserts the Denbury pipeline should have never been built in the first place. *Id.*

Dan Zegart’s direct testimony included a copy of his article as an investigative reporter detailing the events of the Denbury incident. Jorde Landowners Zegart Direct, p. 3; Jorde Landowners Zegart Direct Attachment 2.

In the direct testimony of Gerald Franken *et al.*, Mr. Franken testifies emergency responders are ill equipped to handle a breach of a hazardous liquid pipeline the size of Summit Carbon’s proposed pipeline. Jorde Landowners Gerald Franken *et al.* Direct, pp. 4-5. Mr. Franken testifies “air aspirated vehicles will not function in such a situation.” *Id.* at 5.

In almost all testimony provided by landowners who are a part of Jorde Landowners, safety concerns were raised related to Summit Carbon’s proposed hazardous liquid pipeline, either in direct testimony or on cross-examination. The Board has reviewed the prefiled testimony and cross-examination testimony and has considered the testimony in making its decision. The Board concludes it is unnecessary

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to cite to every instance where the safety issue was addressed due to the substantially similar concerns of the witnesses. The Board has, however, considered all of the testimony in reaching its decision.

In their initial brief, Jorde Landowners reiterate the NIOSH carbon dioxide parameters. Jorde Landowners IB, pp. 49-50. Jorde Landowners, similar to the Counties' argument, state that the late timing of receiving the air dispersion models prevented them from conducting discovery and providing expert witnesses on the issue. *Id.* at 51. Jorde Landowners state Summit Carbon's refusal to turn over or release the air dispersion models publicly was due to the availability of free software to run air dispersion models. *Id.* at 52. Jorde Landowners argue Summit Carbon was negligent in not using the air dispersion models to inform the route. *Id.* at 58.

In their reply brief, Jorde Landowners assert Summit Carbon did not provide any evidence that its proposed hazardous liquid pipeline would be safer than the status quo of simply emitting the carbon dioxide into the atmosphere. Jorde Landowners RB, p. 18. Jorde Landowners state federal law does not prohibit the Board from considering the results of the air dispersion model or risk assessment as a part of the Board's routing decision. *Id.* at 53.

### **Hardin County BOS**

In his direct testimony, Mr. Craighton testifies, based on his research, "if there is a rupture of the pipeline [at] 2,500 psi[, it] would release 133,800 gallons of [carbon dioxide] per minute. This would require an initial isolation distance of 1.5 miles." Hardin County BOS Craighton Direct, p. 3. Mr. Craighton testifies Hardin County is "not prepared for a large-scale release of hazardous materials that would require a large

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response with personnel and equipment.” *Id.* Mr. Craighton states current Hardin County “fire departments have [SCBAs] for 8-12 firefighters. . . .” *Id.* Mr. Craighton asserts the bottles for SCBAs are 30 minutes and the county’s “refill stations are not currently equipped to refill the typical 4,500 psi bottles these departments use.” *Id.*

Mr. Craighton testifies every fire, emergency medical service, and law enforcement person “will need specific training on this new hazard and response to this new product.” *Id.* Mr. Craighton asserts Hardin County first responders currently do not have equipment capable of measuring carbon dioxide, which he states they should have. *Id.* at 3-4. Mr. Craighton states electric UTVs should also be provided to emergency response personnel for use during an incident. *Id.* at 4. Furthermore, Mr. Craighton states currently none of the emergency medical service personnel are neither trained on, nor equipped with, SCBA units. *Id.* Mr. Craighton’s testimony recommends “(1) ongoing training to all Hardin County emergency responders; (2) SCBA tanks; (3) CO2 monitors; (3) more automatic shut off valves; alert systems such as odor release, sirens, warning lights; (4) fixed automatic lighted/digital signage or warning lights; [and] (5) cost assistance.” *Id.*

On cross-examination, Mr. Craighton testifies every first responder unit in Hardin County, including the city of Iowa Falls, is composed of volunteers. HT, p. 3622.

Mr. Craighton testifies the number of volunteers that may show up to an emergency call ranges from zero to a dozen. *Id.* at 3622-23. Mr. Craighton testifies he does not see responses to call for a potential carbon dioxide rupture getting better due to attrition and retirements within the different volunteer departments. *Id.* at 3623. On further cross-examination related to his testimony regarding electric vehicles, Mr. Craighton testifies



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they would be helpful in the summer months, but they may not function properly during an Iowa winter. *Id.* at 3625. Mr. Craighton testifies if internal combustion or electric vehicles are unable to function, first responders would have to walk into the hazardous area wearing the SCBAs, like they do now. *Id.* at 3626.

In its initial brief, Hardin County BOS states the Board should condition Summit Carbon's permit on providing certain emergency response measures, training, and equipment for first responders. Hardin County BOS IB, p. 11. Hardin County BOS states the Board should condition the permit on Summit Carbon providing in-person training in Hardin County every six months at Summit Carbon's expense. *Id.* (citing HT, pp. 3218-19). Hardin County BOS recommends that the permit be conditioned so each first responder will have their own carbon dioxide monitor and SCBA. *Id.* (citing HT, pp. 3221-22). Hardin County BOS states these should be at Summit Carbon's expense, and the costs of training the personnel should also be at Summit Carbon's expense. *Id.* Hardin County BOS also states the Board should condition Summit Carbon's permit on Summit Carbon having a field operator located in Hardin County. *Id.* at 12. Hardin County BOS also states the Board should require Summit Carbon to install a real-time alarm system in Hardin County, provide an automated public alert or notification system for residents, and have a "lighthouse" installed at county parks to automatically illuminate should a release occur. *Id.* at 12 (citing HT, pp. 3233-34).

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### **Landowners, Commenters, and Objectors**

Similar to the landowners who are a part of Jorde Landowners, almost every landowner who testified and thousands of filed comments and objections raise safety-related issues or concerns. The Board has reviewed them and will consider them as the Board reaches its conclusion on this issue.

### **Board Discussion**

The Board has reviewed the information and finds that it may consider the impacts of safety as it relates to Summit Carbon's request for a hazardous liquid pipeline permit. Throughout this docket, there has been a perpetual back-and-forth between Summit Carbon and its opponents as to what, if any, information or requirements the Board can receive or implement as a part of the Board's permitting process as it relates to safety. *See In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, *Order Addressing Motion for Reconsideration and Petitions to Intervene*, pp. 1-5 (Feb. 10, 2023). In that order, the Board stated it

recognizes that it is preempted from setting safety standards that are clearly under the jurisdiction of the United States Department of Transportation. However, it is not clear where the line between safety standards and other statutory requirements under federal law and in Iowa Code chapter 479B is to be drawn. The Board considers those to be evidentiary and legal questions that should be addressed when the Board makes its decision regarding Summit Carbon's petition.

*Id.* at 4. The Board finds that considering the safety aspects that Summit Carbon has committed to abiding by does fall within the Board's purview of Iowa Code chapter 479B and whether Summit Carbon should be granted a permit.

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Both the Counties and Jorde Landowners assert the air dispersion modeling was provided too late in the proceeding to allow for discovery and counter-expert testimony to be performed. The Board notes the discovery issue was only brought to the Board's attention on July 26, 2023, with the filing of a discovery dispute. The Board ruled on the appeal of the administrative law judge's (ALJ) August 14, 2023's order on September 5, 2023, affirming the ALJ's decision that the air dispersion models were discoverable. An initial decision by the ALJ and an appeal to the Board were decided within 41 days of the discovery dispute being filed. While Jorde Landowners were not granted intervention until July 19, 2023, due to their timing for actually petitioning to intervene, they have been participating in the docket since filing their initial appearance on February 28, 2022. The Counties have been a party in this proceeding since being granted intervention on November 9, 2022. The Board does not control when a party seeks intervention, apart from setting the deadline, nor does the Board control when a party brings a discovery dispute. These actions are controlled by the parties and the Board reacts to them. Therefore, the accusatory statements that the Board interfered with the parties' ability to conduct discovery or provide counter-expert testimony of Summit Carbon's air dispersion modeling are false and rest upon the litigation strategies of the parties. *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996) ("At some point, a litigant must bear the consequences of conscious strategic or tactical decisions of this kind.")

Reviewing the evidence, it is clear there are risks associated with Summit Carbon's proposed hazardous liquid pipeline. However, several witnesses for parties who oppose Summit Carbon's petition state there are ways to reduce or minimize the

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risks posed by Summit Carbon's project. Witnesses for Jorde Landowners and the Counties who have had first-hand experience with a carbon dioxide release identified the lack of communication between the pipeline company and both the first responders and the public as the main issue they sought to have addressed. Jorde Landowners Briggs Direct, p. 19; Jorde Landowners Burns Direct, p. 2; and The Counties Willingham Direct, p. 9. Furthermore, witnesses state first responders need to be properly equipped to handle a carbon dioxide release. Jorde Landowners Briggs Direct, pp. 19-20; The Counties Willingham Direct, pp. 15-16; Hardin County BOS Craighton Direct, pp. 3-4.

In light of both of these major issues raised by the opposition parties, Summit Carbon has agreed to address these through annual trainings with all local first responders and buying enough carbon dioxide air monitors to ensure that a monitor can be placed in every emergency manager truck, fire truck, law enforcement vehicle, and ambulance in the communities crossed by the pipeline. Summit Carbon Dillon Rebuttal, pp. 2, 4, 7. The Board interprets the term "fire truck" in Summit Carbon's proposal to include personal vehicles used by volunteer emergency responders. The volunteer nature of many, if not most, of the emergency responders along Summit Carbon's route makes this clarification requirement necessary.

Summit Carbon has also stated it has requested county emergency management officials to inventory what equipment it has, and Summit Carbon has agreed to supplement the equipment by providing grants. HT, p. 3210. Summit Carbon has also stated quarterly county meetings will occur to ensure public awareness of its proposed hazardous liquid pipeline. *Id.* at 3238. Based upon Summit Carbon's commitments, the

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Board finds Summit Carbon has addressed the main issues raised by these witnesses. The Board will make these conditions, as well as others, as part of Summit Carbon's permit discussed later in this order, should it be granted. Additionally, Summit Carbon should consider an annual meeting with all impacted county emergency managers, in addition to the county trainings and meetings, to allow for a shared communication between Summit Carbon and the county emergency managers in one location.

To further mitigate risk, the Board may examine the route on a case-by-case basis to determine if an additional routing modification is necessary on a parcel due to the presence of Summit Carbon's proposed hazardous liquid pipeline. Examination of a routing modification in terms of a setback will assist in reducing the impact of Summit Carbon's proposed hazardous liquid pipeline on nearby residences.

Summit Carbon also has proposed to implement numerous features to reduce the likelihood of a rupture. Summit Carbon has testified its main OCC will be located in Ames and will be operated 24/7, 365 days a year. Summit Carbon will use a SCADA system and an RTTM to monitor its proposed hazardous liquid pipeline from the OCC. Summit Carbon has committed to X-ray inspection of 100 percent of all pipeline welds, above the 10 percent required by PHMSA. Summit Carbon has also committed to hydrotesting its proposed hazardous liquid pipeline at 125 percent MOP. To reduce the likelihood of a ductile fracture, Summit Carbon has committed to using thicker walled pipe as well as ductile arrestors. Furthermore, Summit Carbon has stated it will have its IMP cover its entire pipeline system and not just HCAs, as required by PHMSA. Summit Carbon also states it conducted a dispersion model for its entire pipeline system.

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Overall, the Board finds these commitments made by Summit Carbon will tend to reduce the safety risks associated with its proposed hazardous liquid pipeline by going above and beyond what is required by PHMSA. The Board will require Summit Carbon to implement these features.

A great deal of testimony has been provided as it relates to the air dispersion models and the impacts of carbon dioxide on human health. The Board has reviewed the evidence and finds that while there could be an impact to human health, the evidence presented shows Summit Carbon has taken steps to reduce the potential impact to human health. First, Summit Carbon conducted a worst-case-scenario model of a guillotine release and a more realistic release termed a mechanical release. As stated by Summit Carbon, the Board is unaware of any previous docket where an air dispersion or blast radius model was provided to the Board. The Board's jurisdiction covers numerous types of pipelines that transport things such as natural gas, anhydrous ammonia, crude oil, gasoline, diesel, and jet fuel, just to name a few. There is no question all these products also include some inherent risk in their transportation. The Board understands the risk. While Summit Carbon's proposed hazardous liquid pipeline must have adequate safety features, as required by PHMSA, the steps Summit Carbon proposes to take will likely reduce the risk of occurrence of a catastrophic failure, like the one seen in Sartoria, Mississippi, in addition to improving the effectiveness and speed of emergency response if an event occurs.

While the Board may consider safety as part of its analysis, the Board cannot impose safety criteria on Summit Carbon. The Board is all too familiar with the impacts of imposing safety criteria on a pipeline where federal law controls the subject matter.

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See *ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *N. Nat. Gas Co. v. Iowa Utils. Bd.*, 377 F.3d 817 (8th Cir. 2004). However, Summit Carbon has agreed to the following conditions:

Requiring Summit [Carbon] to provide emergency management training to emergency responders before pipeline operation at Summit[] [Carbon's] expense, including reviewing dispersion analysis results with first responders, reviewing emergency response plans with first responders, and to update that training at least annually; providing [carbon dioxide] monitors to all first response units along the pipeline route; and to comply with all other PHMSA regulations regarding emergency response.

Summit Carbon RB, p. 73. The Board will place these conditions on Summit Carbon's permit. Summit Carbon will be required to create and implement a direct communication procedure between Summit Carbon and county emergency managers in the event a release occurs in a county. The Board will also require Summit Carbon to utilize and provide a Buxus-type system for emergency managers as a condition to its permit. The Board has already considered some of these commitments as part of this factor, but having them be conditions will address many of the concerns raised by the parties. Engagement by local emergency response officials with Summit Carbon in the emergency planning and preparedness processes will be a vital piece of ensuring these conditions provide value to Iowa communities.

The Board finds this factor weighs against Summit Carbon, but its negative impact is alleviated due to the actions proposed by Summit Carbon and the conditions the Board is placing upon the permit.

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## 5. Transportation Methods

During the proceeding, evidence was admitted about the potential of using other methods of transportation for the liquefied carbon dioxide as discussed below.

### **Summit Carbon**

In its Exhibit F, Summit Carbon states “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. . . .”

In his direct testimony, Mr. Priolli testifies, “Time and time again, pipelines have proven to be the safest and most reliable form of transporting hazardous liquids.” Summit Carbon Priolli Direct, p. 7. On cross-examination, Mr. Priolli testifies a tanker truck is capable of transporting between 20 and 22 tons of liquefied carbon dioxide and a railcar is capable of transporting between 60 and 65 tons of liquefied carbon dioxide. HT, pp. 1998-99. By comparison, Summit Carbon’s proposed pipeline could transport up to 18 million metric tons of liquefied carbon dioxide per year. Summit Carbon Exhibit F, section 1.0.

Furthermore, Mr. McCown testifies when it comes to hazardous materials being transported via rail, the counties through which the cargo is passing are not provided advanced notice of the shipment. HT, p. 3471. Mr. McCown noted “rail lines... run through downtown major city centers of our country.” *Id.* at 3472. Questioned as to whether railcars are required to conduct plume models for the materials they are transporting, Mr. McCown states trucks and railcars are not required to conduct plume modeling prior to transporting the hazardous material. *See id.* at 3471.



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### **The Counties**

In its initial brief, the Counties state the reliance upon the statement that pipelines are safer than truck or rail transportation is not based upon any statistics entered into the record. The Counties IB, pp. 63-64. For this reason, the Counties argue the Board cannot rely upon this claim. See *id.* The Counties assert the correct balancing test for this factor is between the status quo and what Summit Carbon proposes to do. *Id.* at 66. The Counties argue there is more evidence relating to the potential harms to human health in the docket compared to no evidence of anyone transporting 9.5 million metric tons of carbon dioxide via truck or rail currently. *Id.* at 64-65. The Counties assert that “the record evidence tends to show that transportation of large quantities of [carbon dioxide] by rail or truck will not be feasible, either now or in the future.” *Id.* at 66.

### **Jorde Landowners**

On cross-examination, Mr. Leaders testifies the Southwest Iowa Renewable Energy (SIRE) ethanol plant captures its carbon dioxide and transports it via tanker trucks. HT, p. 3962.

In their reply brief, Jorde Landowners assert Summit Carbon did not provide any evidence its proposed hazardous liquid pipeline would be safer than the status quo of simply emitting the carbon dioxide into the atmosphere. Jorde Landowners RB, p. 18. They state any argument about a safer or more efficient way to transport carbon dioxide is not relevant. *Id.*

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### **Board Discussion**

As it relates to the arguments that transportation by pipeline is safer than by truck or rail, the Board agrees. Some parties assert the Board is to consider the status quo versus the potential safety impacts of Summit Carbon's proposal, which according to them is weighing the evidence of emitting into the atmosphere versus transporting carbon dioxide by pipeline. Opposing parties assert there is no evidence in the record to demonstrate carbon dioxide is being moved by truck or rail, nor that a pipeline is safer than those modes of transportation. The Board finds both to be false. First, Mr. Leaders testifies to at least one ethanol plant currently capturing and transporting their ethanol by truck. HT, p. 3962. As it relates to pipelines being safer than truck or rail, the Board acknowledges there is no explicit testimony on this issue; however, there is testimony that indicates trucks can only transport 20 to 22 tons of carbon dioxide per tanker and a single railcar can only transport 60 to 65 tons of carbon dioxide. *Id.* at 1998-99. Doing simple math, using Summit Carbon's proposed 9.5 million metric tons per year of carbon dioxide, the number of tanker trucks needed to move the same amount of carbon dioxide would be approximately 431,818, or approximately 146,154 railcars per year. Summit Carbon is proposing to construct 688.01 miles of pipeline to do what nearly half a million tanker trucks or 150,000 railcars would need to do annually. Logic dictates there is a reason a pipeline is being proposed rather than a new trucking company or a railroad company. This logic stems from the fact pipelines are a safer form of transportation. This logic has been cited by the Iowa Supreme Court. See *Punttenney*, 928 N.W.2d at 849-50 ("Pipelines are . . . often safer and more efficient than transportation by train or truck.") (citations omitted). Having either nearly

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half a million tanker trucks or 150,000 railcars added to roadways or railroads, respectively, would create untold numbers of risks and areas where accidents can happen. The Board finds this factor weighs slightly in favor of Summit Carbon's petition.

## **6. Alternative Options**

During the course of the hearing, two main alternative options to Summit Carbon were raised by parties and landowners. Each will be discussed in turn.

### **a. Sequestration in Iowa**

#### **Summit Carbon**

In its Exhibit F, Summit Carbon states, "Iowa does not have proven subsurface geologic formations capable of storing the volume of [carbon dioxide] the plants produce." Summit Carbon Exhibit F, section 1.0. Mr. Pirolli also testifies to this assertion. Summit Carbon Pirolli Direct, p. 4. Mr. Pirolli testifies the lack of appropriate geological formation requires the transportation of carbon dioxide from ethanol plants in Iowa to areas where it can be sequestered and that pipeline transportation is the safest mode for transporting carbon dioxide compared to truck or rail. *Id.* at 7.

During cross-examination, Mr. Pirolli testifies some locations in Illinois, Indiana, and Ohio are potential sequestration sites. HT, p. 1997. However, Mr. Pirolli states Summit Carbon's research of potential sequestration sites in Iowa, eastern Nebraska, eastern South Dakota, and Minnesota established sequestration was not feasible in those locations. *Id.* Mr. Pirolli testifies if it was possible to sequester in Iowa, eastern Nebraska, eastern South Dakota, or Minnesota, Summit Carbon would sequester in Iowa or one of the closer areas. *Id.* Mr. Pirolli testifies Summit Carbon relied upon research from the Energy & Environmental Research Center in North Dakota, which

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states the cap rock formations in Iowa are too shallow, if present at all, which makes the formations unfit for sequestration. *Id.* at 1997-98.

In its initial brief, Summit Carbon asserts there is nothing in Iowa Code chapter 479B that requires or allows the Board to compare alternatives between the applicant's proposed project and an alternative project. Summit Carbon IB, p. 50. In its reply brief, Summit Carbon states the Counties and others misrepresent the testimony of Ryan Clark, a witness for Rep. Isenhart. Summit Carbon RB, p. 41. Summit Carbon states Mr. Clark's testimony clearly demonstrates there is currently not enough known information about the potential sequestration in Iowa to know whether it is possible to sequester in Iowa. *Id.* at 41-42. Summit Carbon asserts the Counties' brief states sequestration is viable in Iowa, a direct contradiction of the testimony. *Id.* at 41. Summit Carbon states, assuming sequestration is possible, pipelines would still be necessary to transport the carbon dioxide from ethanol plants not located where sequestration is viable to places where it is. *Id.* at 43.

**Rep. Charles Isenhart**

In his direct testimony, Rep. Isenhart states the Board should require Summit Carbon to investigate whether it is feasible to sequester in Iowa before granting Summit Carbon's request. Rep. Isenhart Isenhart Direct, p. 3. Rep. Isenhart testifies the University of Iowa has conducted research "which suggest[s] that sequestering carbon dioxide in Iowa may work within the geological 'midcontinent rift' formation that slices through the state. . . ." *Id.* Rep. Isenhart asserts if sequestration in Iowa is possible, it would remove the need for long-distance pipelines and could allow landowners to receive annual payment for carbon storage under their land. *Id.*

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In the direct testimony of Mr. Clark, he testifies he is with the Iowa Geological Survey, which is a part of the University of Iowa. Rep. Isenhart Clark Direct, pp. 1, 3. Mr. Clark testifies research was conducted in 2011 in 24 southwest Iowa counties to determine whether sequestration was feasible in Iowa. *Id.* at 7. Mr. Clark testifies the research was funded by the Department of Energy and led by Energy & Environmental Research Center. *Id.* Mr. Clark states the research examined storage targets below 2,700 feet. *Id.* Mr. Clark testifies that “the report identified several formations as possible storage targets while acknowledging that further study was needed to adequately characterize the deep aquifers in southwestern Iowa.” *Id.* In addition to describing the results of the research, Mr. Clark also provides a narrative, timeline, and estimated cost breakdown to conduct the research for each borehole. *Id.* at 9-10.

On cross-examination, Mr. Clark testifies it is his opinion that sequestration is possible in Iowa. HT, p. 3809. Mr. Clark states there is evidence Iowa does have enough storage space, but notes Iowa has a more limited understanding of its subsurface geology due to Iowa not having a history of petroleum production. *Id.* at 3810. Mr. Clark testifies there are two types of carbon sequestration routes, in his opinion. *Id.* at 3821. The first is a sequestration hub where carbon dioxide is gathered and then stored in one location; the other option is localized storage at the carbon dioxide emitter site. *Id.* Mr. Clark testifies he is currently unable to state where, definitively, sequestration could occur in Iowa, but he notes the Midcontinent Rift System enters the state “from the southwest sort of corner, and then it runs up through and exits Iowa through the north central part. This geologic feature continues up into Minnesota underneath Lake Superior and down around into Michigan.” *Id.* at 3822.

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Mr. Clark asserts this geological feature covers 30 to 35 percent of Iowa. *Id.* Mr. Clark testifies he is not sure what carbon sequestration potential the Midcontinent Rift System possesses, but based upon the information he has seen, additional research would be worth conducting. *Id.* Mr. Clark testifies the injection location must be “at least 2,700 feet underground to maintain it as a liquid so that it doesn’t depressurize and turn back into a gas phase and therefore potentially leak.” *Id.* at 3825. Mr. Clark also testifies the water present within the injection site must be tested to ensure it could never be used as potable water. *Id.* at 3826. Mr. Clark states, “The EPA has set a limit of 10,000 parts per million of total dissolved solids” as the minimum for determining whether the water will be considered potentially potable. *Id.* Mr. Clark testifies anything higher than 10,000 ppm would not be water anyone would want to drink. *Id.* Mr. Clark testifies that, besides these deep, saline aquifers, there is additional research surrounding the injection of carbon dioxide into basalt formations<sup>28</sup> that shows the carbon dioxide would convert into other minerals, such as calcite or ankerite. *Id.* at 3826-27. Mr. Clark testifies calcite and ankerite “have been proven to be very stable in the rock formation” and “a very large portion of [the Midcontinent Rift System] is occupied with basalts.” *Id.* at 3827.

As it relates to the bore holes and determining whether sequestration is possible, Mr. Clark clarifies, conservatively, it would take approximately \$5 million and four years to get to a point where a company would apply for a Class VI permit with the EPA to do injection testing. *Id.* at 3828-29. Mr. Clark testifies he is unfamiliar with how long it

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<sup>28</sup> Mr. Clark states basalt formations are “rocks that were magma. They may have been erupted at the land surface.” HT, p. 3826.

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would take and how much it would cost to obtain a Class VI permit from the EPA, but he acknowledged it would be costlier and would take more time. *Id.* at 3829.

### **The Counties**

In its initial brief, the Counties state Mr. Clark's testimony provides that sequestration is viable in Iowa. The Counties IB, p. 51. The Counties assert Mr. Clark's testimony shows the potential for viable sequestration in Iowa. *Id.* at 31. Additionally, the Counties note Mr. Clark's testimony indicates it may be possible to sequester all of the carbon dioxide produced by Summit Carbon's participating ethanol plants in Iowa. *Id.* at 32. The Counties assert Summit Carbon's failure to include information about the possible sequestration in Iowa is "fundamental to the question of public convenience and necessity. . . ." *Id.* at 33. The Counties argue the record as a whole demonstrates sequestration in Iowa is viable. *Id.* at 51.

### **Jorde Landowners**

In their reply brief, Jorde Landowners agree with the Counties' statements in its initial brief about the viability of sequestering in Iowa. Jorde Landowners RB, pp. 11-12.

### **Board Discussion**

The Board has reviewed the evidence and finds that including the potential for carbon sequestration in Iowa should be a factor considered by the Board during its weighing of the factors. While there is currently limited information about the viability of adequate sequestration in Iowa, the Board finds the factor is worthy of inclusion in its balancing test. While the Board is including it, the Board will give this factor little weight. The Board finds this argument to be based upon speculation, rather than proven facts. While the potential to sequester in Iowa should be examined, this is not the project

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before the Board. Nowhere in Iowa Code chapter 479B is there a requirement for an applicant to list all the possible alternatives to its proposal.

Furthermore, as Mr. Clark's testimony states, the sequestration potential only covers approximately 35 percent of Iowa. HT, p. 3822. This means 65 percent of Iowa does not potentially possess the necessary geologic features necessary to potentially sequester carbon dioxide. With nearly two thirds of Iowa unable to potentially sequester, the Board questions whether a pipeline would still be needed to transport carbon dioxide across the state to the potential sequestration locations. Therefore, the Board finds this factor has little impact on the Board's analysis of balancing of the factors.

#### **b. Green Methanol**

##### **Summit Carbon**

In his rebuttal testimony, Mr. McCown testifies he is aware of the potential of converting carbon dioxide into methanol. Summit Carbon McCown Rebuttal, p. 5. Mr. McCown states he supports "an 'all of the above' approach to energy transformation, [but] most of these technologies remain aspirational, or confined for now to small scale demonstration projects." *Id.* Mr. McCown asserts large amounts of renewable energy are needed in order to make green methanol. *Id.* Additionally, Mr. McCown testifies he is not aware of any large-scale green methanol producers, whereas, "carbon capture, transport, and sequestration have all been present in the United States for nearly half a century in some form or fashion." *Id.*

Mr. McCown also testifies there are suggestions an ethanol plant utilizing a green methanol conversion plant would remove the need for a pipeline. *Id.* Mr. McCown



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asserts the production of green methanol would still likely include a pipeline, which would be flammable and explosive. *Id.* at 5-6. Mr. McCown testifies if green methanol was produced “in any meaningful volume,” it would likely be transported by pipeline. *Id.* Mr. McCown notes “pipelines transport the bulk of our liquid and gas energy consumed daily in the United States via 3.4 million miles of PHMSA regulated pipelines, or enough to circle the earth about 135 times.” *Id.*

Mr. McCown, in response to Hirth’s witness Jeffery Bonar’s testimony that CapCO<sub>2</sub> would transport its methanol by rail, states, “For economic and efficiency reasons, it is highly unlikely that such quantities would be possible via freight railroads.” *Id.* Mr. McCown testifies there are also additional safety risks that arise with shipping via truck or rail compared to pipeline. *See id.* at 6. Mr. McCown asserts pipelines are the safest mode of transportation for two main reasons: “first, in a pipeline, only the product is moving, with truck or rail the container is moving as well, which adds more variables; second, trucks and trains run above ground and are interacting with people and communities along the way.” *Id.* at 6-7. Mr. McCown hypothesizes that if the entire carbon dioxide output from Summit Carbon’s partner ethanol plants was “converted to green methanol and shipped by train or truck to a processing plant on the gulf coast, for example, the increased number of trucks and trains involved would be a far larger safety concern to me than a well-built modern pipeline.” *Id.* at 7.

In its initial brief, Summit Carbon argues the proposed green methanol option is not viable, and even if it was, the Board could not force that option onto an ethanol plant. Summit Carbon IB, p. 51. Summit Carbon also states in order for ethanol plants to receive the same benefit identified in Summit Carbon’s proposal, 950 shipping

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containers would be required for CapCO2's project, they would use more water than Summit Carbon's proposal for the same amount of captured carbon dioxide, and each ethanol plant where CapCO2 is used would require 1,000 megawatts of green energy. *Id.* at 51-52. To its last point, Summit Carbon notes this would require the installation of 12,000 megawatts of renewable generation — double the size of the existing wind generation fleet in Iowa and six times larger than what the Board approved in Wind Prime. *Id.* at 52 (citing *In re: MidAmerican Energy Company*, Docket No. RPU-2022-0001, *Rehearing Final Order and Concurrence* (Dec. 14, 2023)). Summit Carbon also notes several counties where there are ethanol plants have enacted moratoria against the development of wind energy developments. *Id.*; HT, p. 4314.

**Kerry Mulvania Hirth**

In his direct testimony, Mr. Bonar states he is the CEO of CapCO2, a Delaware corporation, which “partners with anaerobic digester operators and other sources of biogenic carbon dioxide . . . such as ethanol plants to capture [carbon dioxide] emissions and transform those emissions into green methanol.” Hirth Bonar Direct, pp. 1, 3. Mr. Bonar testifies, “Methanol is a chemical compound that is used in thousands of everyday products, including insulation, gutters, roofing, paints, carpets, tires, plastics, fertilizers, and cosmetics. Methanol can also act as a replacement for diesel fuel.” *Id.* at 3. Mr. Bonar states methanol “can be made ‘green’ by using captured biogenic [carbon dioxide] emissions and renewable energy sources.” *Id.* Mr. Bonar testifies, “Methanol burns with no waste products, and even if spilled causes no environmental damage.” *Id.* at 4. Mr. Bonar states that “green methanol can easily be used as a transportation fuel because conventional diesel engines can be modified to

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run on green methanol.” *Id.* Mr. Bonar asserts companies such as Maersk and Amazon are exploring the option of converting to green methanol as their fuel sources. *Id.* He testifies Maersk “is seeking to purchase six million metric [tons] of green methanol for its own use in 2030.” *Id.* at 5.

Mr. Bonar testifies CapCO2 would allow ethanol plants to immediately “leverage their [carbon dioxide] waste by turning it into a marketable product that produces an additional revenue stream for the ethanol plant. Instead of simply disposing of [carbon dioxide] emissions as a waste product, green methanol allows ethanol plants to create a new co-product while still reducing the carbon index of ethanol.” *Id.* at 4-5. Mr. Bonar asserts an ethanol plant that emits 260,000 tons of carbon dioxide could produce 160,000 tons of green methanol, which would have a market value of approximately \$160 million. *Id.* at 5. Mr. Bonar states, “Methanol is the simplest hydrocarbon molecule” and “is a key building block for many other valuable green molecules including sustainable aviation fuel (SAF).” *Id.* Mr. Bonar asserts, “Putting . . . [carbon dioxide] into a pipeline and throwing it away literally throws away the future of the ethanol industry.” *Id.* Mr. Bonar also states ethanol plants would still be eligible for federal tax credits as well as being able to sell into low carbon fuel markets. *Id.* at 5-6.

Mr. Bonar testifies, “CapCO2 is a young company, and [it is] currently in the process of developing [its] first green methanol production facility on-site at an ethanol plant in partnership with Adkins Energy in Lena, Illinois.” *Id.* at 6. Mr. Bonar states methanol is liquid at room temperature, which makes it “safe and easy to transport.” *Id.* Mr. Bonar acknowledges creating green methanol does require a large amount of green electricity, which would need to be produced by wind, solar, water, nuclear, or

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geothermal sources. *Id.* However, Mr. Bonar notes “with the green energy demand, the high value of the green methanol means that the costs of the green methanol facility is easily paid back within 3-5 years — in many cases within 1-2 years.” *Id.* Mr. Bonar testifies, “Unlike the pipeline, the green methanol facility delivers handsome profit back to the ethanol plant and local community for decades.” *Id.*

On cross-examination, Mr. Bonar testifies CapCO2 has the ability to scale its production to meet the demands of the ethanol plant as its equipment is contained within shipping containers. HT, p. 4289. Mr. Bonar testifies CapCO2 creates methanol by using a high-pressure reactor where carbon dioxide and hydrogen are combined, with the result of the reaction being methanol, which can be delivered to railcars already on site. *Id.* at 4291. Mr. Bonar testifies CapCO2 first makes green hydrogen, which is then reacted with the carbon dioxide. *Id.* at 4313.

Mr. Bonar testifies green methanol is much more profitable compared to regular methanol, meaning it is a necessity that renewable energy is utilized to operate CapCO2’s reactors. *Id.* at 4293. Mr. Bonar testifies it is his understanding there is an underutilized amount of wind energy generated in Iowa that is looking for a buyer, which CapCO2 would utilize. *Id.* at 4294. Mr. Bonar testifies a 90 million gallon per year ethanol plant would require approximately 1,000 megawatts of renewable electricity per year to create green methanol. *Id.* at 4308. Mr. Bonar testifies a 90 million gallon per year ethanol plant would require 67 million gallons of water per year to make the resulting green methanol. *Id.* at 4294. Mr. Bonar states the used water would leave CapCO2’s process as distilled water and would then be sold. *Id.* at 4295. Mr. Bonar

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testifies only 30 to 40 percent of the water used in total remains after the reaction and that it would be resold. *Id.* at 4316.

Mr. Bonar testifies a 90 million gallon ethanol plant could expect to make between \$200 million and \$400 million worth of green methanol annually. *Id.* at 4298. Out of that amount, Mr. Bonar testifies, CapCO2 would cover capital costs and operating costs. *Id.* at 4299. Mr. Bonar states the remaining money would then be shared with the ethanol plants based upon a confidential formula. *Id.* Mr. Bonar further states it is possible the ethanol plants could qualify for the 45Q, 45V, and 45Z tax credits, but some negotiation would need to occur between CapCO2 and the ethanol plant regarding who utilizes the tax credit. *Id.* at 4303-04. Mr. Bonar testifies CapCO2 could be able to deliver comparable carbon intensity reductions and revenues as described by Summit Carbon. *Id.* at 4305.

Mr. Bonar states CapCO2 would utilize rail transport to move its green methanol to the Gulf of Mexico or to other locations that seek to purchase green methanol. *Id.* at 4301. Mr. Bonar testifies he estimates the number of additional railcars needed to transport green methanol to the Gulf of Mexico would be between 60 and 66 percent more train cars than are currently transporting ethanol. *Id.* at 4315. When questioned about whether CapCO2 would ever construct a pipeline, Mr. Bonar states he could see CapCO2 using pipelines between an existing CapCO2 facility and another facility that would like to use CapCO2. *Id.* at 4324-25. Mr. Bonar states it is possible a pipeline could be built to transport green methanol from the Midwest to the Gulf of Mexico, but reiterates railcar is the method of transportation used by CapCO2, given the infrastructure is there. *Id.* at 4325.

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### **Jorde Landowners**

In the direct testimony of Marie Larson, she testifies there are “[p]eople in Sioux City [who] want to make [m]ethanol for airplane fuel. . . .” Jorde Landowners Marie Larson Direct, p. 26. Mr. Larson asserts the people who are seeking to use methanol for aviation fuel indicated “it would be more money for [e]thanol plants.” *Id.*

On cross-examination, Barbra Harre testifies, “Methanol is only toxic if [it is] drunk.” HT, p. 4354.

On cross-examination, Larry Christensen testifies another company, Carbon Sync, is exploring turning carbon dioxide “into another methanol-type fuel here in Iowa.” *Id.* at 7090.

### **Board Discussion**

The Board has reviewed the evidence and finds the potential alternative should be a factor considered by the Board when determining if the proposed service to be offered by Summit Carbon is in the public convenience and necessity. For many of the same reasons stated above in relation to the potential sequestration in Iowa, the Board finds this proposal, while included, should be given little weight.

## **7. Board Conclusion on Public Convenience and Necessity**

Having reviewed all the factors and conducted its balancing test, the Board finds Summit Carbon’s proposed hazardous liquid pipeline will provide a service that will promote the public convenience and necessity for the reasons described below and the conditions that the Board will place upon Summit Carbon’s permit. The Board notes there does not need to be a consensus among all three Board members as to what

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weight each factor is given, and that the overall Board conclusion on the outcome of the factors is what controls.

Of all the factors discussed above, the Board finds federal policy weighs heavily in favor of Summit Carbon's petition. The federal government under the most recent four presidential administrations (Bush, Obama, Trump, and Biden) has dictated and consistently shown a desire to incentivize carbon capture and sequestration. Under both the Trump and Biden administrations, the 45Q tax credit was increased. This shows the incentivization stemming from the 45Q tax credit is a bipartisan issue that is not likely to be impacted by a change in administrations.

Furthermore, the federal government currently has determined a tax credit of \$85 per ton sequestered is a proper implementation of federal tax policy that has an impact across the United States. The Board emphasizes the difference between a tax refund and a tax credit. A tax refund is money given directly to the taxpayer by the government for actions taken; a tax credit can only be obtained after the taxpayer has taken an action. The difference between the two tax concepts is paramount, as the federal government is incentivizing companies, such as Summit Carbon, to engage in exactly the kind of behavior that company is pursuing. This is no different than a wind or solar farm developer that is pursuing production tax credits, or a farmer enrolling land in a federal conservation program. The federal government is incentivizing certain behavior it has deemed desirable. The Board has no ability to change federal policy; however, the Board does find the implementation of federal policy weighs in favor of finding there is a public convenience and necessity.

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The Board also finds ethanol weighs in favor of Summit Carbon's petition. Throughout the testimony, the Board has consistently heard approximately 53 percent of Iowa's corn crop is used for ethanol production. There is little doubt ethanol production plays a large role in supporting the state of Iowa's and other Midwestern states' economies. While the Board finds it is unlikely that, should Summit Carbon's proposed hazardous liquid pipeline not get built, ethanol plants would close and move to states where they could capture and store their carbon dioxide, there is a possibility that some ethanol plants could become priced out of the market when they are unable to compete with those plants that are able to adapt. The potential closures of ethanol plants would not happen overnight; nonetheless, if a company is unable to compete, eventually the market will force that company to cease. The Board heard repeatedly that it should not be picking winners and losers in the game of ethanol, but, much like the federal policy, ethanol is a key component to Iowa's agricultural economy, and applying the brakes to the market for 53 percent of Iowa's corn market could cause economic hardships to an untold number of Iowans. Therefore, ensuring Iowa's ethanol can compete in the market to the benefit of 53 percent of Iowa's corn market weighs in favor of Summit Carbon's petition. This is a benefit to not only the 12 participating ethanol plants and Summit Carbon, but the 44,000 Iowans employed by the ethanol industry and the hundreds of thousands of Iowans who work in the agricultural field.

As it relates to low carbon fuel markets, the Board finds this factor weighs in favor of Summit Carbon's petition as it will allow ethanol plants to continue to participate in the market. While there are currently only a handful of states that have established low carbon fuel markets, the Board concludes it is reasonable to anticipate the number



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is only going to continue to grow. The Board received testimony that a number of new states are looking to enact legislation that would require the sale of low carbon fuel.

The growing number of states that require or are looking at requiring low carbon fuel demonstrates a need for Summit Carbon's proposed project in order for ethanol plants to remain competitive.

When it comes to climate change, the Board concludes there are sufficient indicators from governments, industries, and consumers that this important issue is unlikely to go away in the near future. While Summit Carbon was cautious to not affirmatively state its proposed project will provide a climate benefit, the Board views the anticipated outcomes of Summit Carbon's proposed project speak for themselves. Summit Carbon is proposing to initially prevent 9.5 million metric tons of carbon dioxide per year from being released into the atmosphere, and eventually increasing to a maximum of 18 million metric tons per year. This is anthropogenic carbon dioxide that occurs outside the natural carbon dioxide cycle. This is the type of carbon dioxide emissions that governments, industries, and consumers are seeking to limit. Summit Carbon's proposed project would provide this benefit to the public by preventing the release of millions of tons of carbon dioxide into the atmosphere annually.

The Board also finds the economic impact provided by Summit Carbon's proposed project to weigh in its favor. While some parties challenged Summit Carbon's assumptions, the Board finds no party provided sufficient evidence to discredit Summit Carbon's conclusion regarding the net positive economic benefit to Iowans. Summit Carbon is estimating \$1.9 billion dollars will be spent in Iowa during construction, and each impacted county could receive approximately \$1 million per year in additional

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revenue stemming from Summit Carbon's proposed hazardous liquid pipeline. These are not insignificant sums of money to be spent in Iowa or received by the counties. While Summit Carbon did not include costs in its calculation, the Board struggles to envision a scenario where the cost inputs would usurp the benefits to this project, economically, for Iowa. Overall, the Board finds there is a net economic benefit to the state of Iowa and finds this factor weighs in favor of Summit Carbon's petition.

Summit Carbon has provided numerous pages of testimony related to how it intends to reduce or minimize the impact to landowners, which the Board will impose on Summit Carbon as a condition later in this order, but the impact to landowners weighs against Summit Carbon. The Board finds that impacting drainage tile lines and impacting crop yields are detriments to landowners across the state of Iowa, which may take years to fix. While Summit Carbon will be required to repair all affected tile and pay landowners for crop damages, those requirements do not outweigh the impact to the landowner. Therefore, this factor weighs against Summit Carbon's petition, although the negative impacts to landowners will be mitigated by the conditions to be placed on Summit Carbon by the Board.

As it relates to safety, the Board finds this factor weighs against Summit Carbon, but is mitigated by Summit Carbon's commitments — which will be conditions of this order — and PHMSA's regulation of Summit Carbon's proposed hazardous liquid pipeline.

Many parties have asserted Summit Carbon's proposed project should be paused until PHMSA updates its rules or that PHMSA is lacking appropriate regulation. The Board disagrees and finds Summit Carbon's proposed project should not be halted

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while waiting for an update to a rule, which at best could take a few years or even more than a decade to implement, depending on how quickly PHMSA adopts a rule change and whether judicial review is sought on the new rules. The Board finds this to be a delay tactic by those who oppose Summit Carbon's proposed project.

Furthermore, the Board finds the assertion that there are no regulations for Summit Carbon's proposed hazardous liquid pipeline to be false. PHMSA already has rules regulating carbon dioxide pipelines. Additionally, should PHMSA's rules implement additional requirements, Summit Carbon will be required to examine its proposed system and determine how it needs to modify its operation of the proposed hazardous liquid pipeline to comply. While it is true there is a grandfather clause related to construction and initial inspection, the grandfather clause does not grant Summit Carbon *carte blanche* authority to ignore PHMSA indefinitely. Summit Carbon will have to continually ensure its proposed hazardous liquid pipeline is in compliance with applicable PHMSA regulations. Furthermore, as stated by Summit Carbon, the grandfather clause does not apply to operational aspects of PHMSA's rules. Any changes related to the operation of Summit Carbon's proposed hazardous liquid pipeline would have to be implemented or Summit Carbon would be in violation of PHMSA's rules and subject to corrective action by PHMSA.

The Board takes serious interest in the Denbury incident and the lessons it offers. Based upon the testimony by those who were physically present during and after the incident, the Board finds Summit Carbon has taken the issues identified by PHMSA and applied them to Summit Carbon's proposed project to reduce the likelihood of a similar event and improve its response should such an event occur. Summit

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Carbon has agreed to ensure open communication occurs between the company, emergency management personnel, and the first responders to ensure everyone knows how to respond in the event of an incident. Summit Carbon has also committed to ensuring first responders are equipped to handle an incident should one occur.

The Board finds, and will condition the permit on, Summit Carbon's commitment to first responders to ensure they are made aware of, and kept aware of, its proposed hazardous liquid pipeline helps to negate the negative impacts of its proposed project. The Board listened to testimony about the volunteer nature of many, if not most, of the first responder units along Summit Carbon's route and will require Summit Carbon to keep local first responders trained and equipped to handle a potential release along the route.

Furthermore, the Board, as discussed previously in this order, will require Summit Carbon to keep and maintain general liability insurance in the amount of \$100 million to ensure there is adequate funding in the event an incident would occur in Iowa related to Summit Carbon's proposed hazardous liquid pipeline.

The Board has also reviewed the dispersion models provided by Summit Carbon and finds Summit Carbon has used the models to assist it in limiting risk. The Board understands there is a fine line between the Board's authority under Iowa Code chapter 479B and PHMSA's federal authority when it comes to safety. The Board does not seek to cross that line. Therefore, the Board will not use the dispersion modeling to assist with routing determinations or routing modifications, because any modification done based upon the dispersion modeling would be done under the guise of safety. *See Kinley Corp. v. Iowa Util. Bd.*, 999 F.2d 354, 359 (8th Cir. 1993). Furthermore, the

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Board questions the usefulness of the dispersion modeling for Board purposes. The Board has sited thousands of miles of hazardous liquid and natural gas pipelines in the state of Iowa without the aid of dispersion models. Some of these pipelines run through the middle of cities. Additionally, while service lines are not permitted by the Board, the Board notes that many houses and businesses are heated using natural gas, meaning a natural gas line runs directly into such buildings. To the Board's knowledge, a dispersion model has never been conducted for natural gas pipelines.

Furthermore, Summit Carbon has applied the dispersion model and its IMP to its entire proposed hazardous liquid pipeline system. Summit Carbon is applying the strictest standards PHMSA has to its entire proposed system as it relates to its dispersion analysis and IMP. PHMSA only requires these items when near HCAs. Based upon Summit Carbon's testimony, the Board finds the dispersion models, for the Board's purpose, demonstrate Summit Carbon has examined the entire route and examined where the likely impacts of a release would be. The Board makes no finding as to whether the dispersion model will satisfy PHMSA's requirements when PHMSA reviews Summit Carbon's information.

As previously stated, the safety factor weighs against Summit Carbon's proposed hazardous liquid pipeline. However, the negative weight of this factor is mitigated by the numerous actions undertaken by Summit Carbon and the conditions placed on it by the Board.

The Board also finds transporting the liquefied carbon dioxide via pipeline weighs in favor of Summit Carbon's petition. As stated previously, the numbers of additional tanker trucks or railcars that would be needed to move the same amount of liquefied

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carbon dioxide would be extensive. Each additional tanker truck or railcar in use would introduce additional risks due to the nature of the transportation method. Nearly half a million additional tanker trucks would be on the road annually, driving between the ethanol plants and the sequestration site. Each truck and trip would create an untold number of potential risks, which Summit Carbon's proposed hazardous liquid pipeline avoids. The same is true for the railcars. Additionally, there is an underlying issue regarding the sheer number of additional semi trucks and trains that would be driving between the ethanol plants and the sequestration site daily, and the impacts this would have on the surrounding areas and roads would be extensive. While transportation via truck or rail removes the need for a pipeline, it introduces additional risks, which numerous intervenors and objectors have stated is the top priority to reduce as it relates to Summit Carbon's proposal, when compared to transportation via pipe. Therefore, the Board finds this factor weighs in favor of Summit Carbon's petition.

Turning to the last two factors identified by the Board as being worthy of discussion — to wit Iowa sequestration and green methanol — the Board finds they neither weigh in favor of nor detract from Summit Carbon's petition. As it relates to the ability to sequester in Iowa, the Board finds there is insufficient evidence to conclude it is currently feasible to sequester in Iowa. The Board, as stated above, does not think the ability to sequester in Iowa would remove the need for Summit Carbon's hazardous liquid pipeline. As noted by Mr. Clark, southwest Iowa is the area targeted for sequestration in Iowa. Looking at Summit Carbon's route, ethanol plants in northern Iowa would have to move their product to a potential sequestration site in southwest Iowa. If sequestration was feasible in Iowa, Summit Carbon would, in all likelihood,

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simply design its proposed hazardous liquid pipeline to flow in a different direction.

Summit Carbon is a for-profit business, so it stands to reason that if Summit Carbon only needed to construct a hazardous liquid pipeline to reach southern Iowa, rather than North Dakota, it would do so. The Board currently finds insufficient evidence to demonstrate sequestration is feasible in Iowa.

