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STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD



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IN RE: :  
SUMMIT CARBON SOLUTIONS, : Docket No.  
LLC : HLP-2021-001  
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TRANSCRIPT OF HEARING  
VOLUME 10  
PUBLIC TRANSCRIPT

Cardiff Event Center at  
Fort Frenzy  
3232 First Avenue South  
Fort Dodge, Iowa 50501  
Friday, September 8, 2023

Met, pursuant to order, at 8:00 a.m.

BEFORE: THE IOWA UTILITIES BOARD  
ERIK M. HELLAND, Board Chair (Presiding)  
JOSHUA J. BYRNES, Board Member  
SARAH MARTZ, Board Member

(Pages 2483 to 2749)

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25			

1                                    P R O C E E D I N G S

2                                    BOARD CHAIR HELLAND: Good morning. It's  
3 8:00, September 8, 2023. We'll go back on the record  
4 for HLP-2021-001, Summit Carbon Solutions'  
5 application.

6                                    Ms. Ryon.

7                                    MS. RYON: If I might, Your Honor, I have a  
8 very brief procedural issue I'd like to raise before  
9 we call our first witness.

10                                    As was decided Wednesday, I did file in  
11 writing Ms. Hirth's motion to subpoena Bruce  
12 Rastetter. It did not come through EFS until late in  
13 the day yesterday. And, after that, my email server  
14 was uncooperative and refused to send the confidential  
15 version for Mr. Dublinske for him to distribute to the  
16 other parties.

17                                    So I talked with Mr. Dublinske, and, given  
18 that other parties only have two days to respond to  
19 that motion, we thought it made sense to treat it as  
20 if it was filed today.

21                                    MR. DUBLINSKE: I appreciate Ms. Ryon's  
22 willingness to do that, and I'm going to distribute it  
23 to the other parties here once I have everything  
24 pulled up this morning. So we agree that counting  
25 starting today would be appropriate.

1 I don't know that it makes a lot of  
2 difference, because of how the counting rules treat  
3 weekends, but I certainly appreciate the courtesy.

4 BOARD CHAIR HELLAND: Seeing no objections,  
5 I think that seems fit. Appreciate the parties  
6 getting along in putting that together.

7 Anything else before we get started?

8 (No response.)

9 BOARD CHAIR HELLAND: Mr. Leonard.

10 MR. LEONARD: Thank you, Your Honor.

11 Summit's next witness it will call is Aaron  
12 DeJoia.

13 BOARD CHAIR HELLAND: Raise your right hand  
14 please.

15 AARON DeJOIA,  
16 called as a witness by Summit Carbon Solutions, LLC,  
17 being first duly sworn by Board Chair Helland, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LEONARD:

21 Q. Are you the same Aaron DeJoia who caused to  
22 be filed written rebuttal testimony in this docket?

23 A. I am.

24 Q. If I asked you the same questions today,  
25 would your answers be substantially the same?

1           A.    They would be.

2           Q.    Do you have any corrections or  
3 modifications to make to that written testimony today?

4           A.    No.

5           MR. LEONARD: Your Honor, we would move for  
6 the admission of Mr. DeJoia's prefiled rebuttal  
7 testimony.

8           BOARD CHAIR HELLAND: Thank you.

9           Other than Mr. Jorde's standing objection,  
10 do we have an objection?

11           (No response.)

12           BOARD CHAIR HELLAND: Seeing none, it will  
13 be admitted and given the weight due.

14           MR. LEONARD: We'll tender the witness for  
15 cross, Your Honor.

16           BOARD CHAIR HELLAND: Who is first?

17           Ms. Gruenhagen.

18           MS. GRUENHAGEN: I think everybody was  
19 waiting to see who was going to go first.

20           BOARD CHAIR HELLAND: There's a lot of that  
21 going around.

22   CROSS-EXAMINATION

23 BY MS. GRUENHAGEN:

24           Q.    Good morning, Mr. DeJoia.

25           A.    Morning.



1           Q.    My name is Chris Gruenhagen, and I'm  
2 representing the Iowa Farm Bureau in these  
3 proceedings. And I have a few questions for you this  
4 morning.

5                    But, first, could you explain what your  
6 role is with the Summit pipeline project?

7           A.    My role with the Summit pipeline project --  
8 there's two of them. One is to provide technical  
9 assistance with soils and reclamation across the  
10 entire project area. And then the additional role is  
11 I'm also leading the team that is doing topsoil  
12 sampling throughout the entire alignment in Iowa.

13           Q.    So you're based in Colorado?

14           A.    I am based in Colorado, correct.

15           Q.    So you're making frequent trips up here to  
16 Iowa then?

17           A.    I make trips up to Iowa. It depends what  
18 you call "frequent," but, yes, I make trips.

19           Q.    Very good. On page 3 of your rebuttal  
20 testimony, line 22 to 25, you indicated that you  
21 developed a topsoil sampling protocol for the Dakota  
22 Access project?

23           A.    I did.

24           Q.    Did Dakota Access use your protocol?

25           A.    Dakota Access used my protocol, correct.

1           Q.    And then, on page 4 starting on line 23,  
2 you describe that you were one of the individuals who  
3 provided technical assistance to the Iowa Utilities  
4 Board in developing the current rules; is that  
5 correct?

6           A.    I provided assistance through another  
7 consultant and provided them my input. They took it  
8 to the IUB. I never spoke personally to the IUB about  
9 those.

10          Q.    And it was a different Board at that time.

11          A.    Yes, it was. To the best of my  
12 understanding.

13          Q.    Are the Board's current rules, in large  
14 part, similar to that protocol you developed?

15          A.    I would say they are similar, but there are  
16 some differences that I would recommend different  
17 based on the science and technology available.

18          Q.    What are those differences? Could you  
19 identify them?

20          A.    A couple of them -- the one that is  
21 probably the most difficult is the compaction testing.  
22 Currently, in the IUB Chapter 9 rules, they are asking  
23 for what is called an SPT compaction method testing.  
24 And that's more of an engineering standard, an  
25 engineering way of measuring compaction. Almost to

1 the point of making sure there's enough compaction to  
2 build something.

3 What I would suggest the IUB change is to  
4 use more of an agricultural method, which is called a  
5 cone penetrometer method, and it is similar to the  
6 methods that were used by Iowa State in their study  
7 that's referenced in my report and other people's  
8 reports. Also referenced as was used in the Ohio  
9 State studies that were referenced in my report and  
10 others' reports.

11 So it's just a different method. It's much  
12 more practical for the field situation than the SPT  
13 method, which is, like I said earlier, an engineering  
14 standard, and there's better agricultural standards  
15 that could be used to provide the exact same  
16 information at a much more logistically capable  
17 methodology.

18 Q. Now, both of the things you just talked  
19 about, that's regarding the compaction standards;  
20 right?

21 A. That is regarding the compaction standard,  
22 correct.

23 Q. And that's not the topsoil survey.

24 A. That's not the topsoil survey.

25 Q. So let's go back to the topsoil survey

1     itself. Are there any differences between what you  
2     recommended for protocols for the topsoil survey and  
3     what the Board has in their rules?

4             A. Yeah, my recommendation for the topsoil  
5     survey would -- first off, let me say I really like  
6     the idea of making sure that every parcel has at least  
7     one or two sampling points on it. It makes for a  
8     better method. Better data.

9             And then the one thing I would change, if  
10    we had the opportunity to, is collecting three points,  
11    one on each side of the right-of-way. From a soil  
12    science perspective, that doesn't provide any  
13    additional value for how we finally come up with a  
14    topsoil map.

15            And, in all actuality, I have ran some of  
16    the data we've collected here, and there is  
17    statistically no difference between if I just use one  
18    of the points versus using the three in the transect  
19    points to determine that.

20            So it's kind of a -- it makes us spend more  
21    time in the field without adding any value or  
22    scientific data value to that collection system.

23            Q. So you're arguing that only one sample is  
24    necessary in a field?

25            A. One sample per transect. But every field

1 should be at least two. I agree with that. And that  
2 the 500 feet, every 500 feet -- in some states, we do  
3 750, some states we do fewer than 500. So 500 is a  
4 good number to start with to have maximum distance  
5 between points. I can't complain about that one way  
6 or the other.

7 But, having to take three samples within 20  
8 feet, from a soil science perspective that doesn't  
9 provide any extra value. Soils don't change that  
10 fast.

11 Q. Does it make the topsoil survey inaccurate  
12 to take a separate sample?

13 A. No, it doesn't make it any more inaccurate.  
14 It just doesn't add any accuracy versus just taking  
15 one sample.

16 And the data we've collected proves that  
17 out, but we're taking three samples at every transect  
18 when we're out there because that's what the IUB has  
19 decided is the correct method for Iowa. And so we're  
20 just following that rule doing everything that we're  
21 asked to do on that.

22 Q. So does the topsoil survey protocol that  
23 you developed for Dakota Access and used have very  
24 similar results to the protocols established by the  
25 Board for doing topsoil surveys?

1           A.    The Dakota Access survey, it has very  
2 similar results, was not very different. The only  
3 thing that I believe and we learned from Dakota  
4 Access, or I learned from Dakota Access, is, yes, we  
5 do need a minimum of two samples per landowner in a  
6 situation so that we always have something to compare  
7 to to make sure we don't have too big of anomalies  
8 based on how farmer practices change.

9           Q.    You list that there are some changes in the  
10 Board's rules overall between what occurred during  
11 Dakota Access and what is currently in the rules on  
12 page 4 of the testimony.

13          A.    Correct.

14          Q.    So I believe we've already discussed (c) on  
15 line 10, but haven't the rules always required, at  
16 least for decades, the separation of topsoil from  
17 subsoil?

18          A.    The rules -- as far as I know, back in  
19 Dakota Access and today, they both require segregation  
20 of topsoil and subsoil, correct.

21          Q.    And that it's always required separation of  
22 the storage areas as well?

23          A.    That -- I can only speak back to Dakota  
24 Access. I didn't know up to that time. So, yes, from  
25 that point forward, they have. To my knowledge.

