

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

IN RE:)	
)	DOCKET NO. HLP-2021-0001
)	
SUMMIT CARBON SOLUTIONS, LLC)	
)	
PETITION FOR HAZARDOUS LIQUID)	
PIPELINE PERMIT)	
)	

**JOINDER
TO
COUNTIES’ MOTION TO RECONSIDER FINAL DECISION AND ORDER
BY
FOR LANDOWNERS, KRACHT AND DAPEMA, LLC**

COMES NOW this 15th day of July, 2024, Gregory and Erica Kracht, Trustees (“**Kracht**”) and DAPEMA, LLC (“**DAPEMA**”), Intervenors herein.

Kracht and DAPEMA fully join the Counties’ Motion to Reconsider Final Decision and Order filed July 12, 2024. In particular, Kracht and DAPEMA highlight section 1(b) of the Counties’ Motion entitled “*Proposed permit conditions.*” (Counties’ Motion, pg. 5-8.) Kracht and DAPEMA fully endorse the following statement:

“First, the Counties asked the Commission to impose a condition that Summit obtain all necessary permits before exercising rights of eminent domain. The Commission did not impose this condition. The Counties ask the Commission to reconsider its rejection of this condition.”

(Counties’ Motion, pg. 6.)

Summit has admitted there is no guarantee that it will obtain a permit in South Dakota or

North Dakota. (Tr. 2763:19 to 2765:28.) Summit's representative Micah Rorie stated:

"...Yes, if we built a pipeline that didn't have a terminus, it would be a pipeline to nowhere..." (Tr. 2766:2-3.)

The IUB's Final Decision and Order appears to have generally recognized Kracht and DAPEMA's criticisms and request with respect to the power of eminent domain:

"Murray Landowners assert the Board must place conditions and restrictions on Summit Carbon to ensure eminent domain is not granted unnecessarily." (Final Decision, pg. 279.)

However, it would appear that the IUB's Final Decision dispensed with this request summarily:

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. (Final Decision, Pg 287.)

...

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. (Final Decision, Pg. 296.)

In addition, the IUB made the following conclusion:

“The Board did not use the number of outstanding easements as a factor to determine whether Summit Carbon should be vested with the right of eminent domain and includes this discussion to correct the factual record.” (Final Decision, pg. 296-97.)

In spite of making this conclusion, the IUB devoted a portion of its opinion to correct the Murray Landowners and Jorde Landowners as to the total number of outstanding easements. The IUB found that there were 414 outstanding easements. (Final Decision, pg. 296.)

Kracht and DAPEMA’s brief highlighted the significant burden placed on landowners and counties in relation to the condemnation process. Kracht and DAPEMA brief, pgs. 4-5. The Thus, the Final Decision authorizes up to 414 separate condemnation actions. The Final Decision does not take this factor into account.

Conclusion

If the Final Decision does not place conditions on granting Summit the power of eminent domain, hundreds of condemnation hearings across the State of Iowa will occur for the express purpose of involuntarily taking property away from landowners for a pipeline that may never exist. Such an action appears to lack any apparent necessity sufficient to justify an involuntary taking.

More simply put, the Final Decision places the cart before the horse.

Respectfully submitted,

BY MURRAY & MURRAY, P.L.C.,

/s/ John M. Murray _____

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