Lastly, as it relates to the production of green methanol, the Board finds this to be a business decision made by the ethanol company as to how it wants to participate in the market. The Board sees the production of green methanol and carbon sequestration as two paths that an ethanol plant could pursue. These paths may not even be mutually exclusive, depending upon the business decision of the ethanol plant. Based upon testimony received during the hearing, both Summit Carbon and CapCO2 have similar business models as it relates to the financial aspects and how tax credits and revenues are shared between them.

Additionally, while green methanol is currently in its infancy in the United States, the Board is not discounting the growth of green methanol production and the impacts it will have on the ethanol market. Summit Carbon, however, is offering a service today that will benefit the ethanol plant in the near term. Furthermore, CapCO2 stated it would transport its green methanol via rail, not pipeline. Based upon Mr. Bonar's testimony, each ethanol plant would see the number of train cars increase by 60 to 66 percent. This is not an insignificant number of additional railcars needed at each ethanol plant, which would then significantly increase the number of trains shipping methanol across the counties, through cities, and to the Gulf of Mexico. The Board suspects that if green methanol production increases, as expected by Mr. Bonar, a

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request for a methanol pipeline will be made due to the ease at which large volumes of product can be moved efficiently and effectively.

Overall, the Board finds that a majority of these factors listed above weigh in favor of Summit Carbon's petition, with the included conditions that are described in the next section. Based upon the balancing test conducted by the Board, the Board finds Summit Carbon has complied with the requirements of Iowa Code § 479B.9 and will provide a service that is in the public convenience and necessity.

#### **J. Conditions**

As stated in the previous section, the Board found Summit Carbon's petition to be in the public convenience and necessity, subject to the conditions of this section and other sections throughout the order. When conducting the balancing test in the previous section, the Board considered these factors in its weighing of the evidence. The Board is only separating out the conditions for ease of use to ensure clear delineation as to what the conditions are and how Summit Carbon is to abide by such conditions. The conditions of this section will be applicable to Summit Carbon's overall permit. If the Board finds Summit Carbon has met the requirements necessary to be granted eminent domain, any modifications related to the easement language or parcel-specific route modifications will be addressed in the appropriate sections.

The Board will require Summit Carbon to abide by its promises and will make those promises conditions upon receiving a permit. Under Iowa Code § 479B.9, the Board imposes conditions on Summit Carbon's permit as it determines to be just and proper. The Board finds all the following conditions to be just and proper as they relate to the granting of Summit Carbon's permit.



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Summit Carbon testifies it will commit to X-ray inspection of 100 percent of the welds, test the pipeline coating, hydrostatically test the pipeline to 125 percent MOP, use thicker walled pipe, and use fracture arrestors. The Board will hold Summit Carbon to its testimony and make these conditions on Summit Carbon's permit.

Summit Carbon has also committed to buying every "emergency manager truck, fire truck, law enforcement vehicle, and ambulance in the communities crossed by the pipeline" a carbon dioxide monitor. Summit Carbon Dillon Rebuttal, p. 7. Summit Carbon has committed to providing grants to cities and counties to purchase the equipment necessary to respond to an incident, should the county or city lack the appropriate response equipment. Summit Carbon also stated transparency and communication between it and first responders is crucial and stated there would be annual first responder training in each county, or as requested by a first responder organization. Summit Carbon states it will review the dispersion analysis results and emergency response plans with first responders. The Board will make these promises made by Summit Carbon conditions on the permit. As stated previously in this order, a large number of the first responders are volunteers. Volunteers may respond to an emergency call in their own personal vehicles. Due to the volunteer nature of Iowa's first responders, the Board will require Summit Carbon to provide each volunteer first responder with a carbon dioxide monitor for their personal vehicle, if they use the vehicle to respond to emergency calls.

As it relates to equipment purchases and trainings, the Board finds there are limits and will require Summit Carbon to engage in good faith with the first responders and the requests for either equipment or training or both. The Board is not granting first

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responders the ability to request the world of Summit Carbon; there are natural limits as to what is reasonable, and the Board will condition Summit Carbon's permit on those requests. The Board is not in the position to know what equipment a first responder unit along the route requires, which equipment it already has, or which equipment is necessary to respond to an incident related to Summit Carbon's proposed hazardous liquid pipeline. The Board cannot definitively rule as to what equipment Summit Carbon should be required to provide and what equipment being requested is beyond necessary to respond to an incident. The communication between Summit Carbon and these units is crucial, and it is these communications that will determine reasonability. To ensure Summit Carbon is working with local first responders, Summit Carbon will be required to provide an annual report to the Board detailing the distribution and denial of grants for the previous year. The reports will be due on the first day of June of each year, beginning in 2025. The report must include the name of the recipient, either the amount awarded or the equipment provided, and when the grant was issued. In the case of a denial, Summit Carbon will be required to explain, in sufficient detail, the reason for the denial as well as provide the applicant's name.

With regard to communication, the Board will require Summit Carbon to work with each county to provide a real-time alarm notification system, similar to the Buxus system described by Mr. Willingham, that operates between Summit Carbon's OCC and the county emergency response coordinator. Having the real-time alarm communication will allow both Summit Carbon in Ames at the OCC and the county emergency management team to deploy as expeditiously as possible should an incident occur.

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As previously stated in this order, the Board will require Summit Carbon to obtain and maintain a general liability policy in an amount of no less than \$100 million and provide proof of such insurance to the Board prior to commencing construction of its proposed project in Iowa. Summit Carbon will be required to submit annual copies of its insurance policy with the Board to ensure compliance with this filing.

The Board will also require Summit Carbon to do the following: make landowner or tenants whole if they are rendered ineligible for current federal farm programs as a result of construction of the proposed hazardous liquid pipeline on their property; compensate landowners if they have a current CRP contract in place that the FSA ends and/or requires the landowner to pay back past CRP contract payments because of the installation of the pipeline; and provide landowners and tenants access to their properties through any fencing or gates and ensure landowners or their tenant farmers will have access to all portions of the farm outside of the easement during construction and restoration. While these conditions are already covered by either Iowa Code chapter 479B or the Board's rules, the Board is explicitly making them a condition on the Summit Carbon permit.

The Board will make these conditions, as well as the other conditions stated in this order, part of Summit Carbon's permit.

**K. Public Use**

Iowa Code 479B.16(1) states:

A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the

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location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

Within this section, the Board will determine whether Summit Carbon should be vested with the right of eminent. If the Board determines Summit Carbon should be vested with the right of eminent domain, the Board will also determine to what extent eminent domain should be granted, whether there is sufficient evidence to demonstrate a greater area is required, and what modifications, if any, should be made to specific eminent domain parcels.

### **1. Legal Requirements**

The Fifth Amendment of the United States Constitution contains certain express limitations on the power of government to take private property through eminent domain. U.S. Const. amend. V. The Iowa Constitution, Article I, Section 18, provides that private property shall not be taken for public use without just compensation first being made or secured to the landowner. Iowa Const. art. 1, § 18. The Iowa Legislature has vested the Board with the authority to grant eminent domain via the enactment of Iowa Code § 479B.16. The Iowa Supreme Court has repeatedly stated “agencies have no inherent power and [have] only such authority as [they are] conferred by statute or is necessarily inferred from the power expressly granted.” *Wallace v. Iowa St. Bd. of*

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*Educ.*, 770 N.W.2d 344, 348 (Iowa 2009) (alterations in original) (internal quotations omitted).

The Iowa Supreme Court in *Puntenney* examined the constitutionality of Iowa Code § 479B.16. *Puntenney*, 928 N.W.2d 829, 844-852. In *Puntenney*, the Iowa Supreme Court examined whether there was a public use by which the hazardous liquid pipeline company is allowed to use the right of eminent domain. *Id.* at 844. The Iowa Supreme Court held that a valid “public use” under the Iowa Constitution must either be for when the sovereign takes the private property and transfers it to public ownership, *i.e.* roads, hospitals, etc., or where the sovereign takes private property and transfers the property to another private party, but the beneficiary is a common carrier, *i.e.* railroads, a public utility, or stadium. *Id.* at 845. The Iowa Supreme Court rejected the U.S. Supreme Court’s eminent domain jurisprudence by not allowing economic development to qualify as a “public use.” *Id.* at 848. The Iowa Supreme Court held that the standards for which eminent domain may be granted under the Iowa Constitution are distinct and Iowa “jealously reserve[s] the right under our state constitutional provisions to reach results different from current United States Supreme Court precedent under parallel provisions.” *State v. Ingram*, 914 N.W.2d 794, 799 (Iowa 2018). “Our Iowa Constitution, like other state constitutions, was designed to be the primary defense for individual rights, with the United States Constitution Bill of Rights serving only as a second layer of protection. . . .”<sup>29</sup> The *Puntenney* Court stated under the Iowa Constitution, economic development was not a public use for Iowa

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<sup>29</sup> The Hon. Mark Cady, *A Pioneer’s Constitution: How Iowa’s Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Civil Liberties*, 60 Drake L. Rev. 1133, 1145 (2012).

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eminent domain proceedings. *Puntenney*, 928 N.W.2d at 848 (“If economic development alone were a valid public use, then instead of building a pipeline, [a company] could constitutionally condemn Iowa farmland to build a palatial mansion, which could be defended as a valid public use so long as 3100 workers were needed to build it, it employed twelve servants, and it accounted for \$27 million in property taxes.”)

The *Puntenney* Court quoted with approval *Stewart v. Board of Supervisors of Polk County*, where the court stated:

[I]f the *public interest can be in any way* promoted by the taking of private property, *it must rest in the wisdom of the legislature*, to determine whether the benefit to the public will be of sufficient importance to render it expedient for them to exercise the right of eminent domain and to interfere with the private rights of individuals for that purpose.

*Id.* (citing *Stewart v. Bd. of Supervisors*, 30 Iowa 9, 21 (1870)) (emphasis in original).

Under Iowa Code § 6A.21(1)(d), “‘public purpose’ or ‘public improvement’ does not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation.” However, in Iowa Code § 6A.21(2), this limitation “does not apply to utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain. . . .” The court in *Puntenney* held that a company under the jurisdiction of the Board via Iowa Code chapter 479B qualified for the exemption and, therefore, did not require landowner

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consent under Iowa Code § 6A.21 prior to condemnation. *Puntenney*, 928 N.W.2d at 843.<sup>30</sup>

In addition to Iowa Code § 479B.16(1), Summit Carbon, prior to requesting the right of eminent domain, must make a good faith effort to negotiate the purchase of an easement. Iowa Code § 6B.2B.

## 2. Parties' Positions

### Summit Carbon

In his rebuttal testimony, Mr. Pirolli testifies Summit Carbon “actively hold[s] [itself] out as willing to carry carbon dioxide for anyone who is able to provide carbon dioxide in line with specifications and who is interested in [its] standard contract.”

Summit Carbon Pirolli Rebuttal, p. 6. Mr. Pirolli testifies Summit Carbon “will be conducting what is known as an open season to solicit interested shippers, and that [it] will be reserving 10 [percent] of the pipeline capacity for ‘walk up’ shippers. . . .” *Id.* Mr. Pirolli defines “walk-up shippers” to mean persons who are not seeking a long-term contract for the shipment of carbon dioxide. *Id.*

Mr. Rorie, in his direct testimony, describes the process by which Summit Carbon attempted to contact landowners regarding the possibility of entering into an easement agreement. Summit Carbon Rorie Direct, p. 4. Mr. Rorie states following the conclusion of the county informational meetings, Summit Carbon’s land agents were present to provide physical and electronic aerial maps of each affected landowner’s parcel. *Id.* Mr. Rorie testifies after the county informational meetings, land agents

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<sup>30</sup> These statements are taken from another recent Board decision in which eminent domain was at issue. *NuStar Order*, pp. 47-50.

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began reaching out to potentially impacted landowners to have initial conversations. *Id.* Mr. Rorie states the initial conversations “were focused on obtaining survey access permission, learning about any unique features of the property or plans of the landowner that might affect the pipeline route, and negotiations toward voluntary easement agreements.” *Id.* Mr. Rorie asserts land agents “have maintained contact with landowners and continue to be available to answer questions and provide updates on the [proposed] [p]roject and any adjustments to the route, and to negotiate toward entering into voluntary easement agreements.” *Id.* Mr. Rorie states Summit Carbon began the negotiation by determining “the fair market value of an easement is a combination of a percentage of the fee value per acre for the permanent easement, the value of the temporary construction easement necessary to install the pipeline facilities, and surface damages (*e.g.*, crop damages), if applicable, associated with construction activity.” *Id.* at 5. Mr. Rorie makes clear, where Summit Carbon is requesting an easement, the landowner retains title to the property. *Id.* Mr. Rorie includes a template voluntary easement with his direct testimony. *Id.*; Summit Carbon Rorie Direct Exhibit 1; *see also* Summit Carbon Hearing Exhibit 1 (Exhibit C to the voluntary easement).

Additionally, Mr. Rorie testifies Summit Carbon is seeking a 50-foot-wide permanent easement as well as a 50- to 60-foot-wide temporary construction easement. Summit Carbon Rorie Direct, pp. 2-3. Mr. Rorie states, “Additional temporary workspace will be necessary at certain discrete locations, typically related to installation methods and/or the presence of environmental or cultural resources.” *Id.* at 3. Mr. Rorie also states the use of HDD may require additional temporary workspace. *Id.*



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In his testimony in response to the Exhibit H Staff Report, Mr. Rorie testifies “every landowner and every negotiation is unique. . . .” Summit Carbon Rorie Exhibit H Staff Report, p. 4. Mr. Rorie asserts Exhibit H landowners have been divided into “four categories: (1) Landowner Not Interested; (2) Landowner in Contact; (3) High Counter; and (4) Legal Assessment.” *Id.* Mr. Rorie’s testimony defines what each category meant as it related to negotiations with landowners. *See id.* at 4-6. Mr. Rorie states Landowners Not Interested included

landowners who have never responded or have stopped responding to Summit Carbon’s various communications regarding easement negotiations, those who have actively responded and indicated they will not sign an easement, and those who have responded that their legal counsel has informed them not to speak with Summit Carbon’s land agents.

*Id.* at 4. Mr. Rorie testifies the Landowner in Contact category includes “landowners who are responsive to Summit[] [Carbon’s] communications but have not indicated a desire to enter into active negotiations.” *Id.* at 5. Landowners within the High Counter category, according to Mr. Rorie, include “landowners which, generally speaking, are agreeable to signing an easement and are comfortable with the terms of the easement agreement, but who have presented a compensation counteroffer that far exceeds the fair market value of the easement being acquired.” *Id.* Lastly, Mr. Rorie states the Legal Assessment category includes landowners “where the parties are in active negotiations and, generally speaking, are working through the language of the terms of the easement agreement through counsel.” *Id.* Mr. Rorie includes a list of landowners by category with this testimony. *Id.* at 4; Summit Carbon Rorie Exhibit H Staff Report Exhibit 2.

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Mr. Rorie also testifies Summit Carbon will continue to work with Exhibit H landowners as it relates to alternative routes across their properties. *Id.* at 6. Mr. Rorie testifies, “Summit Carbon has worked with hundreds of landowners to make micro route adjustments to achieve a preferred route across their property(ies) where possible.” *Id.* Mr. Rorie notes there could be obstacles that inhibit the relocation of Summit Carbon’s proposed hazardous liquid pipeline “including constructability concerns, road crossing or utility crossing angles, and, as more landowners have entered into easements, the location of the pipeline on neighboring property(ies) already under easement.” *Id.*

On cross-examination, Mr. Pirolli testifies the offtake agreements entered into between Summit Carbon and a participating entity are revenue sharing agreements where Summit Carbon “receives money for multiple different services that [it] provide[s].” HT, p. 1904. Mr. Pirolli testifies, in his opinion, there is a customer component and a service provider component to the offtake agreement. *Id.* Mr. Pirolli testifies carbon dioxide is delivered to Summit Carbon where it is compressed, transported, and stored by Summit Carbon. *Id.* at 1909. Mr. Pirolli testifies, in the case of ethanol plants, ethanol is shipped by the ethanol plant, to low carbon fuel markets where it is sold at a premium. *Id.* Mr. Pirolli testifies Summit Carbon then invoices the ethanol plant for Summit Carbon’s share and for operating expenses. *Id.* Mr. Pirolli testifies the ethanol plants are hiring Summit Carbon “to transport and store [carbon dioxide].” *Id.* Copies of the offtake agreements and a copy of the proposed transportation service agreement were admitted into the record. HT, pp. 2169-71.

Mr. Pirolli testifies Summit Carbon has not yet officially conducted a public open season, but Summit Carbon has “been soliciting business and holding [itself] out there

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for the last three years . . . or longer.” *Id.* at 1911. Mr. Pirolli acknowledges what Summit Carbon has been doing is not akin to an open season. *Id.* at 1912. Mr. Pirolli testifies an open season would allow a potential shipper to bid for firm capacity on Summit Carbon’s proposed hazardous liquid pipeline. *Id.* Mr. Pirolli testifies Summit Carbon has created pro forma transportation agreements to be used during the open season. *Id.* at 1913. Mr. Pirolli testifies Summit Carbon would likely build the capture facilities for ethanol plants that participate in the open season, but other industries, or shippers, would likely build their own capture facilities. *Id.* at 1914. Mr. Pirolli states a successful open season shipper would enter into take-or-pay agreements for their committed capacity, whereas uncommitted, walk-up, shippers would not be a part of the open season. *Id.* at 1915. Mr. Pirolli further testifies Summit Carbon has established tariff rates for its proposed system that would be applied universally across a class of shippers. *Id.* at 1916-17. However, on further cross-examination, Mr. Pirolli testifies there is no government body that oversees the implementation of or reviews the tariffs proposed by Summit Carbon. *Id.* at 1974. Mr. Pirolli states it could also be referred to as “a transportation fee.” *Id.* at 1975. Mr. Priolli testifies whether it is called a tariff or a transportation fee, it will still be the rate at which carbon dioxide is shipped on Summit Carbon’s proposed hazardous liquid pipeline. *See id.*

On cross-examination, Mr. Rorie testifies land agents are instructed “to make every assertive effort they can to open a dialogue with a landowner and make every good-faith attempt to have a discussion about an easement and about the project or anything else a landowner may want to discuss.” *Id.* at 2587. These attempts could include in-person contacts, phone calls, or waiting on a person's property. *Id.* Mr. Rorie

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testifies it is Summit Carbon's goal to reach a voluntary agreement with all the landowners along the route even though Summit Carbon is requesting the right of eminent domain. *Id.* at 2597-99.

On cross-examination, Mr. Rorie provides further information on the four different categories of Exhibit H landowners. *Id.* at 2604-17. When questioned about tenants, Mr. Rorie testifies it was stressed to land agents the importance of obtaining the tenant information; but if a landowner is reluctant to share such information, there is very little Summit Carbon can do. *Id.* at 2700. Furthermore, Mr. Rorie provides additional information about the recording mechanisms for the information contained within Exhibits L4 and L5. *Id.* at 2861-63.

In its initial brief, Summit Carbon states Iowa Code § 479B.16 automatically vests a hazardous liquid pipeline company with the right of eminent domain upon a finding the proposed service will be in the public convenience and necessity. Summit Carbon IB, p. 28. Summit Carbon states the recent US Supreme Court case *PennEast Pipeline Co., LLC v. New Jersey*, explains the policy reasons behind providing eminent domain authority automatically when a regulator determines a pipeline qualifies for a permit. 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2244, 2252-53 (2021). Summit Carbon argues:

There is no separate test for the authority to use eminent domain, although the Board can limit the scope of the taking to the extent that it is "necessary." Conversely, the Board can expand the authority, for example to widths beyond the statutory seventy-five foot limits, where the applicant makes a showing that additional authority is necessary for "proper construction, operation, and maintenance."

Summit Carbon IB, p. 30. Summit Carbon asserts the definition of a "public use" begins as a legislative function via the delegation of eminent domain authority. *Id.* (citing *CMC*

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*Real Est. Corp. v. Iowa Dep't of Transp.*, 475 N.W.2d 166, 169 (Iowa 1991)). Summit Carbon states the Iowa Legislature has “unambiguously made the determination that [carbon dioxide] pipelines are a public use” and are eligible to be vested with the right of eminent domain. *Id.* at 31.

In addition, Summit Carbon states a common carrier constitutes a public use under Iowa Code § 6A.22(2). *Id.* Summit Carbon states, “The Iowa Supreme Court has explained that the distinctive characteristic of a common carrier is that it holds itself out as ready to engage in the transportation of goods or persons for hire, and that it need not serve all the public all the time. . . .” *Id.* at 31-32 (citing *Wright v. Midwest Old Settlers and Threshers Ass'n*, 556 N.W.2d 808, 810-11 (Iowa 1996); *Circle Exp. Co. v. Iowa State Com. Comm'n*, 86 N.W.2d 888, 893 (Iowa 1957)). Summit Carbon states other courts have routinely “held that what makes a pipeline a public use is that it provides open access to the relevant users of the pipeline — that is, shippers; not that it must serve every member of the public directly. *Id.* at 32-33 (citing *Iowa RCO Ass'n v. Illinois Com. Comm'n*, 409 N.E.2d 77, 80 (Ill. App. 4th Dist. 1980); *Linder v. Arkansas Midstream Gas Services Corp.*, 362 S.W.3d 889, 897 (Ark. 2010)).

Summit Carbon states it “holds itself out to provide capture, transportation and sequestration of [carbon dioxide] from businesses within the relevant class and in a manner that treats similarly situated parties in a non-discriminatory fashion. . . .” *Id.* at 33. Summit Carbon asserts these facts are not disputed in the record. *Id.* Summit Carbon states the record is clear that none of the ethanol plants are under common ownership with Summit Carbon, Summit Carbon will be holding an open season to allow interested persons to bid on capacity, and Summit Carbon will reserve 10 percent of the

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capacity for walk-up shippers. *Id.* at 33-34. Summit Carbon asserts the issue regarding eminent domain in its case is a much simpler question than the one present in Dakota Access because Summit Carbon has on-ramps and is providing direct benefits to Iowa, unlike the Dakota Access pipeline. *Id.* at 34-35.

Lastly, in its initial brief, Summit Carbon states it has engaged in good faith negotiations, to the extent the negotiations were within Summit Carbon's control. *Id.* at 35. Summit Carbon states its Exhibits L4 and L5, along with several landowners at hearing, demonstrate the good faith efforts undertaken by Summit Carbon. *Id.* at 36. Summit Carbon states where a landowner refuses to communicate with the company, there is little else Summit Carbon can do. *Id.*

In its reply brief, Summit Carbon states opposing parties' reliance upon *United Suppliers, Inc. v. Hanson* and *Mid-America Pipeline Co. v. Iowa State Commerce Commission* are misplaced. As it relates to the *Mid-America Pipeline Co.* case, Summit Carbon states the issue there was a company that produced natural gas, proposing to transport it via its own pipeline, to then sell the natural gas. Summit Carbon RB, p. 30. Summit Carbon states the pipeline in *Mid-America Pipeline Co.* provided no one outside the corporate family a benefit from the carriage. *Id.* Summit Carbon states this is the opposite of what Summit Carbon is proposing to do. *Id.* Summit Carbon states it does not create the carbon dioxide that it proposes to transport and there are no retail sales on the back end. *Id.* Summit Carbon states it is transporting the carbon dioxide for the benefit of the independent ethanol plants, not solely for Summit Carbon's benefits. *Id.* As it relates to *United Suppliers*, Summit Carbon asserts applying the 12-factor test to Summit Carbon "helps show that eminent domain is appropriate in the present case."

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*Id.* at 29-30. Like *Mid-America Pipeline Co.*, the court in *United Suppliers* noted, “United Suppliers provided transportation solely for the chemicals it was reselling, and it did not market any other transportation services, and it warehoused the bulk products itself prior to delivery and then delivered goods ordered out of its own inventory.” *Id.* at 31 (citing *United Suppliers*, 876 N.W.2d 765, 767 (Iowa 2016)). Summit Carbon states none of these facts present in *United Suppliers* are true for Summit Carbon’s proposal. *Id.* As it relates to the 12 factors, Summit Carbon states it meets at least seven of 12 factors, with most of the remaining five not being applicable to Summit Carbon or being a mixed indicator that favors Summit Carbon. *Id.* at 33-34. Summit Carbon asserts the factors apply as follows: (1) Summit Carbon will have legal title of the carbon dioxide in pipe, but Summit Carbon is transporting the carbon dioxide for the benefit of the ethanol plants and Summit Carbon “is holding an open season and continue[s] to hold itself out to shippers who will maintain ownership of their own [carbon dioxide];” (2) there are no orders for the property because Summit Carbon is not engaged in resale; (3) there is no warehousing and then selling before shipment; (4) Summit Carbon does bear the risks in its enterprise, much the same way most common carriers bear financial risk; (5) Summit Carbon is not selling any products; however, the offtake “agreements with the ethanol producers do include an amount to cover the cost of transportation, which is netted out of the revenues to the ethanol producers, and the distance transported is relevant to that cost;” (6) all of Summit Carbon’s carriage is for someone other than itself and “Summit [Carbon] has been holding itself out to transport for entities in situations where the title to the [carbon dioxide] would not transfer, in other words, a pure transportation services agreement”; (7) “Summit [Carbon] advertises itself as being

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in the [carbon dioxide] capture, transportation, and sequestration business” as transportation is an integral part of the other aspects of its business; (8) Summit Carbon is investing more than \$5 billion across five states to construct pipeline facilities, which significantly exceeds the investment of the capture and sequestration aspects of the business, showing transportation is the primary business; (9) Summit Carbon can obtain some profit from the sequestration of carbon dioxide, but only after transporting the product made by independent producers; (10) this factor only applies in a trucking scenario and not to it or any common carrier pipeline; (11) “the products are delivered from the producer to the endpoint that suits the objective of the producer with no intermediate warehousing”; and (12) the shipping need is driven by the independent ethanol plants. *Id.* at 31-33. Summit Carbon argues this analysis establishes it is a common carrier. *Id.* at 34.

Summit Carbon reiterates that under Iowa Code § 479B.16, it does not need to be a common carrier as this provision automatically vests Summit Carbon with the right of eminent domain upon the finding it qualifies for a permit. *Id.* at 35. Summit Carbon states the most stringent restriction on eminent domain is found in Iowa Code § 6A.21, which limits the ability to condemn agricultural land, but explicitly exempts “utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board. . . .” *Id.* at 34. Summit Carbon states the Iowa Supreme Court in *Puntenney* already found hazardous liquid pipelines under Iowa Code chapter 479B are within this exemption. *Id.* (citing *Puntenney*, 928 N.W.2d at 842-43). Summit Carbon states the arguments that if Summit Carbon is not a common carrier, it cannot be vested with eminent domain under Iowa Code § 6A.22, are incorrect. *Id.* Summit Carbon states



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Iowa Code § 6A.22(2)(a)(2) includes both public and private utilities or common carriers. See *id.* Summit Carbon states either the language and automatic vesting of Iowa Code § 479B.16 controls, or there is a strong presumption that uses Iowa Code § 479B.16 to effectuate Iowa Code § 6A.21 as it is a common carrier or a private utility. *Id.*

Summit Carbon asserts this position is consistent with Justice O'Connor's dissent in *Kelo v. City of New London*, as she did not limit her dissent to only common carriers, but also contemplated a "private uses passing constitutional muster if they serve a public purpose. . . ." *Id.* at 35-36 (citing *Kelo v. City of New London*, 545 U.S. 469, 498 (2005)). In using Justice O'Connor's dissent in *Kelo*, the Iowa Supreme Court approved her logic. *Id.* at 3610. In *Puntenney*, the Iowa Supreme Court questioned if the oil proposed to be transported by rail would be a valid public purpose, why would a pipeline providing the same function not? *Id.* (citing *Puntenney*, 928 N.W.2d at 849 n. 6). Summit Carbon asserts if the carbon dioxide was shipped by rail, that would be a public use, thus making Summit Carbon's proposed hazardous liquid pipeline a public use. *Id.*

Additionally, Summit Carbon argues Jorde Landowners' assertion the ethanol plants will be in a joint venture with Summit Carbon is untrue. *Id.* at 37. Summit Carbon states Jorde Landowners do not cite to any law making this assertion relevant as to whether Summit Carbon is vested with the right of eminent domain. *Id.* Summit Carbon also states Jorde Landowners' statement that Carbon would not qualify as a common carrier under the Federal Regulatory Energy Commission (FERC) fails to identify where in Iowa Code § 479B.16 the Iowa legislature intended the FERC determination to apply to an Iowa proceeding. See *id.* Even though not required, Summit Carbon states it is

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still following FERC practice and reserving 10 percent capacity for walk-up shippers and will be conducting an open season. *Id.*

Lastly, Summit Carbon asserts Jorde Landowners' statement about listening to the Board's advice and refusing to work or talk with Summit Carbon fails to accurately reflect the Board's statement to landowners. *Id.* at 37-38. Summit Carbon states:

The Board makes a correct statement of the law when it says a landowner should not agree to an easement if they don't agree with the terms, but nowhere does that mean there are no consequences to the landowner for refusing to negotiate or even advise as to a preferred route until the post-hearing briefs.

*Id.* at 38. Summit Carbon asserts the Board's order is the end of the process, not the beginning, when discussions on routing should be starting. *Id.*

### **Sierra Club**

In its initial brief, Sierra Club argues Summit Carbon can only be vested with the right of eminent domain if it is a common carrier. Sierra Club IB, p. 10. Sierra Club asserts Summit Carbon is not a common carrier. *Id.* at 11. Sierra Club states the Iowa Supreme Court has long held a common carrier must be willing to perform services for the public and not reserve the right to contract with whomever it likes. *Id.* at 11-12 (citing *State ex rel. Bd. of R.R. Comm'rs v. Carlson*, 251 N.W. 160, 161 (Iowa 1933)). Sierra Club continues by stating the Iowa Supreme Court has already held a pipeline transporting its own product is not a common carrier. *Id.* (citing *Mid-America Pipeline Co.*, 114 N.W.2d 622). Sierra Club asserts unlike *Puntenney*, where the court noted Dakota Access was not only relying upon shippers under contract, Summit Carbon relies entirely on shippers under contract — including uncommitted shippers. *Id.* Sierra

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Club also states the *Puntenney* court's reliance on *Wright v. Midwest Old Settlers & Threshers Association*, 556 N.W.2d 808 (Iowa 1996), was to establish a common carrier need, not serve all the public all the time, and that it need not rely entirely upon walk-up business. *Id.* (citing *Puntenney*, 928 N.W.2d at 843). Sierra Club asserts the airline example used in *Puntenney* is not applicable in the case of Summit Carbon as advanced bookings do not require individualized negotiated contracts, unlike Summit Carbon's business model. *Id.*

Sierra Club states Summit Carbon has entered into long-term offtake agreements with the ethanol plants, and any other industry seeking to use Summit Carbon's proposed hazardous liquid pipeline could do so after satisfying Summit Carbon's requirements. *Id.* at 12-13. Sierra Club asserts the reservation of the right to choose its customers makes Summit Carbon not a common carrier under *Carlson*. *Id.* at 13. Furthermore, Sierra Club states the offtake agreements show the ethanol plants are transferring title of the carbon dioxide to Summit Carbon, thus meaning Summit Carbon is carrying its own product, making it not a common carrier. *Id.*

Sierra Club states Summit Carbon's reliance upon the court's statement in *Puntenney* has the analysis backwards. *Id.* at 14. Sierra Club asserts the pipeline in *Puntenney* was by definition a common carrier and the 10 percent capacity for uncommitted shippers is what is required of a common carrier pipeline, not what makes the pipeline a common carrier. *Id.* Sierra Club states that even if the 10 percent requirement is all that is required to establish a common carrier, Summit Carbon has not met its burden of proof. *Id.* at 14-15. Sierra Club asserts Mr. Pirolli testifies Summit Carbon will be holding an open season, but only for committed shippers, which has

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nothing to do with the 10 percent capacity left open for walk-up shippers. *Id.* at 15 (citing Summit Carbon Pirolli Rebuttal, p. 6).

Furthermore, Sierra Club reiterates Mr. Pirolli states the prospective shippers would have to qualify to use Summit Carbon's proposed hazardous liquid pipeline by meeting Summit Carbon's requirements, which is a violation of *Carlson*. *Id.* Sierra Club asserts the testimony of Mr. Pirolli causes it confusion, but, when examined, Mr. Pirolli's testimony shows Summit Carbon will not have any uncommitted shippers. *Id.* at 18.

Sierra Club further asserts the court in *Circle Express Co. v. Iowa State Commerce Commission*, concluded,

We are satisfied there was in this record competent and substantial evidence of a holding out to the general public. Statements as well as the manner in which this business is conducted, including inferential invitations to the public to apply for service, indicate that the company will transport for hire the goods of all persons indifferently so long as it has room and the goods are of the type it assumes to carry. There is substantial evidence of much more than a mere undertaking by a special individual agreement in each particular instance to carry goods of another party. . . . [T]he distinctive characteristic of a common carrier is that he holds himself out as ready to engage in the transportation of goods for hire, as a public employment, and not as a casual occupation, and that he undertakes to carry for all persons indifferently, within limits of his capacity and the sphere of the business required of him. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out, by words or by course of conduct, as to the service offered or performed.

*Id.* at 20 (citing 86 N.W.2d 888, 893 (Iowa 1975)). Sierra Club asserts, unlike *Circle Express Co.*, the testimony of Mr. Pirolli demonstrates Summit Carbon will negotiate

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contracts with specific shippers and Summit Carbon's services are very specialized and directed at a unique class of shippers, not a broad range of shippers. *Id.* at 21.

Sierra Club argues "there is no evidence on which the Board can rely that Summit [Carbon] will conduct its business as a common carrier." *Id.* at 22.

In its reply brief, Sierra Club asserts Summit Carbon's reliance on *PennEast* is misplaced as it involved federal eminent domain power and whether the federal government could seize state-owned land. Sierra Club RB, p. 20. Sierra Club states *PennEast* is irrelevant to the issue before the Board. *Id.* Sierra Club states the court in *Puntenney* was clear that the constitutional restrictions on eminent domain override any statutory grant. *Id.* at 21 (citing *Puntenney*, 928 N.W.2d at p. 844). Sierra Club asserts under the constitution, only a common carrier can be granted the right of eminent domain. *Id.* Sierra Club states other industries can use Summit Carbon's proposed hazardous liquid pipeline, but only if they satisfy Summit Carbon's requirements in violation of the court's holding in *Carlson*. *Id.* at 21-22. Sierra Club states it agrees with the discussion by Jorde Landowners regarding FERC's examination of the Dakota Access transportation service agreements that complied with the requirements of being a common carrier. *Id.* at 22-23. Unlike Dakota Access, Sierra Club asserts Summit Carbon

has nothing but vague, speculative (and perhaps false) claims that it will conduct an open season and contract with shippers other than ethanol plants and reserve 10% of capacity for uncommitted shippers. In fact, it has now had over two years to find shippers and execute contracts that would possibly make it a common carrier. The Board should not speculate and assume Summit [Carbon] will somehow at some time become a common carrier.

*Id.* at 23.

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**Jorde Landowners**

In the direct testimony of Alvin Sandbulte and Calvin Sandbulte, they testify

[A]ccording to the United States Constitution and Iowa's Constitution, that if the government is going to take land for public use, then in that case, or by taking for public use, it can only occur if the private landowner is compensated justly, or fairly. Here there is no public use component.

Jorde Landowners Alvin Sandbulte and Calvin Sandbulte Direct, p. 27; Jorde Landowners Vicky Sonne *et al.* Direct, p. 28; Jorde Landowners Anne N. Gray *et al.* Direct, p. 28. Alvin Sandbulte and Calvin Sandbulte continue by testifying “whether Summit [Carbon] is truly a common carrier should be determined and if [it is] not, [its] [p]etition should be denied.” Jorde Landowners Alvin Sandbulte and Calvin Sandbulte Direct, p. 27; Jorde Landowners Vicky Sonne *et al.* Direct, p. 29; Jorde Landowners Anne N. Gray *et al.* Direct, p. 29. Alvin Sandbulte and Calvin Sandbulte assert, “Summit [Carbon] is not a common carrier and [it has] never proven that [it is]. Simply claiming you are something is not proof you are what you claim.” Jorde Landowners Alvin Sandbulte and Calvin Sandbulte Direct, pp. 27-28; Jorde Landowners Vicky Sonne *et al.* Direct, p. 29; Jorde Landowners Anne N. Gray *et al.* Direct, p. 29.

In their direct testimony, the Hayeks state “it is constitutionally wrong [for] a private company [to] seek[] [the Hayeks'] land for personal gain.” The Hayeks the Hayeks Direct, p. 4. The Hayeks testify, “Eminent domain was intended to be used by the government to take property for the purpose of public use and public good. This is a private company trying to take property for personal gain without any benefit to the public.” *Id.*

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In their initial brief, Jorde Landowners state that “the Board would bear the burden ‘to prove by a preponderance of the evidence that the finding of public use, public purpose, or public improvement meets the definition of those terms.’” Jorde Landowners IB, p. 90 (citing Iowa Code § 22.24(3)). Jorde Landowners state, “A preponderance of the evidence is the evidence that is more convincing than opposing evidence or more likely true than not true.” *Id.* (citing *Interest of K.D.*, 975 N.W.2d 310, 320 (Iowa 2022)). Jorde Landowners assert the court in *Puntenney* held the “two necessary elements in the Iowa constitutional standard for granting the right of eminent domain to a private pipeline company: (a) it must operate as a common carrier, and (b) its operation must provide a substantial public benefit, such as ‘safer transportation’ and ‘lower prices’ for all Iowans.” *Id.* at 94. Jorde Landowners state that “the key safeguard in this analysis is that a pipeline must operate as a common carrier. . . .” *Id.* Jorde Landowners provide a similar analysis regarding Summit Carbon transporting its own product in terms of the holding of *Mid-America Pipeline Co.* as provided by Sierra Club. *Id.* at 95.

Jorde Landowners state carbon dioxide pipelines are not regulated by any federal agency that will determine if Summit Carbon is a common carrier. *Id.* at 96. Therefore, the Board will have to rely upon common law to determine whether Summit Carbon is a common carrier. *Id.* at 97.

Jorde Landowners assert the court in *Wright v. Midwest Old Settlers and Threshers Association* defined a common carrier as follows:

Iowa law has defined a common carrier as “one who undertakes to transport, indiscriminately, persons and property for hire.” *Employers Mut. Cas. Co. v. Chicago & North Western Transp. Co.*, 521 N.W.2d 692, 693 (Iowa

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1994). We have ruled that the distinctive characteristic of a common carrier is that it holds itself out as ready to engage in the transportation of goods or persons for hire, as public employment, and not as a casual occupation. *Kvalheim v. Horace Mann Life Ins. Co.*, 219 N.W.2d 533, 535 (Iowa 1974). A common carrier holds itself out to the public as a carrier of all goods and persons for hire. We, however, have also recognized that a common carrier need not serve all the public all the time. *Id.* A common carrier may combine its transportation function with other vocations and still be considered a common carrier. *Id.* at 538.

*Id.* at 97-98. Jorde Landowners states this logic stems from an earlier case, *Circle Express Co.* *Id.* at 98. Jorde Landowners state the term “for hire” is further determined by using the 12-part “primary business test” from *United Suppliers.* *Id.* Jorde Landowners state the court in *United Suppliers* found it was a private carrier and therefore was not a common carrier. *Id.* at 99-100. Jorde Landowners’ analysis of the 12-factors are:

First, Summit [Carbon] would be the owner of all the property transported. Second, since Summit [Carbon] acquires carbon dioxide via long-term Offtake Agreements, it does order the carbon dioxide prior to its “purchase” because its carbon acquisition is part of a larger business scheme. Third, Summit [Carbon] does not have upstream storage, but it ships the carbon dioxide to downstream storage facilities, such that it does not accept or receive product from other transportation companies via intermediate storage. Fourth, Summit [Carbon] owns and takes financial risks in its transportation affiliate, meaning that the transportation affiliate does not exist apart from the business Summit [Carbon]-ethanol plants joint venture. Fifth, the profits received by Summit [Carbon] under the Offtake Agreements are reduced to cover the costs of transporting carbon dioxide that it owns, meaning that it does not charge a separate transportation fee, as would a common carrier. Sixth, through the Offtake Agreements, Summit [Carbon] does not hold out to transport carbon dioxide owned



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by other entities. Seventh, Summit [Carbon] advertises itself as being a full-service carbon dioxide disposal company that offers services other than transportation. Eight[h], it is unknown whether Summit[] [Carbon's] pipeline infrastructure represents the principal part of its business. Ninth, Summit[] [Carbon's] profits derive primarily from monetizing the 45Q tax credit, which does not provide benefits for transporting carbon dioxide, but rather for capturing and disposing of carbon dioxide; it receives no revenue stream from pipeline operations. It could also profit from revenue sharing of 45Z tax credit for production of clean fuel and from low carbon fuel credit sales, both of which would be generated by its ethanol partners and not its transportation subsidiary. Tenth, Summit [Carbon] does not engage for-hire carriers, because none exist that that could transport carbon dioxide from its carbon capture facilities to its sequestration facilities, and alternative carriers will likely exist because Summit[] Carbon's] Offtake Agreements create a private, closed internally integrated joint venture that prevent use of alternative carriers. Eleventh, since Summit Carbon Solutions is both the shipper and consignee for shipments on SCS Carbon Transport, no intermediate storage or carriers will exist. Twelfth, the Offtake Agreements are essentially continuing supply orders by Summit Carbon.

*Id.* at 123-24. Jorde Landowners assert the above discussion establishes Summit Carbon's primary business is not transportation. *Id.* at 123.

Jorde Landowners state FERC has held “[b]y definition, a pipeline is a common carrier, and is bound by the [Interstate Commerce Act] to ship product as long as a reasonable request for service is made by a shipper.” *Id.* at 103 (citing *Magellan Midstream Partners, L.P.*, 161 FERC ¶ 61,219, at P 12 (2017)). Jorde Landowners state, “FERC requires that pipeline developers provide it with substantial evidence in the form of executed transportation service agreements, descriptions of open seasons, and proposed tariffs to prove that a pipeline will operate as a common carrier.” *Id.* at 104.

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Jorde Landowners argue the court in *Puntenney* was incorrect to hold that FERC only requires a pipeline company to reserve 10 percent capacity to be a common carrier and that it would be unrealistic to require a pipeline company to rely entirely upon walk-up business. *Id.* at 105-06 (citing *Puntenney*, 928 N.W.2d at 843). Jorde Landowners assert FERC requires much more than what the Iowa Supreme Court stated and the evidence submitted by Summit Carbon would not be approved by FERC. *Id.* at 106. Jorde Landowners state that prior to the mid-1990s, all FERC-regulated oil pipelines were month-to-month contracts, which further disproves the Iowa Supreme Court's statement. *Id.* at 107.

Jorde Landowners state there are three different commercial relationships proposed by Summit Carbon: revenue sharing agreements, transportation service agreements, and walk-up shippers. *Id.* at 118-19. Jorde Landowners assert the revenue sharing agreements make Summit Carbon and the ethanol plants a joint venture that does not allow for the creation of the carrier-shipper relationship necessary for there to be a common carrier. *Id.* at 120-21.

As it relates to the transportation service agreement and the walk-up shippers, Jorde Landowners assert that "the evidence related to these potential options proves only that they are both too commercially underdeveloped to rely on for the Board's common carrier determination." *Id.* at 126. Jorde Landowners state, absent executed agreements, there is "neither competent nor substantial" evidence for the Board to rely on that establishes Summit Carbon is a common carrier. *Id.*

In their reply brief, Jorde Landowners argue *PennEast* is inapplicable in this case as "Iowa law requires the Board to conduct a rigorous eminent domain analysis

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separately from its public necessity and convenience analysis.” Jorde Landowners RB, p. 29. Jorde Landowners state the courts have already ruled the “shall” does not automatically vest a pipeline company with the right of eminent domain. *Id.* at 30-31 (citing *Mid-America Pipeline Co.*, 114 N.W.2d at 624). Jorde Landowners state, “Where a pipeline fails to meet the common carrier test and instead is found to be for private use, it may not be granted the right to eminent domain, despite any legislative mandate.” *Id.* Jorde Landowners state after the decision in *Mid-America Pipeline Co.* the pipeline company refiled without eminent domain. *Id.* at 32 (citing *Mid-America Pipeline Co. v. Iowa State Commerce Comm’n*, 125 N.W.2d 801 (1964) [hereinafter *Mid-America 1964*]). Jorde Landowners state that “both Chapter 6A and the *Puntenney* and *Mid-America 1964* decisions make common carrier status a prerequisite for a pipeline applicant to use eminent domain, they are consistent, and the Board must conduct a separate eminent domain and common carrier analysis.” *Id.* at 35. Jorde Landowners state the Board is required to make two findings, without considering economic benefits, as to whether Summit Carbon should be vested with the right of eminent domain. *Id.* at 35-36. Those factors are “(a) whether a project would be a common carrier and therefore have a public use and (b) whether a project would provide a direct public benefit, rather than a trickledown benefit.” *Id.* at 36.

Furthermore, Jorde Landowners state Summit Carbon’s evidence of providing non-discriminatory service, as required for it to be considered a common carrier, does not establish that Summit Carbon will be providing non-discriminatory service. *Id.* at 45-46. In addition to ensuring non-discriminatory service within the same class of service, Summit Carbon is required to show non-discriminatory service between the proposed

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different classes of service, which Jorde Landowners assert Summit Carbon has not established. *Id.* at 46.

### **The Counties**

In its initial brief, the Counties state a common carrier is presumed to be a public use, but the benefits are not. The Counties IB, p. 13. The Counties assert that

the Iowa Constitution demands that even a common carrier be examined to determine whether it will provide a benefit to the public, such as through reduced prices to consumers or safer transportation of a commodity than existing methods of transport currently in use. A formalistic approach that looks only at who “uses” the pipeline, rather than who “benefits” from it will not be enough.

*Id.* at 14. The Counties also discuss the implication of *Mid-America Pipeline Co.* to the facts at issue in Summit Carbon’s docket. *Id.* at 20-22; 69-70. The Counties assert the “necessary” language in Iowa Code § 479B.16 relates to the scope of the taking and not the need for the permit. *Id.* at 17-18. The Counties argue that to “the extent the public [does not] use or benefit from the taking, eminent domain is not necessary and should not be granted.” *Id.* at 18.

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### **Farm Bureau**

In its reply brief, Farm Bureau states Summit Carbon’s and IGAE’s “interpretation of the statute is inconsistent with statutory language, past [Board] precedent, and statutory language used in other jurisdictions.” Farm Bureau RB, p. 2. Farm Bureau states the language in Iowa Code § 479B.16 is not automatic as the remainder of the section after the term “shall” states “to the extent necessary and as prescribed and approved by the board. . . .” *Id.* at 3. Farm Bureau states IGAE’s reliance on drainage district eminent domain authority is inapplicable because drainage districts have a specific provision in the Iowa Constitution that allows a drainage district to use eminent domain, and drainage districts are created and governed by statute. *Id.* at 4. Farm Bureau asserts, “Pipelines are not sovereign and must still meet the statutory and constitutional ‘public use’ requirement before the Board can confer eminent domain authority to take private property.” *Id.* Farm Bureau states, “Combined with section 479B.1, the use of the word ‘shall’ in section 479B.16 indicates the legislature’s intent to confer eminent domain authority, by delegating the decision to the Board.” *Id.* at 8. Farm Bureau argues it is clear the language of Iowa Code § 479B.16 is not self-executing and “the Board should consider whether the proposed pipeline meets the statutory and constitutional requirements for public use.” *Id.* at 9.

### **Kerry Mulvania Hirth**

In her initial brief, Ms. Hirth states Summit Carbon’s proposed hazardous liquid pipeline does not meet the requirements of either the U.S. Constitution or the Iowa Constitution. Hirth IB, pp. 9-13. Ms. Hirth asserts, “The critical component of the Court’s Puntenney decision was its holding that ‘trickle down’ benefits of economic development

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are not enough to constitute a public use.” *Id.* at 9. Ms. Hirth argues Summit Carbon asserts the benefits of its proposal are based purely on economics. *See id.* at 10. Ms. Hirth states that, unlike Dakota Access, which transports crude oil to benefit the manufacturing of consumer goods as well as being used by Iowa’s agricultural sector, Summit Carbon’s proposed hazardous liquid pipeline would be “more akin to a sewer line. . . .” *Id.* at 10. Ms. Hirth further states there was a safety benefit provided by Dakota Access, which is not provided by Summit Carbon as there is currently no large-scale transportation of carbon dioxide by truck or rail happening in Iowa. *Id.* at 11. Mr. Hirth states even under the less strict federal constitutional standard, which allows eminent domain to be used for economic reasons, Summit Carbon’s proposed hazardous liquid pipeline would impact planned development by landowners. *Id.* at 12-13.