1           Q.    And hasn't there also been a requirement,  
2   since before Dakota Access, that the subsoil be placed  
3   back in the trench first and then the topsoil on top?

4           A.    That is how I understand the rules and how  
5   I interpret the rules.

6           Q.    Are you aware also that there's also been a  
7   requirement that the storage of the topsoil and the  
8   subsoil has to have enough separation so that they  
9   don't mix?

10          A.    That is my understanding of the rules,  
11   correct.

12          Q.    During Dakota Access, during that project,  
13   was the topsoil, by and large, removed to the depth  
14   identified by your topsoil survey protocols? Unless  
15   the easement -- I guess a qualifier. Unless the  
16   easement or the line sheet said otherwise?

17          A.    To my understanding, and based on my review  
18   of all the agricultural inspection reports that were  
19   out there, I would say that 90 to 95 percent of the  
20   time topsoil was segregated correctly and separated  
21   from subsoil correctly. Was it 100 percent? I  
22   couldn't say that, but it was very high 90s percent,  
23   90 or better percent.

24          Q.    Is there always some human error kind of  
25   mixed in with this? In judgment?

1           A.     There is always human error in judgment.  
2     And that happens on every project.  And we have to  
3     deal with that from a reclamation perspective during  
4     the reclamation process.  And that's why people like  
5     Dakota Access, and now Summit, have retained services  
6     of soil scientists, reclamation scientists, to help  
7     them through this process of when things don't go  
8     directly as we anticipated.  Which happens on every  
9     construction project.

10           Q.    You indicated when we first started talking  
11    this morning that you're going to be conducting or  
12    overseeing the topsoil surveys for the Summit project?

13           A.    That is correct.

14           Q.    Have you established a process by which  
15    you're going to be sharing those topsoil survey  
16    results with the landowners?

17           A.    We are -- we have a process where we have  
18    developed tables and figures inside of our database to  
19    provide that information to Summit per landowner.  And  
20    I would have to -- I do not know how Summit or if  
21    Summit will distribute that data to individual  
22    landowners.

23                    But my final delivery product will have  
24    tables and figures per landowner per tract for each  
25    tract that we have taken soil samples on, which will



1 be all the tracts along the alignment.

2 Q. So you're not responsible for interacting  
3 with the landowners regarding your topsoil survey? Is  
4 that what I'm understanding?

5 A. Not -- we have interacted with landowners.  
6 Just from them coming out while people have been  
7 walking and taking soil samples. But day-to-day, no,  
8 we are not responsible for interacting with the  
9 landowners on that data at this time.

10 But we aren't done with the survey. So we  
11 have not started to distribute any data, even to  
12 Summit, as of today because we don't have the final  
13 deliverable ready for that.

14 Q. So who at Summit do you report to or do you  
15 give the samples to?

16 A. I report to Grant Terry.

17 Q. And do you know who at Summit is going to  
18 be providing those results to the landowners?

19 A. I do not.

20 Q. Because we've asked previous witnesses.  
21 And I believe they referred us to you. So we'll  
22 continue to figure that out.

23 A. Yeah, I will provide it to Summit, and then  
24 they're responsible for providing it, under my  
25 understanding, to individual landowners.

1 Q. On line 16 there on page 4, you also list  
2 as a change is the compaction requirements. And I  
3 think you've described that already. So I'll kind of  
4 skip that part.

5 But are you familiar with Summit's Ag  
6 Impact Mitigation Plan?

7 A. Yes.

8 Q. Did you contribute to that? Or review it?

9 A. I reviewed it, yes, but I did not have an  
10 active part of putting that together.

11 Q. Do you also recall Dakota Access's Ag  
12 Impact Mitigation Plan?

13 A. Yes, I do.

14 Q. Did you also review that or did you  
15 contribute to that?

16 A. I reviewed and provided comments back on  
17 that one.

18 Q. Do you know what, if any, differences there  
19 are in the de-compaction requirements in the Ag Impact  
20 Mitigation Plan for Summit as compared to the Ag  
21 Impact Mitigation Plan for Dakota Access?

22 A. The Dakota Access was a long time ago, and  
23 I don't -- I couldn't say if there was or was not any  
24 differences between the two. I'm sorry.

25 MS. GRUENHAGEN: Well, why don't we have

1 the Board pull up the Dakota Access Ag Impact  
2 Mitigation Plan. Can you scroll down a little bit  
3 just so -- I'm sorry. Scroll up. I said the wrong  
4 way. Scroll up so we can see the filing stamp.

5 BY MS. GRUENHAGEN:

6 Q. What was the date that this was filed with  
7 the Utilities Board?

8 A. According to what's on the screen in front  
9 of me, it's April 14 of 2016.

10 Q. Would that have been slightly prior to the  
11 construction beginning?

12 A. I believe so.

13 MS. GRUENHAGEN: Can you please scroll down  
14 to the bottom of page 11, 6.8.

15 BY MS. GRUENHAGEN:

16 Q. What is the title of that section?

17 A. 6.8 reads "Restoration after soil  
18 compaction and rutting."

19 Q. Could you read that paragraph. It's just a  
20 few sentences.

21 A. Yes. "In accordance with Chapter 9,  
22 paragraph 9.4(4), agricultural land compacted by heavy  
23 project equipment, including off right-of-way access  
24 roads, will be deep tilled to alleviate soil  
25 compaction upon completion of construction on the

1 property. In areas where topsoil was removed, tillage  
2 will precede replacement of topsoil."

3 MS. GRUENHAGEN: Can you scroll up a little  
4 bit. Thank you.

5 BY MS. GRUENHAGEN:

6 Q. You can continue.

7 A. Continuing, "At least three passes of deep  
8 tillage equipment shall be made per Chapter 9.4(4)(a).  
9 Tillage shall be at least 18 inches deep in land used  
10 for crop production and 12 inches deep on other lands  
11 (except where shallow tile systems are encountered)  
12 and shall be performed under soil moisture conditions  
13 which permits effective working of the soil. If  
14 agreed in advance, this tillage may be performed by  
15 the landowners or tenants using their own equipment."

16 Q. And then go ahead and read the last  
17 paragraph. There's two more sentences.

18 A. "Rutted land will be graded and tilled  
19 until restored as near as practical to its  
20 preconstruction condition. On lands where topsoil was  
21 removed, rutting will be remedied before topsoil is  
22 replaced."

23 Q. Is that consistent with your recollection  
24 of what that said? For the Dakota Access pipeline  
25 project?

1           A.     That was in 2016.  So I'm believing this is  
2     the correct document.  And, to the best of my  
3     recollection, yes.

4           MS. GRUENHAGEN:  Why don't we go ahead and  
5     switch to Summit's Ag Impact Mitigation Plan.

6     BY MS. GRUENHAGEN:

7           Q.     And what's the filing date on this one?

8           A.     According to the document, it's August 22,  
9     2023.

10          MS. GRUENHAGEN:  And then if we could go  
11     ahead and scroll down to page 12.

12     BY MS. GRUENHAGEN:

13          Q.     Section 6.9.  What is the title of that?

14          A.     "Restoration after soil compaction and  
15     rutting."

16          Q.     I'll go ahead and give you a minute to read  
17     through that yourself and then we can talk about that  
18     a little bit.

19          A.     Okay.

20          Q.     Does that look remarkably similar to the  
21     provision on restoration after soil compaction that  
22     you just read through on the Dakota Access Ag Impact  
23     Mitigation Plan?

24          A.     They are similar, but there are slight  
25     differences in them, yes.

1           Q.    So would it surprise you that really the  
2   only difference is the language about halfway through  
3   the paragraph where it says "shall be performed under  
4   soil moisture conditions that result in the maximum  
5   standard penetration test reading," which you  
6   indicated earlier was the change?

7           A.    That's a large, substantial difference  
8   between the two, yes.

9           Q.    And then the other difference is where it  
10   says "de-compaction shall not occur in wet  
11   conditions"?

12          A.    I believe the other one had some language  
13   about wet conditions, but this puts it very --

14          Q.    It's more clear.

15          A.    -- in the forefront.  Yes.

16          Q.    So it was prohibited before, but this is  
17   very clear language?

18          A.    Yes.  Correct.

19          Q.    So the primary difference between the two  
20   plans then is just the maximum standard penetration  
21   test?  Everything else is the same?

22          A.    Yeah, and more clearly identifying that  
23   de-compaction can be done in wet conditions.

24          Q.    Thank you.  So let's go back to your  
25   rebuttal testimony.

1                   On page 6 of your rebuttal testimony,  
2 starting on line 23, you discuss mechanical  
3 de-compaction --

4                   A.    Correct.

5                   Q.    -- in that sentence there. And then you  
6 also talk about deep ripping as the implement used to  
7 de-compact the soil prior to backfilling?

8                   Is that correct?

9                   A.    I say "mechanical de-compaction of subsoil  
10 prior to backfilling topsoil."

11                  Q.    So what are the implements that are used to  
12 accomplish mechanical de-compaction?

13                  A.    There are different implements available  
14 out there. There are the Unverferth, v-e-r-t-h {sic},  
15 type of rippers and also the parabolic rippers. And  
16 both of those are standard agricultural equipment that  
17 are designed explicitly for mechanical de-compaction  
18 of fields.

19                  Q.    For the record, can you roughly explain the  
20 difference between the two types?

21                  A.    The main difference is the shape of the  
22 shank. One, as the parabolic ripper is, is more of a  
23 U-shaped tillage device. It lifts and shatters the  
24 soil. The Unverferth is a little bit different style  
25 of ripper. It does exactly the same thing, but it's

1 just a different design. It's more of a straight  
2 shank that lifts and shatters the soil.

3 Q. So both of them have an iron shank that  
4 will go through the soil? Knife through the soil  
5 essentially?

6 A. They both have a shank that will go into  
7 the soil. The important thing to know, and this is  
8 why it's critical that the IUB has put in the wet  
9 conditions clarifier and made it more appropriate, is  
10 that, in wet conditions, those will just -- like you  
11 said, will just knife through the soil.

12 But, in drier conditions, they will  
13 actually pick the soil up -- you'll see a wave in the  
14 soil conditions. It will pick it up, shatter the  
15 soil, and make more places for roots and water to  
16 penetrate the soil.

17 So that's one of the critical elements of  
18 having this wet condition stipulation in your rules is  
19 so that we can ensure that we get that shattering of  
20 the soil instead of just knifing through it like a  
21 knife through butter.

22 Q. Are there any other types of implements  
23 that can be used for mechanical de-compaction?

24 A. Those are the two most standard ones, the  
25 ones I've seen most often used on right-of-ways. I'm



1 sure there are others, but those are the most common  
2 and the ones that I would recommend out there.

3 Q. So do you know of any others?

4 A. I mean, people try to use the back end of a  
5 grader. The rippers on the back of a grader. They're  
6 different implements. So those are not adequate for  
7 this. I don't want to say no, because as soon as I  
8 step off the stand, I'll remember one, but not off the  
9 top of my head.

10 Q. Well, if you remember one while you're up  
11 there --

12 A. I will.

13 Q. -- it would be helpful to have that.

14 A. Those are the two major types though.

15 Q. Thank you. If the soil has been -- and  
16 I'll use the word "severely," and I know it's a  
17 qualitative word, but it's been severely compacted  
18 such that it's hard, and I'll just use the word  
19 "concrete" as a layperson, will that ripper still do  
20 its job or will it just cut a line through the dirt?

21 A. The interesting thing about these rippers  
22 is if you get them into the ground, and that will be  
23 the hardest thing when it's like concrete is to get  
24 them into the ground, the harder they are, the more  
25 shattering that will take place. However, during that

1 process of making it hard, you disrupt a lot of the  
2 soil structure.

3 So it's critical that, after you rip that,  
4 you give that soil time to heal. And for soil to  
5 build back structure in there. And that's done  
6 through root mass, that's done through time, that's  
7 done through water going in and out of the system.

8 And that's why when I talk to farmers about  
9 this is they always want to help the reclamation  
10 process by bringing in manure or some other organic  
11 material. And really those pieces of equipment are so  
12 heavy when they bring in that, they actually compact  
13 the soil again.

14 So the farmer is trying to help doing the  
15 best he has for his normal fields and fields that  
16 haven't been constructed on, but, when they bring this  
17 added equipment onto the site, it actually re-compacts  
18 some of that soil that we have left there.

19 So them performing extra help for us  
20 doesn't help us. We just want them to be -- from a  
21 reclamation and restoration process, just continue to  
22 do what they do outside the right-of-way on the  
23 right-of-way, and that will prevent -- that will help  
24 that soil heal as fast as possible.

25 It's a process. It's not an overnight deal

1 as some people would want it to be, but it's a  
2 process. It takes years -- or, you know, two to three  
3 years to do.

4 Q. So I'm going to unpack a little bit of  
5 that. I have some follow-up questions to that.

6 So, when you talk about heavy equipment  
7 applying manure, are you familiar with umbilical hose  
8 equipment?

9 A. Yes.

10 Q. Do you believe that to be too heavy to be  
11 applying manure in the farm?

12 A. It's an extra path on this. I want them to  
13 treat their field exactly the same, as a farmer,  
14 across the entire right-of-way. Any extra passes are  
15 not -- don't add value to the reclamation process.

16 Give us a couple years. At that point,  
17 then you can do some of these other reclamation  
18 processes that they have to build that soil back up.  
19 If it needs it.

20 Most of the time if we go through the right  
21 processes and we follow the steps that are in the  
22 AIMP, reclamation will be successful. If we start  
23 adding processes to it, as in adding manure, knifing  
24 in extra stuff, if it's not done absolutely at the  
25 right time with the right processes, it could actually

1 set the reclamation process negative.

2 So, therefore, when I talk to farmers about  
3 their restoration on their project, I'm, like, pretend  
4 like the pipeline never went in for the first two  
5 years and just treat it as part of your other field.

6 Yes, it's going to have some -- especially  
7 in year one, some reduced crop growth, but don't try  
8 and help right off the bat. Because that soil  
9 needs -- it's kind of like a broken arm. It needs  
10 some time to heal before you can start doing other  
11 things with it and strengthening it again. It's a  
12 process. Don't -- just treat it like everything else.

13 Q. So, if a farmer ordinarily applies some  
14 amount of fertilizer across their field, you're not  
15 saying they shouldn't be doing that, are you?

16 A. No. I'm saying do exactly on the  
17 right-of-way as you do in the rest of your field. If  
18 you buy manure, I'm not going to tell you not to apply  
19 manure. I'm going to say but if you only apply it to  
20 the right-of-way, that's what I don't want you to do.  
21 Because I want you to treat the whole field as one.  
22 When we get back.

23 Q. And what you're saying is the soil will  
24 naturally recondition itself without additional help?  
25 Is that what you're saying?

1           A.     When we follow the reclamation plans that  
2     are laid out in the AIMP, we are going to get back to  
3     full productivity, we're going to be able to return  
4     that soil.  It's not going to happen overnight.  It  
5     takes one, two, maybe three years, for it to get back  
6     there.  But it's part of the process.  It's a process,  
7     it's not a -- you can't jump it.

8           Q.     If the soil was hard like concrete because  
9     of the compaction, is it going to take longer to  
10    recover?

11          A.     It should not take longer.  We may add  
12    extra -- one of the things that has really come into  
13    knowledge within the farming community, reclamation  
14    people have known it a little bit longer, is the use  
15    of cover crops.

16                 On something that's very hard like  
17    concrete, I would say let's get cover crops on that as  
18    quickly as possible.  Let us put cover crops on your  
19    parcel.  Roots are the best thing for the soil to  
20    repair itself.  And those roots are clover roots,  
21    turnip roots, corn roots, soybean roots, whatever  
22    roots.

23                 The soil is a living mechanism.  And we  
24    need to feed it again.  We disrupt some of that.  Now  
25    we're going to put it back.

1                   And the process is very quick. Because  
2 you're getting the surrounding. Nothing has died. It  
3 just needs fed. It just needs to be healed. And,  
4 again, I go back to breaking your arm. It needs a  
5 little bit of time, it needs a cast, cover crops, to  
6 get it back to pulmonary productivity.

7                   If you give it the right time, you give it  
8 time to heal, it's going to be able to throw a  
9 baseball just like it was before or grow a crop just  
10 like it was before.

11                   So the restoration is just like a broken  
12 arm. It takes a little bit of time to get back to  
13 that stage.

14                   Q. Your recommendation of cover crops, has  
15 that been the recommendation of the reclamation  
16 industry for quite some time or is that something  
17 that's developed over the last few years?

18                   A. It was really coming -- just starting to be  
19 a big impact right before Dakota Access was built.  
20 And we offered that. We tried to push that with  
21 farmers as part of that AIMP.

22                   I think farmers have realized the  
23 importance of soil microbial activity, soil health,  
24 since that time. So they're much more accepting of  
25 those practices now than they were then.

1           A lot of farmers didn't want cover crops  
2 when we came through with Dakota Access. They just  
3 asked not to have it. Which was disappointing because  
4 I knew that could actually improve the reclamation  
5 process. But, again, we can't force landowners to  
6 follow everything we do.

7           It is highly recommended on my end that  
8 cover crops are included as part of the restoration  
9 process, especially if the pipeline is done being  
10 constructed, say, June and we aren't going to plant  
11 corn back on there until the following May, please let  
12 me get that microbial activity started again, let me  
13 put those cover crops on there, let's get that going  
14 back again.

15           And I think that Summit is in agreement  
16 with that. Is that cover crops are important and they  
17 have that as part of their bigger picture of how to  
18 get this restoration to occur.

19           Q. So, if the soil is so compacted that it's  
20 hard like concrete, we'll just use that phraseology,  
21 what else could be done, other than cover crops, to  
22 help repair and restore that?

23           A. The first step is to mechanically  
24 de-compact it. The next step is to -- the next best  
25 thing, after mechanical de-compaction, is forage

1 radishes, turnips, those types of brassica crops that  
2 have very deep-rooted, big, de-compacting root  
3 systems.

4 And they will go down, break that soil  
5 apart, keep it open -- because it's going to want to  
6 come back together. It keeps it open while the next  
7 grass crop that's also growing in that cover crop mix  
8 comes in, starts building that structure, adds organic  
9 matter to it.

10 And then you're able to redo that, come in,  
11 plant your cash crop. Corn, soybean mostly around  
12 here.

13 And then that will start the process all  
14 over again.

15 Q. Other than what you've described, what else  
16 could be done?

17 A. Those are the primary items. I mean, you  
18 can deep rip it the next year. Which I don't  
19 recommend. Unless it needs it. That's based on how  
20 growth is going.

21 Monitoring is the next best thing. I mean,  
22 these soils, if the reclamation is done and mechanical  
23 deep ripping is done appropriately at the right time,  
24 it will break that up. Then you follow that up with  
25 cover crop. The compaction will not recur unless



1 someone decides to run a honey wagon across it or use  
2 it as a roadway during harvest systems or something  
3 like that.

4 If they treat it as one complete field just  
5 like they have all the other times, it will heal over  
6 time.

7 Q. So, if growth continues to be a problem  
8 four, five, six years down the road, then what do you  
9 recommend?

10 A. If growth is a problem four, five, six  
11 years down the road -- hopefully the landowner has  
12 engaged Summit before that and we aren't four, five,  
13 six years down the road. We're three, four years down  
14 the road.

15 We come in, identify what is limiting  
16 yield. Is it compaction, is it fertility, is it  
17 hydrology. Identify what's limiting yield. Fix that.  
18 Maybe it would require more de-compaction if it's  
19 compaction related. Maybe it will need to be lime.  
20 Maybe it will need to be fertilizer. Maybe it wasn't  
21 graded quite right and we need to fix a few little  
22 holes out there that occurred or settling that  
23 occurred.