In her reply brief, Ms. Hirth states, “The fact that the Board has discretion to deny a permit, means that the legislature did not make a broad pronouncement that all carbon dioxide pipelines provide a public use.” Hirth RB, p. 11. Ms. Hirth asserts this demonstrates the language in Iowa Code § 479B.16 is not automatically granted to a company. *Id.* Ms. Hirth states while Summit Carbon has obtained 75 percent of the easements needed for its proposed hazardous liquid pipeline, Summit Carbon’s assertion about needing “eminent domain to prevent a minority of landholders from having ‘veto power’ over construction of a pipeline is only appropriate if the pipeline promotes a public use.” *Id.* Ms. Hirth argues, irrespective of the number of voluntary easements obtained, “Summit [Carbon] cannot twist the statutory requirements to avoid the constitutional requirement that the proposed pipeline serve a public use.” *Id.*

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**Murray Landowners**

In their initial brief, Murray Landowners begin by stating the Board should consider the number of outstanding easements needed by Summit Carbon compared to Dakota Access. Murray Landowners IB, p. 2. Murray Landowners state approximately 27 percent of the easements are outstanding compared to only 3.7 percent in Dakota Access. *Id.* at 3. Murray Landowners assert the Board must place conditions and restrictions on Summit Carbon to ensure eminent domain is not granted unnecessarily. *Id.* at 7.

**Mary Moser, Jamie Moser, and Carmen Moser**

In their initial brief, the Mosers state Iowa Code § 6B.3(1)(g) requires a “showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement.” The Moser IB, p. 2. The Mosers also state Iowa Code § 6A.22(2)(a)(3) prevents the use of condemnation of private land solely for facilitating an incidental private use. *Id.* The Mosers argue the evidence shows Summit Carbon’s proposed hazardous liquid pipeline “is solely for the purpose of facilitating the private use of ethanol plants to dispose of their [carbon dioxide].” *Id.* at 3. The Mosers further assert Summit Carbon is not a common carrier as it is a private facility for private use. *Id.* at 3-4.

**Republican Legislative Intervenors for Justice**

In his direct testimony, Rep. Holt testifies the legislature’s “grant of power to the . . . Board is extremely narrow, indeed it is narrower than the constitutional standard.” RLIJ Holt Direct, p. 4. Rep. Holt asserts the Iowa Legislature has limited the Board’s authority to grant eminent domain to a finding of public use in relation to finding

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a promotion of the public convenience and necessity. *Id.* at 4-5. Rep. Holt testifies that “issues associated with eminent domain are being litigated, and will continue to be, and were also recently litigated in federal court.” *Id.* at 6. Rep. Holt states “the facts and the law have not yet been fully examined, argued, and ruled upon.” *Id.* Rep. Holt asserts “the Board granting eminent domain without being fully aware of the facts and law that are evolving . . .” is contrary to the legislative intent of Iowa Code chapter 479B. *See id.* Rep. Holt asserts, “The Board simply needs to recognize that even the threshold question of what the law means has not been determined or adjudicated with finality in the Iowa Courts.” *Id.* at 6-7. Additionally, Rep. Holt testifies the Board’s process “should at least be placed on hold while the U.S. Supreme Court finally revisits the important issue of judicial deference to agencies.” *Id.* at 7-8. Rep. Holt states that “the Iowa Constitution is not bound by federal precedents, but they are instructive to Iowa courts.” *Id.* at 8.

On cross-examination, Rep. Holt testifies it is his opinion

[p]ublic use is different from public benefit. . . . [P]ublic use is those things . . . that are essential for humanity. . . . Pipelines that move oil and natural gas are different from a pipeline that’s going to ship [carbon dioxide] and bury it in the ground in another state.

HT, p. 3839.

### **Iowans for a Growing Agricultural Economy**

In its initial brief, IGAE states the term “shall be vested” in Iowa Code § 479B.16 does not require two separate decisions by the Board, but rather one — should Summit Carbon be granted a permit. IGAE IB, p. 5. IGAE states the inclusion of the phrase “to the extent necessary” does not create a secondary decision point for the Board, as



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argued by opponents, but is limiting the extent to which, functionally, eminent domain is needed for the project. *Id.* IGAE asserts this rationale is supported by Iowa Supreme Court decisions regarding the necessity of extra right-of-way. *Id.* at 6-7.

IGAE states, “Necessity for the grant of eminent domain is rarely lacking, absent evidence that the request for the power has no connection to a valid public purpose.” *Id.* at 7. IGAE asserts the Iowa Legislature has established pipelines are a public use and courts “rarely question the decision by a legislature to authorize eminent domain for various categories of development.” *Id.* at 9.

IGAE states Iowa has a long history of allowing eminent domain to be used by a company or individual for the creation of transportation. *Id.* (citing Iowa Code § 759 (1851)). IGAE asserts as far back as 1870, the Iowa Supreme Court has stated, “Every State exercises this power in behalf of railroads, turnpikes, canals and other internal improvements, and this is done without reference to whether the State holds any pecuniary interest in the improvement or not.” *Id.* (citing *Stewart v. Bd. of Supervisors of Polk Cty.*, 30 Iowa 9, 19 (1870)).

IGAE states, “A law granting eminent domain power to permit the taking of property to be used for solely private uses would be beyond the legislature’s authority.” *Id.* at 12 (citing *Puntenney*, 928 N.W.2d at 848). IGAE asserts “where the transfer is to private parties, often common carriers, who make the property available for the public’s use — such as with a railroad, a public utility, or a stadium then the constitutional requirement of public use is satisfied.” *Id.* (citing *Puntenney*, 928 N.W.2d at 848) (internal quotations omitted). IGAE argues Summit Carbon is incorrectly being lumped in with the ethanol plants, creating one entity. *Id.* at 13. IGAE states the

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evidence shows Summit Carbon is creating “a transportation network to connect members of the public — ethanol plants and other producers — with a place to sequester what would otherwise be an atmospheric emission.” *Id.* IGAE states, like the railroads that presell cargo capacity or passenger tickets, “pipeline construction require[s] its future users to commit in advance to supply carbon dioxide to Summit [Carbon] for transportation.” *Id.* (citing *Dubuque & S. C. R. Co. v. Ft. Dodge, D. M. & S. R. Co.*, 125 N.W. 672, 673 (Iowa 1910)).

While the sequestration of carbon dioxide is relatively new, IGAE asserts “the legal issues surrounding the creation of internal improvements are not. . . . The public use concept is . . . flexible and adaptable to changes in society and governmental duty.” *Id.* (citing *Puntenney*, 928 N.W.2d at 851) (internal quotations omitted). IGAE argues Summit Carbon’s petition cannot revolve around the novelty of carbon dioxide capture and sequestration. *See id.* at 14.

In its reply brief, IGAE states the court in *Puntenney* did not hold only a common carrier can be granted the right of eminent domain, as suggested by opponents of Summit Carbon, but rather it “held that economic development, standing alone, was not a valid public use to allow eminent domain to facilitate private enterprise.” IGAE RB, p. 3 (citing *Puntenney*, 928 N.W.2d at 848). IGAE states the question revolves around whether the project is a public use, not a common carrier, that matters for a constructional analysis. *Id.* at 4. IGAE states the court in *Puntenney* held Dakota Access fell into the second category identified in Justice O’Connor’s dissent in *Kelo*, which refers to common carriers as traditionally valid public uses. *See id.* IGAE asserts Justice O’Connor’s dissent, when addressing the second category of takings, notes the

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list is not exclusively common carriers. *Id.* at 4-5 (noting the included term “often” in Justice O’Connor’s dissent). IGAE also states Justice O’Connor’s second category may include “efforts to eliminate other conditions harmful to the public.” *Id.* at 5 (citing *Kelo*, 545 US at 498 (O’Connor, J, dissenting)).

IGAE states Justice O’Connor relied upon two cases to justify the last clause of the second category. *Id.* (citing *Berman v. Parker*, 348 U.S. 26 (1954) and *Hawaii Hous. Authority v. Midkiff*, 467 U.S. 229 (1984)). In *Berman*, the U.S. Supreme Court upheld a takings for blighted neighborhoods and in *Midkiff*, the U.S. Supreme Court upheld the State of Hawaii’s legislation to break up the ownership of nearly 75 percent of the island of Oahu’s land, due to the unique way title passed in Hawaii, from a few landowners to allow more owners to own property there. *Id.* at 5-6 (internal citations omitted). IGAE states that “the land need not end up in the hands of the government for eminent domain to be valid.” *Id.* at 6. IGAE arrives at this conclusion based upon *Midkiff*, where the U.S. Supreme Court held that “[t]he Act advances its purposes without the State’s taking actual possession of the land. In such cases, government does not itself have to use property to legitimate the taking; it is only the taking’s purpose, and not its mechanics, that must pass scrutiny under the [Fifth Amendment].” *Id.* at 6-7 (citing *Midkiff*, 467 US at 244)(alteration in original).

IGAE argues, much like the public policy decisions made in *Berman* and *Midkiff*, the public policy decision behind Summit Carbon’s project supports the grant of eminent domain. *Id.* at 7. IGAE states:

Congress determined that climate change concerns meant that sequestration of carbon dioxide was a vital national interest. To accomplish sequestration, and in recognition that improvement of the climate is a public good, Congress

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created substantial tax credits to encourage the activity. Pursuing the same goals, regulators in certain States and Canadian provinces have created market incentives for low carbon intensity liquid fuels. These policy decisions drive the carbon sequestration market. . . . Conceptually, the public nuisance of climate change is no different than urban blight or a distorted market for private ownership of land. Because these are the kinds of problems that governments are empowered to repair, eminent domain is a constitutional part of the government's toolbox.

*Id.*

In response to arguments related to Summit Carbon's ownership of the carbon dioxide, IGAE asserts "*Mid-America* is a case about a state regulatory body that failed to follow its own statute, not a comprehensive examination about whether a company that moves something it owns can get eminent domain power." *Id. at 8.* IGAE states "*Mid-America* is not a case that stands for broad limitations on eminent domain by pipeline companies. And even if it were, *Puntenney's* later deep analysis of the issue is what controls." *Id. at 9.* As it relates to *United Suppliers*, IGAE states the case supports, not disproves, Summit Carbon's claim of being a common carrier. *Id.* IGAE states the Iowa Supreme Court held the "supplier was a private carrier, not because of the ownership of what it carried but because of the nature of its business." *Id.* IGAE asserts the *United Suppliers* court held *United Suppliers* was a private carrier because it only provided transportation incidental to another primary business. *Id.* IGAE argues Summit Carbon's entire enterprise is the transportation of carbon dioxide from the ethanol plants to the sequestration point in North Dakota. *See id. at 9-10.* IGAE states:

Summit [Carbon] [does not] move carbon dioxide as a part of a bigger business enterprise. It doesn't sell carbon dioxide to customers. Moving carbon dioxide from places where it is created to the place where it is sequestered is all Summit

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[Carbon] wishes to do, and what Summit[] [Carbon's] ethanol plant partners expect from their arrangement. Because unlike with other commodities—where the seller does not care where the commodity . . . ends up—the ethanol plants need Summit [Carbon] to transport the carbon dioxide to the sequestration site for them to receive the benefit of the bargain.

*Id.* at 10. IGAE asserts “when sequestration is the end goal, who owns the carbon dioxide is unimportant for purposes of common-carrier status; the focus is on who benefits from the transportation and eventual sequestration of that carbon dioxide.” *Id.* IGAE argues Summit Carbon’s transportation of carbon dioxide for the benefit of other parties makes Summit Carbon a common carrier. *Id.*

IGAE states the arguments related to Summit Carbon requiring a contract — even for walk-up shippers — thus making Summit Carbon not a common carrier, are based on a misunderstanding of *Carlson*. *Id.* at 10-11. IGAE states *Carlson* “turn[s] on whether there was any independent legal obligation for Carlson to take on all comers who wished to ship with him.” *Id.* at 11. IGAE states there was no requirement in *Carlson* to provide his service to the public. *Id.* (citing *Carlson*, 251 N.W. at 161). IGAE asserts that unlike Carlson, Summit Carbon wants to be a common carrier and has committed to take walk-up business. *Id.* The “agreement or duty to take on all comers, not the details of what happens after the customer walks up, is what distinguishes a common from a private carrier.” *Id.* IGAE argues the cases do not mean a contract cannot exist between a shipper and a carrier or else the carrier’s status of a common carrier would be violated as “[t]his would be an absurd rule.” *Id.*

IGAE also asserts opponents of Summit Carbon have the 10 percent reservation capacity issue discussed in *Puntenney* backwards. *Id.* at 12. IGAE states, under

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federal law, all oil pipelines must be common carriers, irrespective of whether they have a 10 percent walk-up reservation or not. *Id.* IGAE states the inclusion of the 10 percent reservation capacity for walk-up shippers was included in *Puntenney* to address the arguments made by opponents in Dakota Access about it not serving the Iowa public. *Id.* at 13 (citing *Puntenney*, 928 N.W.2d at 844). IGAE states the common carrier issue in Dakota Access was whether the common carrier had to serve customers in Iowa, which the court found they did not. *Id.*

Lastly, IGAE states under Iowa Code § 6A.19, “A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use.” *Id.* at 13. IGAE asserts this section of Iowa Code, when compared with the language on Iowa Code chapter 479B, establishes there is no requirement for a company seeking a permit under Iowa Code chapter 479B to be a common carrier. *Id.* Therefore, any arguments premised on the language of Iowa Code § 6A.22, which refers to common carriers, does not limit the Board’s authority under Iowa Code chapter 479B. *Id.* That being said, IGAE argues, “Summit [Carbon] is a common carrier because of its willingness to take walkup business and because it[] [is] transporting carbon dioxide for the benefit of unaffiliated ethanol plants, it need not be to receive eminent domain power.” *Id.* at 14.

**Wendell King and Diane King**

In the direct testimony of the Kings, they state they are opposed to the use of eminent domain. The Kings the Kings Direct, p. 4. The Kings testify there is no public use component to Summit Carbon’s petition. *Id.* at 20. The Kings state that “according to the United States Constitution and Iowa’s Constitution, that if the government is going

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to take land for public use, then in that case, . . . it can only occur if the private landowner is compensated justly, or fairly.” *Id.* The Kings also assert “whether Summit [Carbon] is truly a common carrier should be determined and if [it is] not, [Summit Carbon’s] [p]etition should be denied.” *Id.* at 21.

### **Estate of Bonnie Wallace**

In his direct testimony, Mr. Wallace testifies he is “not opposed to the idea of personal sacrifice for the public good.” Estate of Bonnie Wallace Wallace Direct, p. 1. However, Mr. Wallace testifies he is “very much opposed to the idea of a private company claiming the right of [e]minent [d]omain for [its] own private company profit. Such an application violates not only the letter of the [l]aw but the very spirit of the [l]aw as well.” *Id.*

### **3. Board Discussion**

As an initial matter, the Board is unpersuaded by Summit Carbon and IGAE’s argument that eminent domain automatically vests with the Board finding the proposed hazardous liquid pipeline will provide a service that is in the public convenience and necessity. The Board’s own precedent contradicts this argument raised by Summit Carbon and IGAE. *See, e.g. Juckett v. Iowa Util. Bd.*, 992 N.W.2d 218, 222 (Iowa 2023).

The Board has reviewed the evidence and applicable law and will grant Summit Carbon the right of eminent domain over the parcels as described below. The Board also finds there is sufficient evidence to grant Summit Carbon greater easement areas. The Iowa Supreme Court in *Puntenney* was clear that a common carrier “has long been recognized in Iowa as a valid public use. . . .” *Puntenney*, 928 N.W.2d at 848. The Iowa

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Supreme Court did not, however, define what a common carrier is. However, the court states FERC only requires a 10 percent reservation of capacity for walk-up shippers to meet the requirement to be a common carrier. *Id.* at 843.

Based upon the record, Summit Carbon has committed to reserving 10 percent of the capacity of its proposed hazardous liquid pipeline for walk-up customers. Pirolli Rebuttal, p. 6. Based upon this requirement in *Puntenney*, Summit Carbon meets the definition of common carrier and is eligible to be vested with the right of eminent domain. If the Iowa Supreme Court's decision stands for the proposition that all that is required for a pipeline to be vested with the right of eminent domain is that the pipeline company reserve 10 percent of its capacity for walk-up shippers, the Board finds Summit Carbon has met that requirement.

However, several parties argue the Iowa Supreme Court was incorrect in its statement and there is more required by FERC to meet the definition of a common carrier. See *Jorde Landowners IB*, p. 106. Besides asserting the Iowa Supreme Court was incorrect, some opposition parties assert FERC has no jurisdiction here and the Board must examine whether Summit Carbon meets the common law definition of a common carrier.

In their briefs, the parties direct the Board to the common law definition of common carrier. In *Circle Express Co.*, the court held

the distinctive characteristic of a common carrier is that he holds himself out as ready to engage in the transportation of goods for hire, as a public employment, and not as a casual occupation, and that he undertakes to carry for all persons indifferently, within limits of his capacity and the sphere of the business required of him.



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*Circle Express Co.*, 249 N.W.2d 658. Summit Carbon has consistently testified and provided documentation to the Board showing it is holding itself out as a transportation business for hire from those who are seeking to have their carbon dioxide emissions captured, transported, and stored in North Dakota. Summit Carbon Pirolli Rebuttal, p. 6. During this proceeding, copies of the offtake agreements and the draft transportation agreements have been admitted into the record for the Board's review and consideration. The Board has reviewed these documents and by comparing the offtake agreements, it is clear they are substantially similar between the various ethanol plants that are seeking Summit Carbon service. Reading these documents demonstrates the agreements are treating the ethanol plants equally. Furthermore, the draft transportation agreement, a different proposed class as compared to the ethanol plants, does not show Summit Carbon is treating this class of shipper any differently than the ethanol plants. The Board finds this establishes Summit Carbon is operating indiscriminately between the different classes.

Furthermore, the Board is unpersuaded by the arguments raised that having contracts with committed shippers is a violation of the common law terms of what is required of a common carrier. As noted by Jorde Landowners, since the mid-1990s, it has become common for common carrier pipelines to operate under long-term contracts. Jorde Landowners IB, p. 107. The court in *Puntenney* held “[i]t would be unrealistic to require a \$4 billion pipeline to depend entirely on walk-up business, just as it would be unrealistic to require an airline to refuse all advance bookings for a flight. The key is whether spot shippers have access. . . .” *Puntenney*, 928 N.W.2d at 843. The court in *Puntenney* held that a “common carrier may combine ‘other vocations’ and

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still be considered a common carrier.” *Id.* The key determination is whether the company has limited itself via the contracts. *Id.* (citing *State ex rel. Bd. of R.R. Comm'rs v. Carlson*, 251 N.W. 160, 161 (1933)). As stated earlier, Summit Carbon is reserving 10 percent of its proposed hazardous liquid pipeline for walk-up customers and is holding itself out to others who are able to use its service. *Supra.* The Board finds Summit Carbon is not limiting its business via the contracts it enters into, which would be a violation of this requirement from the long history of Iowa common law pertaining to common carrier law.

Additionally, some parties assert the presence of the contracts creates barriers to entry because Summit Carbon is able to deny service. However, this issue has been repeatedly addressed by the Iowa Supreme Court as an invalid argument. See *Puntenney*, 928 N.W.2d at 843 (citing *Wright v. Midwest Old Settlers & Threshers Ass'n*, 556 N.W.2d 808, 810 (Iowa 1996)). “A common carrier need not serve all the public all the time.” *Id.* As Summit Carbon is a proposed transporter of liquefied carbon dioxide, it stands to reason there are certain criteria a shipper would need to establish before being allowed to have its product shipped on Summit Carbon’s proposed hazardous liquid pipeline. This is even present where there is a federal agency oversight of a carbon dioxide pipeline. See *NuStar Order*, 55-56 (describing how the shipper has to agree to abide by the terms and conditions of NuStar’s tariff). Establishing compliance with the contents being shipped ensures that Summit Carbon’s proposed hazardous liquid pipeline functions as designed and does not create safety risks, which is an important issue for many of the landowners who have testified before the Board in this proceeding. See *supra* Section III.I.4.

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There is no question Summit Carbon will hold legal title to the liquefied carbon dioxide that will be transported through its proposed hazardous liquid pipeline from the participating ethanol plants. Opposing parties state the Iowa Supreme Court in *Mid-America* held this creates a private pipeline, thus the pipeline is not eligible for eminent domain. *Mid-America*, 114 N.W.2d at 624. However, the issue in that case was that Northern Natural Gas Company was proposing to build a natural gas pipeline to ship its own natural gas to its customers or suppliers. *Id.* at 624-25. In the present case, Summit Carbon does not create the carbon dioxide that is then shipped on its proposed hazardous liquid pipeline. See *supra* Section III.K.2. The 12 participating ethanol plants that were discussed at the hearing are independent of Summit Carbon. *Id.* The fact Summit Carbon is providing a service to the independent carbon dioxide emitters establishes the proposed hazardous liquid pipeline is not creating a closed-looped system where only Summit Carbon benefits. This is opposite of the private pipeline in *Mid-America*. Summit Carbon is providing a service, indiscriminately, to those who are carbon dioxide emitters. Summit Carbon is not proposing to build its project to transport the carbon dioxide it emits, creating the closed-looped system at issue in *Mid-America*. Furthermore, Summit Carbon has testified it is working with other companies on transportation service agreements and holding an open season for potential shippers where Summit Carbon will not own the carbon dioxide in the proposed hazardous liquid pipeline. See HT, pp. 2175-76 (describing the transportation service agreement and its relation to a potential shipper); Summit Carbon RB, p. 31.

Several parties argue that absent a signed transportation service agreement or commitment for walk-up shippers, the Board can only rely upon the offtake agreements.

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*See supra* Section III.K.2. However, as discussed above, like the Iowa Supreme Court in *Puntenney*, the Board is unpersuaded. Summit Carbon has stated its intention. Its business model is to provide a service to the public, indiscriminately, via three options: offtake agreements, transportation service agreements, and walk-up shippers. This is no different than a train selling cargo or passenger tickets prior to the time the train is leaving the station. The train states its intentions to those in the public who are interested, and the public either accepts the offer of the railroad or looks for another option. It is the offering of the intended service to the public that assists in the common carrier analysis. Similar to a proposed railroad route, the benefits to the public cannot be obtained until Summit Carbon's proposed hazardous liquid pipeline is constructed. Everything is hypothetical and the testimony and evidence must be examined to support the action.

Furthermore, while there is a difference between ownership and custody, the Board notes that common carriers are entrusted with the custody of the products they are transporting. *See NuStar Order*, pp. 55-56 (examining the language of NuStar's tariff). This dominion over the product being transported, especially as it relates to recent pipelines before the Board, is why there is the requirement for a bond and for additional insurance requirements. Damage from the pipe itself, while impactful to the land, does not cause most of the issues along a pipeline route; it is the contents of the pipeline. If there was no dominion over the contents of the pipe, then the requirement for the pipeline company to obtain and hold liability insurance would provide little benefit.

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Lastly, as part of the common law analysis on common carriers, there is an examination to be done as to whether transportation is the primary business of the common carrier. *United Suppliers, Inc.*, 876 N.W.2d at 775-76. The Iowa Supreme Court has established a 12-factor test to determine if a common carrier is providing transportation as its primary business. *Id.* at 776-77. The 12 factors are:

1. Whether the carrier is the owner of the property transported.
2. Whether orders for the property are received prior to its purchase by the carrier.
3. Whether the carrier utilizes warehousing facilities and the extent of this use as a storage place.
4. Whether the carrier undertakes any financial risks in the transportation-connected enterprise.
5. Whether the carrier includes in the sale price an amount to cover transportation costs and its relation to the distance the goods are transported.
6. Whether the carrier transports or holds out to transport for anyone other than itself.
7. Whether the carrier advertises itself as being in a noncarrier business.
8. Whether its investment in transportation facilities and equipment is the principal part of its total business investment.
9. Whether the carrier performs any real service other than transportation from which it can profit.
10. Whether the [carrier] at any time engages for-hire carriers to effect delivery of the products, as might be expected, for example, when it is called upon to fill an order and its own equipment is otherwise engaged.
11. Whether the products are delivered directly from the shipper to the consignee (*i.e.*, without intermediate warehousing).
12. Whether solicitation of the order is by the supplier rather than the truck owner.

*Id.* The Board will analyze each of these factors in turn using the parties' already-stated facts and determine whether they weigh for or against or are neutral to Summit Carbon's request for eminent domain authority.

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Factor one, while Summit Carbon will own some of the property being transported, it is also offering service where it will not be the owner of the property. The Board finds this factor is neutral.

Factor two, there are no preorders for the carbon dioxide as Summit Carbon will be transporting the carbon dioxide for the independent emitters to the sequestration site in North Dakota, where it will be stored. The Board finds this factor weighs in favor of Summit Carbon.

Factor three, there is no warehousing prior to shipment. The Board finds this factor does not apply to Summit Carbon.

Factor four, there is financial risk borne by Summit Carbon as it is providing transportation service to the public. The Board finds this factor weighs in favor of Summit Carbon.

Factor five, Summit Carbon does not include any costs in the sale price of the product because it is not reselling anything, but Summit Carbon does recover its costs from the entities that are using Summit Carbon's service. See Summit Carbon RB, p. 32. The Board finds this factor weighs in favor of Summit Carbon.

Factor six, Summit Carbon holds itself out for the transportation of carbon dioxide. The Board finds this factor to weigh in favor of Summit Carbon.

Factor seven, Summit Carbon has consistently testified to capturing, transporting, and storing carbon dioxide. *E.g.*, HT, p. 1614. The Board finds this factor weighs against Summit Carbon.

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Factor eight, Summit Carbon is proposing to build a \$5 billion-dollar-plus pipeline, compared to the \$15 million to \$60 million per capture facility.<sup>31</sup> The Board finds this factor weighs in favor of Summit Carbon.

Factor nine, Summit Carbon does receive payments for sequestering the carbon dioxide in North Dakota, but only after transporting it there. The Board finds this factor is neutral as it relates to Summit Carbon.

Factor ten is inapplicable to pipelines of any kind. The Board finds this factor is neutral as it relates to Summit Carbon.

Factor 11, the ethanol plants provide their carbon dioxide to Summit Carbon, which transports the carbon dioxide to North Dakota to be sequestered, with no storage in between. The Board finds this factor weighs in favor of Summit Carbon.

Factor 12, Summit Carbon is providing a service to independent ethanol plants as Summit Carbon has no carbon dioxide to move itself. The Board finds this factor weighs in favor of Summit Carbon.

Examining the above factors, the Board finds Summit Carbon is a “for hire” company with its primary business being the transportation of carbon dioxide for the independent ethanol plants and those who will do business with Summit Carbon under the transportation service agreement or as a walk-up shipper.

The Board finds Summit Carbon is providing a service to the public, indiscriminately, and will operate as a common carrier under Iowa common law. Therefore, the Board will vest Summit Carbon with the right of eminent domain over

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<sup>31</sup> For the 12 ethanol plants which are a part of this petition, the amount of capture facility investment, using the high end numbers, would be \$720,000,000.

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parcels as described below. The Board also finds there is sufficient evidence to grant Summit Carbon greater easement areas for the proper construction, operation, and maintenance of the proposed hazardous liquid pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its proposed hazardous liquid pipeline. While the Board is vesting Summit Carbon with the right of eminent domain, it is subject to the limits described in the remainder of this order.

With regard to all the other arguments surrounding eminent domain related to Summit Carbon's proposed hazardous liquid pipeline, the Board is unpersuaded by the arguments and will not discuss them further in this order. However, the Board finds it is important to correct a figure cited by Murray Landowners in their initial brief and copied in Jorde Landowners' reply brief.

Murray Landowners assert only 3.7 percent of outstanding easements were needed by Dakota Access, compared to the 27 percent needed by Summit Carbon. Murray Landowners IB, p. 3; Jorde Landowners RB, p. 14. The actual number of outstanding easements needed by Dakota Access at the time of hearing was 414 easements. *In re: Dakota Access, LLC*, Docket No. HLP-2014-0001, *Supplemental Staff Report on Eminent Domain, Letters of Support and Objections*, p. 9 (Oct. 20, 2015). This means that at the time of hearing, the actual percentage of outstanding easements was approximately 32 percent. Any arguments attempting to show Summit Carbon as an outlier when it comes to obtaining voluntary easements are inaccurate when the correct numbers are utilized. The Board did not use the number of outstanding easements as a factor to determine whether Summit Carbon should be



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vested with the right of eminent domain and includes this discussion to correct the factual record.

#### **4. Easement Modifications**

While the Board will grant Summit Carbon the right of eminent domain for the reasons stated above, the Board finds there are modifications needed to the easement language or to the requested eminent domain locations.

##### **Summit Carbon**

On cross-examination, Mr. Rorie testifies Summit Carbon is seeking the right to place up to a 24-inch diameter pipeline within the easement area for all Exhibit H parcels. HT, p. 2716. Mr. Rorie acknowledges, via a hypothetical, if a 6-inch pipe is initially installed, under the language of Exhibit H, Summit Carbon could come in later and put a 24-inch pipe in instead of the 6-inch pipe. *Id.* at 2718. Mr. Rorie testifies he is not sure if Summit Carbon is necessarily looking to do what was proposed in the hypothetical, but Mr. Rorie did assert some flexibility is needed to allow the pipe to be replaced with a larger pipe. *Id.*

In its initial brief, Summit Carbon states the Board should consider the individual parcels for proposed alternative routes, similar to the framework of other Board cases. Summit Carbon IB, p. 38. However, Summit Carbon asserts the Board has held it is not reasonable for a landowner to propose shifting the route off of their property and onto another, even if the other has already granted a voluntary easement. *Id.* at 39. Summit Carbon states its proposed Exhibit H language is substantively similar to other eminent domain easements in other proceedings. *Id.* at 40-41.

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In its reply brief, Summit Carbon states it is opposed to Farm Bureau's proposed modifications to the Exhibit H easement language as the proposed revisions are already covered by Iowa law. Summit Carbon RB, p. 71. Summit Carbon also states Farm Bureau proposes a revision to the Exhibit H easement language to state the easements are non-exclusive, but Summit Carbon states the first line of the Exhibit H easements begin with the term "non-exclusive." *Id.* Summit Carbon asserts the "not to exceed twenty-four inches (24") in diameter" language is appropriate and should not be modified. *Id.* Summit Carbon argues, "Amending each remaining Exhibit H would merely be busy work—not only for Summit [Carbon], but for Board staff, too." *Id.*

### **OCA**

In his direct testimony, Mr. Bents stated all landowners should receive indemnification language in their easement, not just voluntary landowners. OCA Bents Direct, p. 17.

In its initial brief, OCA recommends the Board require Summit Carbon "to offer to purchase voluntary easements from eminent domain landowners with the same terms and conditions already offered to the landowners, for the best prices that have already been offered by [Summit Carbon], at least until the county compensation commission meets to assess the damages for each taking." OCA IB, pp. 14-15 (citing *Dakota Access*, p. 155). OCA also reiterates that the Board should require Summit Carbon to provide the same indemnification language to eminent domain landowners that it offered to voluntary easement landowners. *Id.* at 15.

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**Jorde Landowners**

In the direct testimony of Kathy A. Carter, she testifies as to the issues she has with the voluntary easement language offered by Summit Carbon. Jorde Landowners Kathy A. Carter Direct, pp. 8-26; see Jorde Landowners Nancy Conrad Direct, pp. 7-25; Jorde Landowners Jeffery Colvin and Julie Colvin Direct, pp. 7-25. Ms. Carter testifies Summit Carbon's proposed voluntary easement language includes an indemnification clause, but only for events that occur within Summit Carbon's proposed easement. Jorde Landowners Kathy A. Carter Direct, p. 19; see Jorde Landowners Nancy Conrad Direct, p. 18; Jorde Landowners Jeffery Colvin and Julie Colvin Direct, p. 18.

Ms. Carter asserts this is an issue because Summit Carbon's voluntary easement references an "approximate route." Jorde Landowners Kathy A. Carter Direct, p. 23; see Jorde Landowners Nancy Conrad Direct, pp. 21-22; Jorde Landowners Jeffery Colvin and Julie Colvin Direct, p. 21. Ms. Carter states the language in the voluntary easement would provide Summit Carbon "a blanket easement anywhere" on her land. Jorde Landowners Kathy A. Carter Direct, p. 23; see Jorde Landowners Nancy Conrad Direct, p. 22; Jorde Landowners Jeffery Colvin and Julie Colvin Direct, p. 21.

In addition to language issues, Ms. Carter testifies Summit Carbon should be required to pay her "a royalty of some percentage of the annual profits and value generated by Summit [Carbon] and its investors." Jorde Landowners Kathy A. Carter Direct, pp. 24-25; see Jorde Landowners Nancy Conrad Direct, p. 23; Jorde Landowners Jeffery Colvin and Julie Colvin Direct, p. 23. Lastly, Ms. Carter recommends the Board place a time constraint on the term of the easement instead of

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allowing it to be a perpetual easement. Jorde Landowners Kathy A. Carter Direct, p. 26; see Jorde Landowners Nancy Conrad Direct, pp. 24-25; Jorde Landowners Jeffery Colvin and Julie Colvin Direct, p. 24.

In their initial brief, Jorde Landowners claim,

should the Board grant eminent domain against any landowner, then the Board is de facto approving and endorsing each term of the [voluntary] [e]asement [a]greement. If [the Board] grant[s] eminent domain powers, then Summit [Carbon] can force that onerous [voluntary] [e]asement [a]greement, as drafted . . . upon any such landowner and the landowner has no recourse in [c]ourt to modify those provisions.

Jorde Landowners IB, p. 36.

### **Farm Bureau**

In its initial brief, Farm Bureau states the Board

has authority to examine the proposed Exhibit H easement language to ensure the easement is only granted “to the extent necessary” for the project, to modify the proposed location of the pipeline on individual parcels and place any additional requirements and conditions on the grant of eminent domain that the Board approves.

Farm Bureau IB, p. 41. Farm Bureau states the Board should require Summit Carbon to continue to negotiate easements with landowners with the same compensation included in the last previous offer made by Summit Carbon, even after the Board reaches its decision. *Id.* at 43. Farm Bureau states Summit Carbon has indicated a willingness to take this approach. *Id.* at 42 (describing testimony from Mr. Powell and Mr. Rorie).

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As it relates to the language of the Exhibit H easement, Farm Bureau suggests several proposed revisions. *Id.* at 46-56. Farm Bureau states the language of Exhibit H should specifically reference the attachments included with the Exhibit H. *Id.* at 47. Farm Bureau states the “language should be modified to include in the appropriate places, references to an attachment that specifically shows or describes the location of the permanent easement, the temporary construction easement, and the access easement on the property.” *Id.* Farm Bureau also states the language in paragraph “i” should be changed from “and changing the route or routes” to “within the pipeline easement area.” *Id.* Farm Bureau states this change will make it clear Summit Carbon’s proposed hazardous liquid pipeline can only be relocated within the permanent easement area. *Id.*

Farm Bureau states the Exhibit H’s should be revised to include the exact size of the pipe, and not the blanket 24-inch maximum language. *Id.* at 48. Farm Bureau states this language is too broad, and

[e]xplicitly indicating the diameter of the pipeline to be installed in the easement language will limit the taking to only what is necessary and protect landowners’ rights by ensuring that new easement terms must be reached if any further construction may take place on account of altering the pipe’s diameter.

*Id.* at 48.

Farm Bureau recommends the Exhibit H language be revised to state the substance and commercial purpose of the proposed hazardous liquid pipeline. *Id.* at 49. Farm Bureau states the Board’s order could make this a condition of the permit, but placing the condition in the easement language would ensure Summit Carbon must abide by the amendment rules prescribed by the Board. *See id.* at 50.

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Farm Bureau requests the Board order language be included in the Exhibit H easement that clearly prohibits other uses not described in Summit Carbon's easement. *Id.* at 53. Farm Bureau states the easement language should specifically denote which activities are allowed within the easement and any non-delineated activities are beyond the scope of the easement. *Id.*

Farm Bureau states the Board should require the Exhibit H easement language to be modified to make it non-exclusive. *Id.* at 54. Specifically, Farm Bureau requests paragraph "ii" to read as "a temporary, *non-exclusive* easement in over, through across, under and along. . ." and paragraph "iv" should read "the right of unimpeded, *non-exclusive* ingress and egress in, to, through, on, over, under and across the Easement Areas. . . ." *Id.* at 55 (emphasis in original).

Farm Bureau recommends paragraph "i" be amended to remove "at will" in reference to the abandoning and removing pipelines. *Id.* Farm Bureau states the included phrase currently in the Exhibit H language could allow Summit Carbon to choose not to remove its facilities at all, in contradiction with Iowa Code § 479B.32. *Id.* Farm Bureau also states the terms "all" and "thereunder" should also be removed from paragraph "i." *Id.* at 56.

Lastly, Farm Bureau states paragraph "v" should be revised to state "however, such gates shall not impede the use of the Pipeline Easement Area for farming operations or other land use and the landowner shall be provided with a key or combination for any lock placed on any gate, except for gates securing above ground appurtenant facilities." *Id.* Farm Bureau states the language is necessary to ensure

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Summit Carbon does not interfere with the landowner's use of their property. Farm Bureau argues:

Without this addition to the easement language, there is no guarantee that Summit [Carbon] will properly accommodate landowners in accessing the pipeline easement area. Similarly without a provision in the easement to prevent such action, Summit [Carbon] or its contractors may lock out landowners to prevent their reasonable use of the property.

*Id.*

Farm Bureau also included a copy of its proposed revisions to the Exhibit H easement language with its initial brief. Farm Bureau IB Attachment A.

In its reply brief, Farm Bureau states its proposed revisions to the Exhibit H easement language

are to align the easement language with what Summit [Carbon] witnesses described as their intent, align the easement language with the applicable provisions of Iowa law, enable landowners to enforce the promises made by Summit [Carbon] into the future, mitigate burdens and damages from the proposed project, and to narrow the easement language to reflect only what is necessary for the project.

Farm Bureau RB, p. 10. Farm Bureau states it supports Summit Carbon's offer to include the indemnification language into the Exhibit H easements. *Id.* Farm Bureau included a revised Attachment A to its reply brief that has its proposed changes as well as the indemnification language. *Id. at 11.*

Farm Bureau states the argument made by IGAE as it relates to the Board's authority to only modify the width of the easement and the area used for pipeline equipment is incorrect. *Id.* Farm Bureau states the Board has consistently required modifications beyond just the width or equipment area. *Id. at 11-13* (discussing

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numerous cases where the Board has modified the easement beyond just the width and equipment area).

### **Iowans for a Growing Agricultural Economy**

In its initial brief, IGAE asserts Iowa Code § 479B.16 limits the Board's authority "to what is functionally needed to complete the project." IGAE IB, p. 5. IGAE states the necessity in Iowa Code § 479B.16 "is tied to the width of the pipeline right-of-way and the area of pipeline equipment. . . ." *Id.* at 5-6.

### **Wendell King and Diane King**

In their direct testimony, the Kings describe the issues they have with the proposed voluntary easement provided by Summit Carbon. The King the Kings Direct, pp. 6-19. The Kings' testimony identified substantially the same issues as testified to by Mr. Carter, who is a part of Jorde Landowners. *Compare id. with* Jorde Landowners Kathy A. Carter Direct, pp. 8-26.

### **Board Discussion**

The Board has reviewed the recommended revisions or inclusions into the Exhibit H easement language and will require Summit Carbon to revise the language as described in this section. Before beginning with the modifications, the Board finds it necessary to clarify a few points that were raised by intervenors. First, numerous intervening parties and their witnesses recommended the Board place financial payment conditions within Summit Carbon's Exhibit H easement language. *See, e.g.,* The Kings the Kings Direct, p. 18. The Board does not have the authority to determine compensation resulting from a taking. The authority to determine compensation is completed by a county compensation commission under the provisions of Iowa Code



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chapter 6B. Therefore, any recommendations on payments are beyond the Board's authority.

Second, several witnesses appear to misconstrue the Board's role as it relates to easements. See, e.g., *Jorde Landowners Kathy A. Carter Direct*, pp. 23-24. The Board is not involved in the private negotiations of voluntary easements. In this case, voluntary easements are between Summit Carbon and the landowner. The Board is, however, involved in determining what easement language will be in the context of parcels subject to Exhibit H. Iowa Code § 479B.16(1).

The Board also does not understand the perplexing argument raised by Jorde Landowners in their briefs that the Board's granting of eminent domain and the easement rights in Exhibit H also somehow bind the Exhibit H landowners to the terms of the voluntary easement agreement. The easement terms for Exhibit H landowners are found in Exhibit H.

As it relates to the modifications, the Board will require Summit Carbon to revise all the Exhibit H's to include the indemnification language found in its Hearing Exhibit 1. Summit Carbon Hearing Exhibit 1. The Board agrees with OCA that all landowners, not just landowners who signed voluntary easements, should be provided the indemnification language in their easements.

The Board will require Summit Carbon to revise all of the Exhibit H's to reflect the actual size of the pipe that is proposed for that section of the overall system. The Board understands Summit Carbon's desire to have flexibility to change the diameter of the pipe as it sees fit for its system, but the Board finds the potentially large change in diameter to be unnecessary for Summit Carbon's proposed project. Summit Carbon's

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own witness acknowledges the wording of the proposed Exhibit H language could allow Summit Carbon to increase the size from 6- to 24-inch pipe as it sees fit. The Board finds this to be too burdensome on the Exhibit H landowner and will require the revision of the Exhibit H's to match the actual proposed pipe diameter.

Furthermore, as described earlier in the order, one of the conditions the Board will place on Summit Carbon's permit is to limit the amount of modification that can occur without requiring an amendment, absent a triggering event in 199 IAC 13.9(1). Since the Board is limiting what Summit Carbon will be allowed to modify, absent Board approval, the Board finds this supports revising the language in Exhibit H to reflect the actual diameter of the proposed pipe to be utilized.

While not a modification to the Exhibit H language, the Board will require Summit Carbon to work with every landowner or tenant to ensure that each one is able to reach a portion of their land that would become landlocked during Summit Carbon's construction. Summit Carbon will be required to work with landowners or tenants as it relates to trench plugs to allow access to the other side of the easement area that is temporarily landlocked due to Summit Carbon's construction, if the landowner or tenant needs access to the other side of the construction easement for farming purposes.

The Board will not require Summit Carbon to modify the Exhibit H easement language as proposed by Farm Bureau in its attachment to its reply brief, unless otherwise ordered by this section. The Board finds most of these included revisions are already governed by Iowa law.

The Board will require Summit Carbon to offer to purchase voluntary easements from eminent domain landowners with the same terms and conditions previously offered

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to the landowners, for the last best prices that have already been offered by Summit Carbon, at least until the county compensation commission meets to assess the damages for each taking, as requested by OCA. The Board finds this condition will ensure Summit Carbon continues to work with landowners, who have testified to that desire before the Board, prior to commencing the compensation commission.

The Board will require Summit Carbon to refile the Exhibit H's with the Board for its review of the above revisions. The Board does not find this to be "busy work," as suggested by Summit Carbon, given this language will control under an eminent domain proceeding involving landowners. In addition to the above easement modifications, the Board will require Summit Carbon to modify the route on specific parcels as described below. Furthermore, the Board will require Summit Carbon to correct the deficiencies identified in H-CK-063 and H-WR-124 as well. In H-CK-063, County Highway C46 needs to be revised to C66 and the label for County Highway M25 should be removed. In H-WR-124, the incorrect parcel drawing is included in the Exhibit H.

Lastly, the Board will require Summit Carbon to continue to file withdrawals of Exhibit H parcels as it obtains voluntary easements after the issuance of this order. The Board will require Summit Carbon to submit a report after it has completed all condemnation proceedings, identifying which parcels utilized the county condemnation process. The Board finds these requirements will ensure Summit Carbon continues to negotiate in good faith with landowners through the entirety of the proceeding, including through the condemnation process.

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## **5. Route Modifications**

As discussed earlier in this order, the Board has approved the proposed route submitted by Summit Carbon subject to the modifications stated in this section. The Board will address these parcels by county and will determine whether modifications to a specific parcel will be made. As the Board has consistently determined, the Board finds requesting to have the route moved off one landowner's property onto another, regardless of whether the other landowner has signed a voluntary easement, to be an unreasonable request. While this is the general rule, the Board may, depending on the facts, order modifications that impact the route on non-Exhibit H parcels.

In its reply brief, Summit Carbon states:

The Board should not order any further route changes as design of the route 'on the fly,' without full study of all of the terrain features, impacts, and other impacted parcels, [which] risks significant unintended consequences. The Board should instead reiterate to landowners the importance of working such issues out in advance, when it can be done in a considered way.

Summit Carbon RB, pp. 60-61. While the Board agrees it is important for landowners to work with Summit Carbon on a route, prior to reaching this stage of the proceeding, the Board disagrees with Summit Carbon's assertions. Summit Carbon cannot argue the Board's authority for siting usurps a county's, but then argue the Board cannot modify the route. Summit Carbon cannot have its cake and eat it, too. While the number of modifications made at this stage may be more limited, nonetheless, the Board can still order the modifications.

For ease of use, the Board will be referring only to the Exhibit H number of a parcel in the order. While the Board is proposing these modifications, as stated above,

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the Board is requiring Summit Carbon to still work with landowners on a voluntary easement until the compensation commission commences. This means, as part of the good faith negotiations, Summit Carbon and the landowners may agree to an alternative route different than that approved by the Board.

The Board's decision is binding for parcels that proceed to condemnation. The Board finds it must make a decision as it relates to the parcels, but, according to the evidence, a large number of landowners are waiting for the Board to make a decision before entering into a voluntary easement. Summit Carbon Rorie Exhibit H Staff Report Exhibit 2. The Board understands there may be a limited ability for Summit Carbon to accommodate a late-stage reroute, but the Board is making this statement to ensure the playing field is as level as possible for these landowners after the Board's decision.

**a. Cerro Gordo County**

**Henry J. Kalke and Marlene J. Kalke (H-CE-001 and H-CE-002)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown in H-CE-001 and H-CE-002.

**James D. Fetrow Revocable Living Trust and Margaret A. Fetrow Revocable Living Trust. (H-CE-003, H-CE-004, and H-CE-005)**

In their direct testimony, James and Margaret Fetrow testify to an alternative route that would align Summit Carbon's proposed hazardous liquid pipeline along the northern boundaries of H-CE-004 and H-CE-005 before turning south and running along the eastern boundaries of H-CE-004 and H-CE-003, instead of routing diagonally across the three parcels. Jorde Landowners James and Margaret Fetrow Direct, p. 40; Jorde Landowners James and Margaret Fetrow Direct Attachment No. 22.

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On cross-examination, Mr. Fetrow testifies his proposed alternative route would impact more county tile compared to Summit Carbon's proposed route, which would impact more of his private tile. HT, pp. 6229-30. Furthermore, Mr. Fetrow testifies there is a waterway along the east side of H-CE-003 and H-CE-004. *Id.* at 6231. Mr. Fetrow states even though there is more impact to county drainage tile lines and a waterway, he would still support his proposed alternative route because it would be on the edge of his land and easier to repair, in his opinion, compared to extending through the middle of his property. *Id.*

On cross-examination, Mr. Schovanec testifies he had not seen the proposed route modification and could not testify about the ability to accommodate the request. *Id.* at 2317.

The Board has reviewed the evidence and will not require Summit Carbon to modify its route as requested by James and Margaret Fetrow. The Board finds utilizing the alternative route would impact more of James and Margaret Fetrow's property, while also being located in a waterway. The route proposed by Summit Carbon will impact less property and limit the crossing of the waterway. The Board will approve the route shown by Summit Carbon in H-CE-003, H-CE-004, and H-CE-005.

**Lula Koethe Broadacre Farm, LLC (H-CE-006, H-CE-047, and H-CE-048)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CE-006, H-CE-047, and H-CE-048.

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**Brenda R. Miller (H-CE-010)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CE-010.

**Marlyn R. Carlson (H-CE-011)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CE-011.

**Mary J. Woodward Trust dated July 21, 2009, et al. (H-CE-016 and H-CE-045)**

In direct testimony, Craig Woodward provides a citation to an alternative route as an attachment to the testimony; however, there was no attachment included with his direct testimony showing his proposed alternative route. Jorde Landowners Craig Woodward Direct, p. 35. On cross-examination, Mr. Woodward testifies he does not have an alternative route. HT, p. 5716. Mr. Woodward states he would not want the proposed hazardous liquid pipeline closer to another property he owns. *Id.*

In their initial brief, Jorde Landowners provide a proposed alternative route. Jorde Landowners IB Vol. 3, p. 3.

Based upon Mr. Woodward's testimony and the evidence in the record, the Board will approve Summit Carbon's route as shown in H-CE-016 and H-CE-045.