24 Let's fix what the problem is, go out and  
25 get that reclamation correct at that point.

1           Q.    So you just mentioned settling that's  
2    occurred.  If settling has occurred in the easement  
3    area such that the grade of the easement area is lower  
4    than the rest of the field, do you recommend then  
5    going back in and regrading that to make it level?

6           A.    I would recommend that we take a  
7    parcel-by-parcel evaluation of it and determine what's  
8    the best method.  Sometimes -- regrading is most of  
9    the time the right answer, but there's other answers  
10   of bringing in a little bit of topsoil, bringing in  
11   some compost.  What's it look like.  It's all site  
12   specific.

13                   And those issues will need to be addressed  
14   on a site specific.  Hopefully earlier in the process  
15   than later.  Because I'd rather have these farmers  
16   return to yields after -- you know, going through the  
17   process, three years they should be back to  
18   100 percent yield.  That's the goal for every farmer  
19   on the project.

20                   But if, in year four, they don't have  
21   100 percent yield, I would hope that Summit would  
22   answer the phone -- the farmer would call first,  
23   Summit would answer the phone, they'd get someone like  
24   myself or another reclamation scientist out there to  
25   evaluate what the issue is, fix the issue, and

1 hopefully, in year five, they would be back to full  
2 productivity.

3 But what I think the farmers and Summit  
4 need to understand is that the sooner we attack the  
5 issue, the faster we can fix it, the faster the farmer  
6 is back to not having to worry about these issues  
7 anymore.

8 Q. So, if someone is still having yield issues  
9 with Dakota Access -- I believe there was a landowner  
10 that testified here within the last couple of weeks  
11 showing a yield map indicating that you could still  
12 see the pipeline from Dakota Access.

13 And so, in those kinds of instances, what  
14 you're recommending is there's still something going  
15 on there and the company needs to be recontacted.

16 Is that what you're recommending?

17 A. That's what I would recommend. And I have  
18 no information on Dakota Access.

19 Q. I understand. I'm just using that as an  
20 example.

21 A. Yes, they should contact Dakota Access.  
22 And, in my opinion, Dakota Access should investigate  
23 it.

24 Q. And, similarly with Summit, if there  
25 continues to be yield issues, the landowner should

1 contact Summit.

2 A. That would be my suggestion. And, if  
3 Summit doesn't answer the phone, they should have  
4 someone within the state to call and be able to make  
5 Summit or Dakota Access respond to their complaints.

6 And I believe that these companies, more  
7 times than not, want to solve, be cooperative with  
8 their landowners, because they're all one community at  
9 the end of the day.

10 Q. And so getting back to 100 percent is the  
11 goal of the reclamation.

12 A. Returning yields to 100 percent of the rest  
13 of the field is the goal, yes.

14 Q. But whether it actually achieves that goal  
15 is kind of a field-by-field look at it?

16 A. Every field could have issues. Every field  
17 responds differently as we go through here. I've seen  
18 some -- very few fields, if any, have ever responded  
19 back to 100 percent yield in year one. I've seen  
20 multiple fields, many fields, return to 100 percent  
21 productivity in year two, and a vast majority,  
22 75 percent or more, be back to full productivity in  
23 three years on that.

24 Q. But it's possible that 100 percent of the  
25 fields are not back to normal after three years.

1           A.    That is a possibility, yes.

2           Q.    You also talked some about wet conditions  
3 on page 4, line 9.  That there's a new definition of  
4 wet conditions.  And I'll say -- since your reference  
5 is Dakota Access, hasn't there also been restrictions  
6 for several decades on constructing in wet conditions?

7           A.    Yes.  Under my knowledge, there has been  
8 conditions on working in wet conditions, correct.

9           Q.    And haven't there been rules, again prior  
10 to Dakota Access even, of requiring de-compaction on  
11 the traveled way of the easement?

12          A.    There have been rules regarding -- that  
13 de-compaction should be done in different areas of the  
14 right-of-way before this project, yes.

15          Q.    And, like we talked about earlier with the  
16 compaction issues, do you know what, if any,  
17 differences there are in the wet conditions provisions  
18 in Summit's Ag Impact Mitigation Plan as compared to  
19 the Dakota Access Ag Impact Mitigation Plan?

20          A.    I can't remember the exact differences in  
21 those, but there are differences in what's being --  
22 the definition of wet conditions, yes.

23          Q.    And you did identify that there is a  
24 different definition of wet conditions, but my  
25 question is is the wet conditions requirements, were

1 they still the same between the two?

2 Why don't we just look at it.

3 A. Yeah. Please.

4 MS. GRUENHAGEN: Can we go back to Dakota  
5 Access Ag Impact Mitigation Plan. And then it's on  
6 page 13, section 6.1(4).

7 BY MS. GRUENHAGEN:

8 Q. Go ahead and just read that out loud.

9 A. Yes. "6.1(4). Construction in wet  
10 conditions. In accordance with Chapter 9,  
11 paragraph 9.4(10), construction in wet soil conditions  
12 will not commence or continue at times when or  
13 locations where the passage of heavy construction  
14 equipment may cause rutting to the extent that the  
15 topsoil and subsoil are mixed or underground drainage  
16 structures may be damaged. To facilitate construction  
17 in soft soils, DAPL may elect to remove and stockpile  
18 the topsoil from the traveled way, install mats or  
19 padding, or use other methods acceptable to minimize  
20 rutting or off-site erosion/sedimentation."

21 Q. And, in that paragraph, "DAPL" is Dakota  
22 Access pipeline?

23 A. That is how I understand it, yes.

24 Q. Thank you for doing that.

25 MS. GRUENHAGEN: Could you go ahead and

1 switch back to the Summit Ag Impact Mitigation Plan  
2 that was filed on August 22nd. And that is on  
3 page 14. So just scroll down a little bit more.  
4 Section 6.15.

5 BY MS. GRUENHAGEN:

6 Q. Now, the first paragraph is new. But could  
7 you go ahead and read the second two paragraphs to  
8 yourself. And then, when you're done, we'll chat.

9 A. Okay.

10 Q. In the third paragraph of that section,  
11 "SCS" is Summit Carbon Solutions?

12 A. That is correct. SCS. That's how I  
13 understand it, yes.

14 Q. Are the second and third paragraphs  
15 substantially similar to what you read for the Dakota  
16 Access AIMP?

17 A. They are similar.

18 Q. And then the first paragraph is different.  
19 Would you like to go ahead and read that to yourself  
20 and then we can talk about that.

21 A. I'm done.

22 Q. And so what does that paragraph essentially  
23 require or do?

24 A. My opinion is that that provides the county  
25 inspector greater authority than previously provided

1 to determine and to work with the construction crews  
2 to halt construction during what they're calling wet  
3 conditions in here.

4 Q. And so, as far as the AIMP plans for  
5 construction in wet conditions, are there any  
6 differences substantively other than the county  
7 inspector authority?

8 A. There are limited differences, but I  
9 believe having the county inspector, having that kind  
10 of authority, provides huge value.

11 Q. I would agree with you. On page 9 -- let's  
12 go back to your rebuttal testimony. We're still on  
13 the same subject.

14 MS. GRUENHAGEN: On page 9. At the bottom  
15 of the page. It starts Summit -- scroll up just a  
16 little bit more, please, so that we can see the first  
17 part. At the bottom of page 9, top of page 10. If we  
18 can see that sentence.

19 BY MS. GRUENHAGEN:

20 Q. Can you read the sentence that starts with  
21 "Summit Carbon" on line 26 and going onto page 10?

22 A. Yes. That sentence reads "Summit Carbon  
23 should be allowed to return to construction activity  
24 once the right-of-way," ROW, "has limited (less than  
25 30 percent) of the right-of-way with standing water.



1 This will protect the environmental resource" --

2 Q. That's okay. I just wanted that sentence.

3 Doesn't it say greater than 30 percent in the

4 parentheses? I think you read less than.

5 A. You are correct.

6 Q. Is that a typo?

7 A. That would be a typo. I apologize.

8 Q. That sentence didn't make a lot of sense  
9 with the greater than and that's why I wanted to ask  
10 about that.

11 A. Yes. So I would request that my testimony  
12 here be changed when we get an opportunity. Thank  
13 you.

14 Q. And so, considering if it does say less  
15 than 30 percent of the right-of-way, why are you  
16 suggesting that the requirements be changed to allow  
17 Summit to construct when there's 30 percent standing  
18 water in the right-of-way?

19 A. There are a couple reasons for this. One  
20 is there's a lot of different construction processes  
21 that go on during a pipeline construction. Those  
22 include everything from welding to laying pipe to  
23 bending pipe, to all that. Some of those have a lot  
24 of traffic, some of those have very little traffic.  
25 And all of those can be done, cannot be done,

1 depending on weather conditions and how much water is  
2 there.

3           During certain times of the year, we're  
4 going to have some standing water on the right-of-way  
5 in different portions. That shouldn't shut down the  
6 whole spread or the whole right-of-way. In my  
7 opinion.

8           The more important fact of this is that if  
9 we're not allowed -- if construction is not allowed to  
10 continue, my fear, from a crop/soil/protective/  
11 environmental resource protection, is that the longer  
12 soils stay out of place, being that the topsoil is off  
13 and stockpiled, the greater chance we have for  
14 erosion, for microbial activity to be decreased, for  
15 other processes to occur that then create other  
16 challenges for reclamation.

17           Compaction is one challenge. You know,  
18 damage to drain tile is another challenge, but I  
19 believe that the IUB did a good job in improving the  
20 language around drain tiles and protecting drain tiles  
21 and repairing drain tiles. Those are all other  
22 issues.

23           But you also have to look at the whole  
24 project as a whole and how long is topsoil going to be  
25 stored to the side, how fast can we get that back, how

1 fast can we return that land back to the farmer so  
2 they can start growing crops on it again. All those  
3 things have to be looked at.

4 So I understand. And I was trying to come  
5 up with a method here of how the inspectors who are  
6 asking for more clarity and the right-of-way -- you  
7 know, where can we determine wet conditions.