**Meghan M. Kennedy (H-CE-024, H-CE-025, H-CE-026, and H-CE-027)**

In the direct testimony of Meghan Kennedy, she proposes an alternative route that would stay north of her property and not cross onto her property. Jorde Landowners Kennedy Direct, p. 42; Jorde Landowners Meghan Kennedy Direct Attachment No. 22. Ms. Kennedy questions why Summit Carbon would need to enter her property if it already had an easement with the neighbor to the north. Jorde

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Landowners Meghan Kennedy Direct, p. 42. Ms. Kennedy testifies if Summit Carbon's proposed route does enter onto her parcel, Summit Carbon should be required to enter at the furthest point possible from her residence on the property. *Id.*

On cross-examination, Ms. Kennedy testifies she never spoke with Summit Carbon about changing its proposed route in relation to her parcel. HT, p. 6340.

On cross-examination, Mr. Schovanec testifies Summit Carbon could explore placing more of the pipe on the property of the neighbor to the north. *Id.* at 2328.

Mr. Schovanec testifies about a situation where there is an easement for a corner-clipped parcel, the landowner who signed the easement may have only signed based on the corner clip and did not want additional pipe on the property. *Id.*

The Board has reviewed the evidence and will approve the route shown by Summit Carbon for H-CE-026 and H-CE-027; however, the Board will deny Summit Carbon the right of eminent domain over H-CE-024 and will require revision to H-CE-025 to have the entry point onto Ms. Kennedy's property on this parcel. The Board is requiring this modification to reduce the burden on Ms. Kennedy's property, particularly as it relates to the dwelling located on H-CE-024. Summit Carbon will be required to file a revised H-CE-025 depicting the required modification. The Board will not require the entirety of the route to be moved off of Ms. Kennedy's property, but finds this minimal modification will address the concerns raised by her.

**Ramaekers Farms, L.C. (H-CE-031)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CE-031.



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**Steven Greiner, et al. (H-CE-036)**

In comments filed by Joan Jennings and Steven Greiner, neither provide an alternative route; however, they do provide a map depicting the location of their drainage tile lines and note there is an electric transmission line and wind turbine easement on the property. Joan Jennings and Steven Greiner Exhibit H Landowner Comments, p. 1 (filed August 16, 2023). In their comments, Ms. Jennings and Mr. Greiner state Summit Carbon's proposed route would cross 14 drainage tile lines, which would be difficult to repair. *Id.* at 2.

The Board has reviewed the evidence and will approve the route as shown in H-CE-036 without any modifications.

**Julie Caspers and Donald D. Caspers (H-CE-043 and H-CE-046)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CE-043 and H-CE-046.

**b. Cherokee County**

**Gail R. Todd Revocable Trust and Nancy A. Todd Revocable Trust (H-CK-001, H-CK-002, H-CK-061, and H-CK-062)**

In their direct testimony, Gail Todd and Nancy Todd state Summit Carbon should contact their neighbor to the west and locate its route there. Jorde Landowners Gail Todd and Nancy Todd Direct, p. 4.

The Board has reviewed the evidence and will approve the route shown by Summit Carbon in H-CK-001, H-CK-002, H-CK-061, and H-CK-062.

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**Steven Todd (H-CK-004, H-CK-005, and H-CK-060)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CK-004, H-CK-005, and H-CK-060.

**Elvera Todd (H-CK-006 and H-CK-054)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CK-006 and H-CK-054.

**Clarence V. Todd and Bernice M. Todd (H-CK-007)**

In comments filed by Bernice Todd, Ms. Todd states she does not want the proposed hazardous liquid pipeline to run across the property and she does not have an alternative route. Bernice Todd Exhibit H Landowner Comment, p. 2 (filed Aug. 10, 2023).

The Board has reviewed the route proposed by Summit Carbon and finds it to be reasonable and will approve the route as shown in H-CK-007.

**Clarence Todd and Marvin Todd (H-CK-008 and H-CK-055)**

In comments filed by Marvin Todd, he states the Board should not approve the route across the property. Marvin Todd Exhibit H Landowner Comment, p. 2 (filed Aug. 10, 2023). Mr. Todd states Summit Carbon's proposed route bisects the property, which would create issues with accessing the eastern half of the property. *Id.*

The Board will approve the route as shown in H-CK-008 and H-CK-055. The Board notes it is requiring Summit Carbon to work with all landowners or tenants about the installation of trench plugs to allow a farmer to access landlocked land for farming

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purposes, which should address Mr. Todd's concern about accessing the eastern half of his property.

**Elvera Todd and Steven Todd (H-CK-009)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CK-009.

**NWJ Farms, LLP (H-CK-010)**

In the direct testimony of Nels W. Johnson and Joyce C. Johnson, they recommend moving Summit Carbon's proposed hazardous liquid pipeline off of their property to the north and east. Jorde Landowners Nels W. Johnson and Joyce C. Johnson Direct, p. 4. They testify their proposed alternative route will bypass their property "and save money at the same time." *Id.* The testimony of Mr. Johnson and Ms. Johnson asserts if the route must be on their land, then the alternative route shown in their Direct Attachment No. 2 would be their preference. *Id.*; Jorde Landowners Nels W. Johnson and Joyce C. Johnson Direct Attachment No. 2.

On cross-examination, testimony was provided that states the property owners to the north and east of the property of Mr. Johnson and Ms. Johnson have signed voluntary easements. HT, pp. 6986-87.

The Board has reviewed the evidence and will approve the route as shown in H-CK-010. The Board finds this route to be reasonable in light of the record. The only alternative proposed by Mr. Johnson and Ms. Johnson was to have the route moved off of their property and onto the property of another. While the properties to the north and east did sign voluntary easements, the Board will not require Summit Carbon to reroute as requested in the testimony.

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**Donald O. Johannsen Trust (H-CK-012)**

In his direct testimony, Donald O. Johannsen testifies to an alternative route that would stay north of his property and head east, crossing N Avenue, before turning south and passing 500 feet behind the residence located to the east of his property before reconnecting with Summit Carbon's route. Jorde Landowners Donald O. Johannsen Direct, p. 43; Jorde Landowners Donald O. Johannsen Direct Attachment No. 22. Mr. Johannsen's proposed route would remove Summit Carbon's proposed hazardous liquid pipeline from his property and place it on property owned by a voluntary easement grantor. Jorde Landowners Donald O. Johannsen Direct, p. 43. Mr. Johannsen testifies his proposal for the inclusion of sharp turns is not new or unique to Summit Carbon's route. *Id.* at 44. Mr. Johannsen testifies he would expect the decrease in pressure due to his included bends to be negligible. *Id.* Mr. Johannsen also testifies his neighbor's well and water line are located on his property. Jorde Landowners Donald O. Johannsen Direct Attachment No. 26.

The Board has reviewed the evidence and will require Summit Carbon to modify the eastern entrance onto H-CK-012 by shifting it to the south by 100 feet. The Board finds this route and modification to be reasonable in light of the record. Moving the route as proposed by Mr. Johannsen would have moved the route closer to Mr. Johannsen's neighbor's well, which he indicated was an issue he had with Summit Carbon's proposed route. See HT, p. 5669. The Board will require Summit Carbon to file a revised exhibit H to reflect the modification to the eastern entrance point.

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**Richard L. Davis and Cynthia J. Davis (H-CK-014, H-CK-015, H-CK-056, and H-CK-057)**

During the direct testimony of Richard Davis, Mr. Davis indicates he plans to potentially build a house on H-CK-014. HT, pp. 916-17. Mr. Davis proposes an alternative route that would not cross H-CK-014, but would instead enter his property on H-CK-015. *Id.* at 916. Furthermore, Mr. Davis testifies Summit Carbon plans to place a shutoff valve across the road from where he potentially would construct a home. *Id.*

The Board has reviewed the evidence and will require Summit Carbon to move its route further to the north and east on H-CK-014. The Board finds moving the route further north and out of the driveway will reduce the impact to the property and Mr. Davis's future plans. Summit Carbon should move the route as far north as possible on H-CK-014. The Board will require Summit Carbon to file revised exhibit H's reflecting this change.

**Kohles Family Farms, LLC (H-CK-024 and H-CK-025)**

On cross-examination, Ms. Kohles testifies about the possibility of locating the route along the fence line. HT, pp. 2726-28.

During Ms. Kohles' cross-examination of Mr. Rorie, Ms. Kohles identifies numerous contacts between her and Summit Carbon, as well as Summit Carbon's responses. *Id.* at 2725-42.

In Jorde Landowners' initial brief, Ms. Kohles reemphasizes routing along the property line. Jorde Landowners IB Vol. 17, p. 17.

The Board has reviewed the evidence and will approve the route shown in H-CK-024 and H-CK-025 without modification.

**Bonnie Wallace and Marilyn Godose (H-CK-031, H-CK-032, and H-CK-053)**

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In the direct testimony of Mr. Wallace, he recommends an alternative route which would stay north of his property, cross R Avenue, before turning south and reconnecting with Summit Carbon's route. Estate of Bonnie Wallace Wallace Direct, p. 2; Estate of Bonnie Wallace Wallace Direct Exhibit Alternative Route.

On cross-examination, Mr. Wallace testifies he requested the alternative route because it crosses the land of people who have already signed a voluntary easement with Summit Carbon. HT, pp. 4218-19.

The Board has reviewed the evidence and finds the route proposed by Summit Carbon in H-CK-031, H-CK-032, and H-CK-053 to be reasonable, and the Board will not require route modifications.

**Craig Beyer and Patricia Beyer (H-CK-034, H-CK-045, H-CK-059, and H-CK-063)**

In the direct testimony of Craig Beyer and Patricia Beyer, they recommend an alternative route that would locate Summit Carbon's proposed hazardous liquid pipeline on the northern boundary of H-CK-059 and H-CK-063 before it crosses the highway onto property where Summit Carbon has already obtained an easement. Jorde Landowners Craig Beyer and Patricia Beyer Direct, pp. 42-43.

On cross-examination, Ms. Beyer testifies her alternative route would add 1,300 feet of pipe, which she asserts Summit Carbon said would cost too much. HT, p. 5613. Ms. Beyer testifies moving the route along the northern fence line would reduce the impact to her property. *Id.* at 5614.

On cross-examination, Mr. Schovanec testifies the alternative route proposed by Mr. Beyer and Ms. Beyer would move the route off of their property, which is a request Summit Carbon generally does not accommodate. *Id.* at 2315.

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The Board has reviewed the evidence and will approve the route as shown in H-CK-034, H-CK-045, H-CK-05, and H-CK-063 without modification. The Board finds this route to be reasonable in light of the record.

**Graham Ag, LLC (H-CK-036 and H-CK-058)**

In the direct testimony of Dennis Graham *et al.*, Mr. Graham testifies to an alternative route that would move the pipeline further to the northeast of his property and off of H-CK-036 entirely. Jorde Landowners Dennis Graham *et al.* Direct, p. 49; Jorde Landowners Dennis Graham *et al.* Direct Attachment 22, Exhibit 8. Mr. Graham testifies his proposed alternative route would only pass through pasture ground and would reduce impacts to tiling and terraces. Jorde Landowners Dennis Graham *et al.* Direct, p. 49.

On cross-examination, Mr. Graham testifies Summit Carbon indicated it would not move the route from his land, relocate it to his proposed alternative route, or bore under the hill, which is virgin prairie, to the crop land on the top of the hill. HT, p. 5819.

The Board has reviewed the evidence and will approve the route as shown in H-CK-036 and H-CK-058. However, the Board will require Summit Carbon to bore under the virgin prairie on the parcels. Summit Carbon will be required to submit revised exhibits reflecting this requirement.

**John T. Carey *et al.* (H-CK-042, H-CK-044, and H-CK-051)**

In comments submitted by John Carey *et al.*, they did not propose an alternative route. John Carey *et al.* Exhibit H Landowner Comments, p. 2 (filed Aug. 14, 2023). Mr. Carey states he has been working with Summit Carbon on modifications to the proposed easement, but negotiations have not been successful. *Id.* at 5. The

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comments submitted cover property owned by John Carey *et al.* and property owned by John Carey individually.

The Board has reviewed the evidence and will approve the route as shown in H-CK-042 and H-CK-033 without modifications. The Board finds the route to be reasonable based upon the record. The Board will require Summit Carbon to modify the route on H-CK-051 by paralleling the western boundary a longer distance before connecting with the exit shown in the exhibit. The Board finds this modification will reduce the impact to the property. Summit Carbon will be required to file revised exhibits reflecting the route modification.

**Nancy Hier *et al.* (H-CK-052)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CK-052.

**c. Chickasaw County**

**Agvantage FS, Inc. (H-CS-002)**

No additional evidence was provided as it relates to this parcel. The Board will require Summit Carbon to move the route approximately 50 feet to the north to avoid impacting the business on this parcel shown in H-CS-002. The Board will also require Summit Carbon to locate its temporary construction easement on the north side of the permanent easement. Summit Carbon will be required to submit revised petition exhibits reflecting this modification. The Board finds this modification to be reasonable based upon the record.



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**Mau Farm, Inc. (H-CS-007 and H-CS-009)**

In the direct testimony of Barbara Harre, on behalf of Mau Farm, Inc., she testifies she does not want the proposed hazardous liquid pipeline on her property.

Jorde Landowners Barbara Harre Direct, p. 42.

On cross-examination, Ms. Harre testifies about locating the route on willing neighbor's parcels. HT, p. 4333. Ms. Harre testifies Summit Carbon initially had the route going around her parcels; however, it was later changed to the current proposed route, which is located on her parcel. *Id.* at 4334. Ms. Harre testifies following the parcels along the north and east boundaries of her parcels would follow an existing easement for a natural gas pipeline that supplies the nearby ethanol plant. *Id.* at 4334-35.

The Board has reviewed the evidence and will approve the route as shown in H-CS-007 and H-CS-009. The Board finds this route to be reasonable based upon the record.

**Sharon Kellogg and Bruce Kellogg (H-CS-010)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CS-010.

**David Leichtman and Jean M. Leichtman (H-CS-020)**

No additional evidence was provided as it relates to this parcel. The Board will require Summit Carbon to move the eastern entrance point on this parcel approximately 50 feet to the north to accommodate the modification required on H-CS-002 in order to ensure Summit Carbon can cross the roads at approximately 90 degrees. Upon entering the parcel from the east and heading west, Summit Carbon's route should run

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on a diagonal to rejoin the route proposed by Summit Carbon. Summit Carbon will be required to provide revised exhibits reflecting this modification. The Board finds this modification to be reasonable based upon the record.

**d. Clay County**

**Natalie F. Salton *et al.* (H-CL-001, H-CL-042, and H-CL-097)**

In testimony provided at hearing, Marcia Langner, who appeared for parcels at issue, states there was no alternative route on the properties and she did not want Summit Carbon's proposed hazardous liquid pipeline on the parcels at all. HT, p. 128-29.

The Board has reviewed the evidence and will approve the route shown in H-CL-001, H-CL-042, and H-CL-097. The Board finds the route to be reasonable based upon the evidence.

**Barbara J. Schomaker (H-CL-002 and H-CL-130)**

In the direct testimony of Barbara Schomaker and Casey Schomaker, they provide a proposed alternative route. Jorde Landowners Barbara Schomaker and Casey Schomaker Direct, p. 46; Jorde Landowners Barbara Schomaker and Casey Schomaker Direct Attachment No. 22.

On cross-examination, Casey Schomaker testifies about moving the route further to the north to avoid going through the middle of the terraces. HT, pp. 5253-54.

Mr. Schomaker testifies the alternative route would be closer to the gravel road on the north side of the parcels while also avoiding being close to the house located on the parcels. *Id.* at 5272.

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The Board has reviewed the evidence and will approve the route as shown in H-CL-002 and H-CL-130.

**Marcia T. Baragary (H-CL-003 and H-CL-013)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-003 and H-CL-013.

**Clayton J. Christensen (H-CL-004)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-004.

**Phyllis L. Schott Revocable Family Trust (H-CL-008)**

In comments submitted by Sharon Weishaar, Bonnie L. Schott, and Mary Jo Skellenger, they recommend an alternative route through farmland, which is in CRP, wetland, subsided land, or ditches generally. Sharon Weishaar, Bonnie L. Schott, and Mary Jo Skellenger Exhibit H Landowner Comment, p. 2 (filed Aug. 16, 2023). They also state the route should not go through prime farmland. *Id.*

The Board has reviewed the evidence and will approve the route shown in H-CL-008. The Board finds the route reasonable based upon the record.

**Norman L. Johnson and Laura J. Johnson (H-CL-010 and H-CL-069)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-010 and H-CL-069.

**Aaron E. Salton *et al.* (H-CL-012 and H-CL-072)**

In testimony provided at hearing, Marcia Langner, who appeared for parcels at issue, states there was no alternative route on the properties and she did not want

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Summit Carbon's proposed hazardous liquid pipeline on the parcels at all. HT, pp. 128-29.

The Board has reviewed the evidence and will approve the route shown in H-CL-012 and H-CL-072. The Board finds the route to be reasonable based upon the evidence.

**Michael L. White and Candace J. White (H-CL-017, H-CL-018, H-CL-073, H-CL-077, and H-CL-088)**

In the direct testimony of Michael White and Candace White, they testify to an alternative route for Summit Carbon's proposed hazardous liquid pipeline across their parcels, referenced as shown in an attachment to their testimony. Jorde Landowners Michael White and Candace White Direct, p. 39. However, the attachment was not included in their testimony, nor admitted into the record as a stand-alone exhibit.

In its reply brief, Summit Carbon states it will "shift the route to the west at the southern boundary of the property and then travel northeast to join the current route past the residence." Summit Carbon RB, p. 59. Summit Carbon states this modification would move the route approximately 100 feet further away from the nearby residence.

*Id.*

The Board has reviewed the evidence and will require Summit Carbon to move the route to the west on H-CL-017 so the entirety of the pipeline easement is located on this parcel. The Board will deny Summit Carbon the right of eminent domain on H-CL-018. The Board finds this corner clip to be unreasonable. The Board will also require Summit Carbon to modify the route on H-CL-088 as described in its reply brief. The Board will approve the remainder of the route shown in H-CL-073 and H-CL-077 as the Board finds this route to be reasonable based upon the record. The Board notes

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Summit Carbon is only requesting to use a temporary easement on a small portion of H-CL-077. The Board finds the temporary nature of this corner clip to be reasonable given the temporary nature of the easement that will be on H-CL-077.

**Dennis L. King (H-CL-023 and H-CL-024)**

In the direct testimony of Dennis King and Kerry King, they state they do not want the proposed hazardous liquid pipeline on their property and they do not have an alternative route. Jorde Landowners Dennis King and Kerry King Direct, p. 41.

On cross-examination, Mr. King testifies he “could not fathom anywhere on [his] farm” as a location for Summit Carbon’s proposed hazardous liquid pipeline. HT, p. 4385. Mr. King states even moving across the fence line to a neighbor would be insufficient as it would be moving the route a short distance. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-CL-023 and H-CL-024. The Board finds the route reasonable based upon the record.

**Gadsby Family Farm Company, LLC (H-CL-025, H-CL-026, H-CL-027, H-CL-092, and H-CL-124)**

In the direct testimony of Winston Gadsby *et al.*, he recommends an alternative route where Summit Carbon’s route would enter further north on H-CL-092, run along the northern boundary line of this parcel, and continue to a parcel west of H-CL-092 before turning south, where the route would follow the western property boundary except for a bump-out west of H-CL-026, a parcel also owned by Mr. Winston. Jorde Landowners Winston Gadsby *et al.* Direct, pp. 45-48; Jorde Landowners Winston Gadsby *et al.* Direct Attachment No. 25.

On cross-examination, Mr. Winston testifies his proposed alternative route would reduce the impact on the two northern parcels, which have good corn suitability ratings.

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HT, p. 6384. Mr. Winston also testifies the bump-out would remain on property he owns, but would avoid the creek. *Id.* at 6391. Furthermore, Mr. Winston testifies the temporary construction easement is on the west side of the permanent easement, but it should be on the east side of the permanent easement, with the permanent easement along the property line. *Id.* at 6392. Mr. Winston asserts under Summit Carbon's current configuration, there would be a distance of 50 feet and 150 feet between the temporary easement and the property line, which would be wasted. *Id.* Mr. Winston testifies he never spoke to Summit Carbon about his proposed route. *Id.* at 6384.

The Board has reviewed the evidence and will approve the route as shown in H-CL-025, H-CL-026, H-CL-027, H-CL-092, and H-CL-124. However, the Board will require Summit Carbon to revise H-CL-027 and H-CL-124 to have the temporary construction easement on the eastern side of the permanent easement, and Summit Carbon will be required to revise these exhibits to have the western edge of the permanent easement on the western boundary lines of these parcels. The Board finds the route and modifications reasonable based upon the record.

**Dennis L. King and Kerry L. King (H-CL-028 and H-CL-029)**

In the direct testimony of Dennis King and Kerry King, they state they do not want Summit Carbon's proposed hazardous liquid pipeline on their property and do not have a proposed alternative route. *Jorde Landowners Dennis King and Kerry King Direct*, p. 41.

On cross-examination, Mr. King testifies about recently installed new drainage tile and county drainage tile mains, which he stated were installed in 1916. HT, pp. 4375-76. As noted previously, Mr. King testifies on cross-examination he "could not

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fathom anywhere on [his] farm” as a location for Summit Carbon’s proposed system and even moving across the fence line to a neighbor would be insufficient as it would be moving the route a short distance. HT, p. 4385.

The Board has reviewed the evidence and will approve the route shown in H-CL-028 and H-CL-029. The Board will require Summit Carbon to revise H-CL-028 and H-CL-029 to have the temporary construction easement on the eastern side of the permanent easement, and Summit Carbon will be required to revise these exhibits to have the western edge of the permanent easement on the western boundary lines of these parcels. The Board finds the route and modifications reasonable based upon the record.

**Cecil King, Ltd. (H-CL-030, H-CL-031, and H-CL-032)**

In comments filed by Larry King, he did not provide a recommended alternative route. Larry King Exhibit H Landowner Comments (filed Aug. 11, 2023). Mr. King’s comments indicate he is part of Cecil King, Ltd. See *id.* The Board will approve the route as shown by Summit Carbon in H-CL-030, H-CL-031, and H-CL-032. However, the Board will require Summit Carbon to revise H-CL-030 to account for the realignment required on H-CL-029. The Board will not require any additional modifications to the proposed route for the remainder of the parcels. The Board finds the route and the modification to be reasonable based upon the record.

**Margaret A. Thomson (H-CL-033)**

In the direct testimony of Margaret Thomson, she recommends the route be horizontal, rather than the angle that is proposed by Summit Carbon. Jorde

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Landowners Margaret Thomson Direct, p. 39. Ms. Thomson states this would reduce the impact to her drainage tile. *Id.*

On cross-examination, Ms. Thomson questions why the route runs on a diagonal across her property. HT, p. 5641. Ms. Thomson also states that if the diagonal was reduced slightly, the modification would move the route farther from her house, which is southeast of the route. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-CL-033. The Board finds the route to be reasonable based upon the record.

**Patrick B. Brown and Mary Jane Hickey (H-CL-035 and H-CL-070)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-035 and H-CL-070. However, the Board required modifications to H-CL-017 and H-CL-124, which are located to the north of these parcels. The Board will require Summit Carbon to file revised exhibits that move the temporary construction easement to the eastern side of the permanent easement and move the western boundary of the permanent easement to the western boundaries of parcels H-CL-035 and H-CL-070. The Board finds the route and modifications to be reasonable based upon the record.

**Wayne D. King (H-CL-036)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-036. However, the Board is requiring modifications to H-CL-094 and H-CL-028, which impacts the route on H-CL-036. The Board will require Summit Carbon to revise H-CL-094 to have the temporary construction easement on the eastern side of the permanent easement, and Summit



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Carbon will be required to revise these exhibits to have the western edge of the permanent easement on the western boundary lines of these parcels. The Board finds the route and modifications reasonable based upon the record.

**Lois A. Wunschel Revocable Trust (H-CL-037, H-CL-038, and H-CL-039)**

No additional evidence was provided as it relates to these parcels. The Board will require Summit Carbon to modify the route on H-CL-037 and H-CL-038 to move the permanent easement to the western boundary and the temporary easement to the east side of the permanent easement. Given this modification, Summit Carbon may need to adjust the route on H-CL-039 as well. Summit Carbon will be required to file revised exhibits implementing this routing modification. The Board finds the route and modifications reasonable based upon the record.

**Natalie F. Salton (H-CL-043)**

In testimony provided at hearing, Marcia Langner, who appeared for the parcel at issue, states there is no alternative route across the property and she does not want Summit Carbon's proposed hazardous liquid pipeline on the parcel at all. HT, p. 128-29.

The Board has reviewed the evidence and will approve the route shown in H-CL-043. The Board finds the route to be reasonable based upon the record.

**Arlan J. Schomaker Residuary Trust (H-CL-044, H-CL-100, and H-CL-111)**

In the direct testimony of Barbara Schomaker and Casey Schomaker, they provide a proposed alternative route. Jorde Landowners Barbara Schomaker and Casey Schomaker Direct, p. 42; Jorde Landowners Barbara Schomaker and Casey Schomaker Direct Attachment No. 22.

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On cross-examination, Casey Schomaker testifies about moving the route further to the north to avoid going through the middle of the terraces. HT, pp. 5253-54.

Mr. Schomaker testifies the alternative route would be closer to the gravel road on the north side of the parcels while also avoiding being close to the house located on the parcels. *Id.* at 5272.

The Board has reviewed the evidence and will approve the route as shown in H- H-CL-044, H-CL-100, and H-CL-111. The Board finds this route to be reasonable based upon the record.

**John L. Hargens (H-CL-045 and H-CL-080)**

In the direct testimony of John Hargens and Karen Hargens, they state there is no place on their property where they would recommend Summit Carbon's route be located. Jorde Landowners John Hargens and Karen Hargens Direct, p. 39.

On cross-examination, Mr. Hargens testifies he never proposed an alternative route to Summit Carbon and moving the route to the north would place it closer to his neighbors. HT, p. 5542.

The Board has reviewed the evidence and will approve the route shown in H-CL-035 and H-CL-080. The Board finds this route to be reasonable based upon the record.

**Fitch Iowa Limited Partnership (H-CL-046, H-CL-047, and H-CL-062)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-046, H-CL-047, and H-CL-062.

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**Dianne Carol Binder (H-CL-048)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-048.

**Larry King (H-CL-051 and H-CL-110)**

In comments filed by Larry King, he did not provide a recommended alternative route. Larry King Exhibit H Landowner Comments (filed Aug. 11, 2023).

The Board has reviewed the evidence and will approve the route shown in H-CL-051 and H-CL-110. The Board finds this route to be reasonable based upon the record.

**West Bend Service Corp. et al. (H-CL-052)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-052.

**Jenifer Jane Berge (H-CL-053 and H-CL-078)**

In the direct testimony of Jenifer Berge and Paul Berge, they recommend having Summit Carbon's route paralleling County Road B53, which is half a mile north of the parcels. Jorde Landowners Jenifer Berge and Paul Berge Direct, p. 41.

On cross-examination, Mr. Berge testifies they did not speak to Summit Carbon about alternative routes. HT, p. 5570. Mr. Berge testifies Summit Carbon's route leaves a strip of land on the south side of the easement. *Id.* Mr. Berge testifies he is unsure whether the area to the south of the easement would be large enough to fit farm equipment. *Id.* at 5571.

In its reply brief, Summit Carbon states it will shift the route closer to the southern boundary of these parcels, contingent upon Summit Carbon obtaining an amendment

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from the landowners to the east who signed a voluntary easement agreement and will be impacted by this route modification. Summit Carbon RB, p. 59.

The Board has reviewed the route and will require Summit Carbon to modify its route shown in H-CL-053 and H-CL-078 to shift the route to the south. The Board finds this modification reasonable based upon the record.

**Eben S. Salton *et al.* (H-CL-055)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-055.

**Wendell King and Diane King (H-CL-058 and H-CL-090)**

In the direct testimony of the Kings, they state they have no proposed alternative route. The Kings the Kings Direct, p. 30. The Kings testify Summit Carbon verbally agreed to straighten the route on their property during a conversation in April. *Id.* The Kings also state Summit Carbon should avoid the rural water pipeline that crosses their property. *Id.*

On cross-examination, Mr. King testifies he does not have a rural water pipeline located on his property. HT, p. 3924. Mr. King further testifies to the desire for the route to run north to south on the parcels to avoid impacting drainage tile lines. *Id.* at 3928-29.

The Board has reviewed the evidence and will approve the route shown in H-CL-058 and H-CL-090. The route shown in these exhibits depicts a north-south route as requested by Mr. King. The Board therefore finds the route to be reasonable based upon the record.

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**Muriel M. Lien and David A. Lien (H-CL-059)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-059.

**Ray V. Bailey Trust (H-CL-060 and H-CL-093)**

No additional evidence was provided as it relates to these parcels. The Board will require Summit Carbon to move the route on H-CL-093 to the south by 160 feet and make corresponding route changes as necessary to accommodate this modification. The Board will approve the route as shown by Summit Carbon in H-CL-060 unless it is modified to accommodate the change required for H-CL-093. The Board finds this route and modification reasonable based upon the record.

**O.S.S. Ag., Inc. (H-CL-066)**

In testimony provided at hearing, Marcia Langner, who appeared for parcel at issue, states there is no alternative route across the property and she does not want Summit Carbon's proposed hazardous liquid pipeline on the parcel at all. HT, pp. 128-29.

The Board has reviewed the evidence and will approve the route shown in H-CL-066. The Board finds the route to be reasonable based upon the evidence.

**Janice S. Alger (H-CL-071 and H-CL-074)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-071 and H-CL-074.

**Ann M. Harves (H-CL-075)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-075.

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**Janet Minner (H-CL-081)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-081.

**Maureen M. Christensen and Ronald D. Christensen (H-CL-082)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-082.

**Greg L. Pickrell Separate Property Trust and Kent R. Pickrell Revocable Trust (H-CL-091)**

In the direct testimony of Kent Pickrell, he states he does not want Summit Carbon's proposed hazardous liquid pipeline on his property and he does not have a proposed alternative route. Jorde Landowners Kent Pickrell Direct, p. 50.

On cross-examination, Mr. Pickrell testifies he did not speak to anyone from Summit Carbon regarding an alternative route. HT, p. 7010. Mr. Pickrell testifies his preferred alternative route would be to move it off of his property; however, he testifies that would just move the route to a neighbor's property. *Id.* Additionally, Mr. Pickrell testifies Summit Carbon's H-CL-091 depicts the property covering his neighbor's driveway, and he stated this is a mistake and wants to make sure Summit Carbon does not use the driveway during construction. *Id.* at 7011.

The Board has reviewed the evidence and will approve the route shown in H-CL-091. The Board finds the route to be reasonable based upon the record. In response to Mr. Pickrell's testimony regarding his neighbor's driveway, the Board does not identify any language in the easement that would allow Summit Carbon to use the driveway during construction. While the Board is not requiring a change to the easement

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language, the Board will prohibit Summit Carbon from using the neighbor's driveway for construction purposes, absent the neighbor's approval.

**Richard W. Harves (H-CL-094)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-094. However, the Board required modifications to H-CL-070. The Board will require Summit Carbon to revise H-CL-094 to have the temporary construction easement on the eastern side of the permanent easement, and Summit Carbon will be required to revise these exhibits to have the western edge of the permanent easement on the western boundary lines of these parcels. The Board finds the route and modifications reasonable based upon the record.

**Barbara J. Schomaker *et al.* (H-CL-098 and H-CL-101)**

In the direct testimony of Barbara Schomaker and Casey Schomaker, they provide a proposed alternative route. Jorde Landowners Barbara Schomaker and Casey Schomaker Direct, p. 46; Jorde Landowners Barbara Schomaker and Casey Schomaker Direct Attachment No. 22.

On cross-examination, Casey Schomaker testifies about moving the route further to the north to avoid going through the middle of the terraces. HT, pp. 5253-54. Mr. Schomaker testifies the alternative route would be closer to the gravel road on the north side of the parcels while also avoiding being close to the house located on the parcels. *Id.* at 5272.

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The Board has reviewed the evidence and will approve the route as shown in H-CL-098 and H-CL-101. The Board finds the route to be reasonable based upon the evidence.

**The Clark Weart LLC (H-CL-102, H-CL-116, and H-CL-133)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-102, H-CL-116, and H-CL-133.

**Marie Larson (H-CL-103 and H-CL-112)**

In the direct testimony of Marie Larson, she states there is no place on her property where she would recommend Summit Carbon's proposed hazardous liquid pipeline be located, nor does she have any alternative routes. Jorde Landowners Marie Larson Direct, p. 39.

On cross-examination, Mr. Larson testifies about an alternative route that would move the proposed hazardous liquid pipeline across the road located on the eastern boundary of her parcels. HT, p. 7327.

The Board has reviewed the evidence and will approve the route shown in H-CL-103 and H-CL-112. The Board finds the route to be reasonable based upon the record.

**Donald M. Salton *et al.* (H-CL-105)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-105.

**Margaret Jane Olson *et al.* (H-CL-106 and H-CL-127)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-106 and H-CL-127.



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**Linda M. Salton (H-CL-108 and H-CL-129)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-CL-108 and H-CL-129.

**Shane Wade Helmich and Patricia Kay Helmich (H-CL-114)**

In comments proved by Patricia Helmich and Shane Helmich, they state Summit Carbon's proposed hazardous liquid pipeline should be moved to the western end of their parcel. Patricia Helmich and Shane Helmich Exhibit H Landowner Comment, p. 8 (filed Aug. 16, 2023).

The Board has reviewed the evidence and will approve the route shown in H-CL-114. The Board finds this route to be reasonable based upon the record.

**Pumpkin Flats Properties, LLC (H-CL-119)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CL-119.

**e. Crawford County**

**Nancy A. Qualheim Revocable Trust (H-CR-003)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-CR-003.

**Virgil W. Ewoldt and Bonnie L. Ewoldt (H-CR-004 and H-CR-015)**

In the direct testimony of Virgil Ewoldt and Bonnie Ewoldt, they state the current route proposed by Summit Carbon is their preferred route because moving it east or west would have more impacts to their property. Jorde Landowners Virgil Ewoldt and Bonnie Ewoldt Direct, pp. 43-44.

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As the route shown in H-CR-004 and H-CR-015 is the preferred route by Virgil Ewoldt and Bonnie Ewoldt, compared to moving east or west, the Board will approve the route shown in H-CR-004 and H-CR-015. The Board finds this route to be reasonable based upon the record.

**Timothy Baughman and Susan Herman (H-CR-005 and H-CR-006)**

In the direct testimony of Timothy Baughman and Susan Hermann, they propose an alternative route where Summit Carbon's route would be adjacent to the eastern boundary of the parcels and the valve proposed to be on H-CR-005 would be moved across the road. Jorde Landowners Timothy Baughman and Susan Hermann Direct, p. 43. Mr. Baughman and Ms. Hermann testify placing the valve in the small field on H-CR-005 would impact their ability to farm this section of land given the small size of the field and the large size of their equipment. Jorde Landowners Timothy Baughman and Susan Hermann Direct, pp. 43-44. Mr. Baughman and Ms. Hermann also testify the electric lines needed for operating the valve are located on the south side of the road on the southern boundary of H-CR-005. *Id.* at 43.

During his testimony at hearing, Mr. Baughman asserts he received a verbal agreement from Summit Carbon to move the valve to the other side of the road. HT, p. 4515.

The Board has reviewed the evidence and will approve the route as shown in H-CR-005 and H-CR-006. The Board will deny Summit Carbon the right to place a valve on H-CR-005 and will require Summit Carbon to file a revised exhibit depicting the modification. The current proposed placement of the valve will greatly impact Mr. Baughman and Ms. Hermann's ability to farm the piece of ground where the valve

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was proposed to be located. The Board finds moving the valve to the parcel south of H-CR-005 to be reasonable. The Board finds the route and modification to be reasonable based upon the record.

**Kruthoff Farms, LLC (H-CR-007, H-CR-008, and H-CR-009)**

In the direct testimony of Cynthia Kruthoff *et al.*, Ms. Kruthoff testifies to an alternative route “along the exterior edge of the field near the fence line.” Jorde Landowners Cynthia Kruthoff *et al.* Direct, p. 45.

During her testimony at hearing, Ms. Kruthoff clarifies the proposed alternative route would enter in the far northeast corner and follow the fence line straight south. HT, p. 6038.

In their reply brief, Jorde Landowners provide a diagram depicting Ms. Kruthoff’s proposed alternative route. Jorde Landowners RB Vol. 7, p. 3.

On cross-examination, Mr. Schovanec testifies he was unsure as to why the route jogs over from H-CR-008 to H-CR-009, but states it is likely due to existing infrastructure and the required way of crossing such infrastructure. *Id.* at 2325.

The Board has reviewed the evidence and will approve the route as shown in H-CR-007, H-CR-008, and H-CR-009. The Board finds the jog in the route to be a result of an overhead electric transmission line, which is denoted in H-CR-008 and H-CR-009. The Board finds the route to be reasonable based upon the record.

**Sharen Kleckner, Sandra Kleckner, and Lance Kleckner (H-CR-012 and H-CR-013)**

In the direct testimony of Sandra Kleckner and Lance Kleckner, they recommend an alternative route on H-CR-012 where the route would stay on their neighbor’s parcel. Jorde Landowners Sandra Kleckner and Lance Kleckner Direct, p. 38. They testify if

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the route is located on their property, they would prefer the pipeline to be bored and that they be granted the ability to grow trees on the permanent easement. *Id.* Mr. Kleckner and Ms. Kleckner also testify that boring will reduce the impact to 235th Street, which is a county road but is not maintained adequately by the county. *Id.*

As it relates to H-CR-013, Ms. Kleckner and Mr. Kleckner propose an alternative route where the proposed hazardous liquid pipeline would follow 235th Street, continue on the same angle to the northeast of H-CR-013, before turning and heading north near the northeast corner of H-CR-013. *Id.* at p. 39, Jorde Landowners Sandra Kleckner and Lance Kleckner Direct Attachment No. 22. Ms. Kleckner and Mr. Kleckner also testify Summit Carbon offered an alternative route on the parcel to the west of H-CR-013, but they rejected the offer as it would interfere with “rare and irreplaceable” trees and would impact several planned upgrades to the property. Jorde Landowners Sandra Kleckner and Lance Kleckner Direct, p. 39; Jorde Landowners Sandra Kleckner and Lance Kleckner Direct Attachment No. 28.

On cross-examination, Mr. Kleckner provides further testimony about moving the route off of H-CR-012 and placing it in the road. HT, pp. 6567-68.

On cross-examination, Mr. Schovanec testifies the current route “hugs the section lines” heading north and the proposed route by Ms. Kleckner and Mr. Kleckner bisects the property in the wrong direction. *Id.* at 2319. Additionally, Mr. Schovanec testifies drilling the entirety of H-CR-013 was not considered here as it is not common practice to drill under trees and it inhibits construction activities. *Id.* at 2320.

The Board has reviewed the evidence and will approve the route shown in H-CR-012 and H-CR-013. The Board will require Summit Carbon to bore H-CR-012, but the

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Board will not require boring under H-CR-013. The Board will require Summit Carbon to revise H-CR-012 to reflect the required modification. The Board finds Summit Carbon's concerns related to construction delays from boring under trees to be unpersuasive. The Board is not requiring the boring sought under H-CR-013 as the issue is with the location and not necessarily the construction method. See Jorde Landowners Sandra Kleckner and Lance Kleckner Direct Attachment No. 22. The Board will not require language about being able to grow trees in the permanent right-of-way to be added to the easement, as requested by Ms. Kleckner and Mr. Kleckner. The permanent easement is 50 feet in width, which is the total area where tree growth will be permanently prohibited. After construction is complete, trees may be grown in the temporary construction easement. The Board finds the route and modifications to be reasonable.

**Hans Hoffmeier and Kevin Aikman (H-CR-019 and H-CR-020)**

On redirect at hearing, Rhonda Aikman testifies there is nowhere on the property where Summit Carbon's proposed hazardous liquid pipeline should be located. HT, p. 5811.

In their reply brief, Jorde Landowners propose an alternative route that would be located nearer to the eastern boundary of the parcels. Jorde Landowners IB Vol. 14, p. 12.

The Board has reviewed the evidence and will approve the route as shown in H-CR-019 and H-CR-020. The Board finds the route to be reasonable based upon the record.

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**DeWayne Schultz and Denice Schultz (H-CR-031)**

In the direct testimony of DeWayne Schultz, he did not propose an alternative route across his property for Summit Carbon's proposed hazardous liquid pipeline. See *generally* Jorde Landowners DeWayne Schultz Direct.

The Board has reviewed the evidence and will approve the route shown in H-CR-031. The Board finds this route to be reasonable based upon the record.

**Marge Hemminger Trust (H-CR-032)**

In his testimony, John Hemminger testifies he is not sure if there is a better route than what is being proposed by Summit Carbon, due to the location of a potential house and water lines. HT, pp. 1331, 1336.

The Board has reviewed the evidence and will approve the route shown in H-CR-032. The Board finds the route to be reasonable based upon the record.

**Vicki Koeppe *et al.* (H-CR-036)**

In her direct testimony, Vicki Koeppe testifies to not wanting the route on her property at all. Jorde Landowners Vicki Koeppe Direct, p. 40. However, Ms. Koeppe testifies if the route is on her property, she would prefer it be located along the western boundary of her property. *Id.*, Jorde Landowners Vicki Koeppe Direct Attachment No. 22.

On cross-examination, Ms. Koeppe testifies moving the route to the western fence line would place the route in the end rows of the field rather than through the middle. HT, p. 5893.

On cross-examination, Mr. Schovanec testifies the entry and exit points on Ms. Koeppe's property "are pretty well established at this point." *Id.* at 2303.

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Mr. Schovanec testifies to accommodate Ms. Koeppe's proposed route modification, four 90-degree bends would need to be added on her property, which would add to the disturbance to her property. *Id.* at 2304. Mr. Schovanec testifies that every time a tie-in is installed, a big bell hole must be dug. *Id.* Mr. Schovanec testifies this adds additional impacts and encumbrances to the property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-CR-036. The Board will not require Summit Carbon to move the route near the western boundary of H-CR-036 in this instance, not because the entry and exit points have been decided by voluntary easement grantors, but due to the impacts of moving the entire route to the west. The Board finds adopting Ms. Koeppe's proposed route would require moving the route closer to the house of the neighbor to the south and would more greatly impact that property. Therefore, the Board finds the route reasonable based upon the record.

#### **f. Dickinson County**

##### **Lori L. Goth Revocable Trust (H-DI-001 and H-DI-002)**

In the direct testimony of Lori Goth and Craig Goth, they recommend an alternative route that would locate Summit Carbon's proposed hazardous liquid pipeline in an already existing utility right-of-way. Jorde Landowners Lori Goth and Craig Goth Direct, p. 42. The Goths also propose an alternative route that would relocate Summit Carbon's route off of their property beginning approximately a mile and a half south of their parcel, proceed in a stairstep westerly direction for about two miles, then proceed straight north and reconnect with Summit Carbon's proposed route. Jorde Landowners Lori Goth and Craig Goth Direct Attachment No. 22.

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On cross-examination, Ms. Goth testifies Summit Carbon stated locating its proposed hazardous liquid pipeline within an existing utility easement was not feasible. HT, pp. 4971-72.

The Board has reviewed the evidence and will approve the route shown in H-DI-001 and H-DI-002. The Board finds the route to be reasonable based upon the record.

**Chen Beverly Chow (H-DI-007 and H-DI-031)**

In the direct testimony of Chen Beverly Chow, Ms. Chow testifies she would prefer to not have Summit Carbon's proposed hazardous liquid pipeline cross her property. Jorde Landowners Chen Beverly Chow Direct, p. 39.

On cross-examination, Ms. Chow testifies she recommended to Summit Carbon that it bypass her property. HT, p. 6366

The Board has reviewed the evidence and will approve the route shown in H-DI-007 and H-DI-031. The Board finds the route to be reasonable based upon the record.

**Denise A. Tindall Revocable Trust (H-DI-013, H-DI-016, and H-DI-027)**

In the direct testimony of Denise Tindall, she testifies there is no place on the property where she would recommend Summit Carbon's proposed hazardous liquid pipeline be located. Jorde Landowners Denise Tindall Direct, p. 39.

On cross-examination, Ms. Tindall testifies she recommended Summit Carbon go through another property owner's ground to the south of her property and then proceed west to Highway 71, before following Highway 71 north. HT, pp. 7064-65. Ms. Tindall states this would reduce the impact to her property. *Id.* at 7064.



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The Board has reviewed the evidence and will approve the route as shown in H-DI-013, H-DI-016, and H-DI-027. The Board finds the route to be reasonable based upon the record.

**Robert J. Soat (H-DI-014, H-DI-015, and H-DI-019)**

In the direct testimony of Robert J. Soat, Annabell Soat, and Brenda Jairell, they recommended an alternative route as shown in Jorde Landowners Lori Goth and Craig Goth Direct Attachment No. 22. Jorde Landowners Robert J. Soat *et al.* Direct Attachment No. 22.

On cross-examination, Ms. Jairell testifies she is not sure “an alternate route is even acceptable. Because no matter what route this pipeline goes through, it is going to have a huge impact, not just on landowners but neighboring communities.” HT, p. 7299.

The Board has reviewed the evidence and will approve the route shown in H-DI-014, H-DI-015, and H-DI-019. The Board finds the route to be reasonable based upon the record.

**Huntoon Farms, Ltd. (H-DI-017, H-DI-034, H-DI-037, H-DI-043, and H-DI-063)**

In the direct testimony of Craig Huntoon, he testifies there is no place on his property where he would recommend Summit Carbon’s proposed hazardous liquid pipeline be located. Jorde Landowners Craig Huntoon Direct, p. 15.

On cross-examination, Mr. Huntoon testifies he does not want Summit Carbon’s proposed hazardous liquid pipeline on his property. HT, p. 6480.

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In their initial brief, Jorde Landowners propose a new alternative route that would move the entire route approximately half a mile to the west. Jorde Landowners IB Vol. 16, p. 5.

The Board has reviewed the evidence and will approve the route shown in H-DI-017, H-DI-034, H-DI-037, and H-DI-043. However, due to the routing modification on H-DI-076, Summit Carbon may be required to revise the route on these parcels. If such modification is required, Summit Carbon will be required to submit revised exhibits showing the modified route.

**Delmar E. Baines Revocable Living Trust (H-DI-018, H-DI-026, and H-DI-032)**

In the direct testimony of Delmar Baines and Dillon Baines, they recommend the alternative route as shown in Jorde Landowners Lori Goth and Craig Goth Direct Attachment No. 22. Jorde Landowners Delmar Baines and Dillon Baines Direct Attachment No. 22.

On cross-examination, Dillon Baines testifies the route should run straight east to west or north to south, not on a diagonal. HT, p. 5427. He also recommends Summit Carbon use an abandoned railroad that runs west of Superior, Iowa. *Id.* at 5428. Mr. Baines states he does not think it is necessary to go through his property. *Id.*

In their initial brief, Jorde Landowners propose another alternative route that would have Summit Carbon's route follow the eastern and northern boundaries of the parcels. Jorde Landowners IB Vol. 7, p. 2.

On cross-examination, Mr. Schovanec testifies the alternative route shown in Jorde Landowners' Delmar Baines and Dillon Baines Direct Attachment No. 22 is

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entirely outside of Summit Carbon's notice corridor and would impact several other landowners. HT, p. 2300.

The Board has reviewed the evidence and will approve the route as shown in H-DI-018, H-DI-026, and H-DI-032. The Board finds the route to be reasonable based upon the record.

**Sonstegard Family Farms (H-DI-023 and H-DI-065)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-DI-023 and H-DI-065.

**Jackson Farms of Terril, Inc. (H-DI-028 and H-DI-052)**

In the direct testimony of Dennis Jackson, on behalf of Jackson Farms of Terril, Inc., he states he did not want Summit Carbon's proposed hazardous liquid pipeline on his property and Summit Carbon should locate its proposed hazardous liquid pipeline on a nearby neighbor's property who wants it. Jorde Landowners Dennis Jackson Direct, p. 40.

On cross-examination, Mr. Jackson testifies he already has an existing natural gas pipeline located on his property. HT, p. 4913.

The Board has reviewed the evidence and will approve the route shown in H-DI-028 and H-DI-052. The Board finds the route to be reasonable based upon the record.

**Daniel L. Wahl (H-DI-038)**

In the direct testimony of Daniel Wahl, he testifies Summit Carbon should move its route to property currently owned by the IDNR. Jorde Landowners Daniel L. Wahl Direct, p. 42. Mr. Wahl's proposed alternative route would run diagonally from the

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property west of H-DI-077, across property owned by the IDNR, before running parallel to Highway 71. Jorde Landowners Daniel L. Wahl Direct Attachment No. 22.