8 And this was one method to do that that  
9 allows a very quantitative process, more quantitative  
10 than the term "wet," but still allow construction to  
11 occur, still allow us to get the project executed.  
12 Which then returns the land back to the farmer as  
13 quickly as possible so that their restoration on that  
14 piece of property can occur and they're back to full  
15 productivity faster.

16 So trying to come up with that process and  
17 how we get everyone through those transects. So we're  
18 not on the same landowner for six weeks if it happens  
19 to start raining. We can keep progressing forward in  
20 a manner that is protective of all the resources.  
21 Subsoil, topsoil, drain tile, erosion, all of that.  
22 Microbial activity.

23 Q. If there's ponding on land, doesn't that  
24 mean the soil is already saturated? Because it's not  
25 soaking into the soil?

1           A.    It could mean that the soil is already  
2 compacted. It could mean that the soil is saturated.  
3 It could mean that that's where all the -- that just  
4 that area is saturated because there was a depression  
5 area there. So there's a lot of different reasons.  
6 Your saturation is one of many.

7                   And it probably is saturated and a  
8 depression at the same time, but those are all  
9 different aspects.

10           Q.    And so you're suggesting that construction  
11 continue even though the ground is compacted or it's  
12 already saturated?

13           A.    The thing that we have to remember through  
14 Iowa is there are many soil types that have what we  
15 call a Bg, big "B," small "g," horizon, and that "g"  
16 tells us that that soil goes through many wetting and  
17 drying cycles.

18                   And through portions of the soil -- or  
19 portions of the active growing season -- the "g"  
20 doesn't stand for this, there's some other soil  
21 classification terms we use for it, but during  
22 portions of the growing season, and non-growing  
23 season, those soils are saturated naturally.

24                   So, if we just used saturation, there are  
25 parts of this project where we take the topsoil off

1 and may have to wait six months for the soil to dry  
2 underneath. If you're using just saturation as a  
3 predictor.

4 And so that's why we just -- sometimes  
5 we're going to have to do construction on soil that  
6 has a water content around field capacity. And that  
7 is what we have to do because construction -- it  
8 doesn't get less than field capacity until the fall of  
9 the year.

10 In those situations, we have to deal with  
11 the ramifications of that, or the construction team  
12 has to deal with the ramifications of that, which  
13 means more diesel spent on de-compaction, more times  
14 it might need to be ripped, because we have the rule  
15 in there that says we have to be under 300 psi -- I  
16 have some different language I'm sure you're going to  
17 ask me about later, but we'll just go with what's in  
18 there. 300 psi.

19 That is the protection we're using to allow  
20 construction to happen during non-optimal times of the  
21 year. And that's how we're going to get construction  
22 through these certain areas and put that farmland back  
23 into production and allow for continuation -- for that  
24 land to be returned back to 100 percent productivity.

25 So there are -- what's good about the IUB

1 process and the rules and regulations around this is  
2 there's checks and balances many places along the  
3 process to return this.

4 Are we going to be 100 percent on -- is  
5 every tract going to be repaired to 100 percent  
6 productivity, you know, three years to the day after  
7 we leave? If I stood up here and said yes, I'd be  
8 lying to everyone in the room.

9 There's going to be a certain number of  
10 tracts, a very small percentage, that we have to go  
11 back to, that Summit has to go back to, to be able to  
12 get that return to 100 percent productivity.

13 So can I guarantee you that 100 percent of  
14 the tracts will be repaired on day -- you know, three  
15 years to the day after we get done? No. But can we  
16 do it? Yes. Can we get it back to 100 percent  
17 productivity? Absolutely.

18 Q. So, in that sentence there where you're  
19 talking about allowing Summit to return to  
20 construction activities, when you're saying  
21 "construction activities," you're not necessarily  
22 meaning heavy equipment, like bringing in the pipe and  
23 lowering in the pipe with cranes and some of the heavy  
24 construction equipment, are you?

25 A. I'm saying construction activities.

1     Whatever those are. At that time and phase in the  
2     construction process. I'm not delineating between  
3     digging ditch or laying pipe or bringing in pipe for  
4     the project. There's too many different processes and  
5     they all are material differences. So this is for any  
6     and all construction activities in my opinion.

7             MS. GRUENHAGEN: Could we go back to  
8     Summit's Ag Impact Mitigation Plan. And then go to  
9     page 7 and scroll down to the definition of wet  
10    conditions.

11    BY MS. GRUENHAGEN:

12            Q. So this is the definition that's included  
13    in Summit's Ag Impact Mitigation Plan; correct?

14            A. That's correct.

15            Q. And does it say -- is wet conditions  
16    defined as ponded water?

17            A. Wet conditions is defined as ponded water.

18            Q. So would your recommendation then regarding  
19    construction with 30 percent of ponded water in the  
20    easement, would it be defined as a wet condition then?

21            A. Yes, greater than 30 percent, in my  
22    definition -- or greater than 30 percent of the  
23    right-of-way being -- can I start over?

24            Q. Feel free.

25            A. If there is greater than 30 percent of the

1 right-of-way with ponded water, construction -- that  
2 would be deemed wet conditions.

3 Q. Do you see the 30 percent number in the  
4 definition of wet conditions?

5 A. No.

6 Q. So wouldn't 10 percent of ponding on that  
7 easement be considered a wet condition?

8 A. Yes. And so would -- if someone spilled a  
9 bottle of water and it puddled up, that could be  
10 defined as a wet condition too. I mean, that's why  
11 ponded water -- how big is the area of ponded water?  
12 Is it anywhere on the right-of-way?

13 You know, they have construction easements  
14 opened up for -- I don't know for sure, but let's say  
15 they have five miles of construction easement opened  
16 up. If there's ponded water on -- one pond somewhere  
17 along there, does that count? Or is it per easement.

18 So all I was trying to do was define this a  
19 little better so that we knew, everyone was on the  
20 same page, of what is ponded water. What's that  
21 limitation?

22 So it was a recommendation of mine.  
23 Different people will hate it, others will like it.

24 Q. Doesn't it make more sense to leave it to  
25 the discretion of the county inspector, depending on



1 where the water ponding is, how much there is, as to  
2 whether or not it's a good idea to continue  
3 constructing in those conditions?

4 A. That's up to the IUB. I'm putting in my  
5 opinion, and the IUB gets to -- hopefully will define  
6 ponded water a little bit better. But -- they can  
7 leave it to the county inspector or something else.

8 So that was just my professional opinion on  
9 what I would want ponded water to be to protect the  
10 resource but also allow construction to occur at the  
11 same time to protect the other resources that are  
12 being left exposed at that point.

13 Q. So, if you recall, we were talking just a  
14 little bit ago about the provisions in the AIMP with  
15 wet conditions whereby Summit could remove the topsoil  
16 in the traveled way but continue construction if  
17 they're on the subsoil.

18 Do you recall that?

19 A. Yes.

20 Q. Does creating ruts in the subsoil,  
21 impacting the subsoil, also cause difficulty with  
22 compaction ultimately?

23 A. Rutting -- rutting -- if I see rutting,  
24 that indicates that compaction likely occurred. So  
25 rutting means compaction is occurring. But the lack

1 of rutting doesn't mean compaction hasn't occurred  
2 either.

3 Q. So, if you're in wet conditions and you're  
4 seeing rutting, it's pretty likely there's compaction  
5 occurring?

6 A. Yes, I would agree with that.

7 Q. And it doesn't really require mixing of  
8 topsoil and subsoil. Just if you see rutting at all,  
9 there's likely compaction happening?

10 A. There is compaction when rutting occurs  
11 most of the time.

12 Q. In the wet conditions, it also talks about,  
13 in that definition, where it may damage underground  
14 tile lines.

15 What circumstances would Summit consider  
16 soil conditions to be too wet that they're going to  
17 damage underground tile lines?

18 A. In my opinion, conditions that are too wet  
19 that may damage underground tile lines is when the  
20 rutting is to the depth of the tile line.

21 So, if the tile line is 12 inches below the  
22 surface of our working condition and we have a 12-inch  
23 rut, I know there's high potential for damage to  
24 underground tile lines.

25 Q. Couldn't there also just be damage from

1 heavy equipment going across the top and compacting it  
2 down? Wouldn't that also potentially crush the tile?

3 A. That is a potential, yes, but there's also  
4 a potential for that to occur under non-wet conditions  
5 also.

6 Q. So were you involved with the repairing of  
7 drainage tile aspects or is that just Mr. Ellingson?

8 A. Mr. Ellingson is the expert at that. I've  
9 never repaired a drain tile a day in my life.

10 Q. Then we won't talk about that. Thank you.

11 You mentioned just a few minutes ago that  
12 there are many soil types across the fields in Iowa.

13 Do you recall that?

14 A. Yes.

15 Q. Do the soil types impact how quickly that  
16 soil might recover?

17 A. Yes.

18 Q. And so are there certain soil types that  
19 may make it -- let me correct that, that may cause it  
20 to require a longer period of time to recover?

21 A. Not substantially. So all soils will  
22 recover at similar rates under identical conditions.  
23 But that being said is that if you construct on a clay  
24 loam during very dry conditions versus a sandy loam on  
25 very dry conditions, those could be -- those could

1 then have different -- those would reclaim about the  
2 same speed. But, if you worked on a sandy loam during  
3 very dry conditions and a clay loam during very wet,  
4 then you start seeing differences on there.

5 So it's all site specific, weather  
6 dependent, all these independent issues that are going  
7 through there. Then you've got to throw on what  
8 farming practices were used before you got there, what  
9 farming practices are used after you leave, that all  
10 interplay with this.

11 And on a 600-, 700-mile pipeline, we're  
12 working all that together; with the topsoil survey,  
13 with the AIMP, with the construction schedule, to use  
14 the best knowledge we have to reclaim these areas.

15 That's why, like I said earlier, I can't  
16 guarantee 100 percent success the first time around.  
17 Because there is so much difference in all these  
18 areas, we're not going -- we're humans. We're not  
19 going to get it right every time. But we're going to  
20 get it down to a manageable number.

21 My guess is in the tens across the entire  
22 project. Just on my experience. That then we can  
23 come back and do site-specific reclamation on that  
24 property owner and get them back very quickly from the  
25 time we know about it back to 100 percent yield.

1           Q.    So have your services been retained beyond  
2 just the period of construction for this project?

3           A.    My services have not been retained beyond  
4 construction at this point.

5           Q.    So, if Summit needed to go back three,  
6 four, five years from now, that would need to be a  
7 separate contract?

8           A.    Yes, that would be under a separate  
9 contract. They may choose me, they may choose a  
10 different soil scientist, reclamation scientist.

11          Q.    My last question. So, in your opinion, the  
12 best chance of restoring that soil is for the  
13 contractors to follow the Board rules and the AIMP?

14          A.    In my opinion, the best way for success on  
15 reclamation is to follow the Board rules and the AIMP  
16 as it is currently. Or with the few modifications  
17 that I suggested in my report.

18                MS. GRUENHAGEN: Thank you. That's all the  
19 questions I have.

20                THE WITNESS: Thank you.

21                BOARD CHAIR HELLAND: Thank you.

22                Mr. Murray.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. MURRAY:

3 Q. Good morning, Mr. DeJoia.

4 A. Good morning.

5 Q. We've had some issues in prior witnesses  
6 with my position here, and I think it's important for  
7 you to make sure that you speak into the microphone.

8 A. I will.

9 Q. If you have any difficulty with that, just  
10 let me know.

11 A. Okay. Thank you.

12 Q. Really I just have some short questions  
13 here for you.

14 With respect to your background, I found  
15 interesting in your rebuttal testimony that you  
16 supplied some information about where you grew up; is  
17 that right?

18 A. That is correct.

19 Q. And, without getting into that, I think you  
20 generally noted that, based upon your upbringing in a  
21 rural setting, you really appreciate issues affecting  
22 landowners.

23 Is that a fair and accurate  
24 characterization?

25 A. Yeah, that's a very accurate

1 representation. Because the thing I've always  
2 understood growing up in those communities is that the  
3 land is kind of like a farmer's child. It's been  
4 handed down from grandfather to dad to son in a lot of  
5 these situations, and these guys -- it's part of their  
6 family. It's not real estate. It is their life.

7 And so, when you understand that, you  
8 understand how important it is that you fix their  
9 child's arm. That you get them back to that full  
10 productivity. And you don't get that unless you grew  
11 up on the farm, you've thrown hay bales, you've done  
12 this.

13 And so that's why I think it's important  
14 for people to know who I am and where I came from.

15 Q. So true. They are truly stakeholders in  
16 this process, aren't they.

17 A. Yeah. And, if I ever go to a farmer and  
18 tell him that I know his piece of property better than  
19 he does, someone should slap me first. Because you  
20 have to listen to the farmers. You have to listen to  
21 their -- what they know about their land. I know the  
22 science, I know the reclamation processes, but they  
23 know -- they know the dirt.

24 BOARD CHAIR HELLAND: Mr. DeJoia, you can  
25 move that mic so you don't have to pivot back and

1     forth so much.

2     BY MR. MURRAY:

3             Q.     The analogy you used concerning a broken  
4     arm, and how you extended that to how a parent takes  
5     care of their child with a broken arm, I'd like to  
6     talk to you about that. That's interesting to me.

7                     So, as I understand your testimony, you  
8     would certainly want that parent to be involved at all  
9     times talking to the doctor about that broken arm;  
10    correct?

11            A.     I -- yes. I want that parent to tell me  
12    how the kid's feeling, how they're responding, all  
13    that stuff. But, at the same time, the doctor knows  
14    what the process is and has seen the healing process  
15    of that broken arm.

16                     So, having them give me feedback, but be  
17    listening to the feedback. "Oh. That's part of the  
18    process. Yes, it's going to get itchy under the cast,  
19    nothing to be concerned about."

20                     But then them saying, well, they can't grip  
21    anything or they're having tingling in their fingers,  
22    I need to know that. They need to give me that  
23    feedback so I can make the right diagnosis moving  
24    forward.

25                     MR. MURRAY: If the tech person could bring



1 up Summit's AIMP, I'd appreciate that. And if we  
2 could go to the definition of affected person, I'd  
3 also appreciate that.

4 BY MR. MURRAY:

5 Q. On the screen, it appears there's a  
6 definition for affected person, Mr. DeJoia. Can you  
7 read that definition into the record?

8 A. Yes. "Affected person. Any person with a  
9 legal right or interest in the property, including,  
10 but not limited to, a landowner, a contract purchaser  
11 of record, a person possessing the property under a  
12 lease, a record lienholder, and a record encumbrancer  
13 of the property."

14 Q. Before we get into unpacking that, I'll  
15 just ask you to generally summarize that this  
16 definition, this, rather, term of "affected person,"  
17 appears in several instances later on in this AIMP;  
18 correct?

19 A. Correct.

20 Q. And, as I believe I'm correct, a prior  
21 version of the AIMP with the Dakota Access pipeline  
22 project did not have such a definition; correct?

23 A. I can't remember if the Dakota Access AIMP  
24 had that or not.

25 Q. Then I won't ask you about that. We'll

1 confine our questions to the various instances in  
2 which an affected person arrives in the Summit AIMP.

3 Okay?

4 A. Okay.

5 Q. Are you saying to the Board that you agree  
6 that an affected person, as you've defined there, as  
7 the AIMP has defined, should readily be involved in  
8 all aspects of the project?

9 A. I agree. Hopefully, not all those people  
10 would be involved at one time, but, you know, in  
11 general, the landowner and the tenant farmer are two  
12 very important people as part of the reclamation  
13 process.

14 Q. Yeah, I agree with that also. The last  
15 one, record encumbrancer of the property, that would  
16 maybe be a bank; right?

17 A. Correct. But I think also Summit, who  
18 would be part of this -- you know, having the  
19 easement, needs to be a big part of it too. Because  
20 they need to provide the resources to create the  
21 reclamation at the end.

22 So there's really three now that I think  
23 about it.

24 Q. Sure. And, when we talk about that record  
25 encumbrancer, there are unique situations in which a

1 bank helps out the little old lady and manages the  
2 farm; right?

3 A. Correct.

4 Q. So, in all these different cases, you may  
5 have a lead person perhaps that may act as perhaps the  
6 primary affected person that can make some quick  
7 decisions and can work and provide that input.

8 You would see a value to that; right?

9 A. I would see a value to that.

10 Q. And I just want to make sure that you  
11 confirm and affirm that. Because my clients very much  
12 appreciate your affirmation.

13 MR. MURRAY: Let me check and see if I have  
14 anything else, Mr. Chair.

15 BY MR. MURRAY:

16 Q. Mr. DeJoia, just one more thing. As I  
17 recollect from the updating of the land restoration  
18 standards with the Iowa Utilities Board, the  
19 previously referenced wet condition section, which  
20 included the provisions about the county inspector's  
21 sole discretion being determinative, that was a new  
22 provision; correct?

23 A. Yes.

24 Q. And I just want to harken back. You did  
25 have some, I suppose, indirect input as it relates to

1 those rulemaking processes; is that right?

2 A. I had some input to the consultant I worked  
3 with regarding those inputs. I don't -- they asked me  
4 about this, but I did not provide much information on  
5 that. Because they were going a different route. So  
6 I just -- they didn't really ask me that much about  
7 it.

8 Q. Did you know about the rulemaking process  
9 prior to the rulemaking process happening?

10 A. I knew about it when the consultant called  
11 me and asked me for my input mostly on de-compaction,  
12 topsoil survey type of stuff.

13 Q. Did you have an opportunity to look at the  
14 proposed rules before they were adopted?

15 A. No, I did not.

16 Q. But you certainly did know that the Board  
17 was considering a revamping of the entirety of that  
18 segment of the administrative code?

19 A. Yes, I did.

20 MR. MURRAY: Thank you. I have nothing  
21 further for this witness.

22 THE WITNESS: Thank you.

23 BOARD CHAIR HELLAND: Mr. Long, your tag  
24 has been up and down. So I just want to double-check.  
25 We can go to Mr. Whipple first.

1                   MR. LONG: Please do. I think my questions  
2 have been answered.

3                   BOARD CHAIR HELLAND: Okay. Thank you.  
4                   Mr. Whipple.

5                                   CROSS-EXAMINATION

6 BY MR. WHIPPLE:

7                   Q. Farm Bureau was pretty thorough, so I don't  
8 have a lot of questions for you, Mr. DeJoia, but I  
9 just want to clear up a couple things.

10                   This 30 percent test that you're proposing.  
11 Would that be for construction already under way?

12                   A. That would be for any construction  
13 activity. You could claim that could be before  
14 topsoil comes off also, but there are other factors.

15                   Topsoil is very well identified. And it  
16 would be hard to strip topsoil if there's 30 percent  
17 water on -- standing water and not mix topsoil and  
18 subsoil at some point during there.

19                   So, you know, there's other -- that's not  
20 the sole discretion. There's other aspects of that,  
21 but that's more of what -- it's intended more for  
22 when -- after topsoil has been stripped.

23                   Q. Okay. And that's kind of what I was  
24 thinking when I said "construction already under way."  
25 There's a trench already begun to be dug; right?

1           A.    Correct.

2           Q.    So, if we haven't begun to dig and there's  
3    30 percent of the right-of-way with standing water,  
4    even you're saying that's probably not the best time  
5    to begin trenching.

6           A.    It's not the best time to begin taking  
7    topsoil off the right-of-way. Once the topsoil is  
8    off, that's really when that 30 percent begins to --  
9    in my opinion, begins to be relevant anymore.

10          Q.    Would that be something you might also like  
11   to correct in your testimony or clarify about that  
12   30 percent figure?

13          A.    Yeah, I think that's a good clarification  
14   in there is that post topsoil salvage, yes.

15          Q.    Help me understand how, in the field, the  
16   county inspector, the landowner, the construction  
17   managers on-site, how would they measure 30 percent of  
18   the right-of-way easily and accurately when they're  
19   out there in the field?