The Board has reviewed the evidence and will approve the route as shown in H-DI-038. The Board finds this route to be reasonable based upon the record.

**Douglas L. Phillips (H-DI-042)**

In his testimony, Douglas Phillips testifies he does not see a better routing option on his property. HT, p. 1367.

The Board has reviewed the evidence and will approve the route shown in H-DI-042. The Board finds the route to be reasonable based upon the record.

**Naomi Senn Revocable Trust (H-DI-057)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-DI-057.

**Mett Farms, LLC (H-DI-058)**

During his testimony, Franklin Mett, on behalf of Mett Farms, LLC, proposes an alternative route that would place Summit Carbon's route in the public right-of-way of Highway 71. HT, p. 4789. Mr. Mett recommends the remainder of the route, from its current crossing of Highway 71 to the Minnesota border, be located in the rights-of-way for Highway 71. *Id.*

The Board has reviewed the evidence and will approve the route shown in H-DI-058. The Board finds the route to be reasonable based upon the record.

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**BWT Holdings, LLLP (H-DI-059, H-DI-064, and H-DI-066)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-DI-059, H-DI-064, and H-DI-066.

**Andrew Corcoran and Caila Corcoran (H-DI-067)**

In the direct testimony of Andrew Corcoran and Caila Corcoran, they testify there is no place on their property where they would want Summit Carbon's proposed hazardous liquid pipeline located. Jorde Landowners Andrew Corcoran and Caila Corcoran Direct, p. 40.

On cross-examination, Ms. Corcoran testifies a new house is being constructed in the path of Summit Carbon's proposed route across her property. HT, p. 5499. Ms. Corcoran testifies the property used to be owned by Huntoon Farms. *Id.* at 5501. Ms. Corcoran testifies the property was purchased from Huntoon Farms on March 1, 2023. *Id.* at 5506. Ms. Corcoran testifies she was aware of some of the background regarding Summit Carbon's proposed hazardous liquid pipeline prior to purchasing the property, as her father is the tenant for Huntoon Farms. *Id.* at 5510.

In their initial brief, Jorde Landowners propose an alternative route that would have Summit Carbon's route located at the far eastern boundary of the parcel. Jorde Landowners IB Vol. 2, p. 4.

In its reply brief, Summit Carbon states it proposes to

modify the route to travel north from the south side of the southern acquired property. The route will then cross 140th Street and travel northeasterly through the approximate midpoint of the parcel, being approximately 300 feet from each of the two residences identified on the property, and then travel northwest to exit the property.

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Summit Carbon RB, p. 57.

The Board has reviewed the information and will require Summit Carbon to modify the route shown in H-DI-067. The Board will require Summit Carbon to move the proposed route to the eastern boundary of the parcel. The eastern boundary of the permanent easement should be on the eastern boundary of H-DI-067, with the temporary easement to the west of the permanent easement. The Board finds the modified route to be reasonable based upon the record.

**g. Emmet County**

**Gordon B. Garrison and Evalena F. Garrison (H-EM-004 and H-EM-005)**

In their initial brief, the Garrisons propose an alternative route that would move Summit Carbon's route off of their property and onto the properties to the north and west of the Garrisons' property, where Summit Carbon has obtained voluntary easements. The Garrisons IB, p. 3.

The Board has reviewed the evidence and will approve the route as shown by Summit Carbon in H-EM-004 and H-EM-005. The Board finds the route to be reasonable based upon the record.

**Eugene Leonard Trust (H-EM-006)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-EM-006.

**W. Robert White and Jacqueline S. White (H-EM-007)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-EM-007.

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**Matthew L. Valen (H-EM-008)**

In the direct testimony of Matthew Valen, he testifies to an alternative route which would turn north after crossing the Des Moines River approximately one mile prior to reaching his property. Jorde Landowners Matthew Valen Direct, p. 39; Jorde Landowners Matthew Valen Direct Attachment No. 22.

On cross-examination, Matthew Valen testifies he did not speak with Summit Carbon on possible alternative routes. HT, p. 7345. Matthew Valen reiterates his request to move the route to the west onto property where Summit Carbon already has an easement. *Id.* at 7347.

In their initial brief, Jorde Landowners propose an alternative route that would move Summit Carbon's route approximately 115 feet to the northwest to avoid his parcel. Jorde Landowners IB Vol. 8, p. 2

In its reply brief, Summit Carbon states it is proposing to "shift the route to the northwest closer to an existing pipeline, provided it is able to obtain an amendment from an adjacent landowner to facilitate this modification." Summit Carbon RB, p. 59.

The Board has reviewed the evidence and will require Summit Carbon to modify its route to more closely parallel the existing natural gas pipeline on the property. The Board finds the route and modification to be reasonable based upon the record.

**Della M. Curtis (H-EM-013)**

In the direct testimony of Della Curtis, she testifies to a route similar to the route proposed in Jorde Landowners Matthew Valen Direct Attachment No. 22. Jorde Landowners Della Curtis Direct, pp. 39-10; Jorde Landowners Della Curtis Direct Attachment No. 22.

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On cross-examination, Ms. Curtis testifies she has not had any discussion with Summit Carbon as it relates to alternative routes. HT, p. 7053.

The Board has reviewed the evidence and will approve the route shown in H-EM-013. The Board finds the route to be reasonable based upon the record.

**Dennis L. Valen (H-EM-015 and H-EM-021)**

In the direct testimony of Dennis Valen, he testifies to a route similar to the route proposed in Jorde Landowners Matthew Valen Direct Attachment No. 22. Jorde Landowners Dennis Valen Direct, p. 46; Jorde Landowners Dennis Valen Direct Attachment No. 22.

On cross-examination, Mr. Valen testifies there is an existing natural gas pipeline on his property. HT, pp. 7445-46. He testifies the natural gas pipeline runs on a diagonal from the western edge of H-EM-015 and proceeds to the northeast across H-EM-015 and H-EM-021. *Id.* at 7446; Jorde Landowners Dennis Valen Direct Attachment No. 34. Dennis Valen testifies Summit Carbon's route would parallel the existing natural gas pipeline. *Id.* at 7447.

The Board has reviewed the evidence and will approve the route shown in H-EM-021. The Board is requiring a modification to H-EM-008 that may impact the route on H-EM-015. Therefore, the Board will require Summit Carbon to modify H-EM-015 to the extent necessary to comply with the modification ordered in H-EM-008. The Board finds the route to be reasonable based upon the record.



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**BWT Holdings, LLLP (H-EM-020, H-EM-022, H-EM-023, and H-EM-024)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-EM-020, H-EM-022, H-EM-023, and H-EM-024.

**h. Floyd County**

**Kathy A. Johnson Revocable Trust (H-FL-001)**

In the direct testimony of Kathy Carter, she recommends an alternative route that would run on the north side of the road on the northern end of her parcel. Jorde Landowners Kathy Carter Direct, pp. 41-42. Ms. Carter testifies moving the route to the north side of the road would realign the route with the route two miles west of her property, where it is located on the north side of the road for more than 20 miles. *Id.* at 42. Additionally, Ms. Carter testifies Summit Carbon agreed to bore under all of her trees. *Id.* at 4-5.

On redirect, Ms. Carter reiterates her request to have the route moved to the north side of the road. HT, p. 5359.

On cross-examination Mr. Schovanec testifies Summit Carbon will be boring under her entire property so there will be no surface impacts. *Id.* at 2329. Mr. Schovanec testified that “based on the depth of that river and where the drill should come out, it should be on her property. . . . But, to accommodate her request, [Summit Carbon] extended that drill into the landowner to the west who has signed an easement.” *Id.* at 2329-30.

The Board has reviewed the evidence and will approve the route shown in H-FL-001. The Board will, however, require Summit Carbon to revise the language of the

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easement for H-FL-001 to prohibit the removal of trees from above the easement. The Board finds the route and easement language modification to be reasonable based upon the record.

**Sandy S. Sonne (H-FL-002)**

In the direct testimony of Vicky Sonne *et al.*, she testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property and she does not have a proposed alternative route. Jorde Landowners Vicky Sonne *et al.* Direct, p. 42.

On cross-examination, Ms. Sonne testifies she never spoke with Summit Carbon about an alternative route. HT, pp. 6873-74.

The Board has reviewed the evidence and will approve the route shown in H-FL-002. The Board finds the route reasonable based upon the record.

**Katherine D. Knoop Ogilvie Revocable Trust (H-FL-003)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FL-003.

**Burnett Land Company, LLC (H-FL-004)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FL-004.

**Joan Marie Korth *et al.* (H-FL-005)**

During her testimony, Jessica E. Marson testifies moving the route to the south and off of her property would solve her issues, but she testifies she has concerns generally about Summit Carbon's proposed hazardous liquid pipeline being in the area. HT, p. 65-66.

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The Board has reviewed the evidence and will approve the route shown in H-FL-005. The Board finds the route to be reasonable based upon the record.

**Marth Revocable Trust *et al.* (H-FL-008 and H-FL-012)**

In the direct testimony of Gary Marth and Sandra Marth, they testify Summit Carbon's proposed route impacts their ability to add more buildings to their farmstead. Jorde Landowners Gary Marth and Sandra Marth Direct, p. 43. They testify there is an alternative route across their property that will be less impactful. *Id.* Gary Marth and Sandra Marth do not identify what the alternative route would be. *See id.*

The Board has reviewed the evidence and will approve the route as shown on H-FL-008. The Board will require Summit Carbon to modify the route on H-FL-012. The Board will require Summit Carbon to move the route north 200 feet and continue straight across H-FL-012 until it is on the other side of the waterway located on H-FL-012. Summit Carbon will be required to have the bend in the pipeline northeast of the grass waterway, which stems from the north to south running waterway located on H-FL-012. Summit Carbon will be required to modify the route to run north and south, connecting with the point where the route crosses the gravel road to the south of H-FL-012. The Board finds the route and modification reasonable based upon the record.

**Galen Greenzweig and Charlotte Greenzweig (H-FL-009)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FL-009.

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**Gary L. Marth and Sandra K. Marth (H-FL-010 and H-FL-011)**

In the direct testimony of Gary Marth and Sandra Marth, they testified Summit Carbon's proposed route impacts their ability to add more buildings to their farmstead. Jorde Landowners Gary Marth and Sandra Marth Direct, p. 43. They testified there is an alternative route across their property that will be less impactful. *Id.* Gary Marth and Sandra Marth do not identify what the alternative route would be. *See id.*

The Board will require Summit Carbon to move the east to west running portion of the route 200 feet to the north on H-FL-011. The Board will deny Summit Carbon the right of eminent domain over H-FL-010. The Board finds moving the route 200 feet to the north on H-FL-011 will allow for future expansion of Gary Marth and Sandra Marth's property. By moving the route north 200 feet to the north, Summit Carbon will not need rights over H-FL-010. The Board finds the route and modification of H-FL-011 to be reasonable based upon the record.

**Larry D. Sonne (H-FL-013)**

In the direct testimony of Vicky Sonne *et al.*, she testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property and she does not have a proposed alternative route. Jorde Landowners Vicky Sonne *et al.* Direct, p. 42.

On cross-examination, Ms. Sonne testifies she never spoke with Summit Carbon about an alternative route. HT, pp. 6873-74.

The Board has reviewed the evidence and will approve the route shown in H-FL-013. The Board finds the route reasonable based upon the record.

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**George G. Cummins and Vonda M. Cummins (H-FL-015)**

In the direct testimony of George Cummins, he testifies he does not want Summit Carbon's proposed hazardous liquid pipeline located on his property and he does not have a proposed alternative route. Jorde Landowners George Cummins Direct, p. 56. In his direct testimony, Mr. Cummins testifies Summit Carbon's route would impact "a storage shed, [six] heritage apple trees, two apricot trees, [his] perennial raspberries and rhubarb[,] and his garden." *Id.* at 10.

On redirect, Mr. Cummins testifies his property could be used for future housing development and locating Summit Carbon's proposed hazardous liquid pipeline on his property could impact his ability to develop it. HT, pp. 5948-49.

On cross-examination, Mr. Schovanec testifies Summit Carbon moved the route further to the east to avoid Mr. Cummins; shed, trees, and garden. HT, p. 2330.

The Board has reviewed the information and will approve the route shown in H-FL-015. The Board has already found earlier in this order that development can, and does, occur in and around pipelines, and any diminution in value will be determined by the local compensation commission. *See supra* Sections III.I.3 and III.K.4. The Board finds the route to be reasonable based upon the record.

**Charles City Area Development Corp. (H-FL-016 and H-FL-025)**

During the testimony of Timothy Scott Fox, on behalf of the Charles City Area Development Corp., Mr. Fox recommends the route be moved south of the Avenue of Saints, which is located at the southern end of H-FL-016. HT, p. 233. Mr. Fox testifies the area to the northeast and west of the parcels are "residential neighborhoods and planned housing developments." *Id.* at 234. Mr. Fox also testifies there are two natural

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gas pipelines that already cross H-FL-016 and H-FL-025, and Summit Carbon's route would parallel the existing pipelines. *Id.* at 231, 235.

On cross-examination, Mr. Schovanec testifies Summit Carbon met with the Charles City Area Development Corp. multiple times and Summit Carbon thought it had a verbal agreement with the group. HT, p. 2099. Mr. Schovanec testifies Summit Carbon offered alternative routes for the property, but the Charles City Area Development Corp. ultimately determined that if the route must be on the property, it should parallel the existing natural gas pipelines. *Id.* at 2100.

The Board has reviewed the evidence and will approve the route shown in H-FL-016 and H-FL-025. The Board finds Summit Carbon's route paralleling the two existing natural gas pipelines will reduce the impact to the parcels. The Board has already found earlier in this order that development can, and does, occur in and around pipelines, and any diminution in value will be determined by the local compensation commission. *See supra* Sections III.I.3 and III.K.4. The Board finds the route to be reasonable based upon the record.

**Curtis A. Marth and Teresa A. Stevens-Marth (H-FL-020 and H-FL-021)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FL-020 and H-FL-021.

**i. Franklin County**

**Robert T. Hamilton, Inc. (H-FK-001, H-FK-023, and H-FK-067)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-001, H-FK-023, and H-FK-067.

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**Vern R. Ziesman and Dorothy A. Ziesman (H-FK-002)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FK-002.

**Daniel D. McNickle Living Trust (H-FK-003, H-FK-026, H-FK-041, and H-FK-074)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-003, H-FK-026, H-FK-041, and H-FK-074. However, the Board will require Summit Carbon to bore under the ingress and egress easement held by Daniel D. McNickle shown on H-FK-026. The Board finds the route and modification reasonable based upon the record.

**Rollene Farms, LLC (H-FK-006, H-FK-007, H-FK-008, H-FK-011, H-FK-012, H-FK-013, and H-FK-014)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-006, H-FK-007, H-FK-008, H-FK-011, H-FK-012, H-FK-013, and H-FK-014.

**C. S. 76 Inc. (H-FK-010 and H-FK-050)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-010 and H-FK-050.

**4R Farms, LLC (H-FK-015, H-FK-027, and H-FK-028)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-015, H-FK-027, and H-FK-028.

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**Arlene M. Hamilton (H-FK-016, H-FK-052, and H-FK-066)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-016, H-FK-052, and H-FK-066.

**Raejean G. Schafer (H-FK-017 and H-FK-018)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-017 and H-FK-018.

**Ron E. Warschkow and Troy E. Warschkow (H-FK-029 and H-FK-032)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-029 and H-FK-032.

**Scott Alan Neely and Shane Eldon Neely (H-FK-031)**

Shane Neely submitted comments in which there is a proposed alternative reroute to Summit Carbon's proposed hazardous liquid pipeline by moving it to road ditches or to locate it on the Neelys' neighbor's property where the neighbor had already granted Summit Carbon an easement. Shane Eldon Neely Exhibit H Landowner Comment, p. 2 (filed Aug. 10, 2023).

The Board has reviewed the evidence and will approve the route shown in H-FK-031. The Board finds the route to be reasonable based upon the record.

**Lisa K. McNickle (H-FK-033)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FK-033.



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**Ruth Meinberg (H-FK-037)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FK-037.

**Ivan L. Butt (H-FK-038 and H-FL-064)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-038 and H-FK-064.

**Amy Campbell *et al.* (H-FK-039 and H-FK-065)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-039 and H-FK-065.

**Karen K. McNickle and Richard D. McNickle (H-FK-045 and H-FK-058)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-045 and H-FK-058.

**Ten-K Farms, Inc. (H-FL-046, H-FK-056, H-FK-059, H-FK-060, H-FK-061, and H-FK-062)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-046, H-FK-056, H-FK-059, H-FK-060, H-FK-061, and H-FK-062.

**Daunyale Sporaa (H-FK-048)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FK-048.

**James Ziesman and Julie Ziesman (H-FK-049)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FK-049.

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**Deborah A. Pals *et al.* (H-FK-051)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FK-051.

**Douglas Frye and Anita Frye (H-FK-055 and H-FK-073)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-055 and H-FK-073.

**Skinner Farms, LLC (H-FK-063 and H-FK-071)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FK-063 and H-FK-071.

**Destiny Farms, Inc. (H-FK-069 and H-FK-070)**

In comments submitted by Douglas Lemke, on behalf of Destiny Farms, Inc., he states he does not have a proposed alternative route. Douglas Lemke Exhibit H Landowner Comments, p. 2. Mr. Lemke states it should be Summit Carbon's responsibility to provide him with alternative routes. *See id.*

The Board has reviewed the information and will approve the route as shown in H-FK-069 and H-FK-070. The Board finds the route to be reasonable based upon the record. As it relates to Mr. Lemke's comments about alternative routes, the Board agrees Summit Carbon bears the burden of proof as it relates to alternative routes, which the Board has already found Summit Carbon has done. The questions provided to the Exhibit H landowners were for them to express any alternative placements either they desire, or that Summit Carbon did not consider.

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**j. Fremont County**

**Olson Investments, LP (H-FM-002 and H-FM-003)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FM-002 and H-FM-003.

**Heather Marie Wood and Andrew Gee (H-FM-004 and H-FM-005)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-FM-004 and H-FM-005.

**Hawthorne Group, LLC (H-FM-006)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-FM-006.

**k. Greene County**

**Elizabeth Ellen Tribble *et al.* (H-GR-002 and H-GR-003)**

As it relates to these properties, testimony was submitted by Mark Gunion, individually, and by Elizabeth Tribble *et al.* Jorde Landowners Mark Gunion Direct, p. 1 (filed July 20, 2023); Jorde Landowners Elizabeth Tribble *et al.* Direct, p. 1 (filed July 24, 2023). In both submitted testimonies, they recommend the route be moved to the western boundary of H-GR-002, which would remove the need for eminent domain over H-GR-003. Jorde Landowners Mark Gunion Direct, pp. 41-42; Jorde Landowners Mark Gunion Direct Attachment No. 22; Jorde Landowners Elizabeth Tribble *et al.* Direct, pp. 41-42; Jorde Landowners Elizabeth Tribble *et al.* Direct Attachment No. 22.

On cross-examination, Mark Gunion testifies his neighbor to the south consented to moving the route to the western edge of the property, near the railroad tracks. HT, p. 6417. Mr. Gunion testifies the route could follow the railroad tracks south on his and

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his southerly neighbor's property before turning southeast and following the drainage ditch further south along the route. *Id.* at 6418.

The Board has reviewed the evidence and will approve the route shown in H-GR-002 and H-GR-003. While Mr. Gunion and Ms. Tribble may have obtained consent from the landowners from south, they did not mention the landowners to the north. *Cf. id.* at 6417. Additionally, the landowners to the north and south of H-GR-002 and H-GR-003 have granted voluntary easements. While the Board has the ability to determine the route, irrespective of whether a voluntary easement or eminent domain is being sought, the Board acknowledges a landowner who has granted an easement also has rights that the Board must consider when making routing changes, such as what is being proposed by Mr. Gunion and Ms. Tribble. Therefore, given the impacts to landowners who have reached voluntary easements with Summit Carbon, the Board will approve the route as shown in H-GR-002 and H-GR-003. The Board finds the route to be reasonable based upon the record.

**Louis Barry Tronchetti et al. (H-GR-007, H-GR-008, and H-GR-009)**

In the direct testimony of Daniel Tronchetti, Mr. Tronchetti testifies he does not want Summit Carbon's proposed hazardous liquid pipeline to be located on his property. Jorde Landowners Daniel Tronchetti Direct, p. 40. However, Mr. Tronchetti testifies to an alternative route shown in his Attachment No. 22. *Id.*

On cross-examination, Mr. Tronchetti clarifies his Attachment No. 22 does not depict an alternative route, but rather Summit Carbon's proposed route. HT, p. 6104. Mr. Tronchetti testifies he is not proposing an alternative route. *Id.* at 6105.

Mr. Tronchetti testifies, given the fact his land runs east and west, he does not think

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there is an alternative route around his property. *Id.* at 6104-05. Mr. Tronchetti testifies he is recommending Summit Carbon do minimum damage to his drainage tile system and Summit Carbon be required to bore under any drainage tile line, which is more than six inches in diameter on his property. *Id.* at 6105. Included with Mr. Tronchetti's direct testimony was a map with the approximate locations and sizes of the drainage tile on his property. Jorde Landowners Daniel Tronchetti Direct Attachment No. 22.

The Board has reviewed the evidence and will approve the route shown in H-GR-007, H-GR-008, and H-GR-009. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to bore under any drainage tile line that is six or more inches in diameter. Based upon Mr. Tronchetti's drainage tile map, it appears a very small number of drainage tile lines of six or more inches in diameter will be crossed. The Board understands Mr. Tronchetti's concern about drainage tile; however, the Board has previously found in this order Summit Carbon's land restoration plan will address those concerns related to drainage tile and any repairs that need to occur to them. *See supra* Section III.G.

## **I. Hancock County**

### **Yvonne A. Greiman (H-HC-003 and H-HC-007)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HC-003 and H-HC-007.

### **James Ralph Brouwer and Cherry Lou Brouwer (H-HC-004 and H-HC-005)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HC-004 and H-HC-005.

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**Glen E. Alden and Sioux M. Lawton (H-HC-006)**

During his testimony at hearing, Glen Alden testifies he does not have a proposed alternative route because he asserts moving the route slightly does not make it any better. HT, p. 275. Mr. Alden testifies there is “no better route, because either it interferes with me or my neighbor.” *Id.*

The Board has reviewed the evidence and will approve the route shown in H-HC-006. The Board finds the route to be reasonable based upon the record.

**WAW Revocable Trust (H-HC-008 and H-HC-009)**

During his testimony at hearing, Paul Wacker testifies he does not have a proposed alternative route. HT, p. 1251. Mr. Wacker testifies he does not want Summit Carbon’s proposed hazardous liquid pipeline within 4,000 feet of any building or waterway. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-HC-008 and H-HC-009. The Board finds the route to be reasonable based upon the record.

**Brenda A. Barr (H-HC-016)**

In the direct testimony of Brenda Barr, she testifies there is no place on her property where Summit Carbon’s proposed hazardous liquid pipeline should be located. Jorde Landowners Brenda Barr Direct, p. 41.

On redirect, Ms. Barr requests the route be moved either ten feet north or south so it would not impact her drainage tile main. HT, p. 4492.

The Board has reviewed the evidence and will require Summit Carbon to move the route ten feet to the south on H-HC-016 so the route will not impact Ms. Barr’s

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drainage tile main. The Board finds the route and modification reasonable based upon the record.

**Richard D. Nall et al. (H-HC-021 and H-HC-022)**

In comments submitted by Donna Nall, she does not recommend an alternative route across her property. See Donna Nall Exhibit H Landowner Comments, p. 2 (filed Aug. 17, 2023).

The Board has reviewed the evidence and will approve the route shown in H-HC-021 and H-HC-022. The Board finds the route to be reasonable based upon the record.

**Hawkeye Pride Egg Farms, LLP (H-HC-034)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HC-034.

**Dwight A. Doughan (H-HC-044, H-HC-050, and H-HC-077)**

During his testimony, Dwight Doughan did not have a proposed alternative route. HT, p. 6716.

The Board has reviewed the evidence and will approve the route as shown in H-HC-044, H-HC-050, and H-HC-077. The Board finds the route to be reasonable based upon the record.

**Barz-Carter Farms, LLC (H-HC-046, H-HC-047, H-HC-048, and H-HC-055)**

Sue Carter, on behalf of Barz-Carter Farms, LLC, in her testimony at hearing, recommends a proposed alternative route which would move the route further north to avoid her pattern drainage tile. HT, p. 6612.

The Board has reviewed the evidence and will approve the route shown in H-HC-046, H-HC-047, H-HC-048, and H-HC-055. The Board understands Ms. Carter's

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concern about her drainage tile; however, Summit Carbon will be required to repair any damage in compliance with the land restoration plan approved earlier in this order.

*Supra* Section III.G. Therefore, the Board finds the route proposed by Summit Carbon to be reasonable based upon the record.

**Seebeck Sisters, LLC (H-HC-049, H-HC-058, and H-HC-071)**

In comments submitted by Jane Swenson, on behalf of Seebeck Sisters, LLC, Ms. Swenson did not provide a proposed alternative route. Jane Swenson Exhibit H Landowner Comments, p. 2 (filed Aug. 16, 2023). Ms. Swenson states an alternative route will not alleviate the issues she has with Summit Carbon's proposed project. *Id.*

The Board has reviewed the evidence and will approve the route shown in H-HC-049, H-HC-058, and H-HC-071. The Board finds the route reasonable based upon the record.

**Ivan L. Frey (H-HC-051 and H-HC-061)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HC-051 and H-HC-061.

**Shirley J. Clark Revocable Trust (H-HC-062 and H-HC-072)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HC-062 and H-HC-072.

**Carol L. Nordquist (H-HC-075 and H-HC-076)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HC-075 and H-HC-076.



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**The JoAnn M. Harle Irrevocable Eldercare Trust (H-HC-080 and H-HC-081)**

In comments submitted by Tamara Becker, Michele Nolby, and Heather Rasmussen, they recommend an alternative route where Summit Carbon's proposed hazardous liquid pipeline would be located on the south side of the road that runs parallel to the southern boundary of their properties. Tamara Becker, Michele Nolby, and Heather Rasmussen Exhibit H Landowner Comments, p. 2 (filed Aug. 9, 2023).

The Board has reviewed the evidence and will approve the route shown in H-HC-080 and H-HC-081. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify the route as recommended by Tamara Becker, Michele Nolby, and Heather Rasmussen as it would move the route onto the property of someone who otherwise does not have the route on their property.

**Martha Jane Cole (H-HC-083)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HC-083.

**m. Hardin County**

**James G. Willems and Eloise R. Willems (H-HD-002 and H-HD-109)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-002 and H-HD-109.

**Lester Muller (H-HD-006)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-006.

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**Oelmann Farms, LLC (H-HD-007 and H-HD-011)**

During his direct testimony, Hollis Oelmann, on behalf of Oelmann Farms, LLC, proposes an alternative route for his two parcels where Summit Carbon's route would be located a quarter mile further southwest of each parcel. HT, p. 364. Mr. Oelmann testifies the modification would move the route off of his property and not impact him at all. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-HD-007 and H-HD-011. The Board finds the route to be reasonable based upon the record.

**Mark E. Lundy (H-HD-009)**

During his testimony, Mark Lundy proposes relocating the route off of his property. HT, p. 6685. Mr. Lundy proposes moving the route north on the parcel to the west of his property, crossing the road near the northwest corner of his property, and entering onto the property to the north of his property. *Id.* at 6685-86. Mr. Lundy testifies Summit Carbon already has obtained easements from the owner of the properties to the west and north of his. *Id.* at 6685.

The Board has reviewed the evidence and will approve the route as shown in H-HD-009. The Board finds the route to be reasonable based upon the record.

**Georgene M. Simms (H-HD-012 and H-HD-111)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-012 and H-HD-111.

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**Raymond T. Stockdale Revocable Trust (H-HD-013 and H-HD-086)**

In the direct testimony of Raymond and Katherine Stockdale, they propose an alternative route that would be located on the property of their neighbors, who have already signed an easement, as well as one of the Stockdale's properties, not currently under easement and not currently proposed to be crossed by Summit Carbon's proposed project. Jorde Landowners Raymond and Katherine Stockdale Direct, pp. 49-50. The Stockdales further clarify their alternative route in their Attachment No. 22. Jorde Landowners Raymond and Katherine Stockdale Direct Attachment No. 22.

The Board has reviewed the evidence and will approve the route shown in H-HD-013 and H-HD-086. The Board finds the route to be reasonable based upon the record.

**Kent Kasischke (H-HD-014, H-HD-018, and H-HD-026)**

In the direct testimony of Kent Kasischke, he states he does not want Summit Carbon's proposed hazardous liquid pipeline on his property and he does not have a proposed alternative route across his property. Jorde Landowners Kent Kasischke Direct, p. 15.

The Board has reviewed the evidence and will approve the route shown in H-HD-014, H-HD-018, and H-HD-026. The Board finds the route to be reasonable based upon the record.

**Kathleen Hunt (H-HD-015, H-HD-024, H-HD-037, and H-HD-098)**

In the direct testimony of Kathleen Hunt, she proposes an alternative route that would parallel the eastern boundary of her property. Jorde Landowners Kathleen Hunt Direct, p. 44; Jorde Landowners Kathleen Hunt Direct Attachment No. 22.

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On cross-examination, Ms. Hunt testifies there used to be a house located in the southeast corner of the property. HT, p. 5784. Ms. Hunt testifies she has considered building another house on the property in approximately the same location. *Id.*

On cross-examination, Mr. Schovanec testifies it may be possible to accommodate Ms. Hunt's request. HT, p. 2323. Mr. Schovanec testifies it would require working with the landowners to the north and south. *Id.* at 2323-24.

Mr. Schovanec testifies it may be possible to change the angle of approach across Ms. Hunt's property to follow the eastern property boundary for a longer period of time. *Id.* at 2324.

The Board will require Summit Carbon to modify the route on H-HD-015, H-HD-024, H-HD-037, and H-HD-098. The Board will require Summit Carbon to modify the route to run straight south upon entering H-HD-015 and continue south until reaching the northern boundary of H-HD-098. Upon entering the northern boundary of H-HD-098, Summit Carbon will be required to modify the route to run in a southwesterly direction before connecting with its current proposed route approximately halfway through H-HD-098. The Board will not require modification of the route from this point to the southern boundary of H-HD-098. As the Board is modifying the route, Summit Carbon will be required to revise H-HD-037 to remove the unnecessary temporary easements due to the change in the route. The Board finds the route and modifications to be reasonable based upon the record.

**Maureen H. Allan (H-HD-020 and H-HD-099)**

In the direct testimony of Maureen Allan, she recommends an alternative route that would move the route to the properties to the west, northwest, and north of her

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property. Jorde Landowners Maureen Allan Direct, p. 41. Ms. Allan states it is her understanding these landowners have already signed easements with Summit Carbon and the recommended alternative route would avoid going through her property. *Id.*

In their initial brief, Jorde Landowners provide an alternative route that would have Summit Carbon's route parallel the western boundaries of Ms. Allan's property.

Jorde Landowners IB Vol. 15, p. 2

The Board has reviewed the evidence and will approve the route shown in H-HD-020 and H-HD-099. The Board finds the route to be reasonable based upon the record.

**Donald H. Gellhorn and Ora H. Gellhorn (H-HD-021)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-021.

**Thelma Ringena *et al.* (H-HD-022, H-HD-103, and H-HD-104)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-022, H-HD-103, and H-HD-104.

**Dan H. Nederhoff and Jill Nederhoff (H-HD-023 and H-HD-105)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-023 and H-HD-105.

**Jeffrey Leon Brandt and Rebecca L. Brandt (H-HD-025)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-025.

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**Janet Miller (H-HD-030)**

In the direct testimony of Janet Miller, she recommends an alternative route that would run along the western boundary of the parcel to the west of her property, cross the road to the south of her property, and continue south for approximately a quarter of a mile before turning east and connecting with Summit Carbon's proposed route south of her property. Jorde Landowners Janet Miller Direct, p. 42; Jorde Landowners Janet Miller Direct Attachment No. 22. Ms. Miller also included another proposed alternative route, which would move the proposed route further to the northeast on her property, with the route crossing the road to the south of her property approximately halfway between her house in the southwest corner of her parcel and her neighbor's house to the east. Jorde Landowners Janet Miller Direct Attachment No. 29.

The Board has reviewed the evidence and will require Summit Carbon to reroute its proposed hazardous liquid pipeline to the eastern boundary of Ms. Miller's parcel. The route should run north to south across the entire parcel, in line with the existing proposed crossing of the road to the south of Ms. Miller's parcel. The Board is requiring the modification based upon modifications to H-HD-031. The Board finds the modification and route reasonable based upon the record.

**Debra K. LaValle (H-HD-031)**

In the direct testimony of Debra LaValle, she testifies to a proposed alternative route identical to Ms. Miller. Jorde Landowners Debra LaValle Direct, p. 42, Jorde Landowners Debra LaValle Direct Attachment No. 22. Ms. LaValle testifies the alternative route would allow her to construct her home on the property. Jorde Landowners Debra LaValle Direct, pp. 5, 42. Ms. LaValle testifies she plans to

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construct her home near the area where Summit Carbon is proposing to cross her property. *Id.* at 5, Jorde Landowners Debra LaValle Hearing Exhibit 317.

On cross-examination, Ms. LaValle testifies she never spoke to Summit Carbon about her plans to construct her retirement home on the property. HT, p. 4436.

The Board has reviewed the evidence and will require Summit Carbon to move the entry point onto Ms. LaValle's property 300 feet to the north of its current proposed entry point. Upon entering, the route should continue east before turning south near the eastern boundary of Ms. LaValle's property. Summit Carbon may install two bends in the route to accommodate the transition from a west-to-east route to a north-to-south route to avoid a 90-degree angle. Moving the route 300 feet north will not foreclose Ms. LaValle's ability to construct her home in the southwest corner of her parcel. The Board finds this route and modification to be reasonable based upon the record.

**Lucille Y. Henricks (H-HD-033, H-HD-042, and H-HD-089)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-033, H-HD-042, and H-HD-089.

**Celia Nygaard Revocable Trust *et al.* (H-HD-034, H-HD-092, H-HD-093, and H-HD-106)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-034, H-HD-092, H-HD-093, and H-HD-106.

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**Beasley Brothers Farms, LLC (H-HD-035 and H-HD-087)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-035 and H-HD-087.

**Frances M. & E. Lester Williams Charitable Trust (H-HD-036, H-HD-081, and H-HD-097)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-036, H-HD-081, and H-HD-097.

**Kimberlee Kasischke and Tamara A. Kasischke (H-HD-038, H-HD-039, and H-HD-096)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-038, H-HD-039, and H-HD-096.

**Raymond T. Stockdale Revocable Trust and Katherine A. Stockdale Revocable Trust (H-HD-040 and H-HD-112)**

In the direct testimony of Raymond and Katherine Stockdale, they propose an alternative route that would be located on the property of a neighbor who has already signed an easement, as well as another one of the Stockdale's properties, not currently under easement and not currently proposed to be crossed by Summit Carbon's proposed project. Jorde Landowners Raymond and Katherine Stockdale Direct, pp. 49-50. The Stockdales further clarify their alternative route in their Attachment No. 22. Jorde Landowners Raymond and Katherine Stockdale Direct Attachment No. 22.

The Board has reviewed the evidence and will approve the route shown in H-HD-040 and H-HD-112. The Board finds the route to be reasonable based upon the record.



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**James M. Broer Trust (H-HD-041)**

In comments submitted by James Broer, he states he already has three natural gas pipelines that cross his property. James Broer Exhibit H Landowner Comments, p. 1 (filed Aug. 18, 2023). Mr. Broer states Summit Carbon's initial route impacted one of the existing natural gas easements on his property. *Id.* at 2. Mr. Broer states once he made Summit Carbon aware of this conflict, Summit Carbon adjusted its proposed route south by approximately 75 feet. *Id.* Mr. Broer states if Summit Carbon is able to move the route 75 feet, it should move its route to the road right-of-way on the eastern boundary of his property so it would not impact his property. *Id.* at 3.

The Board has reviewed the evidence and will approve the route shown in H-HD-041. The Board finds the route to be reasonable based upon the record.

**Christopher Renihan and Margie Renihan (H-HD-043)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-043.

**Teresa A. Thoms Revocable Trust (H-HD-044, H-HD-052, H-HD-101, and H-HD-102)**

In the direct testimony of Teresa Thoms, she states she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. Jorde Landowners Teresa Thoms Direct, p. 39.

On cross-examination, Ms. Thoms proposes an alternative route that would run along the west and northwestern boundaries of H-HD-052, H-HD-101, and H-HD-102. See HT, p. 4841. Ms. Thoms testifies her proposed route would follow the gravel driveway on these properties. *Id.* at 4856. Ms. Thoms also testifies she does not want

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to have a valve placed in the northerly triangular area on H-HD-102 as an alternative location for the valve site compared to its current location on H-HD-052. *Id.* at 4857.

The Board has reviewed the evidence and will require Summit Carbon to modify the route on H-HD-052, H-HD-101, and H-HD-102 so the route runs along the western and northwestern boundaries of these parcels, in the same orientation as the gravel driveway on the parcels. Once the route reaches the north side of the tree line in the triangular section of H-HD-102, the route should turn northeast to connect with Summit Carbon's proposed route on the parcel to the east of H-HD-102. The Board will not grant any rights to Summit Carbon to locate a valve on H-HD-102. The Board finds the modified route to be reasonable based upon the record. The Board will also approve the route as shown in H-HD-044, without modification, as it finds the route reasonable based upon the record.

**Katherine A. Stockdale Revocable Trust (H-HD-046 and H-HD-113)**

In the direct testimony of Raymond and Katherine Stockdale, they propose an alternative route that would be located on the property of a neighbor who has already signed an easement, as well as another one of the Stockdale's properties, not currently under easement and not currently proposed to be crossed by Summit Carbon's proposed project. Jorde Landowners Raymond and Katherine Stockdale Direct, pp. 49-50. The Stockdales further clarify their alternative route in their Attachment No. 22. Jorde Landowners Raymond and Katherine Stockdale Direct Attachment No. 22.

The Board has reviewed the evidence and will approve the route shown in H-HD-046 and H-HD-113. The Board finds the route to be reasonable based upon the record.

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**Dean G. Ruby (H-HD-055 and H-HD-100)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-055 and H-HD-100.

**Leverton Woodland Trust (H-HD-059)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-059.

**Meickley Farm Corp. (H-HD-060 and H-HD-083)**

In comments by Craig Welter, on behalf of Meickley Farm Corp., he recommends an alternative route that would parallel the southern fence line of the property before turning north. Craig Welter Exhibit H Landowner Comments, p. 2 (filed Aug. 17, 2023). Mr. Welter recommends his south-to-north route be located in the road right-of-way. *Id.*

The Board has reviewed the evidence and will approve the route shown in H-HD-060 and H-HD-083. The Board finds the route to be reasonable based upon the record.

**Josiah White's Quakerdale Foundation (H-HD-061, H-HD-073, H-HD-076, H-HD-079, and H-HD-095)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-061, H-HD-073, H-HD-076, H-HD-079, and H-HD-095.

**Dennis T. Heetland Revocable Trust (H-HD-062)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-062.

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**Patricia D. Richtsmeier Trust (H-HD-064)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-HD-064.

**Darcie J. Mazoway (H-HD-070 and H-HD-110)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-070 and H-HD-110.

**Paul D. Gogerty and Bonnie A. Gogerty (H-HD-078 and H-HD-088)**

In comments provided by Paul Gogerty, he recommends an alternative route that would not run diagonally across his parcels. Paul Gogerty Exhibit H Landowner Comments, p. 2 (filed Aug. 7, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-HD-078 and H-HD-088. The Board finds the route to be reasonable based upon the record.

**Dale E. Heetland Revocable Trust (H-HD-082, H-HD-107, and H-HD-108)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-HD-082, H-HD-107, and H-HD-108.

**n. Ida County**

**Moore Family Trust (H-ID-008)**

In the direct testimony of Patricia Moore, she testifies there is no place on the property where she would recommend Summit Carbon's proposed hazardous liquid pipeline be located. Jorde Landowners Patricia Moore Direct, pp. 40-41.

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The Board has reviewed the evidence and will approve the route as shown in H-ID-008. The Board finds the route reasonable based upon the record.

**Drews Land Company, Inc. (H-ID-009, H-ID-064, and H-ID-065)**

In the direct testimony of Patricia Moore, on behalf of Drews Land Company, Inc., she testifies there is no place on the property where she would recommend Summit Carbon's proposed hazardous liquid pipeline be located. Jorde Landowners Patricia Moore Direct, pp. 40-41.

The Board has reviewed the evidence and will approve the route as shown in H-ID-009, H-ID-064, and H-ID-065. The Board finds the route reasonable based upon the record.

**Gaylord Boeck *et al.* (H-ID-012)**

In the direct testimony of Alan Boeck, he testifies there is no place on the property where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners Alan Boeck Direct, p. 48.

In their initial brief, Jorde Landowners propose an alternative route that would move the route to the western boundary of the property. Jorde Landowners IB Vol. 19, p. 9.

The Board has reviewed the evidence and will approve the route as shown in H-ID-012. The Board finds the route to be reasonable based upon the record.

**47 DL 72, LLC (H-ID-020 and H-ID-021)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ID-020 and H-ID-021.

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**Don Friedrichsen et al. (H-ID-024 and H-ID-025)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ID-024 and H-ID-025.

**Annette E. Janssen and Steven R. Davis (H-ID-031)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-ID-031.

**Reliant Processing Ltd. (H-ID-033)**

No additional evidence was provided as it relates to this parcel. The Board will require Summit Carbon to modify the route to move it further to the west so it does not pass under a liquid propane tank on the property. Additionally, the Board will require Summit Carbon to work with Reliant Processing Ltd. to ensure it is able to access the property at all times during construction, unless otherwise agreed to, to ensure the processing plant can function as normal. The Board finds this modified route to be reasonable based upon the record.

**Peggy L. Else (H-ID-034)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-ID-034.

**JDC Beyer Family Farm, LLC (H-ID-050)**

In the direct testimony of Craig Beyer, he testifies to an alternative route across his property. Jorde Landowners Craig Beyer Direct, p. 42. At the hearing, Mr. Beyer provides a map depicting his proposed alternative route. Jorde Landowners Craig Beyer Hearing Exhibit 647. Mr. Beyer's proposed alternative route would move Summit Carbon's route to the northeast off of his property. *Id.*

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On cross-examination, Mr. Beyer reiterates his recommendation to move Summit Carbon's route off of his property. HT, p. 6764. Mr. Beyer also proposes moving Summit Carbon's proposed route to the far northeast corner of his property to reduce the impact to his property. *Id.*

The Board has reviewed the evidence and will approve the route shown in H-ID-050. The Board finds the route to be reasonable based upon the record.

**Cronin Crops, LLC (H-ID-059)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-ID-059.

**o. Kossuth County**

**Marilyn V. Arndorfer Revocable Trust (H-KO-002, H-KO-003, and H-KO-024)**

In the direct testimony of Marilyn Arndorfer, Dana Arndorfer, and Eric Arndorfer, they testify there is no place on their property where they would locate Summit Carbon's proposed hazardous liquid pipeline. Jorde Landowners Marilyn Arndorfer, Dana Arndorfer, and Eric Arndorfer Direct, p. 40. In their direct testimony, they state Summit Carbon's proposed route would locate the hazardous liquid pipeline 295 feet from Dana Arndorfer's house. *Id.* at 3.

On cross-examination, Mr. Schovanec testifies Summit Carbon would be willing to move the route further south to be farther away from the house. HT, p. 2331. Mr. Schovanec testifies Summit Carbon was never made aware of this request prior to the submission of the direct testimony. *Id.*

In its reply brief, Summit Carbon proposes to move the route closer to the northern boundary on H-KO-002 to accommodate the landowner's request. Summit

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Carbon RB, pp. 57-58. Summit Carbon states it cannot move the route closer to the northern boundary on H-KO-003 due to the residence on the north side of the road on the northern boundary of the parcel. *Id.* at 58. Summit Carbon states it cannot adjust the route on H-KO-024 due to a grain silo on an adjacent property. *Id.*

The Board has reviewed the evidence and will require Summit Carbon to modify the route as it relates to H-KO-002 and H-KO-003. The Board will require Summit Carbon to move the route to the southern boundary of these parcels. The Board will not require modifications to the route shown in H-KO-024. The Board finds the modifications and the route to be reasonable based upon the record.

**Sauder Farms, LLC (H-KO-004, H-KO-011, H-KO-021)**

In its reply brief, Summit Carbon proposes to modify the route by moving it closer to the northern boundaries of these parcels. Summit Carbon RB, p. 58.

The Board has reviewed the evidence and will require Summit Carbon to modify the route shown on H-KO-004 and H-KO-021 to move the route closer to the northern boundary. As it relates to H-KO-011, the Board will require Summit Carbon to modify the route by entering the parcel on the western boundary and angling it to the southeast until reaching the southern boundary of this parcel near the boundary line between H-KO-011 and H-KO-003, due to the modifications required in H-KO-003. The Board finds the modification to be reasonable based upon the record.

**Galyen Ranch, LLC (H-KO-006 and H-KO-053)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-006 and H-KO-053.



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**Blackrock Farms, LLC (H-KO-007)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-007.

**David L. Gerber (H-KO-008 and H-KO-039)**

In the direct testimony of David Gerber, he states he does not have a proposed alternative route across his property. Jorde Landowners David Gerber Direct, pp. 35-36.

The Board has reviewed the evidence and will approve the route shown in H-KO-008 and H-KO-039. The Board finds the route to be reasonable based upon the record.

**Dennis L. Frideres and Joyce A. Frideres (H-KO-009, H-KO-010, H-KO-030, and H-KO-041)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-009, H-KO-010, H-KO-030, and H-KO-041.

**Arndorfer Bros. (H-KO-012, H-KO-013, H-KO-051, and H-KO-052)**

In the direct testimony of Marilyn Arndorfer, Dana Arndorfer, and Eric Arndorfer, they testify there is no place on their property where they would locate Summit Carbon's proposed hazardous liquid pipeline. Jorde Landowners Marilyn Arndorfer, Dana Arndorfer, and Eric Arndorfer Direct, p. 40.

On cross-examination, Dana Arndorfer testifies he and his wife have plans to construct a house on the northwest side of the pond located on H-KO-052. HT, pp. 5402-03. Mr. Arndorfer testifies he has removed trees in preparation for constructing a new house "in the next few years." *Id.* at 5403.

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In its reply brief, Summit Carbon proposes to modify the route by moving it to the northern boundary of the parcels. Summit Carbon RB, pp. 57-58. Summit Carbon states it cannot modify the route on H-KO-051 due to the presence of a creek. *Id.* at 58. As it relates to H-KO-013, Summit Carbon states the route will be adjusted to tie into the route on the property to the west, which has already signed a voluntary easement. *Id.*

The Board has reviewed the evidence and will require Summit Carbon to modify the route as proposed in its reply brief as it relates to H-KO-012 and H-KO-013. Summit Carbon's route on H-KO-052 should be modified to have the route located along the southern boundary of this parcel. For H-KO-051, the route should be located along the southern boundary of this parcel until it crosses the stream. After crossing the stream, Summit Carbon's route should angle to the northeast on H-KO-051 until reconnecting with Summit Carbon's proposed route. The Board finds the route and modifications to be reasonable based upon the record.

**Joan T. Centlivre Revocable Trust (H-KO-014)**

In her direct testimony, Joan Centlivre testifies to a proposed alternative route where Summit Carbon's proposed hazardous liquid pipeline would be moved to the parcel to the south of her parcel. Jorde Landowners Joan Centlivre Direct, pp. 41-42. Ms. Centlivre states this parcel is owned by the Kossuth County Conservation Department. *Id.* at 42. Ms. Centlivre testifies the conservation land is producing nothing and moving the route to this parcel would not impact food production. *Id.*

On cross-examination, Ms. Centlivre testifies she never spoke to Summit Carbon about an alternative route. HT, p. 6539.

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The Board has reviewed the evidence and will approve the route as shown in H-KO-014. The Board finds the route to be reasonable based upon the record.

**McGinnis Family Farm Trust (H-KO-015, H-KO-025, and H-KO-054)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-015 and H-KO-025.

However, the Board will require Summit Carbon to modify the route on H-KO-054 by shifting the route 150 feet to the south. The Board finds this route modification reasonable based upon the record.

**Donald Lickteig Trust and Evelyn Lickteig Trust (H-KO-017 and H-KO-022)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-017. However, the Board will require modifications to the temporary construction area located on the southern half of this parcel, which will be used for the drill string; the exit angle on H-KO-022; and the temporary construction easement, which will be used for the drill string. The Board is requiring these modifications based upon modifications required later in this order. The Board finds the route and modifications reasonable based upon the record.