20          A.    Well, I kind of chose a third, because, I'm  
21   like, most people can split things into thirds. You  
22   know, 25 percent, could we go there? Yeah. A third  
23   gives me a little bit of, you know, difference there.  
24   And they're going to have to make their best judgment,  
25   but it gives them a starting point.

1           If someone is going to argue, no, it's only  
2   29 percent, and the county inspector says it's 30, you  
3   know, we're going to -- we're going to have those --  
4   hopefully we won't, but you know, in construction,  
5   you're going to have that argument, and they're going  
6   to have to work it out in the field. There's going to  
7   have to be some give-and-take there.

8           Q.    So, if I'm walking down the right-of-way  
9   with my boots on and every third step I'm stepping in  
10  ponded water, that seems like a lot of water to me.

11          A.    That's a lot of water, but, if it's that,  
12  that's -- every third step, you are not going to go to  
13  construction at that point under my opinion and my  
14  suggestion there.

15          Q.    So you said a couple things that I thought  
16  were good.

17                On the one hand, you said that having the  
18  county inspectors have the authority to stop  
19  construction provides a lot of value; right?

20          A.    Correct.

21          Q.    And then you also said you really need to  
22  trust the farmer because he knows the dirt; right?

23          A.    Correct.

24          Q.    So, if, out in the field, the county  
25  inspector and the farmer look down that right-of-way

1 and they don't think construction should begin,  
2 shouldn't that be the outcome? Shouldn't the rules  
3 make sure that that's the outcome?

4 A. I think the rules have that as part of the  
5 provision there. As what was read in the AIMP.

6 Q. Regardless of your 30 percent  
7 recommendation.

8 A. There's got to be balance on this at the  
9 same time. The farmer knows his topsoil, he knows his  
10 farming practices. He knows that. But we also have  
11 to get construction done.

12 Once that topsoil comes off, it's a race to  
13 get that topsoil back from a reclamation standpoint.  
14 The faster we get topsoil back on the right-of-way,  
15 the better reclamation is going to be, the better the  
16 farmer is going to have that. With limitations.

17 We can't -- we have to make sure the drain  
18 tile is put back right. We have to make sure deep  
19 ripping is done correctly. We have to make sure that  
20 the subsoil that is going to be -- in our scenario, is  
21 going to be the most damaged, quote-unquote damaged,  
22 is protected -- that's going to be our limiting  
23 factor.

24 So let's take care of everything, but,  
25 remember, we've got to bring topsoil back on. The



1 longer it sits, the worse off -- the more potential we  
2 have for decreased microbial growth, decreased  
3 nutrient cycling. I'll leave it there.

4 Q. Just so I'm clear, your recommendations  
5 aren't proposed to override the rule about county  
6 inspection; right?

7 A. It's to give them an idea of what ponded  
8 water is.

9 Q. So it's more of a guideline to the county  
10 inspector?

11 A. Correct.

12 MR. WHIPPLE: That's all I have, Your  
13 Honor.

14 BOARD CHAIR HELLAND: Mr. Jorde.

15 MR. JORDE: Yes. Thank you.

16 CROSS-EXAMINATION

17 BY MR. JORDE:

18 Q. Generally, if I can sum up, you're the guy  
19 that's hired to come and basically say you think  
20 everything is going to be fine as long as the  
21 contractors use your recommended and best practices.

22 Is that the gist of it?

23 A. Those are your words, not mine.

24 Q. Do you disagree?

25 A. I've been asked to opine on the AIMP.

1 Q. Okay. But, again, your whole testimony is,  
2 as long as the AIMP is followed, everything should be  
3 fine. I mean, that's the summary of your testimony,  
4 isn't it?

5 A. The AIMP is designed in a manner that is  
6 going to provide the most consistent and thorough  
7 reclamation process out there.

8 Is that what you're asking?

9 Q. So you had stated that, during Dakota  
10 Access, they used your protocol; correct?

11 A. I helped develop the AIMP. They used my  
12 protocol on the topsoil salvage side of things.

13 Q. And you would agree that you learned, and  
14 the world learned, based on what actually happened  
15 during Dakota Access, that improvements could be made.

16 Is that fair?

17 A. Yes. That's how science works.

18 Q. That's right. And so every time we have a  
19 project that disturbs the soil and inconveniences  
20 farming practices and activity, we learn more about  
21 how to do better in the future.

22 Is that fair?

23 A. That is fair, yes.

24 Q. Very good. So all of this comes down to,  
25 sir, relying upon the contractor, subcontractor,

1 sub-sub-subcontractors who aren't here to testify and  
2 if they will, in fact, follow the procedures that  
3 you're recommending.

4 That's where the rubber hits the road,  
5 doesn't it?

6 A. The implementation is a large part of the  
7 process of the AIMP. You are correct.

8 Q. And you may very well have great ideas and  
9 recommendations, I'm not criticizing that, but,  
10 ultimately, that has to trickle down to a contractor  
11 or someone in a heavy piece of equipment that's going  
12 to do the right thing that day on that field.

13 Is that fair?

14 A. There are also layers of inspection as part  
15 of the IUB regulations that help that trickle down and  
16 get implemented. But, yes, it has to be implemented  
17 to work. Paper does not work.

18 Q. All right. And you were critical on  
19 page -- starting on page 5 at the bottom onto page 6  
20 of -- maybe I shouldn't say "critical," but you  
21 commented or attempted to rebut one of my witnesses,  
22 Mr. Loren Staroba, and his experience with long-term  
23 yield loss.

24 Do you generally recollect that?

25 A. Can I refresh my memory on that?

1 Q. Certainly.

2 A. I see. Yeah.

3 THE WITNESS: Can you go down just a couple  
4 more?

5 A. Okay. What's your question?

6 BY MR. JORDE:

7 Q. The first question was just confirming you  
8 recollect at least signing a document that states  
9 criticisms, or at least comments or clarifications, in  
10 response to Mr. Staroba's testimony.

11 Do you see that there?

12 A. Correct.

13 MR. JORDE: Okay. Well, then since you're  
14 responding to Mr. Staroba, I offer Landowner 491, 492,  
15 493, and 494.

16 MR. LEONARD: Do you mind summarizing what  
17 those are, Brian?

18 BOARD CHAIR HELLAND: Before you do, can  
19 you repeat those numbers?

20 MR. JORDE: I certainly can. 491, 492,  
21 493, and 494. So 491 that's Mr. Staroba's -- let's  
22 see. It should be his testimony. It's his testimony  
23 plus Attachment 1, and then it's his other attachments  
24 to his testimony.

25 BOARD CHAIR HELLAND: Are there any

1 objections?

2 MR. LEONARD: I'll object for now. It's  
3 been our process, and I thought it was an agreement,  
4 that we would wait until a witness takes the stand  
5 before admitting their testimony.

6 MR. JORDE: Well -- and here's the problem.  
7 This gentleman, now it's going to be in the record, a  
8 one-way criticism of testimony, which is completely  
9 unfair. Hence my standing objection.

10 And so now, since he's already objecting  
11 and calling out my witness, that testimony has to come  
12 in because that forms the basis of his rebuttal  
13 testimony. So these have to come in now.

14 BOARD CHAIR HELLAND: Okay. Thank you.

15 The Board will admit the evidence as Jorde  
16 Landowner Hearing Testimony 491 through 494.

17 MR. JORDE: Thank you.

18 Now, if we could pull up, please, 491. And  
19 maybe scroll down. I think it's page 4 of that  
20 exhibit, please.

21 BY MR. JORDE:

22 Q. So Attachment 1 to Mr. Staroba's testimony,  
23 he called out on his property -- well, there were  
24 actually two, but the pipelines that were constructed  
25 20, 30, 40 years ago and then highlighted a continuous

1 strip that's even able to be seen on a grainy printed  
2 and scanned Google Map.

3 Is the summary of your rebuttal essentially  
4 that modern practices have evolved and that you would  
5 not expect to see damages to yield loss decades into  
6 the future?

7 A. My testimony is that across large swaths of  
8 land -- I mean, individual landowners, as I've said  
9 earlier, could need further reclamation. But, in  
10 general, yes.

11 Q. Okay. And I just wanted to be sure. I  
12 mean, this project is proposed across nearly 700 miles  
13 all over Iowa at different soil compositions,  
14 different terrains and drainage and conditions, and  
15 obviously you know -- we can have kind of broad  
16 opinions, but, at the end of the day, each tract has  
17 to be analyzed and have its different challenges.

18 Would you agree with that?

19 A. Yes.

20 Q. And so when you said initially that you  
21 thought within one, two, three years was your quote to  
22 be back to full production, that can't possibly be a  
23 blanket statement across all of Iowa, can it?

24 A. It cannot be a blanket statement on every  
25 tract, everywhere, across all of Iowa. But, as I said

1 there, it was a majority of the tracts. A large  
2 majority of the tracts.

3 Q. But you didn't analyze the soil composition  
4 and the elevations and the drainage situations on  
5 every single parcel, did you?

6 A. No, I have not.

7 MR. JORDE: Thank you. I don't have  
8 anything further.

9 BOARD CHAIR HELLAND: Okay. Thank you.  
10 Mr. Leonard.

11 MR. LEONARD: Nothing, Your Honor.

12 BOARD CHAIR HELLAND: Thank you.

13 I forgot about Board members.

14 BOARD MEMBER BYRNES: All right. Just a  
15 few quick questions here.

16 BOARD CHAIR HELLAND: I'm sorry, Mrs.  
17 Kohles. I didn't see you back there. Go ahead.

18 CROSS-EXAMINATION

19 BY MS. KOHLES:

20 Q. Good morning, Mr. DeJoia. I'm Jean Kohles  
21 with Kohles Family Farms, and I have just a few  
22 questions for you.

23 Do you have any experience with reclamation  
24 of farmland where a CO2 pipeline was put into  
25 operation?

1           A.    I do not have any reclamation experience  
2 for a CO2 pipeline. Let me take that back. I do have  
3 reclamation experience on a CO2 pipeline. Sorry.