**Jeanetta L. Simpson and Richard C. Simpson (H-KO-018)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-018.

**Robert G. Faber *et al.* (H-KO-019)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-019.

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**A.L.G.K., LLC (H-KO-023)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-023.

**Lawrence Fogarty and Karen Fogarty (H-KO-027)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-027.

**Anne Laubenthal (H-KO-029 and H-KO-032)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-029 and H-KO-032.

**Besch Family Living Trust (H-KO-031 and H-KO-045)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-031 and H-KO-045.

**Geraldine R. Pedersen Revocable Trust (H-KO-035)**

In the direct testimony of Geraldine Pedersen and Sheila Antoinette Eller, they testify there is no place on their property where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners Geraldine Pedersen and Sheila Antoinette Eller Direct, p. 43.

In its reply brief, Summit Carbon proposes to modify its route by moving it closer to the northern boundary of the parcel. Summit Carbon RB, pp. 57-58.

The Board has reviewed the evidence and will require Summit Carbon to modify the route shown H-KO-035 to move the route to the southern boundary of the parcel to align with modifications required on H-KO-002. The Board finds the route and modification reasonable based upon the record.

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**Henry Schnakenberg and Mark Thees Schnakenberg (H-KO-036)**

During his testimony at the hearing, Henry Schnakenberg proposes an alternative route that would move the route off of his property and place it on land owned by the U.S. Fish and Wildlife Service and the Kossuth County Conservation Department. HT, p. 4746, Henry Schnakenberg Hearing Exhibit 5.

The Board has reviewed the evidence and will not require Summit Carbon to modify the route as proposed by Mr. Schnakenberg. The Board will approve the route as shown in H-KO-036. The Board finds this route to be reasonable based upon the record.

**Christopher M. Capesius et al. (H-KO-037 and H-KO-059)**

No additional evidence was provided as it relates to these parcels. The Board will require Summit Carbon to move the route to the south 200 feet on H-KO-037. The route on H-KO-059 should angle from the proposed route to a point of connection with the route on K-KO-037, which is 200 feet further to the south than the proposed route. The Board finds this modified route to be reasonable based upon the record.

**Henry Schnakenberg and Adelheid Schnakenberg (H-KO-038 and H-KO-046)**

Mr. Schnakenberg also provides testimony relating to these two parcels. HT, p. 4749. Mr. Schnakenberg states there are a lot of rocks on this property due to the geology. *Id.* at 4757.

The Board has reviewed the evidence and will require Summit Carbon to modify the route to move it 200 feet to the south on H-KO-038. Once the route enters H-KO-046, Summit Carbon should continue straight for 200 feet before angling to the northeast to reconnect with Summit Carbon's proposed route. While the Board

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understands Mr. Schnakenberg's concerns about rocks, the Board finds Summit Carbon's land restoration plan addresses requirements for what size of rocks can be left after construction, and if rocks result in changes to Summit Carbon's hazardous liquid pipeline, the pipeline will be subject to regulation by PHMSA. The Board finds the route and modifications to be reasonable based upon the record.

**Charleen R. Mehan *et al.* (H-KO-040)**

At hearing, Christopher Wittkopf proposes an alternative route that would move Summit Carbon's proposed hazardous liquid pipeline 100 feet to the northwest off of his property and onto property owned by another landowner who has already signed an easement with Summit Carbon. HT, pp. 1481-82.

On cross-examination, Mr. Schovanec testifies it is possible to accommodate Mr. Wittkopf's request by moving the eastern exit of the drill string to the northwest. HT, p. 2344. Mr. Schovanec testifies this modification will also result in routing modifications or easement modifications on H-KO-017, H-KO-022, H-KO-069, and H-KO-073. *Id.*

While the Board is very hesitant to move Summit Carbon's route off of a person's property because they object to the route being on their property, the Board, in this case, will require Summit Carbon to move its route to the northwest off of H-KO-040. As such, the Board will deny Summit Carbon the right of eminent domain over H-KO-040. The Board finds moving Summit Carbon's route 150 feet to the northwest from its entry point on the eastern boundary of H-KO-040 to be reasonable while not placing additional burdens on neighboring parcels. The Board's modification here will impact H-KO-017, H-KO-022, H-KO-069, and H-KO-073. Summit Carbon will be required to

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make consistent modifications on these parcels to align with the modification of the route discussed above.

**Alan A. Laubenthal and Sandra M. Laubenthal (H-KO-042)**

In the direct testimony of Alan Laubenthal and Sandra Laubenthal, they state there is no place on their property where they would propose Summit Carbon's route be located. Jorde Landowners Alan Laubenthal and Sandra Laubenthal Direct, p. 41.

They testify they use reduced tillage to capture carbon dioxide on their farm and Summit Carbon's construction will negatively impact their ability to farm on their property. *Id.*

On cross-examination, Alan Laubenthal testifies Summit Carbon stated it would be willing to move the route further to the north. HT, p. 6449. However, Mr. Laubenthal states while moving the route further to the north would move it away from his house, it would move it closer to his neighbor's. *Id.* at 6449-50.

The Board has reviewed the evidence and will approve the route shown in H-KO-042. The Board finds the route to be reasonable based upon the record.

**Erik T. Reseland and Richard E. Reseland (H-KO-044)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-044.

**Marlene M. Raney *et al.* (H-KO-055)**

No additional evidence was provided as it relates to this parcel. However, due to modifications required on H-KO-037, the Board will require Summit Carbon to modify the route on H-KO-055 by entering the western boundary of this parcel 200 feet to the south before angling to the northeast to reconnect with Summit Carbon's proposed

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route on this parcel. The Board finds this route and modification to be reasonable based upon the record.

**Revocable Trust Agreement of Dean H. Frideres and Linda J. Frideres (H-KO-060)**

At hearing, Linda Frideres proposes an alternative route that would be located on the south side of the road along the southern boundary of her property. HT, p. 1452, Linda Frideres Hearing Exhibit 2. Mr. Frideres' proposed alternative route would be located on land owned by the United States of America and Kossuth County. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-KO-060. The Board finds the route reasonable based upon the record.

**z. Amy Laubenthal Gallagher (H-KO-061)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-061.

**DAPEMA, LLC (H-KO-065)**

On cross-examination, David Skilling, on behalf of DAPEMA, LLC, testifies he did not request an alternative route with Summit Carbon. HT, p. 3722. Mr. Skilling did testify about moving the route to the north onto property owned by a landowner who has already granted Summit Carbon an easement on other property, and not having Summit Carbon be located on his property. *Id.*

On cross-examination of Mr. Rorie, Murray Landowners questioned whether Summit Carbon has considered moving the route north onto property owned by a landowner who has granted Summit Carbon an easement on a different parcel. HT, p. 2808, *see also* Murray Landowners Hearing Exhibit 4.



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In their reply brief, Murray Landowners propose to modify the property description to the "N ½ N ½ N ½ of the NW ¼ SW ¼ of Section 26, Township 95 North, Range 29, West of the 5th P.M., Kossuth County, Iowa." Murray Landowners IB, p. 16. Murray Landowners state this will reduce the easement on the property to only what is necessary. Murray Landowners also state the inclusion of terms related to emergency situations are ambiguous and overly broad. *Id.* at 15.

The Board has reviewed the information and will approve the route shown in H-KO-065. The Board will not require Summit Carbon to reroute its proposed hazardous liquid pipeline north onto the neighbor's property simply because the neighbor signed a voluntary easement for property somewhere else. The Board will not require changes to the legal description or the emergency clause. The legal description is based upon the legal description on file with the county auditor, and the emergency clause is necessary to allow access outside of the permanent easement during an emergency. It does not grant Summit Carbon *carte blanche* authority to enter and use the property as it sees fit. The Board finds the route to be reasonable based upon the record.

**The Danish Home Foundation (H-KO-068)**

No additional evidence was provided as it relates to this parcel; however, the Board will require Summit Carbon to modify the route to move the entire route 200 feet to the south. The Board finds the route and modification to be reasonable based upon the record.

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**David E. Wildin and Caroline M. Wildin (H-KO-069 and H-KO-073)**

During his testimony, David Wildin proposed two alternative routes. HT, p. 470. The first route proposed by Mr. Wildin would move Summit Carbon's route one mile to the north of his property through the Smith Wildlife Preserve Area. *Id.* His second proposed alternative route is one mile south of his property through county-owned gravel pits. *Id.* at 471. Mr. Wildin testifies he plans to subdivide his property to allow for the construction of houses. *Id.* at 457.

On cross-examination, Mr. Schovanec testifies Summit Carbon was made aware of Mr. Wildin's proposed subdivision and received an offer from Mr. Wildin accommodating the potential loss for having Summit Carbon's proposed hazardous liquid pipeline on the property. *Id.* at 2291-92. Mr. Schovanec testifies Summit Carbon was willing to honor the offer proposed by Mr. Wildin until he withdrew his offer. *Id.* at 2292.

The Board has reviewed the evidence and will require modifications to H-KO-069 and H-KO-073 to align with the modification discussed above related to H-KO-040. The Board finds the route and modification reasonable based upon the record.

**Chris Rahm and Noel M. Rahm (H-KO-072)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-072.

**Christine Frideres and Randy Frideres (H-KO-074)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-KO-074.

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**Nancy C. Erickson (H-KO-075)**

In her direct testimony, Nancy Erickson testifies about a proposed alternative route that would be located along the southern boundary of her property. Jorde Landowners Nancy Erickson Direct, p. 43; Jorde Landowners Nancy Erickson Direct Attachment No. 22.

In their reply brief, Jorde Landowners further depict Ms. Erickson's proposed alternative route, which would parallel the southern boundary of her property and continue west through her neighbors. Jorde Landowners IB Vol. 10, p. 2. The route would be approximately a quarter of a mile south from its current location onto her neighbor's property, compared to where the neighbor agreed. See *id.*

On cross-examination, Mr. Schovanec testifies, in order to accommodate Ms. Erickson's request, Summit Carbon would need to cross the stream on her property twice and run parallel to the stream. HT, p. 2326. Mr. Schovanec testifies there are hydrological concerns when paralleling a stream due to the potential movement of the stream. *Id.*

The Board has reviewed the information and will approve the route shown in H-KO-075. The Board finds the route to be reasonable based upon the record.

**Robert B. Rausenberger Family Revocable Living Trust (H-KO-077 and H-KO-078)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-KO-077 and H-KO-078.

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**p. Lyon County**

**Jeffery Colvin and Julie Colvin (H-LY-001)**

In their direct testimony, Jeffery Colvin and Julie Colvin propose an alternative route that would follow the northern boundary of their parcel. Jorde Landowners Jeffery Colvin and Julie Colvin Direct, p. 40; Jorde Landowners Jeffery Colvin and Julie Colvin Direct Attachment No. 22.

During cross-examination, Jeffery Colvin testifies there is a Northern Natural Gas transmission pipeline and Dakota Access pipeline located on his property. HT, pp. 5774-75. Mr. Colvin testifies Summit Carbon's route is north of and would parallel the existing pipelines located on his property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-LY-001. The Board finds the route to be reasonable based upon the record.

**Mark L. Van Tol and Sandra Kay Van Tol (H-LY-005)**

In comments provided by Mark L. Van Tol and Sandra Kay Van Tol, they propose an alternative route that would follow along the fence lines of the property. Mark L. Van Tol and Sandra Kay Van Tol Exhibit H Landowner Comments, p. 6 (filed Aug. 14, 2023). Mark L. Van Tol and Sandra Kay Van Tol also note they have Dakota Access pipeline on their property. *Id.* at 4.

The Board has reviewed the evidence and will approve the route as shown in H-LY-005. The Board finds the route to be reasonable based upon the record.

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**Corrine Bonnema *et al.* (H-LY-006)**

In comments provided by Corrine Bonnema *et al.*, she recommends Summit Carbon find an alternative route that does not impact her property. Corrine Bonnema *et al.* Exhibit H Landowner Comments, p. 7 (Filed Aug. 14, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-LY-006. The Board finds the route reasonable based upon the record.

**John C. Bahnson *et al.* (H-LY-007)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-LY-007.

**David L. Wallenburg and Jean Wallenburg (H-LY-008)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-LY-008.

**Arie Blom Testamentary Trust (H-LY-012)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-LY-012.

**Bonnema Harvest Farms, LP (H-LY-013)**

In comments provided by Dale Bonnema, on behalf of Bonnema Harvest Farms, LP, he states he does not have an alternative proposed route. Dale Bonnema Exhibit H Landowner Comments, p. 2 (Filed Aug. 8, 2023). Mr. Bonnema states he already has a natural gas pipeline, a water pipeline, Dakota Access pipeline, and a MidAmerican Energy Company electric line located on his property. *Id.* at 1.

The Board has reviewed the evidence and will approve the route as shown in H-LY-013. The Board finds the route reasonable based upon the record.

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**Todd L. Martin and Sandra K. Martin (H-LY-014)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-LY-014.

**Greg & Erica Kracht Living Trust (H-LY-016)**

In his direct testimony, Gregory Kracht testifies about potentially developing the property in the future. Murray Landowners Kracht Direct, p. 4. Mr. Kracht testifies he spoke with Summit Carbon about moving the route to the west, which he states Summit Carbon did do. *Id.* at 5, Murray Landowners Kracht Direct Exhibit 3. However, Mr. Kracht states Summit Carbon moved the route back to the original location, which is toward the middle of the property. Murray Landowners Kracht Direct, pp. 5-6.

During his cross-examination, Mr. Kracht testifies there is a house approximately 500 to 750 feet to the west of the route shown in H-LY-016. HT, p. 3744.

During cross-examination, Mr. Rorie discusses the events surrounding the change in the routing across Mr. Kracht's property. HT, p. 2786-96.

The Board has reviewed the evidence and will approve the route as shown in the most recent H-LY-016. The Board will not require Summit Carbon to modify the route as requested by Mr. Kracht.

**q. Montgomery County**

**Rodney Mulvania (H-MO-001, H-MO-019, and H-MO-020)**

In her direct testimony, Kerry Mulvania Hirth states there is an existing ONEOK pipeline that crosses her father's property. Hirth Hirth Direct, p. 3. During her testimony at hearing, Ms. Hirth provides additional information about Native American artifacts on the property. HT, pp. 4046-47, Hirth Hearing Exhibit 24-27.

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The Board has reviewed the evidence and will approve the route as shown in H-MO-001, H-MO-019, and H-MO-020. The Board finds the route to be reasonable based upon the record. As Ms. Hirth testifies to a large presence of Native American artifacts on these parcels, the Board will not place any special conditions on Summit Carbon for these parcels, but as Summit Carbon is constructing in and around these parcels, it should pay close attention to the construction to ensure construction ceases if Native American artifacts are identified and that it complies with any requirements of the Iowa State Historic Preservation Office.

**TSL Farms, LLC (H-MO-006 and H-MO-008)**

In the direct testimony of Tom McDonald and Susan McDonald, on behalf of TSL Farms, LLC, they testify about a proposed alternative route that would move the route closer to the western boundary of their parcels. Jorde Landowners Tom McDonald and Susan McDonald Direct Attachment No. 22.

During cross-examination, Tom McDonald testifies about an old house site located on H-MO-008, near the northern boundary of the parcel, about halfway between the east and west boundaries of the parcel. HT, pp. 5087-88. Mr. McDonald states he plans to build a house near the location of the old house site in the future. *Id.* at 5088.

The Board has reviewed the evidence and will approve the route as shown in H-MO-006 and H-MO-008. The Board finds the route to be reasonable based upon the record.

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**Margaret A. Thomas Revocable Trust (H-MO-015, H-MO-016, H-MO-017, and H-MO-018)**

In her direct testimony, Margaret Thomas testifies there is no place on her property where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners Margaret Thomas Direct, p. 41.

The Board has reviewed the evidence and will approve the route as shown in H-MO-015, H-MO-016, H-MO-017, and H-MO-018. The Board finds the route to be reasonable based upon the record.

**Larry K. Laurman and Beverly A. Laurman (H-MO-021)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-MO-021.

**TC Accommodator 294, LLC (H-MO-022 and H-MO-023)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-MO-022 and H-MO-023.

**Hunt Heritage Farm, LLC (H-MO-024, H-MO-025, H-MO-026, H-MO-027, and H-MO-028)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-MO-024, H-MO-025, H-MO-026, H-MO-027, and H-MO-028; however, the Board will require Summit Carbon to revise H-MO-027 to remove all language related to a permanent easement. Based upon a review of this parcel, Summit Carbon is only seeking a temporary construction easement for the purpose of constructing a drill string. To the extent Summit Carbon is seeking any permanent easement rights on H-MO-027, those rights are denied. Summit Carbon will be required to revise the easement language to reflect the



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temporary nature of the easement on H-MO-027. The Board finds the route and modification reasonable based upon the record.

**Marsha Anne Fleming and Morris L. Fleming (H-MO-031 and H-MO-035)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-MO-031. The Board will require Summit Carbon to modify the route in H-MO-035 by continuing straight for an additional 300 feet after entering the parcel on the southern boundary. The Board finds the route and modification reasonable based upon the record.

**Rodney D. Rhoden Trust (H-MO-048)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-MO-048.

**r. O'Brien County**

**Leona Frederika Sauer (H-OB-002 and H-OB-003)**

In comments by Leona Frederika Sauer, she states there is no place on her property where Summit Carbon's proposed hazardous liquid pipeline should be located. Leona Frederika Sauer Exhibit H Landowner Comment, p. 2 (filed Aug. 15, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-OB-002 and H-OB-003. The Board finds the route reasonable based upon the record.

**Charlotte Hartman *et al.* (H-OB-006)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-OB-006.

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**Ivan D. Kruse (H-OB-007)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-OB-007.

**Nancy Miller *et al.* (H-OB-008 and H-OB-039)**

During her direct testimony, Nancy Miller testifies Summit Carbon should move its route off of her property. HT, p. 6650. Mr. Miller states the people to the east have signed an easement and the parcel directly to the north of her property is entirely covered by a cattle feedlot. *Id.* at 6650-51. Ms. Miller testifies she never spoke to Summit Carbon about an alternative route. *Id.* at 6655.

The Board has reviewed the evidence and will approve the route as shown in H-OB-008 and H-OB-039. The Board finds the route reasonable based upon the record.

**James L. Beck *et al.* (H-OB-010)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-OB-010.

**Patricia S. Engel Revocable Trust (H-OB-012)**

During his direct testimony, Kent Engel testifies he does not have a proposed alternative route. HT, p. 508. Mr. Engel testifies he has flown over the area multiple times and the only potential option is moving the entire route to the east. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-OB-012. The Board finds the route to be reasonable based upon the record.

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**Barbara Mars et al. (H-OB-015 and H-OB-038)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-OB-015 and H-OB-038.

**James Van Beek Revocable Trust (H-OB-016 and H-OB-017)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-OB-016 and H-OB-017.

**Duane P. Stoll and Nancy J. Stoll (H-OB-018 and H-OB-019)**

In comments provided by Duane Stoll, he states he would prefer if Summit Carbon was not located on his property. Duane Stoll Exhibit H Landowner Comment, p. 2 (Filed Aug. 17, 2023). Mr. Stoll states, should Summit Carbon's route be located on his property, the route should be moved 50 feet to the north to avoid as much of his tile as possible. *Id.*

The Board has reviewed the evidence and will require Summit Carbon to modify the route shown on H-OB-018 and H-OB-019 to move the route 50 feet to the north. The Board will not require the eastern entry point on H-OB-018 or the western exit point on H-OB-019 to be modified. The angled sections should begin as soon as possible near the eastern entry point on H-OB-018 and the western exit point on H-OB-019 and be as short as necessary to accommodate the 50-foot movement further north on Mr. Stoll's property. The Board finds the modification and route reasonable based upon the record.

**Janet E. Bonner Revocable Trust (H-OB-021 and H-OB-036)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-OB-021 and H-OB-036.

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**Shea Family Farm, LLP (H-OB-024 and H-OB-031)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-OB-024 and H-OB-031.

**Sharon A. Van Beek Revocable Trust (H-OB-026 and H-OB-030)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-OB-026 and H-OB-030.

**Marjorie K. Cleveringa (H-OB-027 and H-OB-028)**

During the testimony of Tom Konz, he testifies about moving his repair shop to the northern fence line near the northwest corner of H-OB-028. HT, p. 833. Mr. Konz also testifies about the negotiations he was engaged in with Summit Carbon regarding a potential easement on his property. HT, pp. 841-52.

The Board has reviewed the information and will approve the route as shown in H-OB-027 and H-OB-028. The Board finds the route to be reasonable based upon the record. However, as stated earlier in this order, Summit Carbon is required to continue to work with landowners to address their concerns.

**Ronald Carl Vlaming *et al.* (H-OB-035)**

In her direct testimony, Nancy Conrad testifies there is no place on her property where Summit Carbon's route should be located. Jorde Landowners Nancy Conrad Direct, p. 40.

On redirect, Ms. Conrad states she is unsure as to why the route does not pass entirely onto her neighbor's property to the south instead of starting on her property and then crossing onto her neighbors' property. HT, p. 5285.

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In their initial brief, Jorde Landowners provide an alternative route that would completely bypass Ms. Conrad's parcel. Jorde Landowners IB Vol. 12, p. 5.

The Board has reviewed the evidence and will approve the route as shown in H-OB-035. The Board finds the route to be reasonable based upon the record.

**Greg Burmakow Revocable Trust (H-OB-037)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-OB-037.

**Revocable Trust of Lois Deiterman (H-OB-040, H-OB-041, and H-OB-042)**

During his cross-examination, Mr. Bobolz testifies he never spoke to Summit Carbon about a proposed alternative route because he does not want Summit Carbon to cross his property. HT, p. 4166. Mr. Bobolz states he has CRP ground on his property, which Summit Carbon will not impact based upon its current route. *Id.* at 4160. Mr. Bobolz also states there is a creek that runs through H-OB-042. *Id.* at 4171.

The Board has reviewed the evidence and will approve the route as shown H-OB-040, H-OB-041, and H-OB-042. The Board finds the route to be reasonable based upon the record.

**s. Page County**

**Laughlin 10, LLC (H-PG-001 and H-PG-002)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PG-001 and H-PG-002.

**Polly Ann Delehant and Donald James Delehant (H-PG-003 and H-PG-004)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PG-003 and H-PG-004.

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**Debra L. Wheeler *et al.* (H-PG-005 and H-PG-006)**

In her direct testimony, Debra Wheeler proposes an alternative route that would move Summit Carbon's route off of H-PG-005 and H-PG-006 and move it to the west to run parallel to Highway 59, which runs along the western boundary of her property.

Jorde Landowners Debra Wheeler *et al.* Direct Attachment No. 22.

On cross-examination, Ms. Wheeler reiterates her request to have the route relocated so it is parallel to Highway 59 on the west side of her property. HT, p. 6504.

On redirect, Ms. Wheeler testifies to potentially buying the acreages located just southeast of H-PG-005 as well as potentially building more acreages in line with the existing acreages near the southeast corner of H-PG-005. *Id.* at 6528.

The Board has reviewed the evidence and will approve the route as shown in H-PG-005 and H-PG-006. The Board is not requiring the route modification requested by Ms. Wheeler due to the additional impacts to landowners on both sides of Ms. Wheeler. Implementing Ms. Wheeler's request would impact her neighbors to the north and south who have already signed voluntary easements. The Board must also consider the impacts to people who have signed easements as well as those who are subject to a request for eminent domain. A "pipeline is not a single structure that may be placed in one location. . . ." *Couser*, Civil No. 4:22-cv-00383-SMR-SBJ, 2023 WL 8366208, at \*10 (S.D. Iowa Dec. 4, 2023). The Board is required to examine the whole picture. Examining the whole picture, the Board finds the route as shown in H-PG-005 and H-PG-006 to be reasonable.

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**Maher Farms, Inc. (H-PG-007, H-PG-008, and H-PG-018)**

In the direct testimony of Martin Maher and Wanda Maher, on behalf of Maher Farms, Inc., they propose an alternative route that would run along the eastern boundary of H-PG-007 and continue south. Jorde Landowners Martin Maher and Wanda Maher Direct Attachment No. 22.

On cross-examination, Mr. Maher testifies Summit Carbon offered him an alternative route that would have run on the parcel to the east of H-PG-008, in a straight north and south line, before angling to the northeast. HT, p. 5053. Mr. Maher states he rejected this route due to his desire to place more grain bins near the existing grain bins located in the southeast corner of H-PG-008. *Id.* at 5054. Mr. Maher states he would be willing to have a discussion with Summit Carbon about modifying the route to match what is depicted in his alternative route. *Id.* at 5058-59. Mr. Maher also testifies about another potential alternative route that would parallel 110th Street and A Avenue along the boundaries of his property. *Id.* at 5061.

On cross-examination, Mr. Schovanec states Mr. Maher requested the route currently depicted in Summit Carbon's route. *Id.* at 2322-23. Mr. Schovanec affirms the original route discussed by Mr. Maher and states two route modifications were done with respect to Mr. Maher's property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-PG-007, H-PG-008, and H-PG-018. While Summit Carbon and Mr. Maher may be able to reach an agreement as to the route, the Board is examining the evidence it has before deciding. Based upon that evidence, the Board finds the route to be reasonable based upon the record.

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**t. Palo Alto County**

**Verdon Acres, LLLP (H-PA-001)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-PA-001.

**Daniel Fehr and Eunice Fehr (H-PA-002 and H-PA-003)**

In his testimony at hearing, Daniel Fehr testifies Summit Carbon's original route ran along the southern boundary of his properties. HT, p. 1184. Daniel Fehr testifies the original route would have been 300 feet south of the housing located on his grandson's property across the road. *Id.* Daniel Fehr testifies Summit Carbon altered the route to the currently proposed route due to the construction of a hog confinement on Summit Carbon's initial proposed route. *Id.* Daniel Fehr also testifies he has a 48-inch drainage tile line installed on his property that ranges in depth from four feet to 19 feet deep. *Id.* at 1188-89. Daniel Fehr recommends Summit Carbon's route should follow roads or places where someone else already has an easement. *Id.* at 1199-1200.

On cross-examination, Daniel Fehr clarifies the housing and place of worship are for approximately 72 H-2A visa workers and are located on H-PA-013, which is approximately 250 feet from Summit Carbon's route. *Id.* at 1201-02.

During the questioning of John Banwart, he states the hog confinement was built on top of Summit Carbon's proposed route in an attempt to force Summit Carbon to change its route. *Id.* at 4187.

The Board has reviewed the evidence and will require Summit Carbon to revise H-PA-002 and H-PA-003 to have the route located along the southern boundary of the



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parcels. As it relates to the route on H-PA-003, the Board will require Summit Carbon to bore the route from just to the east of the cutout for the hog confinements to the other side of the road on the western boundary of H-PA-003. The southern boundary of Summit Carbon's permanent easement should align with the southern boundary of H-PA-003. Summit Carbon will also be required to revise H-PA-003 to reflect the additional workspace needed for the drilling on H-PA-003. After the bored section, Summit Carbon will be required to angle the route from the bore location to align with the eastern entry point on H-PA-002. The Board finds this modification to be reasonable due to the conditions on H-PA-013, which will be addressed later in this order.

**John Banwart and Kimberly Banwart (H-PA-004 and H-PA-005)**

In his direct testimony, Mr. Banwart testifies Summit Carbon's route follows the same route as a 48-inch drainage tile main located on his property that drains 1,200 acres. Banwart Banwart Direct, p. 1.

On cross-examination, Mr. Banwart testifies Summit Carbon's easement would prevent him from impounding water on his property that he could use for irrigation purposes. HT, p. 4203.

The Board has reviewed the evidence and will approve the route as shown in H-PA-004 and H-PA-005. The Board will require Summit Carbon to bore under the drainage tile main located on Mr. Banwart's property. Summit Carbon will be required to revise the exhibits to reflect the need for additional workspace, if necessary, for the bore pits. As it relates to the inference with Mr. Banwart's ability to impound water in the permanent easement, the Board will not require this language to be struck from the

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easement language as the Board questions the validity of the concern given Summit Carbon's close proximity to the drainage tile main installed on Mr. Banwart's property. The Board finds the route and modifications reasonable based upon the record.

**James A. and Sharon A. Fehr Trust *et al.* (H-PA-006)**

During his testimony at hearing, James Fehr recommends Summit Carbon abandon the entire project. HT, p. 536. James Fehr states he does not have an alternative route, and if Summit Carbon wants to locate its route across his property, his entire property is for sale. *Id.* at 536-37.

The Board has reviewed the evidence and will approve the route as shown in H-PA-006. The Board finds the route reasonable based upon the record.

**Melvin Fisk III Trust *et al.* (H-PA-007, H-PA-008, and H-PA-010)**

On cross-examination, Carmen Moser testifies Melvin Fisk III and Dorothy Ann Stimpson filed an objection with the Board on June 12, 2023, requesting the route be moved to the south side of the Des Moines River. HT, p. 3793.

The Board has reviewed the evidence and will approve the route as shown in H-PA-007, H-PA-008, and H-PA-010. The Board finds the route reasonable based upon the record.

**James R. Moser *et al.* (H-PA-009)**

In his direct testimony, Jamie Moser testifies about a filing regarding the routing of Summit Carbon's proposed hazardous liquid pipeline. The Mosers Jamie Moser Direct, p. 5.

On cross-examination, Jamie Moser testifies about keeping Summit Carbon's route south of the Des Moines River. HT, p. 3758.

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On cross-examination, Carmen Moser testifies the land south of the river where she proposes the route be located is owned by Palo Alto County, and Palo Alto County does not oppose Summit Carbon's proposed hazardous liquid pipeline.<sup>32</sup> *Id.* at 3774.

The Board has reviewed the evidence and will approve the route as shown in H-PA-009. The Board will not require Summit Carbon to reroute south of the Des Moines River onto property owned by Palo Alto County. As stated earlier in this order, the Board has to consider landowners who have signed a voluntary easement as well as landowners who have not. While Palo Alto County may not have issue with having Summit Carbon's route located on its property, no evidence was submitted showing Palo Alto County owns sufficient property south of the Des Moines River to accommodate Summit Carbon's route without impacting new or additional landowners. Therefore, the Board finds the route to be reasonable based upon the record.

**Verda M. Bruellman et al. (H-PA-011 and H-PA-012)**

At hearing, Joan Marie Wirtz testifies much of her property contains drainage tile and is covered by an irrigator. HT, p. 1403. Ms. Wirtz testifies Summit Carbon's route could impact her ability to utilize her irrigator over the entirety of the farm. *Id.* at 1413. Ms. Wirtz also testifies to having an existing natural gas pipeline on H-PA-011. *Id.* at 1402.

During his cross-examination, Mr. Schovanec explains Summit Carbon would be responsible for damages that may result to the field where irrigation is unable to be performed due to Summit Carbon's construction. *Id.* at 2296. Ms. Schovanec states

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<sup>32</sup> The Board is unsure whether Ms. Moser was making this statement as an individual or has personalized knowledge about Palo Alto's position on Summit Carbon's proposed hazardous liquid pipeline given she is the County Auditor for Palo Alto County. The Mosers Carmen Moser Direct Exhibit 19, p. 9; Palo Alto BOS Amicus Curiae, p. 3.

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this would apply to any portion of the field orphaned by Summit Carbon's construction.  
*Id.*

The Board has reviewed the evidence and will approve the route as shown in H-PA-011 and H-PA-012. As it relates to Ms. Wirtz's concerns regarding irrigation, Summit Carbon will be responsible for any damages resulting from its construction that orphans a part of a field from receiving irrigation. While Summit Carbon may be able to install trench plugs to allow the irrigator to pass over the open trench or construct in this area when irrigation is not happening, it does not change the fact that Summit Carbon is responsible for the damages it causes. Iowa Code § 479B.29. The Board finds the route to be reasonable based upon the record.

**Noah Daniel Fehr and Charlie Roger Fehr (H-PA-013 and H-PA-014)**

At hearing, Daniel Fehr testifies his grandsons bought H-PA-013 and H-PA-014 from him with a young farmers loan. HT, p. 1206. Daniel Fehr also testifies to the homestead located within H-PA-013 as housing 72 H-2A visa workers. *Id.* at 1201-02.

In its reply brief, Summit Carbon proposes to move the route approximately 120 feet to the north of the area where the workers live. Summit Carbon RB, p. 60. Summit Carbon states this modification would require a corresponding change on H-PA-003. *Id.*

The Board has reviewed the information and will require Summit Carbon to revise H-PA-013 and H-PA-014 to have the route located near the southern boundary of these parcels. As it relates to H-PA-013, the eastern entry point will be required to align with the boring required on H-PA-003, described above. Additionally, the route should parallel the existing 48-inch drainage tile main located on these parcels and cross it as few times as possible. Summit Carbon will be required to locate its proposed

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hazardous liquid pipeline beneath the drainage tile main on these parcels when it crosses the drainage tile main. Summit Carbon will be required to revise the exhibits to include any additional workspace needed for the required bore pits. The Board finds the route and modification reasonable based upon the record.

**Patricia Ann Wirtz Testamentary Trust (H-PA-015 and H-PA-016)**

On cross-examination, Mr. Banwart testifies he is also representing the Patricia Ann Wirtz Testamentary Trust. HT, p. 4188. Mr. Banwart testifies there is a 48-inch drainage tile main that crosses his property and terminates on H-PA-015 before branching north and south with 36-inch drainage tile mains. *Id.* at 4188.

The Board has reviewed the evidence and will approve the route as shown in H-PA-015 and H-PA-016. The Board will require Summit Carbon to bore under the drainage tile main located on H-PA-015. Summit Carbon will be required to revise the exhibit to reflect the need for additional workspace, if necessary, for the bore pits. The Board finds the route and modifications reasonable based upon the record.

**Neil R. Dahlquist Living Trust (H-PA-025)**

In his direct testimony, Neil Dahlquist testifies there is no place on his property where he would recommend Summit Carbon's route be located. Jorde Landowners Neil Dahlquist Direct, p. 40.

During his additional direct testimony provided at hearing, Mr. Dahlquist testifies the bends in Summit Carbon's route, which cause it to impact his property, are necessary due to Summit Pork II, LLC, buying property across from his property. HT, p. 7132; Jorde Landowners Dahlquist Hearing Exhibit 648, p. 1. Mr. Dahlquist testifies the route does not cross the property owned by Summit Pork II, LLC, which he asserts

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has “the same address in Iowa as the people involved in the pipeline and the same president.” *Id.* In his Hearing Exhibit 646, Mr. Dahlquist shows there are buildings located on the property owned by Summit Pork II, LLC. Jorde Landowners Dahlquist Hearing Exhibit 646, p. 2.

The Board has reviewed the evidence and will approve the route as shown in H-PA-025. While the Board does find Summit Carbon’s choice of routing peculiar in this situation, given the buildings are already constructed, the Board finds the route to be reasonable based upon the record.

**Cletus R Elbert Revocable Trust (H-PA-027 and H-PA-028)**

In the direct testimony of Maureen Frances Elbert Bechard *et al.*, she testifies to a proposed alternative route along the southern boundary of the parcels. Jorde Landowners Maureen Frances Elbert Bechard *et al.* Direct, p. 41. Ms. Bechard testifies locating Summit Carbon’s route near the southern boundary of her property would avoid many of the drainage tile lines located on the property. *Id.*

During her cross-examination, Ms. Bechard testifies about conversations her brother had with Summit Carbon about moving the route near the southern boundary of her parcels. HT, p. 7186.

On cross-examination, Mr. Schovanec states, in relation to the proposed route modification by Ms. Bechard, “a lot of these landowners [had not] mentioned these reroutes until easements were secured on both sides of their property. And that makes it very difficult to adjust at that point.” *Id.* at 2301.

The Board has reviewed the evidence and will approve the route as shown in H-PA-027 and H-PA-028. The Board will not require Summit Carbon to modify the

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route as requested by Ms. Bechard. The Board finds the route to be reasonable based upon the record.

**Weber Acres, Ltd. (H-PA-030 and H-PA-031)**

In the direct testimony of David Weber, on behalf of Weber Acres, Ltd., he states there is no place on his property where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners David Weber Direct, p. 15.

On cross-examination, Mr. Weber testifies he did not speak with Summit Carbon about a proposed alternative route. HT, p. 6064.

In its reply brief, Summit Carbon proposes moving the route closer to the southern boundary of these parcels. Summit Carbon RB, p. 59.

The Board has reviewed the evidence and will require Summit Carbon to modify the route shown in H-PA-030 and H-PA-031 by shifting the route to the south, closer to the southern boundary of the parcels. The Board finds the route and modification to be reasonable based upon the record.

**Douglas Williamson and Jill Williamson (H-PA-032)**

At the hearing, Jill Williamson testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. HT, p. 1231.

In their initial brief, Jorde Landowners propose an alternative route that would move the route as near as possible to the southern boundary. Jorde Landowners IB Vol. 17, p. 41.

In its reply brief, Summit Carbon proposes modifying the route to move it closer to the southern boundary of this parcel. Summit Carbon RB, p. 59.

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The Board has reviewed the evidence and will require Summit Carbon to revise the route shown in H-PA-032. The Board will require Summit Carbon to move its route closer to the southern boundary of this parcel. The Board finds the route and modification to be reasonable based upon the record.

**Patricia Ann Baumann (H-PA-033 and H-PA-034)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PA-033 and H-PA-034.

**Jane Anna Howard Trust (H-PA-044, H-PA-045, H-PA-047, H-PA-048, H-PA-049, and H-PA-050)**

In the direct testimony of Jason Howard, he testifies to two possible alternative routes. Jorde Landowners Jason Howard Direct, pp. 41-42; Jorde Landowners Jason Howard Direct Attachment No. 22. Mr. Howard's first proposed alternative route would move Summit Carbon's route approximately one mile south to the land owned by Mr. Howard that is located south of 440th Street. Jorde Landowners Jason Howard Direct, p. 42. The proposed route would parallel the southern boundary of these parcels owned by Mr. Howard. *Id.* Mr. Howard's second proposed alternative route would move Summit Carbon's route north, to the south side of English Road, in Palo Alto County. *Id.* Mr. Howard states either of his proposed route modifications would bypass the Robert Mulroney Recreation Area east of his farm "and would most likely require a shorter boring run under the Des Moines River." *Id.* Mr. Howard testifies the route modifications are preferred because Summit Carbon's route crosses approximately 1.5 miles of their property, which is currently under CRP contract until 2030 and is his largest and most profitable piece of land. *Id.* at 41.



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The Board has reviewed the evidence and will approve the route as shown in H-PA-044, H-PA-045, H-PA-047, H-PA-048, H-PA-049, and H-PA-050. The Board will not require Summit Carbon to modify its route as suggested by Mr. Howard. The Board finds the route to be reasonable based upon the record.

**Mersch Farms, Inc. (H-PA-052, H-PA-053, and H-PA-054)**

In the direct testimony of Joan Mersch *et al.*, on behalf of Mersch Farms, Inc., she testifies to a proposed alternative route that would turn north immediately after entering the eastern boundary of H-PA-052 before turning west approximately 150 feet from the northern boundary of H-PA-052. Jorde Landowners Joan Mersch *et al.* Direct Attachment No. 22. Ms. Mersch also recommends boring under the berms located near the eastern boundary of H-PA-052 and the western boundary of H-PA-053.

On cross-examination, Ms. Mersch testifies her proposed alternative route was not provided to Summit Carbon. HT, p. 5312.

On cross-examination, Mr. Schovanec testifies Summit Carbon would be willing to accommodate Ms. Mersch's request to bore under her berms. *See id.* at pp. 2311-12.

The Board has reviewed the evidence and will approve the route as shown in H-PA-052, H-PA-053, and H-PA-054. The Board will require Summit Carbon to bore under the berms located near the eastern boundary of H-PA-052 and the western boundary of H-PA-053. Based upon H-PA-052 and H-PA-053, it appears Summit Carbon is already proposing to bore under these berms; however, if Summit Carbon needs additional workspace for the bore pits, the Board will require Summit Carbon to

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file revised exhibits detailing the additional workspace. The Board finds the route and modification reasonable based upon the record.

**Julie J. Johnson and Jane J. Culver (H-PA-059 and H-PA-060)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PA-059 and H-PA-060.

**u. Plymouth County**

**Mark J. Nilles and Jean A. Nilles (H-PL-001 and H-PL-034)**

In comments submitted by Mark Niles and Jean Niles, they recommend an alternative route for Summit Carbon's proposed hazardous liquid pipeline "somewhere where a natural gas pipeline is located." Mark Niles Exhibit H Landowner Comments, p. 3 (filed Aug. 16, 2023); Jean Niles Exhibit H Landowner Comments, p. 3 (filed Aug. 16, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-PL-001 and H-PL-034. The Board finds the route to be reasonable based upon the record.

**Kenneth A. Orban and Susan K. Orban (H-PL-002, H-PL-003, and H-PL-035)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PL-002, H-PL-003, and H-PL-035.

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**Clair E. Thoreson and Linda D. Thoreson Revocable Trust (H-PL-005 and H-PL-036)**

During her testimony, Tamera Snyder recommends a proposed alternative route that would move the route “a little bit to the west. . . .” HT, p. 414.

On cross-examination, Ms. Snyder testifies moving the route to the west would move it closer to the buildings just west of the southwest corner of H-PL-005. *Id.* at 419. When asked to clarify how far she proposes to move the route west, Ms. Snyder states, “A hundred miles.” *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-PL-005. The Board will require Summit Carbon to modify the route on H-PL-036 by continuing straight for an additional 160 feet after entering the parcel from the south before angling to the northwest. The Board finds the route to be reasonable based upon the record.

**G and G Land, LLC (H-PL-007 and H-PL-037)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PL-007 and H-PL-037.

**Steven J. Breuer *et al.* (H-PL-008)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-PL-008.

**L & G Kolker Family, LLC (H-PL-011 and H-PL-012)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PL-011 and H-PL-012.

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**Riediger Partnership (H-PL-013, H-PL-014, H-PL-017, H-PL-018, and H-PL-019)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PL-013, H-PL-014, H-PL-017, H-PL-018, and H-PL-019.

**Ronald R. Fischer *et al.* (H-PL-016 and H-PL-038)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PL-016 and H-PL-038.

**Merle T. Shay and Rebecca Shay (H-PL-030 and H-PL-033)**

During his testimony at hearing, Merle Shay testifies about the presence of a natural gas line on his parcels that runs north to south, just west of the terrace located on H-PL-033. HT, pp. 941-42. Mr. Shay also testifies about a proposed alternative route he discussed with Summit Carbon where the route would be moved to the parcel to the west of his parcels. *Id.* at 947-48. Mr. Shay states the landowner to the west was willing to have the route located on his property, but Mr. Shay's neighbor to the west wanted the route along the western boundary of the parcel. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-PL-030 and H-PL-033. The Board will not require the route modification proposed by Mr. Shay. The Board finds the route to be reasonable based upon the record.

**v. Pottawattamie County**

**Slagle Land and Cattle, Ltd. (H-PO-004 and H-PO-005)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PO-004 and H-PO-005.

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**David P. Wright and Tami J. Wright (H-PO-006 and H-PO-007)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PO-006 and H-PO-007.

**Timber Lane, LLC (H-PO-019 and H-PO-020)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-PO-019 and H-PO-020.

**Triple P Farms, Inc. (H-PO-024, H-P-025, and H-PO-038)**

In his testimony at hearing, John Pattee, on behalf of Triple P Farms, Inc., states his primary concern is regarding the restoration of his property post-construction. HT, p. 1143. Mr. Pattee states it would be his preference to not have Summit Carbon's route cross his property; however, if the route must cross his property, Mr. Pattee recommends an alternative route that would run along the western boundary of his property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-PO-024, H-PO-025, and H-PO-038. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to make the proposed modification requested by Mr. Pattee at hearing.

**Linda M. Green and JoAnn C. Hollesen (H-PO-031)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-PO-031.

**Raymond H. Eischeid Revocable Trust (H-PO-037)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-PO-037.

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**w. Shelby County**

**Grandma Frieda Boettger Hansen's 40, Inc. (H-SH-001)**

In the direct testimony of Sherri Webb *et al.*, on behalf of Grandma Frieda Boettger Hansen's 40, Inc., Ms. Webb testifies to two potential alternative routes. Jorde Landowners Sherri Webb *et al.* Direct, pp. 71-72. Ms. Webb states the two alternatives proposed by her are to reduce the number of crossings of Silver Creek. *Id.* at 71. In her Attachment No. 22, Ms. Webb shows her alternative routes. Jorde Landowners Sherri Webb *et al.* Direct Attachment No. 22. Ms. Webb's first proposed alternative route would turn east from Summit Carbon's route just north of H-SH-034, continue for approximately a half of a mile, and cross Silver Creek before turning south. *Id.* Ms. Webb's first alternative route would stay on the east side of Silver Creek before reconnecting with Summit Carbon's proposed route approximately one mile south of her parcel. *Id.* Ms. Webb's second alternative route shown in Attachment No. 22 would turn west just north of H-SH-034, then continue west for approximately half a mile, before turning south. *Id.* Ms. Webb's second alternative route would stay west of Summit Carbon's proposed route before returning to Summit Carbon's route approximately one mile south of Ms. Webb's property. *Id.* Ms. Webb testifies both of her alternative routes would be on property she does not own. Jorde Landowners Sherri Webb *et al.* Direct, p. 71. Ms. Webb testifies Summit Carbon's route through her property would parallel the existing electric line easement and would avoid the tile location on the farm. *Id.* at 71-72.

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On redirect, Ms. Webb testifies the location proposed by Summit Carbon would avoid a hog confinement located to the north of her property and it would avoid placing the route closer to Silver Creek. HT, p. 6165.

The Board has reviewed the evidence and will approve the route as shown in H-SH-001. The Board finds the route to be reasonable based upon the record.

**Bonnie J. Peters and David D. Peters (H-SH-002 and H-SH-012)**

In the direct testimony of David Peters and Bonnie Peters, they testify about the presence of a hog confinement located on H-SH-012. Jorde Landowners David Peters and Bonnie Peters Direct, p. 2.

During her cross-examination, Ms. Peters testifies she never spoke with anyone from Summit Carbon regarding the route on her parcels. HT, p. 6247.

The Board has reviewed the evidence and will approve the route as shown in H-SH-002 and H-SH-012. The Board finds the route to be reasonable based upon the record.

**Circle R Farm, Ltd. (H-SH-003 and H-SH-036)**

During his testimony at hearing, John Rosman, on behalf of Circle R Farm, Ltd., states he does not have a proposed alternative route. HT, p. 567. Mr. Rosman states he does not want to move the proposed hazardous liquid pipeline onto a neighbor's property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-SH-003 and H-SH-036. The Board finds the route to be reasonable based upon the record.

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**Productive Farms, LLC (H-SH-004, H-SH-005, and H-SH-006)**

In the direct testimony of Jann Reinig and Lydia Reinig, on behalf of Productive Farms, LLC, they testify there is no place on the property where they would recommend Summit Carbon's proposed hazardous liquid pipeline be located. Jorde Landowners Jann Reinig and Lydia Reinig Direct, p. 45. Additionally, the Reinigs testify to not being made aware of where Summit Carbon's proposed hazardous liquid pipeline would be on their property due to maps provided by Summit Carbon containing different scales. *Id.*

On cross-examination, Jann Reinig reaffirms her inability to determine where Summit Carbon's proposed hazardous liquid pipeline would be located on her property. HT, pp. 4878-79. Jann Reinig testifies it was her understanding Summit Carbon's route would parallel the fence near the western boundary of her property. *Id.* at 4880.

The Board has reviewed the evidence and will approve the route as shown in H-SH-004, H-SH-005, and H-SH-006. The Board finds the route to be reasonable based upon the record. As it relates to the maps provided to Jann Reinig and Lydia Reinig, the Board is uncertain what maps were previously provided to them. However, the Board notes the maps filed with the Exhibit H's all contain the same scales.

**Donald J. Gaul and Mary A. Frisch Joint Revocable Trust (H-SH-007 and H-SH-014)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-007 and H-SH-014.

**Norman N. Schmitz and Gloria A. Schmitz Living Trust (H-SH-008 and H-SH-015)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-008 and H-SH-015.



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**Rick A. Chipman Revocable Trust and Cheryl A. Chipman Revocable Trust (H-SH-013, H-SH-030, H-SH-031, and H-SH-033)**

In the direct testimony of Rick Chipman, he testifies he is against Summit Carbon's proposed hazardous liquid pipeline, especially when it is near homes and the town of Earling, Iowa. Chipman Chipman Direct, p. 3. Mr. Chipman states he has several terraces and a CRP waterway that Summit Carbon's route would impact. *Id.* at 2.

During cross-examination by the Counties, Mr. Chipman states he is concerned about Earling should a release occur. HT, p. 4116. When further questioned on his concerns regarding Earling, Mr. Chipman testifies he is not sure moving the route to the east would be a great solution due to him not having seen the vapor dispersion models. *Id.* at 4117.

The Board has reviewed the information and will approve the route as shown in H-SH-013, H-SH-030, H-SH-031, and H-SH-033. The Board finds the route to be reasonable based upon the record. Additionally, examining potential alternative routes around Mr. Chipman's property would impact more terraces than what Summit Carbon's route would impact, which Mr. Chipman testified was a concern of his.

**Leo P. Kaufmann and Julie K. Kaufmann (H-SH-016 and H-SH-017)**

During her cross-examination, Julie Kaufmann testifies she did not speak with Summit Carbon about an alternative route further away from the buildings located on her property. HT, p. 3882. Ms. Kaufmann testifies there are two residences approximately half a mile to the east of Summit Carbon's route, including the residence where she lives. *Id.* at 3878. Ms. Kaufmann testifies she "made it very clear to them

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from the very beginning that we were not interested in selling our land and we don't want to sign any part of that agreement with [Summit Carbon]." *Id.* at 3882.

The Board has reviewed the evidence and will approve the route as shown in H-SH-016 and H-SH-017. The Board finds the route to be reasonable based upon the record.

**Pearl M. Schulte Revocable Trust (H-SH-018, H-SH-019, and H-SH-032)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-018, H-SH-019, and H-SH-032.

**Bernice Gaul Book Revocable Trust (H-SH-020, H-SH-040, and H-SH-067)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-020, H-SH-040, and H-SH-067.

**George N. Langenfeld Revocable Trust and Julie A. Langenfeld Revocable Trust (H-SH-021 and H-SH-022)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-021 and H-SH-022.

**Joseph P. Bock Testamentary Trust (H-SH-023 and H-SH-024)**

In his testimony, Ronald Beymer testifies there is no good route through his property. HT, pp. 621-22. Mr. Beymer testifies he also does not simply want to have it moved to his neighbor's property either. *Id.* at 622.

The Board has reviewed the evidence and will approve the route as shown in H-SH-023 and H-SH-024. The Board finds the route to be reasonable based upon the record.

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**James Schmitz (H-SH-025)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SH-025.

**Land Family Farms, LLC *et al.* (H-SH-026 and H-SH-027)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-026 and H-SH-027.

**Larry I. Gaul and Yvonne M. Gaul (H-SH-028)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SH-028.

**James G. Rosman *et al.* (H-SH-029, H-SH-035, and H-SH-063)**

At hearing, Kathryn Josephine Byars testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. HT, p. 724.

The Board has reviewed the evidence and will approve the route as shown in H-SH-029, H-SH-035, and H-SH-063. The Board finds the route to be reasonable based upon the record.

**TL Barrett Farms, LLC (H-SH-034)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SH-034.

**Gerald Reinig Revocable Trust *et al.* (H-SH-037, H-SH-049, H-SH-050, and H-SH-064)**

During his cross-examination, David Reinig testifies the parcels for which he is testifying were added at different times and either were added under Reinig, Inc., or under the trusts. HT, p. 1308. Mr. Reinig did not propose an alternative route for his parcels. See *id.* at pp. 1284-1315. Mr. Reinig did testify to his experiences with

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pipelines on other farms he has and acknowledges the impacts from a pipeline can be mitigated. *Id.* at 1291-92, 1300-01.

The Board has reviewed the information and will approve the route as shown in H-SH-037, H-SH-049, H-SH-050, and H-SH-064. The Board finds the route to be reasonable based upon the record.

**Benita A. Schiltz Revocable Trust (H-SH-038)**

In the direct testimony of Mary Powell *et al.*, she testifies to an alternative route near the eastern boundary of her parcel. *Jorde Landowners Mary Powell et al. Direct*, p. 33. However, Ms. Powell testifies this route would impact a well near the eastern property boundary. *Id.* Ms. Powell asserts Summit Carbon should be required to dig a new well away from Summit Carbon's route and run new water lines to the house and livestock buildings located west of H-SH-038. *Id.* at 33-34.

In its reply brief, Summit Carbon proposes to "shift the route so that it angles to the northwest and then northeast around the well. This shift will locate the pipeline approximately 100 additional feet from the well." Summit Carbon RB, p. 60.

The Board has reviewed the evidence and will require Summit Carbon to revise H-SH-038 to move the route 300 feet to the west of its current location on Ms. Powell's property. Summit Carbon will be required to continue the northeast entry angle on the property to just southwest of the terrace which runs on a northwest to southeast angle in the northeast of the parcel. At this point, Summit Carbon will be required to turn south and continue in a straight line before exiting the parcel. The Board finds this route and modification reasonable based upon the record. The Board will not require Summit Carbon to dig a new well or run new water lines, as requested by Ms. Powell.

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**Mary J. Huss Living Trust *et al.* (H-SH-042, H-SH-043, and H-SH-055)**

In the direct testimony of Joan E. Gaul *et al.*, she testifies there is no place on her property where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners Joan E. Gaul *et al.* Direct, p. 41.

During her cross-examination, Ms. Gaul testifies she never spoke with Summit Carbon about an alternative route because she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. HT, p. 5144.

The Board has reviewed the evidence and will approve the route as shown in H-SH-042, H-SH-043, and H-SH-055. The Board finds the route to be reasonable based upon the record.

**Dorothy Ann Chevalier *et al.* (H-SH-044 and H-SH-052)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SH-044 and H-SH-052.

**Linda L. Brinker Revocable Trust and Kenneth N. Brinker Revocable Trust (H-SH-051)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SH-051.

**Melvin A. Graeve Revocable Trust (H-SH-053 and H-SH-054)**

No additional evidence was provided as it relates to these parcels; however, the Board will require Summit Carbon to modify the route shown H-SH-053 and H-SH-054 by moving it 300 feet to the west. On H-SH-054, Summit Carbon will be required to move the entirety of the route 300 feet to the west to align with the modification ordered on H-SH-038. On H-SH-053, Summit Carbon will be required to move the route 300 feet to the west to align with the change on H-SH-054. After the route crosses the

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furthest south terrace on this parcel, Summit Carbon will be required to route on a southeasterly angle until realigning with Summit Carbon's proposed route on this parcel prior to exiting this parcel. The Board finds this route and modification reasonable based upon the record.

**JoAnn H. Koesters (H-SH-060)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SH-060.

**x. Sioux County**

**Darold D. Boersma Revocable Trust and Rebecca A. Boersma Revocable Trust (H-SI-002)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SI-002.

**Dawn R. Thompson (H-SI-004)**

During her testimony, Dawn Thompson provides a recommended alternative route that would be located near the property line to avoid the wet areas on her farm. HT, p. 4817. Ms. Thompson also recommends using road ditches to locate Summit Carbon's proposed hazardous liquid pipeline. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-SI-004. The Board finds the route reasonable based upon the record.

**Lynn Nederhoff (H-SI-010)**

In comments provided by Lynn Nederhoff, she recommends an alternative route that would place Summit Carbon's proposed hazardous liquid pipeline on her neighbor's property. Lynn Nederhoff Exhibit H Landowner Comments, p. 2 (filed Aug. 18, 2023).

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The Board has reviewed the evidence and will approve the route as shown in H-SI-010. The Board finds the route to be reasonable based upon the record.

**Stanley G. Sneller (H-SI-011)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SI-011.

**Judith K. Sickmeir and Betty A. Wilhelmson Trust (H-SI-012, H-SI-105, and H-SI-106)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-012, H-SI-105, and H-SI-106.

**June Zeising (H-SI-013 and H-SI-110)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-013 and H-SI-110.

**Harlan Huitink and Nelva Huitink (H-SI-018 and H-SI-113)**

During her testimony, Nelva Huitink states she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. HT, p. 183. Ms. Huitink testifies her son plans to enter the dairy industry, and the location of the planned dairy facility was north of the acreage located south of H-SI-018. *Id.* at 177. Ms. Huitink testifies Summit Carbon's route would foreclose any expansion of her acreage to the north or to the east. *Id.*

On cross-examination, Ms. Huitink testifies she has both a natural gas pipeline and Dakota Access pipeline located on her parcels, with Summit Carbon's route being the farthest away from the acreage located south of H-SI-018. *Id.* at 202.

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The Board has reviewed the evidence and will approve the route as shown in H-SI-018 and H-SI-113. The Board finds the route to be reasonable based upon the record.

**Harriet Vander Zwaag and Connie B. Van Voorst (H-SI-021 and H-SI-115)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-021 and H-SI-115.

**Wilmer J. Hulstein Revocable Trust (H-SI-026, H-SI-036, and H-SI-104)**

In the direct testimony of Anne Gray *et al.*, Ms. Gray states she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. Jorde Landowners Anne Gray *et al.* Direct, p. 42. Ms. Gray testifies H-SI-026 and H-SI-104 are located next to Siouxland Energy, a participating ethanol plant, so she is unable to suggest an alternative route. *Id.* As it relates to H-SI-036, Ms. Gray questions why the route passes through the middle of the section. *Id.*

On cross-examination, Ms. Gray reiterates her position of not wanting Summit Carbon's proposed hazardous liquid pipeline on her property. HT, p. 5368.

The Board has reviewed the evidence and will approve the route as shown in H-SI-026, H-SI-036, and H-SI-104. The Board finds the route to be reasonable based upon the record.

**Daniel J. Sandbulte *et al.* (H-SI-027 and H-SI-107)**

In the direct testimony of Alvin Sandbulte and Calvin Sandbulte, they testify there are less intrusive and more direct routes that would not cut across their parcels. Jorde Landowners Alvin Sandbulte and Calvin Sandbulte Direct, p. 4. They also testify Summit Carbon's route would impact their ability to expand their farming operation. *Id.*



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On cross-examination, Alvin Sandbutle testifies there is no current expansion of the farming operation planned and he does not have a proposed alternative route for Summit Carbon's proposed hazardous liquid pipeline. HT, pp. 6820-21.

On cross-examination, Calvin Sandbulte testifies about an alternative route that would move Summit Carbon's route a half a mile to the west of the parcels. *Id.* at 6832.

In its reply brief, Summit Carbon proposes to "shift the route towards the east property boundary. This shift will locate the [route] approximately 100 additional feet away from the residence, increasing the distance between the pipeline and the residence to more than 500 feet." Summit Carbon RB, p. 60.

The Board has reviewed the evidence and will require Summit Carbon to revise H-SI-027 and H-SI-107. The Board will require Summit Carbon to revise H-SI-027 to show the route continuing straight for 800 feet instead of turning to the northeast as shown in Summit Carbon's H-SI-027. Once the route reaches the 800-foot mark, Summit Carbon will be required to angle the route from this point to the eastern exit point on H-SI-027. This exit point will align with the modified route on H-SI-107, which will run parallel to the northern boundary of H-SI-107, in line with the proposed eastern exit point of H-SI-107. This modification will reduce the impact to a potential development on the parcels. The Board finds the modification and route reasonable based upon the record.

**Kathy L. Sneller Revocable Trust and Mark E. Sneller Revocable Trust (H-SI-028, H-SI-029, and H-SI-109)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon H-SI-028, H-SI-029, and H-SI-109.

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**Delbert Broek Yorkshires, Inc. (H-SI-030 and H-SI-031)**

No additional evidence was provided as it relates to these parcels; however, the Board will require Summit Carbon to modify the route on both H-SI-030 and H-SI-031. On H-SI-030, the Board will require Summit Carbon to move the proposed eastern exit point of the parcel 450 feet to the north. Summit Carbon's route between the southern entrance point and the modified eastern exit point should be on an angle. On H-SI-031, the Board will require the western exit point to be moved 450 feet to the north to align with the modification ordered on H-SI-030. From the western entrance point on H-SI-031, Summit Carbon's route should proceed on a northeasterly angle until reconnecting with Summit Carbon's route where the existing bend in the route on H-SI-031 is located. The Board finds this modification and route to be reasonable based upon the record. By moving the route further north, it will reduce the impacts on sectionalized fields located on H-SI-031. While there was no additional testimony provided as it relates to these parcels, the Board still examined this parcel as part of the Board's review of Summit Carbon's petition.

**Edmund J. Lanners Trust (H-SI-037)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SI-037.

**Dooyema & Sons, Inc. *et al.* (H-SI-040)**

The Board will require Summit Carbon to modify the route shown in H-SI-040. Instead of the route entering H-SI-040 and turning west, the Board will require Summit Carbon to continue on this parcel for approximately 1,000 feet, before bending at approximately the same angle as already proposed by Summit Carbon on this parcel.

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The western exit point of H-SI-040 should align with the eastern entrance point of H-SI-052, described below. The Board finds this modification and route reasonable based upon the record.

**Doris E. Boer Revocable Trust (H-SI-042 and H-SI-103)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-042 and H-SI-103.

**Bell Lake Cattle Co. (H-SI-044, H-SI-049, and H-SI-086)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-044, H-SI-049, and H-SI-086.

**Cornelius J. Schelling & Ester Ruth Schelling Revocable Trust (H-SI-045, H-SI-053, H-SI-059, and H-SI-080)**

In the direct testimony of Cornelius Schelling and Ester Schelling, they testify there is no place on their parcels where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners Cornelius Schelling and Ester Schelling Direct, p. 40.

The Board has reviewed the evidence and will approve the route as shown in H-SI-045, H-SI-053, H-SI-059, and H-SI-080. The Board finds the route reasonable based upon the record.

**Kooiker Dairy Farms, Inc. (H-SI-048, H-SI-054, H-SI-061, H-SI-111, and H-SI-114)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-048, H-SI-054, H-SI-061, H-SI-111, and H-SI-114.

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**Robert D. Hulstein and Linda Hulstein (H-SI-050)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SI-050.

**Gerald Franken *et al.* (H-SI-052, H-SI-062, and H-SI-094)**

In the direct testimony of Bradley Franken *et al.*, he testifies there is no place on the parcels where Summit Carbon's proposed hazardous liquid pipeline should be located. Jorde Landowners Bradley Franken *et al.* Direct, p. 40.

During his cross-examination, Mr. Franken testifies he did try to negotiate a different route across the parcels, but was unsuccessful. HT, p. 6796.

On redirect, Mr. Franken testifies Summit Carbon's route was initially on his neighbor's property before it was moved onto his property. *Id.* at 6809.

The Board has reviewed the evidence and will approve the route as shown in H-SI-062 and H-SI-094. The Board will require modifications to the route on H-SI-052. The Board will require Summit Carbon to modify the route on this parcel so upon entering H-SI-052 at its southern entrance point, Summit Carbon's route will continue north for 60 feet before angling to the northeast before exiting H-SI-052. The angle should be approximately the same angle as already proposed by Summit Carbon on this parcel. The Board finds this modification and route reasonable based upon the record.

**Vermeer Land & Cattle, LP (H-SI-060, H-SI-063, H-SI-064, and H-SI-116)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-SI-060, H-SI-063, H-SI-064, and H-SI-116.

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**QTIP Trust (H-SI-065 and H-SI-108)**

In comments provided by Kathi Buyert, she does not recommend an alternative route. See Kathi Buyer Exhibit H Landowner Comments, p. 2 (filed Oct. 30, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-SI-065 and H-SI-108. The Board finds the route to be reasonable based upon the record.

**Kooiker Boys, LLC (H-SI-070)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-SI-070.

**Edward P. Utesch, Jr., et al. (H-SI-076)**

During his testimony, Mark Utesch testifies Summit Carbon's route would fix a washout located just north of the halfway point of his parcel on its eastern boundary. HT, p. 1503. Mr. Utesch testifies he could think of other spots on his farm where Summit Carbon could be located. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-SI-076. Although Mr. Utesch states he could think of alternative routes, none were provided during the hearing for the Board's consideration. The Board will require Summit Carbon to work with Mr. Utesch to address the washout on his parcel where Summit Carbon's route is proposed to be located. Therefore, the Board finds the route reasonable based upon the record.

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**y. Story County**

**Isabel McLain Reichardt Living Trust (H-ST-001, H-ST-002, H-ST-003, and H-ST-014)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ST-001, H-ST-002, H-ST-003, and H-ST-014.

**Colleen Ann Faust Trust (H-ST-009)**

In comments provided by Colleen Ann Faust, she recommends moving Summit Carbon's route to the east to avoid her property and that of other landowners who have not signed an easement with Summit Carbon. Colleen Anne Faust Exhibit H Landowner Comment, p. 16 (filed Aug. 15, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-ST-009. The Board finds the route to be reasonable based upon the record.

**Deseret Trust Company (H-ST-010, H-ST-020, H-ST-047, and H-ST-060)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ST-010, H-ST-020, H-ST-047, and H-ST-060. The Board finds the route to be reasonable based upon the record.

**Dowell Sisters Farm, LLC (H-ST-011)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-ST-011.

**Andrew J. Swanson *et al.* (H-ST-013, H-ST-031, H-ST-052, H-ST-053, and H-ST-054)**

In comments by Andrew Swanson, he states that given the fact Summit Carbon is going to North Dakota, there is no reason for Summit Carbon to cross his property as it is in the opposite direction of North Dakota when leaving Lincolnway Energy near

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Nevada, Iowa. Andrew Swanson Exhibit H Landowner Comments, p. 6 (filed August 16, 2023). Mr. Swanson recommends Summit Carbon's route parallel existing pipelines that run north and south in the area of Lincolnway Energy. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-ST-013, H-ST-031, H-ST-052, H-ST-053, and H-ST-054. The Board finds the route to be reasonable based upon the record. While it is true that Summit Carbon's sequestration site is proposed to be in North Dakota, the route crossing Mr. Swanson's property is joining several ethanol plants together, including Pine Lakes Corn Processors in Hardin County. Routing Summit Carbon's proposed hazardous liquid pipeline in such a manner to connect participating ethanol plants to a single hazardous liquid pipeline reduces the need for additional pipelines and reduces the burden on landowners.

**Delories J. Carsrud (H-ST-021 and H-ST-044)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ST-021 and H-ST-044.

**Gerlach Farms, Inc. (H-ST-022 and H-ST-023)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ST-022 and H-ST-023.

**Swanson Trust #1 (H-ST-030)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-ST-030.

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**Key Cooperative (H-ST-036 and H-ST-043)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ST-036 and H-ST-043.

**Village Smith Apartments, Partnership (H-ST-041)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-ST-041.

**Edwin C. Carpenter GST Trust (H-ST-042, H-ST-045, and H-ST-046)**

In comments provided by Edwin Carpenter, he recommends rerouting Summit Carbon's route to the boundary of the field to minimize interruption to farming activities. Edwin Carpenter Exhibit H Landowner Comment, p. 2 (filed Aug. 7, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-ST-042, H-ST-045, and H-ST-046. The Board finds the route reasonable based upon the record.

**Helen B. Zook Trust and Marquis Family Partnership, LLC (H-ST-055, H-ST-056, H-ST-057, and H-ST-058)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-ST-055, H-ST-056, H-ST-057, and H-ST-058.

**z. Webster County**

**Roger A. Eslick and Judith M. Eslick (H-WE-004 and H-WE-037)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WE-004 and H-WE-037.



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**Van Diest Family, LLC (H-WE-006, H-WE-007, H-WE-020, H-WE-021, H-WE-027, H-WE-034, H-WE-036, H-WE-042)**

During his testimony at hearing, Robert Van Diest, on behalf of Van Diest Family, LLC, states he does not want Summit Carbon to cross his property as there has to be alternative ways to remove carbon dioxide that do not include a hazardous liquid pipeline. HT, pp. 4706-07.

The Board has reviewed the evidence and will approve the route as shown in H-WE-006, H-WE-007, H-WE-020, H-WE-021, H-WE-027, H-WE-034, H-WE-036, H-WE-042. The Board finds the route to be reasonable based upon the record.

**Sunderman Farms, Inc. (H-WE-008 and H-WE-016)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WE-008 and H-WE-016.

**Ronald L. Morgan and Marta J. Burkgren (H-WE-009, H-WE-010, and H-WE-015)**

During her testimony, Marta Burkgren testifies to a proposed alternative route that would run along the western boundary of H-WE-010. HT, pp. 4680-81.

Ms. Burkgren states this would parallel an overhang easement for an electric transmission line located on her neighbor's parcel. *Id.* at 4681.

The Board has reviewed the information and will approve the route as shown in H-WE-009, H-WE-010, and H-WE-015. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify its route as suggested by Ms. Burkgren.

**Christine Hayek and Allen Hayek (H-WE-012 and H-WE-032)**

In their direct testimony, the Hayeks testify there are several existing natural gas pipelines located on their property. The Hayeks the Hayeks Direct, p. 3.

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On cross-examination, Mr. Hayek testifies his son's house is approximately half a mile to the east of Summit Carbon's route. HT, p. 4003. Mr. Hayek also states Summit Carbon's route would impact his 12-inch drainage tile main as well as several drainage tile laterals, much in the same way as the natural gas pipelines did. *Id.* at 3995.

The Board has reviewed the evidence and will approve the route as shown H-WE-012 and H-WE-032. The Board has previously discussed the issue of drainage tile earlier in this order as it relates to Summit Carbon's proposed hazardous liquid pipeline. *Supra* Section III.G. The Board finds the route reasonable based upon the record.

**Martha Heineman (H-WE-017, H-WE-018, and H-WE-019)**

In comments provided by Martha Heineman, she proposes an alternative route that would run along the western boundary of H-WE-018 and H-WE-019. Martha Heineman Exhibit H Landowners Comments, p. 2 (filed Aug. 17, 2023). Ms. Heineman states this route would reduce the impact to her drainage tile lines. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-WE-017, H-WE-018, and H-WE-019. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify its route as suggested by Ms. Heineman.

**Zimm Co. (H-WE-024, H-WE-025, H-WE-026, and H-WE-031)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WE-024, H-WE-025, H-WE-026, and H-WE-031.

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**Hasty Farms, LLP (H-WE-029 and H-WE-045)**

In comments submitted by David Mickelson, on behalf of Hasty Farms, LLP, Mr. Mickelson proposes an alternative route that would have Summit Carbon follow the eastern boundaries of H-WE-029 and H-WE-045. David Mickelson Exhibit H Landowner Comment, pp. 7-9 (filed Aug. 14, 2023). Once reaching the corner of H-WE-045, Mr. Mickelson would have the route turn west and follow along the southern boundary of H-WE-045 before exiting the parcel. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-WE-029 and H-WE-045. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify its route as suggested by Mr. Mickelson.

**Patrick Kirk (H-WE-035)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WE-035.

**Sara Jeanne Goodwin Zimmerman & Co. (H-WE-039 and H-WE-046)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WE-039 and H-WE-046.

**Steven R. Will and Debra R. Will (H-WE-051)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WE-051.

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**Powers Family Trust (H-WE-060 and H-WE-066)**

In comments by Gerald Powers, he does not recommend an alternative route for Summit Carbon's proposed hazardous liquid pipeline across his parcels. Gerald Powers Exhibit H Landowner Comments, p. 2 (filed Aug. 15, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WE-060 and H-WE-066. The Board finds the route to be reasonable based upon the record.

**St. David Farms, LLLP (H-WE-071 and H-WE-083)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WE-071 and H-WE-083.

**Gregory F. Nachtmann (H-WE-078 and H-WE-079)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WE-078 and H-WE-079.

**aa. Woodbury County**

**Carolyn Blighton (H-WO-001)**

No additional evidence was provided as it relates to this parcel; however, due to changes required based on testimony relating to H-WO-044, the Board will require Summit Carbon to modify H-WO-001. The Board will require Summit Carbon to continue straight across the parcel before turning and heading southwest. The Board will require Summit Carbon to bore from this parcel, under the road and railroad, and onto H-WO-044. Summit Carbon's bore will not enter upon the eastern section of H-WO-044. Summit Carbon will also be required to revise H-WO-0001 to reflect the

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need for any additional workspace required to accommodate this revision. The Board finds this modification and route reasonable based upon the record.

**Delores A. Sidener Family Trust (H-WO-002, H-WO-008, and H-WO-040)**

In the direct testimony of Delores Sidener, she testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. Jorde Landowners Delores Sidener Direct, p. 40. Ms. Sidener states that if Summit Carbon's route is to be located on her property, she would recommend moving the route to parallel the road on the south and east sides of her parcels. *Id.*

On cross-examination, Eric Sidener reaffirms the proposed alternative route proposed by Ms. Sidener. HT, pp. 7213-14. Mr. Sidener clarifies the proposed alternative route would be located in the road right-of-way. *Id.* at 7214.

In their initial brief, Jorde Landowners provide depictions of the route proposed by Ms. Sidener as well as another proposed alternative route. Jorde Landowners IB Vol. 15, p. 40.

The Board has reviewed the evidence and will approve the route as shown in H-WO-002, H-WO-008, and H-WO-040. The Board finds the route to be reasonable based upon the record.

**Carl S. Palmquist Testamentary Trust *et al.* (H-WO-009, H-WO-013, H-WO-014, and H-WO-047)**

In the direct testimony of Eric Palmquist and Gayle Palmquist, they recommend an alternative route that would move Summit Carbon's route from their parcels and place it on their neighbor's parcels. Jorde Landowners Eric Palmquist and Gayle Palmquist Direct, p. 52. They propose Summit Carbon modify its route by using a minimum maintenance road located at the southern boundary of H-WO-009 and

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continuing west. *Id.*, Jorde Landowners Eric Palmquist and Gayle Palmquist Direct Attachment No. 28. The route would continue west until reaching a gravel road west of H-WO-009 and H-WO-014. *Id.* The route would continue north until reaching an east and west running road where the proposed alternative route would bend to the northwest before continuing north for approximately half a mile. *Id.*

During his cross-examination, Mr. Palmquist testifies he did not speak with Summit Carbon about a proposed alternative route. HT, p. 7399. Mr. Palmquist testifies there is a 638 erosion control structure on his property near where Summit Carbon is proposing its route. *Id.* at 7395.

In their initial brief, Jorde Landowners propose an alternative route that would move Summit Carbon's route approximately two miles to the west. Jorde Landowners IB Vol. 18, p. 3.

The Board has reviewed the evidence and will approve the route as shown in H-WO-009, H-WO-013, H-WO-014, and H-WO-047. The Board finds this route to be reasonable based upon the record. The Board has consistently been hesitant to move Summit Carbon's route off of one person's property and onto the property of another. The proposed alternative route for these parcels would have moved Summit Carbon's route off of the Palmquist's parcels and onto neighbor's parcels. Therefore, the Board will not require Summit Carbon to modify the route as proposed by Mr. Palmquist and Ms. Palmquist; however, the Board will require Summit Carbon to bore under the 638 erosion control structure located on H-WO-047.

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**Mary Lou Wilson Revocable Living Trust (H-WO-011 and H-WO-015)**

In the direct testimony of Jody Wilson, she testifies to a proposed alternative route that would move Summit Carbon's proposed hazardous liquid pipeline to the northwest on her property. Jorde Landowners Jody Wilson Direct Attachment No. 22. Ms. Wilson states this modification would move Summit Carbon's route "away more from the three dams, house, structures and a very old Oak tree." Jorde Landowners Jody Wilson Direct, p. 41.

On cross-examination, Ms. Wilson testifies she did not speak to Summit Carbon about her proposed alternative route. HT, p. 5739. Ms. Wilson further states she is unsure if her proposed alternative route is feasible given the presence of two natural gas pipelines already on her property. *Id.*

During his cross-examination, Mr. Schovanec testifies the route proposed by Ms. Wilson can be accommodated. *Id.* at 2309.

In its reply brief, Summit Carbon proposes to "shift the pipeline so that it angles out to the northwest from the residence approximately 100 more feet, increasing the distance between the pipeline and the residence to more than 500 feet." Summit Carbon RB, p. 58.

The Board has reviewed the evidence and will require Summit Carbon to revise H-WO-011 and H-WO-015 to reflect the route as shown in Ms. Wilson's Attachment No. 22. The testimony of Mr. Schovanec affirms Summit Carbon can accommodate her request. HT, at p. 2309. While Ms. Wilson may have existing infrastructure on her property, this creates construction considerations by Summit Carbon that do not foreclose the possibility of a route modification on a person's property. Summit Carbon

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will also be required to file the revised exhibits depicting any additional work space it may need to accommodate the route modification, given the presence of two natural gas pipelines. The Board finds the modifications and route reasonable based upon the record.

**Marcia Kay Nance and Peggy Dianne Nance (H-WO-016 and H-WO-024)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WO-016 and H-WO-024.

**Robert Merrill Rogers Revocable Trust and Glennis J. Rogers Revocable Trust (H-WO-017)**

In comments provided by Glennis Rogers, she does not provide a proposed alternative route. See Glennis Rogers Exhibit H Landowner Comments, p. 2 (filed Aug. 10, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WO-017. The Board finds the route reasonable based upon the record.

**Leonard D. Jorgensen and Patricia J. Jorgensen (H-WO-018)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WO-018.

**James T. O'Malley *et al.* (H-WO-020 and H-WO-023)**

In comments submitted by James T. O'Malley, he states Sioux City, Iowa, is growing, and land adjacent to his property was recently annexed by Sioux City. James T. O'Malley Exhibit H Landowner Comments, p. 2 (filed Aug. 16, 2023). Mr. O'Malley states Summit Carbon's route should be moved miles to the north or south of Sioux City to avoid the growing city. *Id.* Mr. O'Malley states another alternative would be to place Summit Carbon's proposed hazardous liquid pipeline in the road right-of-way between



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his two parcels. *Id.* Mr. O'Malley states this would move Summit Carbon's route off of private property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-WO-020 and H-WO-023. The Board finds the route to be reasonable based upon the record. As it relates to Mr. O'Malley's concern about Summit Carbon's route impeding the expansion of Sioux City, the Board earlier in this order explored this issue. *Supra* Section III.I.3. The Board found cities can, and do, continue to expand even when there is a pipeline, hazardous or not, present in the development. *Id.*

**CoBar, Inc. and Charles H. Oehlerking Revocable Trust (H-WO-022, H-WO-031, and H-WO-041)**

During his testimony, Mark Oehlerking proposes an alternative route that would run along the southern boundary of H-WO-022, H-WO-031, and H-WO-041. HT, p. 831. Mr. Oehlerking testifies he does not want the route to pass through the middle of his parcels. *Id.* Mr. Oehlerking also testifies about the presence and location of the center pivots, water lines, and well for the irrigation system on these, and other, parcels. *Id.* at 788, Oehlerking Hearing Exhibit 1.

The Board has reviewed the evidence and will approve the route as shown in H-WO-022, H-WO-031, and H-WO-041. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify its route as suggested by Mr. Oehlerking. The Board will require Summit Carbon to bore under the water lines located on these parcels.

**Lane M. Jorgenson and Lucinda L. Jorgensen (H-WO-026)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WO-026.

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**South Woodbury, LLC (H-WO-027)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WO-027.

**Steve Mrla (H-WO-029)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WO-029.

**Brian Krogh and Amiee Krogh (H-WO-030 and H-WO-044)**

During her testimony, Amiee Krogh testifies about her plans to construct a climate-controlled storage facility on the section of H-WO-044, east of the railroad and road that bisects the parcel. HT, p. 738. Ms. Krogh testifies she has spoken with the Small Business Administration about the potential climate-controlled storage facility as well as having preliminary discussions with the Woodbury County Board of Supervisors about rezoning of the parcel. *Id.* at 738-39. Ms. Krogh also states the property to the north of H-WO-044 is in the process of being subdivided for residential development. *Id.* at 742.

The Board has reviewed the evidence and will require Summit Carbon to revise H-WO-030 and H-WO-044. The Board will require Summit Carbon to move the eastern exit point of the western section of H-WO-044 to the north to be approximately 50 feet from the northern boundary of H-WO-044. Summit Carbon will be required to use this point and the western exit point on H-WO-030 to create the angle across these two parcels. Summit Carbon's route will not be located on the eastern portion of H-WO-044. The Board finds this modification and route reasonable based upon the record.

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**Mark S. Godfredson (H-WO-032, H-WO-042, and H-WO-043)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WO-032, H-WO-042, and H-WO-043.

**Gina Green and Linda Hoffmeier (H-WO-036)**

In their reply brief, Jorde Landowners propose an alternative route that would have the route located nearer to the northwest boundary of the parcels. Jorde Landowners IB Vol. 14, p. 12. Jorde Landowners state this would avoid a wooded area on the parcel. *Id.*

The Board has reviewed the evidence and will approve the route as shown by Summit Carbon in H-WO-036. The Board finds the route to be reasonable based upon the record.

**Orville J. and Jeanne M. Davis Joint Revocable Trust (H-WO-037)**

During the testimony of Larry Christensen, he states he has a problem with placing Summit Carbon's proposed hazardous liquid pipeline anywhere on the property. HT, p. 7089. Mr. Christensen testifies that not constructing Summit Carbon's proposed hazardous liquid pipeline is the best option because there are other uses for the carbon dioxide. *Id.* at 7089-90.

The Board has reviewed the evidence and will approve the route as shown in H-WO-037. The Board finds the route to be reasonable based upon the record.

**Hennings Joint Trust (H-WO-039 and H-WO-046)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WO-039 and H-WO-046.

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**bb. Wright County**

**Robert R. Ritter and Judith Ann Ritter (H-WR-002 and H-WR-019)**

During his testimony, Robert Ritter states “it would be selfish . . . to ask Summit [Carbon] to change the route to someone else's farm.” HT, p. 1072. Mr. Ritter testifies he requested Summit Carbon put a trench plug in the southeast corner of the route across H-WR-002 to allow for farming operations to occur on the western side of the route due to the location of a field entrance near the southeast corner of H-WR-002. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-WR-002 and H-WR-019. The Board will require Summit Carbon to install a trench plug in the southeast corner of the route across H-WR-002, as requested by Mr. Ritter. The Board understands the construction may necessitate moving the trench plug slightly; however, the Board will require the trench plug to be located as near as practical to the southeast corner, as requested by Mr. Ritter. The Board finds the requirement and route reasonable based upon the record.

**Shannondoa Capps and Danielle Capps (H-WR-003)**

The Board has reviewed the evidence and will approve the route as shown in H-WR-003; however, the Board will require Summit Carbon to bore under this parcel and will deny Summit Carbon the request for a temporary construction easement. Additionally, the Board will require Summit Carbon to work with the landowner to ensure they can enter and exit their property while the boring is taking place. The section of the parcel for which Summit Carbon seeks to route its pipeline is under the only entry and exit points to this property. By boring under this parcel, Summit Carbon should

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minimize the impact to this parcel. The Board finds this modification and route reasonable based upon the record.

**Lance E. Meyer and Carol L. Meyer (H-WR-004, H-WR-005, and H-WR-006)**

In comments provided by Lance Meyer and Carol Meyer, they state the land has been in CRP for 25 years and is contracted to remain in the program. Lance Meyer and Carol Meyer Exhibit H Landowner Comment, p. 1 (filed Aug. 10, 2023). The Meyers state Summit Carbon's route should be moved to the parcel to the south of their parcels, where that landowner has already signed a voluntary easement with Summit Carbon for land located east of their property. *Id.* at 2.

The Board has reviewed the evidence and will approve the route as shown in H-WR-004, H-WR-005, and H-WR-006. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify its route as suggested by Mr. Meyer and Ms. Meyer.

**Robert A. Watts (H-WR-007 and H-WR-008)**

In his direct testimony, Robert Watts recommends the Board deny Summit Carbon the route that passes over his property and is part of Lateral Line 1. Jorde Landowners Robert Watts Direct, p. 43. Mr. Watts testifies the ethanol plants located on Lateral Line 1 could connect with another company providing the same service as Summit Carbon. *Id.*

On direct examination at hearing, Mr. Watts testifies to an alternative route in which Summit Carbon would route its proposed hazardous liquid pipeline straight north from Pine Lake Corn Processors and interconnect with Summit Carbon's route near Mason City, Iowa. HT, p. 7371.

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The Board has reviewed the evidence and will approve the route as shown in H-WR-007 and H-WR-008. The Board finds the route to be reasonable based upon the record. As discussed earlier in this order, the Board has approved Summit Carbon's Lateral Line 1, as it relates to macro routing, and therefore denies Mr. Watts' request to deny Lateral Line 1. See *supra* Section III.E. Additionally, the Board will not require Summit Carbon to route directly north out of the Pine Lake Corn Processors' plant as proposed by Mr. Watts.

**Elmer L. Ryerson Trust (H-WR-011, H-WR-012, and H-WR-119)**

In comments by Kelby Ryerson, he states he does not recommend an alternative route because Summit Carbon's petition should be denied. Kelby Ryerson Exhibit H Landowner Comments, p. 2 (filed Aug. 15, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WR-011, H-WR-012, and H-WR-119. The Board finds the route to be reasonable based upon the record.

**Ryerson Insurance Trust (H-WR-013 and H-WR-037)**

In comments by Deborah Vance, she states there is no route on her property where Summit Carbon should be located. Deborah Vance Exhibit H Landowner Comments, p. 2 (filed Aug. 8, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WR-013 and H-WR-037. The Board finds the route to be reasonable based upon the record.

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**Verle L. Tate Revocable Trust (H-WR-016 and H-WR-098)**

During his testimony, Verle Tate testifies there is no good route for Summit Carbon's proposed hazardous liquid pipeline in the area. HT, p. 1026.

In its reply brief, Summit Carbon proposes to "angle the pipeline northeast after entering the property on the south boundary and traveling towards the east boundary of the property, then turning north for the remainder of the property." Summit Carbon RB, p. 60.

The Board has reviewed the evidence and will require Summit Carbon to modify the route shown in H-WR-016 and H-WR-098 to follow the route stated in Summit Carbon's reply brief. The Board finds the route and modification to be reasonable based upon the record.

**Jacobsen Family Farms, LLLP (H-WR-017, H-WR-046, H-WR-047, and H-WR-048)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-017, H-WR-046, H-WR-047, and H-WR-048.

**Brian D. Ellis and Elizabeth H. Ellis (H-WR-018)**

During her testimony, Elizabeth Ellis testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property, nor would she recommend moving it onto a neighbor's property. HT, p. 979.

The Board has reviewed the evidence and will approve the route as shown in H-WR-018. The Board finds the route to be reasonable based upon the record.

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**William L. Stuck and Lisa Stuck (H-WR-020 and H-WR-027)**

In their direct testimony, the Stucks testify the ground where Summit Carbon intends to locate its route is very wet land. The Stucks the Stucks Direct, p. 2. As a result of the ground being wet, the Stucks testify a lot of drainage tile has been installed on the parcels. *Id.* The Stucks testify Summit Carbon's route would "be very close to the farmstead." *Id.*

In their initial brief, the Stucks propose an alternative route that would move the route on H-WR-027 to the southeast, off of their property. The Stucks IB, p. 4.

The Board has reviewed the evidence and will approve the route as shown in H-WR-020 and H-WR-027. The Board finds the route to be reasonable based upon the record. Additionally, the Board has addressed the concerns related to drainage tile earlier in this order. *Supra* Section III.G.

**D. Richard Hocraffer (H-WR-021, H-WR-022, and H-WR-102)**

In the direct testimony of Todd Hocraffer, Denise Hocraffer, and D. Richard Hocraffer, they testify they do not want Summit Carbon's proposed hazardous liquid pipeline on their property. Jorde Landowners Todd Hocraffer, Denise Hocraffer, and D. Richard Hocraffer Direct, p. 3.

On cross-examination, Todd Hocraffer testifies to an alternative route along the southern boundary of H-WR-021 and H-WR-022. HT, p. 5443. Mr. Hocraffer testifies the southern boundary of H-WR-022 is a grass driveway and the southern boundary of H-WR-021 is farm ground. *Id.* Mr. Hocraffer testifies the alternative route will move the route out of the middle of the field and farther away from the farmstead. *Id.* at 5444. Mr. Hocraffer testifies this alternative route was never proposed to Summit Carbon. *Id.*



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The Board has reviewed the evidence and will approve the route as shown in H-WR-021, H-WR-022, and H-WR-102. The Board finds the route to be reasonable based upon the record. The Board will not require Summit Carbon to modify its route as proposed by Mr. Hocraffer.

**Loutomco, Inc. (H-WR-023, H-WR-024, H-WR-050, H-WR-063, H-WR-112, and H-WR-142)**

On cross-examination, Marvin Leaders, on behalf of Loutomco, Inc., testifies he does not agree with the concept of Summit Carbon's proposed hazardous liquid pipeline. HT, p. 3961. Mr. Leaders testifies there are other options to capture carbon dioxide besides installing a pipeline. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-WR-023, H-WR-024, H-WR-050, H-WR-063, H-WR-112, and H-WR-142. The Board finds the route to be reasonable based upon the record.

**VOD, Inc. (H-WR-026 and H-WR-028)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-026 and H-WR-028.

**n. Jack and Jeanne Dawson Living Trust (H-WR-029 and H-WR-044)**

In comments provided by Jeanne Dawson, she recommends an alternative route that would locate Summit Carbon's proposed hazardous liquid pipeline along the fence line. Jeanne Dawson Exhibit H Landowner Comments, p. 2 (filed Aug. 17, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WR-029 and H-WR-044. The Board finds the route to be reasonable based upon the record.

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**Estate of Dorla D. Hill et al. (H-WR-030, H-WR-053, and H-WR-054)**

In the direct testimony of Julie Glade *et al.*, Ms. Glade testifies to a proposed alternative route that would run north of her property. Jorde Landowners Julie Glade *et al.* Direct Attachment No. 22.

On cross-examination, Ms. Glade testifies she did not speak with Summit Carbon about her proposed alternative route. HT, pp. 4259-60. Ms. Glade also testifies to an alternative route that would remain on her property, but would be located farther north on it. *Id.* at 4291.

On redirect, Ms. Glade testifies she does not own the property where she is proposing her alternative route, shown in Attachment No. 22, to be located. *Id.* at 4271.

In their reply brief, Jorde Landowners propose another alternative route that would move the route closer to the northern boundary of the parcels. Jorde Landowners IB Vol. 1, p. 26.

The Board has reviewed the evidence and will approve the route as shown in H-WR-030, H-WR-053, and H-WR-054. The Board finds the route to be reasonable based upon the record.

**David Derscheid (H-WR-035 and H-WR-036)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-036. The Board will require Summit Carbon to modify the route on H-WR-035 by moving the southern entrance point 250 feet to the east to accommodate the modification on H-WR-073. Summit Carbon should modify the route to then angle to the northwest to reconnect with its proposed route. The Board finds this route reasonable based upon the record.

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**David M. Hoffmann and LaDonna R. Hoffmann (H-WR-039 and H-WR-125)**

During her testimony, LaDonna Hoffmann testifies she does not want Summit Carbon's proposed hazardous liquid pipeline on her property. HT, p. 881.

The Board has reviewed the evidence and will approve the route as shown in H-WR-039 and H-WR-125. The Board finds the route to be reasonable based upon the record.

**Curtis W. Dow and Linda M. Dow (H-WR-040)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-040.

**Keller Farm, Inc. (H-WR-041, H-WR-042, and H-WR-088)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-041, H-WR-042, and H-WR-088.

**Diane G. Middleton *et al.* (H-WR-043, H-WR-056, and H-WR-159)**

In comments provided by Sara Middleton, she states Summit Carbon's route should be located in road rights-of-way or on unfarmable ground. Sara Middleton Exhibit H Landowner Comment, pp. 1-2 (filed Aug. 23, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WR-043, H-WR-056, and H-WR-159. The Board finds the route to be reasonable based upon the record.

**William L. Peyton and Sondra L. Peyton (H-WR-045)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-045.

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**Taecker Family 1990 Trust *et al.* (H-WR-049, H-WR-057, H-WR-058, H-WR-064, H-WR-065, H-WR-069, H-WR-072, H-WR-122, H-WR-123, and H-WR-154)**

During his testimony, John Taecker testifies he is working with Summit Carbon on routing on his property. HT, pp. 4574-76. Mr. Taecker testifies Summit Carbon is actively working on an alternative route for his property. *Id.* at 4775. Mr. Taecker states the routing modifications are to avoid drainage tile on the parcels. *Id.* at 4774. Mr. Taecker testifies the Board should either table or dismiss the eminent domain proceedings for his parcels while he and Summit Carbon work out the route. *Id.* at 4775.

While the Board understands Mr. Taecker's request, the Board will nonetheless approve the route as shown in H-WR-049, H-WR-057, H-WR-058, H-WR-064, H-WR-065, H-WR-069, H-WR-072, H-WR-122, H-WR-123, and H-WR-154. The Board finds the route reasonable based upon the record. As noted previously in this order, Summit Carbon is to continue to work with the landowners until the commencement of the compensation proceeding. This requirement should alleviate the concerns raised by Mr. Taecker and allow for the continued discussion of a voluntary route across his parcels. The Board's approved route should only be used in the event a voluntary agreement is not reached between Mr. Taecker and Summit Carbon.

**Patricia Joan White and Robert F. Kruger (H-WR-052)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-052.

**David W. Oneal and Janelle I. Oneal Revocable 2020 Trust Agreement (H-WR-059)**

In comments provided by David Oneal, he states Summit Carbon's route should only be located on parcels where landowners have agreed to having Summit Carbon

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located on their property. David Oneal Exhibit H Landowner Comment, p. 2 (filed Aug. 16, 2023).

The Board has reviewed the evidence and will approve the route as shown in H-WR-059. The Board finds the route to be reasonable based upon the record.

**Carmen Dee Halverson *et al.* (H-WR-062, H-WR-067, and H-WR-071)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-062, H-WR-067, and H-WR-071.

**Roger H. Derscheid Revocable Trust (H-WR-070 and H-WR-073)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-070; however, the Board will require Summit Carbon to modify the route across H-WR-073 by moving the route 250 feet to the east. Summit Carbon should make any necessary angle adjustments on this parcel in the southern half of H-WR-073. The Board finds this route and modification reasonable based upon the record.

**Roger H. Derscheid Family Trust (H-WR-077)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-077.

**Shirley J. Olson (H-WR-079)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-079.

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**RMT Family Real Estate, LLC (H-WR-081 and H-WR-092)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-081 and H-WR-092.

**Ronald J. Stein and Esther Stein (H-WR-089)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-089.

**Skinner Farms, LLC (H-WR-099 and H-WR-131)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-099 and H-WR-131.

**Romona Jean Ritter and Marjorie Swan (H-WR-100, H-WR-128, and H-WR-132)**

In the direct testimony of Marjorie Swan and Jean Ritter, they testify there is no place on their property where Summit Carbon's proposed hazardous liquid pipeline should be located due to its proximity to Dows, Iowa, and the Iowa River. Jorde Landowners Marjorie Swan and Jean Ritter Direct, p. 41.

The Board has reviewed the evidence and will approve the route as shown in H-WR-100, H-WR-128, and H-WR-132. The Board finds the route to be reasonable based upon the record.

**Van Diest Family, LLC (H-WR-101 and H-WR-145)**

During his testimony at hearing, Robert Van Diest, on behalf of Van Diest Family, LLC, states he does not want Summit Carbon to cross his property as there has to be alternative ways to remove carbon dioxide that do not include a hazardous liquid pipeline. HT, pp. 4706-07.

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The Board has reviewed the evidence and will approve the route as shown in H-WR-101 and H-WR-145. The Board finds the route to be reasonable based upon the record.

**Prairiesky Farms, LLC *et al.* (H-WR-104 and H-WR-105)**

In comments provided by David Stevenson, on behalf of Prairiesky Farms, LLC, he states he has restored four oxbows on his property and has won several awards for his conservation work on his property. David Stevenson Exhibit H Landowner Comment (filed Aug. 17, 2023). Mr. Stevenson states his daughter plans to construct a house overlooking Otter Creek, which runs through his property. *Id.*

The Board has reviewed the evidence and will approve the route as shown in H-WR-104 and H-WR-105. The Board finds the route to be reasonable based upon the record.

**Kenneth Huntley (H-WR-113)**

No additional evidence was provided as it relates to this parcel. The Board will approve the route as shown by Summit Carbon in H-WR-113.

**Anita M. Johnson and Jerry W. Johnson (H-WR-116 and H-WR-117)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-116 and H-WR-117.

**Arnold J. and Vicki L. Wagner Revocable Trust (H-WR-124 and H-WR-150)**

No additional evidence was provided as it relates to these parcels. The Board will approve the route as shown by Summit Carbon in H-WR-124<sup>33</sup> and H-WR-150.

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<sup>33</sup> The Board based its decision upon the route depicted in Summit Carbon's Exhibit B, the KMZ, and the previously filed Exhibit H for this parcel, given the most recently filed Exhibit H contains an incorrect drawing for the parcel.

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**L. Other issues**

**1. Summit Carbon Company Structure**

**Jorde Landowners**

In the direct testimony of Maureen Allan, she testifies Summit Carbon is a limited liability company (LLC) whose owners are hidden by layers of LLC member entities.

Jorde Landowners Maureen Allan Direct, p. 8; see Jorde Landowners Kathy Carter Direct, pp. 8-9; Jorde Landowners James Fetrow and Margaret Fetrow Direct, p. 8.

Ms. Allan testifies the Board does not know who it is dealing with and the Board should require Summit Carbon “to reveal its owners and investors and if those owners and investors are also entities the IUB should require transparency at every level of ownership so . . . the real people behind this newly formed for-profit private company”

are known. Jorde Landowners Maureen Allan Direct, p. 9; see Jorde Landowners Kathy Carter Direct, p. 8; Jorde Landowners James Fetrow and Margaret Fetrow Direct, p. 8. Ms. Allan also testifies Summit Carbon is a foreign LLC, according to the Iowa Secretary of State’s website, with the actual state of incorporation being Delaware.

Jorde Landowners Maureen Allan Direct, p. 9; see Jorde Landowners Kathy Carter Direct, p. 9; Jorde Landowners James Fetrow and Margaret Fetrow Direct, p. 8.

In her direct testimony, Ms. Kohles testifies Summit Carbon refuses to disclose its investors, and, as an LLC, Summit Carbon is “not restricted on when, how much or for what [it] use[s] [its] annual tax free compensation from the government for.” Kohles Family Farms Kohles Direct, p. 7.



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During cross-examination, Ms. Kohles testifies the Board should consider Summit Carbon's business model when deciding whether to issue the permit. HT, p. 4107.

In the direct testimony of Mr. Leaders, he testifies Summit Carbon is an LLC whose owners are hidden by layers of LLC member entities. Loutomco, Inc., Leaders Direct, p. 8. Mr. Leaders testifies the Board does not know who it is dealing with and the Board should require Summit Carbon "to reveal its owners and investors and if those owners and investors are also entities the IUB should require transparency at every level of ownership so . . . the real people behind this newly formed for-profit private company" are known. *Id.* Mr. Leaders also testifies Summit Carbon is a foreign LLC, according to the Iowa Secretary of State's website, with the actual state of incorporation being Delaware. *Id.*

**Kerry Mulvania Hirth**

In her initial brief, Ms. Hirth asserts Summit Carbon is creating a monopsony.<sup>34</sup> Ms. Hirth states Summit Carbon, along with the actions of Summit Agricultural Group, LLC (Summit Ag), are creating "a closed loop low carbon fuel supply chain" in violation of Iowa Code § 553.5. Hirth IB, p. 4 (internal quotations omitted). Ms. Hirth states Summit Carbon's actions add to a vertically integrated monopsony. *Id.* Ms. Hirth asserts there does not need to be the "actual establishment of market control, but merely an 'attempt to establish' market control." *Id.* Ms. Hirth states the Iowa Supreme Court in *Mueller v. Wellmark, Inc.* held "[t]he antitrust laws are as concerned about

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<sup>34</sup> Black's Law Dictionary defines "monopsony" to mean "a market situation in which one buyer controls the market." *Monopsony*, Black's Law Dictionary (11th ed. 2019).

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abuse of monopsony power to pay prices below a competitive level as they are about abuse of monopoly power to charge prices above a competitive level. The seller to the monopsony has been harmed as much as the buyer from the monopoly.” 818 N.W.2d 244, 265 (Iowa 2012). Ms. Hirth argues the contents of the offtake agreements decrease the competitiveness of the ethanol plants and allow for Summit Ag to manipulate the market. *Id.* at 5.

### **Iowans for a Growing Agricultural Economy**

In its reply brief, IGAE states there is “no evidence to support the claim that a single pipeline company can monopolize a market with tens of thousands of producers and millions of customers.” IGAE RB, p. 14. IGAE asserts “there [is] no evidence to explain why the purported victims of this anticompetitive behavior, ethanol plants, were so willing to sign agreements with Summit [Carbon].” *Id.* Additionally, IGAE states the Board is not the proper enforcement authority for Iowa Code chapter 553. *Id.* IGAE notes Iowa Code § 553.7 vests the attorney general with bringing suits under chapter 553. *Id.* IGAE states there is another provision that allows either the attorney general or the person harmed to bring suit to restrain the anticompetitive behavior. *Id.* Under either provision, IGAE asserts, the Board is not the proper venue to make this argument. *Id.* at 14-15.

### **Summit Carbon**

In its reply brief, Summit Carbon states Ms. Hirth focuses on Summit Ag to support her assertion. Summit Carbon RB, p. 51. Summit Carbon states it and Summit Ag are separate and distinct business entities. *Id.* at 52 (citing HT, pp. 1985-86).

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Summit Carbon states the Board's order denying Ms. Hirth's motion to subpoena Bruce Rastetter already addressed the issues raised by Ms. Hirth. *Id.* at 52-53.

### **Board Discussion**

The Board has reviewed this argument and disagrees that it needs to require disclosure of Summit Carbon's investors or that it needs to consider Summit Carbon's business model. The Board is permitting Summit Carbon to construct, operate, and maintain a hazardous liquid pipeline in Iowa. The Board's authority is over Summit Carbon. Furthermore, the Board does not see a valid legal issue arising from the assertions of Jorde Landowners. The Board is a regulator and regulates the entity before it to the extent of the Board's jurisdiction. *See Wallace v. Iowa St. Bd. of Educ.*, 770 N.W.2d 344, 348 (Iowa 2009). The Board does not possess the powers to regulate an LLC. That responsibility falls to either the Iowa Secretary of State, the Delaware Secretary of State, or other institutions. The Board notes some of those questioning the validity of Summit Carbon being an LLC are also LLCs or other corporate entities themselves. *See Loutomco, Inc., Leaders Direct*, p. 8; *Jorde Landowners Craig Beyer Direct*, p. 8 (testifying on behalf of property owned by JCD Beyer Family Farm LLC).

As it relates to Ms. Hirth's assertion about Summit Carbon and Summit Ag creating a monopsony, the Board finds it does not have the authority to determine if a violation of Iowa Code chapter 553 has occurred. That is the responsibility of the Iowa Attorney General. As it relates to Summit Carbon's petition, the Board is unpersuaded by any of the arguments made by Ms. Hirth on this topic and fails to see how Summit Carbon, as a separate and distinct company from Summit Ag, could create the monopsony suggested by Ms. Hirth.

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## 2. Transfer of Permit

### Jorde Landowners

In her direct testimony , Nancy Conrad testifies Summit Carbon’s voluntary easement would allow it to transfer the easement to another party. Jorde Landowners Nancy Conrad Direct, p. 17; see Jorde Landowners Virgil Ewoldt and Bonnie Ewoldt Direct, p. 20; Jorde Landowners Jann Reinig and Lydia Reinig Direct, p. 21. Ms. Conrad states the Board should “require any new entity, assignee, or other that would become owner or operator of this hazardous pipeline to first apply for and be granted permission to take this project over from Summit [Carbon].” Jorde Landowners Nancy Conrad Direct, p. 17; see Jorde Landowners Virgil Ewoldt and Bonnie Ewoldt Direct, p. 20; Jorde Landowners Jann Reinig and Lydia Reinig Direct, p. 22.

### Board Discussion

Under Iowa Code § 479B.14, the Iowa Legislature has established a permit “shall not be sold until the sale is approved by the board.” Iowa Code § 479B.14(3).

Furthermore,

If a transfer of a permit is made before the construction for which it was issued is completed in whole or in part, the transfer shall not be effective until the pipeline company to which it was issued files with the board a notice in writing stating the date of the transfer and the name and address of the transferee.

Iowa Code § 479B.14(4). The Board’s rules at 199 IAC 13.14 further address the procedures that are to be followed when a permit is sold or transferred.

As Iowa law and the Board’s rules already place requirements on the sale and transfer of permits, the Board finds it unnecessary to make this a condition of the order.

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The Board's inclusion of this issue is to remind all parties of this requirement should a sale or transfer occur.

### **3. Due Process**

#### **Republican Legislative Intervenors for Justice**

In the direct testimony of Rep. Thomson, he testifies the Board's process denies due process to "important voices." RLIJ Rep. Thomson Direct, p. 3. Rep. Thomson testifies the Board is "to act in the best interests of the people of the state of Iowa. This involves listening to as many of the people of Iowa as possible. The implication of this is that the IUB should err on [the] side of allowing more participation, not less." *Id.*

#### **Summit Carbon**

In its initial brief, Summit Carbon states any claims about being denied due procedural process related to the procedural schedule, ordering of witnesses, or the ability to perform friendly cross-examination are meritless. Summit Carbon IB, p. 57. Summit Carbon asserts "the Board's procedural process for this contested case comports with due process and the Board's statutory authority to in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice." *Id.* at 58 (citing Iowa Code § 474.3). Summit Carbon directs the Board to *Jones v. University of Iowa*, 836 N.W.2d 127 (Iowa 2013), where the Iowa Supreme Court held,

all that is necessary is that the procedures be tailored to the capacities and circumstances of those who are to be heard, to insure that they are given a meaningful opportunity to present their case and [n]o particular procedure violates [due process] merely because another method may seem fairer or wiser.

*Id.*, 836 N.W.2d at 145 (internal quotations omitted).

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### **Board Discussion**

As it relates to due process arguments, the Board simply notes it conducted a hearing for eight weeks, which amassed a transcript spanning nearly 7,500 pages. The Board has received and reviewed almost 4,200 comments, including admitting more than 600 comments filed after the submission deadline. The Board received and reviewed approximately 50,000 pages of prefiled testimony and exhibits from hundreds of witnesses — experts and landowners alike.

During the hearing, the Board made great exceptions to its rules to allow parties to file untimely testimony, to cross-examine witnesses that generated unduly repetitious testimony, and to remove all guards normally adhered to during a Board proceeding, all in the interests of justice to ensure landowners were able to provide their testimony to the Board.

In addition to the events at hearing, the Board sent mailers to all Exhibit H landowners in June 2023 to ensure they were made aware of their options to participate in the hearing. The Board provided landowners with options ranging from testifying at the hearing, to submitting comments, to mediation, to not wanting any further contact. The Board received feedback from landowners regarding all of these options. The Board finds it provided due process to all those involved, and to claim otherwise ignores the facts and events of this case.

## **M. Motions**

### **1. Motion for Confidential Treatment**

On December 29, 2023, Sierra Club, the Counties, and Jorde Landowners filed requests for confidential treatment for information contained in their initial post-hearing

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briefs. The motions were accompanied by affidavits from Wallace Taylor on behalf of Sierra Club, Timothy Whipple on behalf of the Counties, and Christian Williams on behalf of Jorde Landowners. On January 19, 2024, Ms. Hirth filed a motion for confidential treatment of certain parts of her reply brief. The motions state the information for which they are seeking confidential treatment is already confidential before the Board. The motions state the information that is confidential relates to the offtake agreements or air dispersion models.

The Board will grant the motions for confidential treatment filed by Sierra Club, the Counties, Jorde Landowners, and Ms. Hirth.

## **2. Motion to Release Offtake Agreements**

### **Kerry Mulvania Hirth**

On January 19, 2024, Ms. Hirth filed a motion to have the offtake agreements made public. Ms. Hirth states Summit Carbon relied upon information with the confidential offtake agreements, which, pursuant to Board order, is only allowed to be viewed by attorneys. Ms. Hirth states parties to this proceeding cannot state the contents or rebut statements about the contents of the offtake agreements without having to file those arguments confidentially. Additionally, Ms. Hirth argues Summit Carbon has waived confidentiality of the offtake agreements and the testimony about the offtake agreements. Ms. Hirth asserts, “Failure to remove the confidential designation of the offtake agreements creates a context in which Summit [Carbon] can publicly discuss alleged benefits of the pipeline but other parties cannot publicly refute those claims or discuss other negative aspects of Summit [Carbon’s] business model.”

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**Summit Carbon**

In its response on February 2, 2024, Summit Carbon states the Board should deny Ms. Hirth's motion. Summit Carbon states the Board has already decided the offtake agreements are confidential, and Ms. Hirth's filing is a late-filed request for reconsideration. Summit Carbon also states Ms. Hirth failed to cite any authority in support of her argument, which can be deemed a waiver of the issue. *See, e.g., In re V.H.*, 996 N.W.2d 530, 537 (Iowa 2023).

Summit Carbon asserts it is not confidential that Summit Carbon has entered into offtake agreements with the ethanol plants. Summit Carbon states it is not even confidential that the offtake agreements include "critical timing-related provisions." Summit Carbon argues just because the agreements themselves are confidential does not inhibit a party from generally referencing the existence of the offtake agreements. Summit Carbon states it "has not publicly disclosed any confidential terms of the agreements; rather, it has discussed only the general nature of the agreements using no more specific language than has already been necessarily disclosed in prior public filings." Summit Carbon states it has not waived confidentiality of the offtake agreements. *See Motorola Sols., Inc. v. Hytera Commc'ns Corp.*, 367 F. Supp. 3d 813, 816-17 (N.D. Ill. 2019). Summit Carbon states that applying Ms. Hirth's logic would result in "every trade secret complaint alleging misappropriation [to] be a public disclosure of that trade secret."

Additionally, Summit Carbon states Ms. Hirth is allowed to speak generally about her disagreement with Summit Carbon's claims regarding the offtake agreements. Summit Carbon asserts the only thing Ms. Hirth cannot do is disclose specific terms of



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the offtake agreements publicly. Summit Carbon notes if Ms. Hirth wants to provide arguments about specific terms of the offtake agreements to the Board, Ms. Hirth may do so. However, the document must be filed confidentially with the Board.

### **Corn Processors**

On February 2, 2024, Corn Processors filed a joinder to Summit Carbon resistance.

### **Board Discussion**

Throughout the proceeding, Summit Carbon has been diligent to protect confidential information about the contents of the offtake agreements from public disclosure. HT, pp. 1999-2000 (demonstrating Summit Carbon's interruption of a Board question that was entering into information that was confidential). Furthermore, the Board is unpersuaded by Ms. Hirth's motion that the confidential nature of the agreements prevents parties from making arguments. While Ms. Hirth is prohibited from disclosing the contents of the offtake agreements to the public, Ms. Hirth is not prohibited from disclosing them to the Board in the form of a confidential version of her brief. This is common practice before the Board. See 199 IAC 14.12 (detailing what is required for filing a public and confidential version of a document with the Board). Ms. Hirth's own reply brief complied with the Board's requirements. For these reasons, the Board denies Ms. Hirth's motion to remove confidentiality with regard to the offtake agreements.

### **N. Assessment of Costs**

Pursuant to 199 IAC 17.4(1)(d), the Board may assess costs to an intervenor "if the board determines that the person's intervention or participation is not in good faith,

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the board determines the intervention significantly expands the scope of the proceeding without contribution to the public interest, or the board determines there are unusual circumstances warranting assessment.” When deciding whether to assess costs, the Board’s rules identify eight factors that it considers before determining whether to assess the costs. 199 IAC 17.4(2). The eight factors are:

- a. Whether the person’s intervention and participation in a board proceeding expanded the scope of the proceeding without contributing to the public interest.
- b. Whether the person’s intervention and participation in a board proceeding was in good faith.
- c. The financial resources of the person.
- d. The impact of assessment on participation by intervenors.
- e. The nature of the proceeding or matter.
- f. The contribution of the person’s participation to the public interest.
- g. Whether directly assessing costs would be fair and in the public interest.
- h. Other factors deemed appropriate by the board in a particular case.

*Id.*

At the beginning of the evidentiary hearing, Summit Carbon moved to strike all late-filed testimony and exhibits filed by Jorde Landowners between July 20 and July 27, 2023, due to both the lateness and for failing to abide by the Board’s filing standards issued during the March 15, 2023 technical conference. The Board denied Summit Carbon’s motion to strike and to require refiling so as to not place an undue burden on the Board and the parties who prepared using the late and incorrectly filed testimony. However, the Board stated it would examine whether to assess costs after the conclusion of the hearing.

During the course of the proceeding, the Board was cognizant of the actions taken by the parties as it relates to the scope of the proceeding. The Board assessed

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whether the actions of the parties were in the public interest and whether those actions expanded the record with irrelevant, immaterial, or unduly repetitious evidence.

While the actions of several of the parties during this proceeding would have resulted in admonishment, or even sanctions, from a court in Iowa, including the likely striking of testimony and evidence, the Board will not assess any costs to the offending parties. However, these parties are hereby put on notice that future behavior similar to that demonstrated during this proceeding may result in actions taken by the Board, potentially including striking testimony and exhibits or assessing costs.

**O. Permit**

With this order, the Board is approving Summit Carbon's petition for a hazardous liquid pipeline permit. However, the Board will not be issuing Summit Carbon's permit with the order. Summit Carbon will be required to file the revised documents described earlier in this order for the Board's approval. *See supra*. The Board will issue the permit once Summit Carbon has filed the corrected exhibits and the Board approves of the changes. Once Summit Carbon's compliance with those provisions of this order is achieved, the Board will issue the permit, allowing Summit Carbon to begin construction and any necessary eminent domain proceedings. Similar to other filings, parties will have 14 days to file their responses, if any, to Summit Carbon's compliance filings made pursuant to this order.

While the Board is withholding the permit until the compliance filings have been made, reviewed and approved, this is the Board's final order on the merits for purposes of Iowa Code §§ 17A.16, 476.12, and 479B.22.

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#### **IV. CONCLUSIONS OF LAW**

1. The Board has jurisdiction over the subject matter of this docket under the provisions of Iowa Code chapter 479B.

2. The requirements of Iowa Code § 479B.5 have been met by Summit Carbon.

3. Summit Carbon has established its hazardous liquid pipeline will promote the public convenience and necessity as required by Iowa Code § 479B.9.

4. Summit Carbon has demonstrated compliance with the financial requirements of Iowa Code § 479B.13.

5. Summit Carbon will be vested with the right of eminent domain as described in this order, once a permit is issued, in accordance with Iowa Code § 479B.16.

6. Summit Carbon has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the hazardous liquid pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its hazardous liquid pipeline.

#### **V. ORDERING CLAUSES**

##### **IT IS THEREFORE ORDERED:**

1. The petition for hazardous liquid pipeline permit filed by Summit Carbon Solutions, LLC, on January 28, 2022, as subsequently revised, is granted subject to the terms and conditions of this order.

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2. Motions and objections not previously granted or sustained are overruled. Arguments presented in written filings or made orally at the hearing that are not addressed specifically in this final decision and order are rejected, either as not supported by the evidence or as not being of sufficient persuasiveness to warrant detailed discussion.

3. Summit Carbon Solutions, LLC, shall continuously revise Exhibit E as it obtains consents, permits, authorizations, or as consultations occur resulting in Summit Carbon Solutions, LLC, either receiving a consent, permit, or authorization, or a determination that a consent, permit, or authorization is not needed after consulting with a particular entity.

4. Summit Carbon Solutions, LLC, shall continuously revise the Federal and State Permit Tracker in Exhibit F as it obtains consents, permits, authorizations, or as consultations occur resulting in Summit Carbon Solutions, LLC, either receiving a consent, permit, or authorization, or a determination that a consent, permit, or authorization is not needed after consulting with a particular entity.

5. Summit Carbon Solutions, LLC, shall not commence construction on any segment of pipe in Iowa until it has obtained agency approval for a route and sequestration site in North Dakota and an agency approval of a route in South Dakota, except as described in Ordering Clauses 6 and 7.

6. Summit Carbon Solutions, LLC, shall not commence construction of Trunk Line 3, north of the Superior Ethanol Plant, or Lateral Line 2, until it has received agency approval from Minnesota for a connection to ethanol plants located in Minnesota as well as compliance with Ordering Clause 5.

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7. Summit Carbon Solutions, LLC, shall not commence construction of Trunk Line 5, south of Plymouth Energy, until it has an approved route in Nebraska to at least one ethanol plant in addition to compliance with Ordering Clause 5.

8. Summit Carbon Solutions, LLC, shall file notice prior to commencing construction, as conditioned by Ordering Clauses 5, 6, and 7, establishing it has met the conditions necessary to begin construction in those specified areas.

9. Summit Carbon Solutions, LLC, shall file construction reports every 30 days once it commences construction, in accordance with the requirements stated in this order.

10. Summit Carbon Solutions, LLC, shall file as-built maps and notice of completion of construction once construction is completed.

11. Summit Carbon Solutions, LLC, shall file for an amendment if a condition in 199 Iowa Administrative Code 13.9 is implicated or if Summit Carbon Solutions, LLC, adds two or more miles of pipe or changes the diameter of two or more miles of pipe that does not implicate the conditions in 199 Iowa Administrative Code 13.9, as described in this order.

12. Summit Carbon Solutions, LLC, shall obtain and maintain a general liability insurance policy in an amount of no less than \$100 million and provide proof of such insurance to the Utilities Board prior to commencing construction, as described in this order.

13. Summit Carbon Solutions, LLC shall annually file a copy of its insurance policy with the Utilities Board.

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14. Summit Carbon Solutions, LLC, shall revise and file Exhibit I as described in this order.

15. Summit Carbon Solutions, LLC, shall file a winter construction plan on or before August 1 of any year in which it seeks to engage in construction during the months of December through March.

16. Summit Carbon Solutions, LLC, shall perform X-ray inspections of 100 percent of the welds, test the pipeline coating, and hydrostatically test the pipeline to 125 percent of the maximum operating pressure.

17. Summit Carbon Solutions, LLC, shall use thicker walled pipe and fracture arrestors where appropriate.

18. Summit Carbon Solutions, LLC, shall purchase and provide a carbon dioxide monitor to every emergency manager truck, fire truck, law enforcement vehicle, and ambulance in the communities crossed by the pipeline, as described in the body of this order.

19. Summit Carbon Solutions, LLC, shall provide grants to cities and counties to provide the necessary equipment to respond to an incident.

20. Summit Carbon Solutions, LLC, shall file with the Utilities Board annually, commencing on June 1, 2025, a report detailing the distribution or denial of grants for the previous year, as further described in the body of this order.

21. Summit Carbon Solutions, LLC, shall work with each county crossed by its hazardous liquid pipeline to provide a real-time alarm notification system, similar to the Buxus system described in the body of this order.

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22. Summit Carbon Solutions, LLC, shall make landowners or tenants whole if they are rendered ineligible for current federal farm programs as a result of construction of the hazardous liquid pipeline on their property.

23. Summit Carbon Solutions, LLC, shall make landowners whole if they have a current Conservation Reserve Program contract in place that the Farm Service Agency ends and/or requires the landowner to pay back past Conservation Reserve Program contract payments because of the installation of the hazardous liquid pipeline.

24. Summit Carbon Solutions, LLC, shall provide landowners and tenants access to their properties through any fencing or gates and shall ensure landowners or their tenant farmers will have access to all portions of the farm outside of the easement during construction and restoration.

25. Summit Carbon Solutions, LLC, shall be vested with the right of eminent domain across all requested parcels as necessary to the extent requested, including greater construction areas, unless otherwise ordered.

26. Summit Carbon Solutions, LLC, shall be required to submit revisions as directed for parcel H-CK-063 (IA-CK-204-007.000), owned by Craig Beyer and Patricia Beyer, as described in the body of this order.

27. Summit Carbon Solutions, LLC, shall be required to submit revisions as directed for parcel H-WR-124 (IA-WR-302-0353.000), owned by Arnold J. Wagner and Vicki L. Wagner, as described in the body of this order.



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28. Summit Carbon Solutions, LLC, shall include the indemnification language in all Exhibit H filings as shown in its Hearing Exhibit 1.

29. Summit Carbon Solutions, LLC, shall revise all of the Exhibit H filings to reflect the actual diameter of the pipe crossing the parcel.

30. Summit Carbon Solutions, LLC, shall be required to continue to work with all landowners and tenants to ensure the landowner or tenant is able to access an area of their property that is landlocked during the construction period.

31. Summit Carbon Solutions, LLC, shall be required to offer to purchase voluntary easements from eminent domain landowners with the same terms and conditions already offered to landowners and for the last best price already offered by Summit Carbon Solutions, LLC, at least until the county compensation commission is empaneled to determine the compensation for the taking.

32. Summit Carbon Solutions, LLC, shall continue to file withdrawals of eminent domain parcels for which voluntary easements are obtained.

33. Upon completion of all county compensation commission proceedings, Summit Carbon Solutions, LLC, shall file a report with the Board identifying which parcels went through a county compensation commission proceeding.

34. Summit Carbon Solutions, LLC, shall be denied the right of eminent domain over parcel H-CE-024 (IA-CE-101-0339.000), owned by Meghan M. Kennedy.

35. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall file revisions to parcel H-CE-025 (IA-CE-101-0340.000), owned by Meghan M. Kennedy, as described in the body of this order.

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36. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall file revisions to parcel H-CK-014 (IA-CK-204-0121.000), owned by Richard L. Davis and Cynthia J. Davis, as described in the body of this order.

37. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the prairie located on parcel H-CK-036 (IA-CK-204-0116.000), owned by Graham Ag, LLC, as described in the body of this order.

38. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall file revisions to parcel H-CK-051 (IA-CK-204-0251.000), owned by John T. Carey, as described in the body of this order.

39. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the prairie located on parcel H-CK-058 (IA-CK-204-0117.000), owned by Graham Ag, LLC, as described in the body of this order.

40. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall file revisions to parcel H-CS-002 (IA-CS-101-0030.000), owned by Agvantage FS, Inc., as described in the body of this order.

41. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall file revisions to parcel H-CS-020 (IA-CS-101-0032.000), owned by David Leichtman and Jean M. Leichtman, as described in the body of this order.

42. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-017 (IA-CL-203-0144.000), owned by Michael L. White and Candace J. White, as described in the body of this order.

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43. Summit Carbon Solutions, LLC, shall be denied the right of eminent domain over parcel H-CL-018 (IA-CL-203-0145.000), owned by Michael L. White and Candace J. White.

44. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-027 (IA-CL-203-0176.000), owned by Gadsby Family Farm Company, LLC, as described in the body of this order.

45. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-028 (IA-CL-203-0182.000), owned by Dennis L. King and Kerry L. King, as described in the body of this order

46. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-029 (IA-CL-203-0183.000), owned by Dennis L. King and Kerry L. King, as described in the body of this order.

47. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-030 (IA-CL-203-0184.000), owned by Cecil King, Ltd., as described in the body of this order.

48. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-035 (IA-CL-203-0178.000), owned by Partick B. Brown and Mary Jane Hickey, as described in the body of this order.

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49. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-036 (IA-CL-203-0181.000), owned by Wayne D. King, as described in the body of this order.

50. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-037 (IA-CL-203-0190.000), owned by the Lois A. Wunschel Revocable Trust, as described in the body of this order.

51. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-038 (IA-CL-203-0191.000), owned by the Lois A. Wunschel Revocable Trust, as described in the body of this order.

52. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-039 (IA-CL-203-0193.000), owned by the Lois A. Wunschel Revocable Trust, as described in the body of this order.

53. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-053 (IA-CL-102-0366.000), owned by Jenifer Jane Berge, as described in the body of this order.

54. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-070 (IA-CL-203-0179.000), owned by Patrick B. Brown and Mary Jane Hickey, as described in the body of this order.

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55. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-078 (IA-CL-102-0364.000), owned by Jenifer Jane Berge, as described in the body of this order.

56. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-088 (IA-CL-203-0144.500), owned by Michael L. White and Candace J. White, as described in the body of this order.

57. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-093 (IA-CL-103-0112.000), owned by the Ray V. Bailey Trust, as described in the body of this order.

58. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-094 (IA-CL-203-0180.000), owned by Richard W. Harves, as described in the body of this order.

59. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-CL-124 (IA-CL-203-0177.000), the Gadsby Family Farm Company, LLC, as described in the body of this order.

60. Summit Carbon Solutions, LLC, shall be denied the right to place a valve on parcel H-CR-005 (IA-CR-308-0421.000), owned by Timothy Baughman and Susan Herman, and shall file revised exhibits reflecting the modification.

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61. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under parcel H-CR-012 (IA-CR-308-0473.500), Sharen Kleckner, Sandra Kleckner, and Lance Kleckner, as described in the body of this order.

62. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-DI-067 (IA-DI-304-0029.100), owned by Andrew Corcoran and Caila Corcoran, as described in the body of this order.

63. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-EM-008 (IA-EM-305-0004.500), owned by Matthew L. Valen, as described in the body of this order.

64. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-EM-015 (IA-EM-305-0004.000), owned by Dennis L. Valen, as described in the body of this order.

65. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the easement language for parcel H-FL-001 (IA-FL-101-0185.000), owned by the Kathy A. Johnson Revocable Trust, to remove the language allowing for the removal of trees from the easement areas.

66. Summit Carbon Solutions, LLC, shall be denied the right of eminent domain over parcel H-FL-010 (IA-FL-101-0142.000), owned by Gary L. Marth and Sandra K. Marth.

67. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-FL-011 (IA-FL-101-0143.000), owned by Gary L. Marth and Sandra K. Marth, as described in the body of this order.

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68. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-FL-012 (IA-FL-101-0141.000), owned by the Marth Revocable Trust *et al.*, as described in the body of this order.

69. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the ingress and egress easement held by Daniel D. McNickle shown on parcel H-FK-026 (IA-FK-301-0402.000), owned by the Daniel D. McNickle Living Trust.

70. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HC-016 (IA-HC-101-0448.000), owned by Brenda A. Barr, as described in the body of this order.

71. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-015 (IA-HD-301-0222.000), owned by Kathleen Hunt, as described in the body of this order.

72. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-024 (IA-HD-301-0221.000), owned by Kathleen Hunt, as described in the body of this order.

73. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-030 (IA-HD-301-0327.000), owned by Janet Miller, as described in the body of this order.

74. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-031 (IA-HD-301-0328.000), owned by Debra K. LaValle, as described in the body of this order.

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75. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-037 (IA-HD-301-0218.000), owned by Kathleen Hunt, as described in the body of this order.

76. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-052 (IA-HD-301-0258.000), owned by the Teresa A. Thoms Revocable Trust, as described in the body of this order.

77. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-098 (IA-HD-301-0221.100), owned by Kathleen Hunt, as described in the body of this order.

78. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-101 (IA-HD-301-0259.000), owned by the Teresa A. Thoms Revocable Trust, as described in the body of this order.

79. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-HD-102 (IA-HD-301-0260.000), owned by the Teresa A. Thoms Revocable Trust, as described in the body of this order.

80. Summit Carbon Solutions, LLC, shall be denied the right to place a valve on parcel H-HD-102 (IA-HD-301-0260.000), owned by the Teresa A. Thoms Revocable Trust.



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81. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-ID-033 (IA-ID-308-0691.500), owned by Reliant Processing Ltd., as described in the body of this order.

82. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-002 (IA-KO-102-0026.000), owned by the Marilyn V. Arndorfer Revocable Trust, as described in the body of this order.

83. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-003 (IA-KO-102-0027.000), owned by the Marilyn V. Arndorfer Revocable Trust, as described in the body of this order.

84. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-011 (IA-KO-102-0028.000), owned by Sauder Farms, LLC, as described in the body of this order.

85. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-012 (IA-KO-102-0031.000), owned by Arndorfer Bros., as described in the body of this order.

86. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-013 (IA-KO-102-0032.000), owned by Arndorfer Bros., as described in the body of this order.

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87. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the location of the temporary construction easement on parcel H-KO-017 (IA-KO-102-0084.000), owned by the Donald Lickteig Trust and Evelyn Lickteig Trust, as described in the body of this order.

88. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-022 (IA-KO-102-0083.000), owned by the Donald Lickteig Trust and Evelyn Lickteig Trust, as described in the body of this order.

89. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-035 (IA-KO-102-0025.000), owned by the Geraldine R. Pedersen Revocable Trust, as described in the body of this order.

90. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-037 (IA-KO-102-0055.000), owned by Christopher M. Capesius *et al.*, as described in the body of this order.

91. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-038 (IA-KO-102-0061.000), owned by Henry Schnakenberg and Adelheid Schnakenberg, as described in the body of this order.

92. Summit Carbon Solutions, LLC, shall be denied the right of eminent domain over parcel H-KO-040 (IA-KO-102-0075.000), owned by Charleen R. Mehan *et al.*

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93. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-046 (IA-KO-102-0060.000), owned by Henry Schnakenberg and Adelheid Schnakenberg, as described in the body of this order.

94. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-051 (IA-KO-102-0023.000), owned by Arndorfer Bros., as described in the body of this order.

95. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-052 (IA-KO-102-0024.000), owned by Arndorfer Bros., as described in the body of this order.

96. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-054 (IA-KO-102-0049.000), owned by the McGinnis Family Farm Trust, as described in the body of this order.

97. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-055 (IA-KO-102-0054.000), owned by Marlene M. Raney *et al.*, as described in the body of this order

98. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-059 (IA-KO-102-0056.000), owned by Christopher M. Capesius *et al.*, as described in the body of this order.

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99. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-068 (IA-KO-102-0062.000), owned by The Danish Home Foundation, as described in the body of this order.

100. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-069 (IA-KO-102-0081.000), owned by David E. Wildin and Caroline M. Wildin, as described in the body of this order.

101. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-KO-073 (IA-KO-102-0080.000), owned by David E. Wildin and Caroline M. Wildin, as described in the body of this order.

102. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the easement language for parcel H-MO-027 (IA-MO-306-0075.100), owned by Hunt Heritage Farm, LLC, to remove all language related to a permanent easement as described in the body of this order.

103. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-MO-031 (IA-MO-306-0191.000), owned by Marsha Anne Fleming and Morris L. Fleming, as described in the body of this order.

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104. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-MO-035 (IA-MO-306-0193.000), owned by Marsha Anne Fleming and Morris L. Fleming, as described in the body of this order.

105. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-OB-018 (IA-OB-103-0303.000), owned by Duane P. Stoll and Nancy J. Stoll, as described in the body of this order.

106. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-OB-019 (IA-OB-103-0305.000), owned by Duane P. Stoll and Nancy J. Stoll, as described in the body of this order.

107. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-002 (IA-PA-102-0189.000), owned by Daniel Fehr and Eunice Fehr, as described in the body of this order.

108. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-003 (IA-PA-102-0190.000), owned by Daniel Fehr and Eunice Fehr, as described in the body of this order.

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109. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the drainage tile located on parcels H-PA-004 (IA-PA-102-0196.000) and H-PA-005 (IA-PA-102-0198.000), owned by John Banwart and Kimberly Banwart, and file any necessary revised exhibits to accommodate this requirement, as described in the body of this order.

110. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-013 (IA-PA-102-0192.000), owned by Noah Daniel Fehr and Charlie Roger Fehr, as described in the body of this order.

111. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-014 (IA-PA-102-0194.000), owned by Noah Daniel Fehr and Charlie Roger Fehr, as described in the body of this order.

112. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the drainage tile located on parcels H-PA-013 (IA-PA-102-0192.000) and H-PA-014 (IA-PA-102-0194.000), owned by Noah Daniel Fehr and Charlie Roger Fehr, and file any necessary revised exhibits to accommodate this requirement, as described in the body of this order.

113. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the drainage tile located on parcel H-PA-015 (IA-PA-102-0200.000), owned by the Patricia Ann Wirtz Testamentary Trust, and file any necessary revised exhibits to accommodate this requirement, as described in the body of this order.

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114. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-030 (IA-PA-102-0355.000), owned by Weber Acres, Ltd., as described in the body of this order.

115. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-031 (IA-PA-102-0357.000), owned by Weber Acres, Ltd., as described in the body of this order.

116. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PA-032 (IA-PA-102-0361.000), owned by Douglas Williamson and Jill Williamson, as described in the body of this order.

117. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the berms located on parcels H-PA-052 (IA-PA-102-0219.000) and H-PA-053 (IA-PA-102-0221.000), owned by Mersch Farms, Inc., and file any necessary revised exhibits to accommodate this requirement, as described in the body of this order.

118. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-PL-036 (IA-PL-318-0195.000), owned by the Clair E. Thoreson and Linda D. Thoreson Revocable Trust, as described in the body of this order.

119. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SH-038 (IA-SH-308-0360.000), owned by the Benita A. Schiltz Revocable Trust, as described in the body of this order.

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120. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SH-053 (IA-SH-308-0357.000), owned by the Melvin A. Graeve Revocable Trust, as described in the body of this order.

121. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SH-054 (IA-SH-308-0358.000), owned by the Melvin A. Graeve Revocable Trust, as described in the body of this order.

122. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SI-027 (IA-SI-205-0194.000), owned by Daniel J. Sandbulte *et al.*, as described in the body of this order.

123. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SI-030 (IA-SI-205-0212.000), owned by Delbert Broek Yorkshires, Inc., as described in the body of this order.

124. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SI-031 (IA-SI-205-0213.000), owned by Delbert Broek Yorkshires, Inc., as described in the body of this order.

125. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SI-040 (IA-SI-205-0157.000), owned by Dooyema & Sons, Inc., *et al.*, as described in the body of this order.

126. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SI-052 (IA-SI-205-0156.000), owned by Gerald Franken *et al.*, as described in the body of this order.



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127. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall work with the landowner for parcel H-SI-076 (IA-SI-205-0102.000), owned by Edward P. Utesch, Jr., *et al.*, as described in the body of this order.

128. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-SI-107 (IA-SI-205-0195.000), owned by Daniel J. Sandbulte *et al.*, as described in the body of this order.

129. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WO-001 (IA-WO-318-0067.000), owned by Carolyn Blighton, as described in the body of this order.

130. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WO-011 (IA-WO-318-0150.000), owned by the Mary Lou Wilson Revocable Trust, as described in the body of this order.

131. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WO-015 (IA-WO-318-0151.000), owned by the Mary Lou Wilson Revocable Trust, as described in the body of this order.

132. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under the water lines located on parcels H-WO-022 (IA-WO-318-0049.000), H-WO-031 (IA-WO-318-0048.000), and H-WO-041 (IA-WO-318-0050.000), owned by CoBar, Inc. and the Charles H. Oehlerking Revocable Trust, and file any necessary revised exhibits to accommodate this requirement, as described in the body of this order.

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133. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WO-030 (IA-WO-318-0063.000), owned by Brian Krogh and Amiee Krogh, as described in the body of this order.

134. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WO-044 (IA-WO-318-0064.000), owned by Brian Krogh and Amiee Krogh, as described in the body of this order.

135. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and bore under the erosion control structure located on parcel H-WO-047 (IA-WO-318-0161.000) owned by the Carl S. Palmquist Testamentary Trust *et al*, as described in the body of this order.

136. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall bore under parcel H-WR-003 (IA-WR-301-0512.000), owned by Shannondoa Capps and Danielle Capps, and shall be denied the request for a temporary construction easement across this parcel.

137. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WR-016 (IA-WR-202-0057.000), owned by the Verle L. Tate Revocable Trust, as described in the body of this order.

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138. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WR-035 (IA-WR-302-0295.000), owned by David Derscheid, as described in the body of this order.

139. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WR-073 (IA-WR-302-0293.000), owned by the Roger H. Derscheid Revocable Trust, as described in the body of this order.

140. Summit Carbon Solutions, LLC, shall be granted the right of eminent domain and shall revise and modify the route on parcel H-WR-098 (IA-WR-202-0056.000), owned by the Verle L. Tate Revocable Trust, as described in the body of this order.

141. The motion for confidential treatment filed by Sierra Club Iowa Chapter on December 29, 2023, is granted.

142. The motion for confidential treatment filed by Jorde Landowners on December 29, 2023, is granted.

143. The motion for confidential treatment filed by Dickinson, Emmet, Floyd, Franklin, Kossuth, Shelby, Woodbury, and Wright County Boards of Supervisors on December 29, 2023, is granted.

144. The motion to release offtake agreements filed by Kerry Mulvania Hirth on January 19, 2024, is denied.

145. The Utilities Board retains jurisdiction of the subject matter of this docket

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for purposes of receiving and considering the additional filings required by this order and for such other purposes as may be deemed appropriate.

**UTILITIES BOARD**

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ATTEST:

Kerrilyn Russ 2024.06.25  
08:12:05 -05'00'

Sarah Martz Date: 2024.06.25  
08:09:22 -05'00'

Dated at Des Moines, Iowa, this 25th day of June, 2024.

**VI. CONCURRENCES AND DISSENTS**

I concur in approving the proposed hazardous liquid pipeline with the route modifications set forth in the order. I write separately solely to dissent from those portions of the order that delegate the statutory authority of the Board to the public utility commissions of other states.

I believe an agency should both stay within its jurisdiction and exercise such authority as it is instructed to exercise by law. When an agency makes an approval or disapproval contingent upon decisions made by another agency or another state, it gives away duties that have been assigned to it by the Iowa Legislature. I continue to believe that is improper.

**UTILITIES BOARD**

Erik M. Helland 2024.06.25  
08:06:33 -05'00'

Erik Helland, Chair

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While I join with the Board's discussion concerning the majority of the route, because I do not believe the portion of the proposed pipeline running from Quad County Corn Processors in Ida County to the Green Plains facility in Fremont County, hereinafter referred to as the "North-South lateral," is just and proper, I respectfully dissent from that section of the final order.

The portion of Iowa law that governs this Board's review of a hazardous pipeline route is found in Iowa Code § 479B.9 and provides, in relevant part, that the Board "may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." This standard governing Board review is not unique to hazardous liquid pipelines, as the Iowa legislature delegated to the Board similar authority over other infrastructure projects. See Iowa Code § 478.4 (providing that in the context of electric transmission line franchises, the Board "may grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route as may seem to it just and proper"), Iowa Code § 479.12 (in the context of pipelines as that term is defined in chapter 479, providing that the Board "may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper").

The "just and proper" standard is not a recent legislative creation; rather, the standard has been included in Iowa law since at least 1925. See 1925 Iowa Acts ch. 5, § 8 (providing the Iowa Board of Railroad Commissioners with the authority to grant an application for a certificate of public convenience and necessity "in whole or in part upon

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such terms, conditions and restrictions and with such modifications as to schedule and route as may seem to it just and proper”).

Notwithstanding that the standard has been a long-standing fixture of Iowa law, “the standard of ‘just and proper’ is not defined” under Iowa law. *In re: MidAmerican Energy Company*, Docket No. P-844, “Proposed Decision and Order,” pp. 10, 30 (Sept. 25, 2002). The lack of a bright-line legislative definition of “just and proper” coupled with the language in Iowa Code § 479B.9 suggests the Board is vested with board discretion on this issue. *See In re: United States Gypsum Company*, Docket No. P-833, “Proposed Decision and Order Granting Permit,” p. 9 (March 21, 1996) (stating the similar language in chapter 479 “vests the board with broad discretion”). In exercising this broad discretion, the Board has previously identified a number of non-exclusive factors that may be considered in determining whether a route is just and proper. For example, in a pipeline case brought under chapter 479, the Board held that in “considering whether a proposed route is just and proper, the Board must look at the evidence presented concerning the reasons for selecting the proposed route, the evidence in support of any alternative route, and then address the overall public interest.” *In re: City of Waukee, Iowa*, Docket No. P-874, “Order Modifying Proposed Pipeline Route and Conditional Grant of Permit,” p. 30 (Aug. 24, 2009). Other factors the Board has identified that may be considered include the pipeline length, the use of existing corridors, construction costs, and environmental impacts. *In re: Interstate Power and Light Company*, Docket No. P-0893, “Order Granting Pipeline Permit,” p. 11

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(August 1, 2016). Furthermore, it is unclear whether the “just and proper” inquiry must result in a binary “yes” or “no” determination. For example, a former Board chairperson opined that a route proposed by a company would not meet the “just and proper” standard if another route “is more just and proper than the route” sought by the company. *Id.* at 19-20 (Chairperson Huser dissenting).

In light of the aforementioned authority and given the lack of any clear legislative directive or adjudicatory guiding principles, it appears to me that “just and proper” is an amorphous standard, which allows the Board to take into consideration any factor or reason the Board finds material as to what is just and proper.

In a previous dissent in the above-captioned docket, I discussed some of the public interests that the Board should consider in a project of this scale. *See In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, “Order Denying Motions to Reopen Record, Consolidate, and Stay Proceedings, with Dissenting Opinion,” pp. 16-17 (April 25, 2024) (Board Member Byrnes dissenting). Specifically, I wrote:

The Board should demand that the route for a project of this size and magnitude be the product of comprehensive planning to ensure the final route is the most efficient to accompany the project’s objectives and to minimize the impact on Iowa landowners.

*Id.* at 16. The same principles that were expressed in my April 25, 2024 dissent guide my position on the North-South lateral.

The North-South lateral runs approximately 123 miles through seven counties and impacts 118 eminent domain parcels — all of which are necessary to serve only

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one ethanol facility. Under my review and weighing of the evidence and the implicated public interests, I cannot conclude the North-South lateral is just and proper and cannot conclude that the anticipated benefits to be received by the one facility to be served by the North-South lateral justify the lateral's length, costs, and impacts to Iowa landowners and tenants.<sup>35</sup> See Summit Carbon Pirolli Rebuttal Ex. 1, at p. 41 (identifying the one ethanol facility at the southern end of the North-South lateral as one of the smaller ethanol production facilities).

I am not suggesting that the "just and proper" analysis should be boiled down to a benefit-per-pipeline-mile analysis or that a lengthy lateral pipeline intended to serve but one facility can never meet the "just and proper" standard. As evidenced through my agreement with most of the majority's opinion, I do believe that all other aspects of Summit Carbon's proposed pipeline (trunk and laterals), with deviations, meets the "just and proper" standard. Rather, the North-South lateral is unique in terms of the laterals in this case by virtue of its length, impacts to landowners and tenants, and number of facilities served. Simply put, in weighing the impacts to be borne by landowners and tenants on the North-South lateral as well as the claimed benefits to be realized by Summit Carbon and the sole facility, I cannot find the North-South lateral to be just and proper.

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<sup>35</sup> I also have reservations regarding Summit Carbon's route in and around the Charles City, Iowa, area. Although I believe there are alternative routes that, in my opinion, are "more just and proper," I must also consider the landowners in that area who signed voluntary easements. The number of landowners in that area who agreed to the pipeline and the pipeline location weigh against the Board making significant modifications to that portion of the proposed route. With that said, however, I do not believe the number of voluntary easement landowners can save the North-South lateral because, as set forth above, I do not believe the lengthy lateral to serve only one facility is supportable. By way of comparison, the route in and around the Charles City area is a trunk line needed to serve entire areas of Iowa.



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I do appreciate that the Board has previously approved hazardous liquid pipeline permits that did not directly serve any Iowa facilities. For example, the Board issued a permit for the Dakota Access pipeline to cross all of Iowa without connecting to any facility in this state. See *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829, 832 (Iowa 2019) (describing the Dakota Access pipeline as “an underground crude oil pipeline . . . that would run from western North Dakota across South Dakota and Iowa to an oil transportation hub in southern Illinois”). However, Dakota Access involved a 343-mile trunk line with a sole objective, as it pertained to Iowa, to traverse the state from the northwest corner to the southeast corner. *Id.* at 833.

Unlike the Dakota Access trunk line, with a sole purpose of traversing the entire state, the purpose of the Summit Carbon laterals is to connect certain Iowa ethanol facilities to the trunk line. Therefore, consideration of the number of facilities being served becomes relevant in considering Summit Carbon’s laterals even though such consideration may have been immaterial to a case solely involving a trunk line, such as Dakota Access.

I further appreciate that in many of the Board’s prior cases (especially electric transmission line franchise cases), the Board’s “just and proper” review includes an evaluation as to potential modifications of the route. See e.g., *In re: ITC Midwest LLC*, Docket Nos. E-21948, E-21979, E-21950, and E-21951, “Order Denying Petition for Limited Intervention and Granting Petitions for Electric Franchises,” p. 33 (June 1, 2011) (holding the governing statute “gives the Board the discretion to modify the line location and route if it determines the modification to be just and proper”); *In re: City of Waukee, Iowa*, Docket No. P-874, “Order Modifying Proposed Pipeline Route and Conditional

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Grant of Permit,” p. 32 (Aug. 24, 2009) (stating that if the Board determines a “proposed route is not just and proper, the Board must still consider whether to modify the proposed route or reject the petition” for a pipeline permit).

Because my concerns with the North-South lateral cannot be remedied through a modification, I would deny Summit Carbon a hazardous liquid pipeline permit for this portion of the project.

To be clear, I do believe, if supported by sufficient evidence, a lengthy lateral serving only one facility can meet the “just and proper” standard. For example, had the evidence established that Summit Carbon reasonably anticipated that the North-South lateral was necessary to serve some purpose other than the one small ethanol plant (e.g., the lateral was necessary to serve future facilities or to accommodate future growth, etc.) my weighing of the interests may have been different. Further, I do not believe there is anything inherently suspect with the facility proposed to be served by the North-South lateral, and as evidenced by my approval for Summit Carbon’s trunk line and other laterals, if a more sensible route is proposed by Summit Carbon to serve that facility, I may find that route to meet the “just and proper” standard.

The Board is bound to interpret and apply Iowa law, which in the context of hazardous liquid pipelines is somewhat narrow and less-than-substantial. While all three Board members agree that Summit Carbon met the hazardous liquid pipeline elements for the majority of the project, I find that Summit Carbon failed to provide sufficient evidence to counter the inconvenience and negative impacts that will be experienced by landowners located on the North-South lateral. Therefore, I believe that

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the North-South lateral as proposed by Summit Carbon in its current form is neither just nor proper.

**UTILITIES BOARD**

Joshua Byrnes Date: 2024.06.25  
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Joshua Byrnes, Board Member