4           Q.    Where?

5           A.    In Wyoming, Montana, and I believe that  
6 went into North Dakota.

7           Q.    How did the land -- well, Wyoming and  
8 Montana are completely different topographies than  
9 Iowa or the heartland; correct?

10          A.    That is correct.

11          Q.    Did you have problems in those areas with  
12 reclamation?

13          A.    There were problems. There were weed  
14 issues in certain areas. But, in general, across just  
15 like what I'm saying here, the vast majority of the  
16 land did not have issues with reclamation.

17          Q.    So you have experience with the  
18 supercritical CO2 pipelines then; correct?

19          A.    Can you restate that question? I don't  
20 understand your question. Sorry.

21          Q.    You indicated you have experience with  
22 reclamation where a CO2 pipeline has been installed.

23          A.    Yes.

24          Q.    So you are aware that the land can be  
25 heated around 90 degrees in order for the



1 supercritical CO2 pipeline to operate correctly.

2 A. The pipeline that I have experience with,  
3 the CO2 was -- heating of the CO2 was not an impact on  
4 reclamation.

5 Q. So the heating of the soil does not affect  
6 the reclamation process in your opinion.

7 A. In the pipeline project I have experience  
8 with with CO2, there was no impacts on soil  
9 temperature that affected reclamation on that project.

10 Q. On that project. Could it affect  
11 reclamation in Iowa on this project?

12 A. I have no information at this time of  
13 temperature impacts from CO2 pipelines.

14 Q. Could the increase, in your opinion, in  
15 ground temperature affect future yields of the crops?

16 A. The research indicates on -- that I am  
17 aware of on heat impacts from pipelines, not CO2  
18 pipelines but oil pipelines, there is no impact on  
19 crop yields based on heating of the soil from those  
20 pipelines.

21 Q. And no effect from the resulting dryness  
22 from the heating.

23 A. As I said, those pipelines have shown no  
24 impacts on crop yield due to the pipeline installation  
25 based on heating -- these were oil pipelines -- of

1 that, so...

2 Q. What percentage of reclamation success do  
3 you have with this type of pipeline?

4 A. With a CO2 pipeline?

5 Q. Correct.

6 A. I believe that pipeline is two years in.  
7 So we are not completely through restoration there.  
8 And we're doing -- you know, we're bringing back crop  
9 productivity and being very successful there. What  
10 percentage? I do not know what that is.

11 Q. What do you anticipate? Broad figure,  
12 please.

13 A. I have no idea where we're at with that.

14 Q. Pertaining to your -- since you don't have  
15 that much experience, where have you received the  
16 information or your resources pertaining to a CO2  
17 pipeline and how it can affect future crop yields?

18 A. The construction techniques to put a CO2  
19 pipeline in are very similar to the construction  
20 techniques for oil and gas. Natural gas pipelines.  
21 There are intricate details on actually how it goes,  
22 but you dig a hole, you put the pipe in. That process  
23 is the same.

24 So my experience on reclamation comes from  
25 the tens of thousands of miles of pipeline reclamation

1 I have done previously. A very limited amount, as you  
2 mentioned, on CO2, but there is no practical  
3 difference in terms of the reclamation of those.

4 Q. Do you base that opinion on your experience  
5 or from information and resources provided by Summit  
6 or an independent contractor? Or independent source.

7 A. Which information? That reclamation is  
8 similar?

9 Q. Yeah. And that it would be as successful.

10 A. Based on my experience on the other CO2  
11 pipeline and tens of thousands of miles of pipeline  
12 I've reclaimed and worked on in the past.

13 MS. KOHLES: No further questions. Thank  
14 you.

15 THE WITNESS: Thank you.

16 BOARD CHAIR HELLAND: Thank you. Sorry  
17 about that.

18 So any other parties before we move to  
19 Board Member Byrnes?

20 (No response.)

21 BOARD MEMBER BYRNES: All right. Thank  
22 you.

23 So, just to piggyback on that, you just  
24 stated tens of thousands of miles of pipeline that  
25 you've put in; correct?

1 THE WITNESS: That I've been --

2 BOARD MEMBER BYRNES: Or been part of. Not  
3 put in.

4 THE WITNESS: I haven't put in any of it.  
5 I've reclaimed and done reclamation plans, been part  
6 of reclaiming it both on paper and in the field. All  
7 those together.

8 BOARD MEMBER BYRNES: So you talked about  
9 earlier a plan or guidance, if you will, on how you  
10 can restore these parcels that have been impacted.  
11 And you provided kind of a one-, two-, three-step  
12 plan, if you will.

13 Have you ever been part of, on these  
14 projects, where you actually provide -- I would almost  
15 call it consulting services to the farmer or the  
16 landowner after the fact where you provide them with  
17 documentation, you provide them with kind of  
18 consulting and guidance on, "Here's what I would do if  
19 I were you"? Has that ever been a practice that  
20 you've done on a project?

21 THE WITNESS: Yeah, I have worked with  
22 landowners that have had other pipelines come across  
23 their property and that weren't reclaimed right. They  
24 weren't getting the results they wanted when they  
25 called up the pipeline owner that installed the

1 pipeline. So they had me come in, work with the  
2 pipeline to come up with a site-specific plan, is what  
3 I call it, for their individual parcel maybe at that  
4 fourth or fifth year.

5 A lot of times what happens generally is  
6 the landowner calls the pipeline owner. The pipeline  
7 owner then calls me saying, "Hey, landowner A has an  
8 issue, would you go out and look at it."

9 And we would work with the landowner, with  
10 the pipeline company, to come up with a reclamation  
11 plan for that site-specific plan.

12 Very few times have I worked for the  
13 landowner, getting paid by the landowner, because most  
14 times the pipeline company says, "No, it's still on  
15 us. We'll pay Aaron," or pay my firm, "to come out,  
16 look at it, implement a plan, get it implemented, get  
17 this back to 100 percent productivity."

18 BOARD MEMBER BYRNES: And I should have  
19 been more clear. Not necessarily the landowner hiring  
20 you but maybe a retention, if you will, by the  
21 company.

22 And I know that you're not a direct Summit  
23 employee, but you are a Summit witness at this point  
24 in time. Do you know if Summit would be willing to  
25 provide site-specific plans for each of the impacted

1 landowners?

2 THE WITNESS: I do not know if Summit would  
3 be interested in that. If I was their -- if they  
4 asked me, I would say that is -- that's not what to do  
5 at this point. We need to use the AIMP. If we come  
6 back and have issues, then we can do site-specific  
7 plans.

8 Those need -- you know, when reclamation  
9 doesn't work, you have to figure out why exactly it  
10 didn't work, and that includes a lot of time and cost  
11 to get to the right answer.

12 So you don't -- not every tract -- like I  
13 said, probably -- maybe 10, 20 percent of the tracts  
14 will need this. I'm hoping it's in the hundreds --  
15 you know, less than a hundred tracts here across the  
16 entire state of the -- I think there's 3,000 tracts  
17 total. It should be in the 50s, really, if we follow  
18 the AIMP.

19 Now we can manage that data, now we can do  
20 it right on the tracts that we weren't successful on  
21 the first time just based on odds. The statistics  
22 means we're going to have a certain percentage that  
23 have issues.

24 BOARD MEMBER BYRNES: And I was not at the  
25 IUB when Chapter 9 went through its revisions. So I'm

1 just curious. You mentioned that you weren't directly  
2 involved, but you provided information to a  
3 consultant.

4 Do you know who the consultant was and who  
5 they were associated with?

6 THE WITNESS: Yeah, I was contacted by Evan  
7 Del Val. And I believe, at the time, he was at ISG.

8 BOARD MEMBER BYRNES: And ISG is also one  
9 of the firms that a lot of counties use for this  
10 process?

11 THE WITNESS: That is my understanding. A  
12 lot of counties used them during Dakota Access. So  
13 that's however I got to know them.

14 BOARD MEMBER BYRNES: That's somewhat  
15 interesting. Because my next question is going to ask  
16 to have brought up the Counties' witness -- and I  
17 believe it's Kruizenga. If I, again, mispronounce  
18 that name, I apologize. If we could bring up witness  
19 Kruizenga's direct testimony on pages 7 and 8.

20 So he makes recommendations regarding  
21 changes to Summit's Agriculture Impact Mitigation  
22 Plan.

23 Have you read through his suggested  
24 changes, by chance?

25 THE WITNESS: Yes, I have.

1                   BOARD MEMBER BYRNES: And what are your  
2 thoughts on his suggested changes?

3                   THE WITNESS: I am in agreement with him on  
4 the compaction changes that he suggested in there,  
5 and -- I think he goes a little bit too far on the  
6 reporting part of that. But, in general, I'm in  
7 agreement with the methods to use in the field on  
8 that.

9                   And, again, I think, in that first  
10 paragraph on wet conditions, he's trying to do similar  
11 to what I was trying to do, took a little different  
12 approach to it than I did, about trying to define that  
13 wet condition a little bit more. I just went a  
14 different route. I can't say I agree or disagree with  
15 his statement there.

16                   I have no opinion on the tile repair. That  
17 is Mr. Ellingson's specialty, not mine, on that.

18                   Is there another one there?

19                   BOARD MEMBER BYRNES: I think backfill  
20 maybe. The type of backfill.

21                   THE WITNESS: Yeah, that's regarding tile  
22 repair. So that's Mr. Ellingson. Not my expertise.  
23 So I would not want to opine on that at this point.

24                   BOARD MEMBER BYRNES: So, based on his  
25 recommended changes, if the Board were to approve this



1 project, would these recommended changes by  
2 Mr. Kruizenga be something that Summit would be  
3 willing to do?

4 THE WITNESS: I would definitely highly  
5 recommend to -- I can't speak for Summit. But, if  
6 they asked me my opinion, the soil cone  
7 penetrometer -- I would highly recommended changing  
8 from the SPT to the soil cone penetrometer method.

9 Again, he goes a little -- in my opinion,  
10 he goes a little bit far on the reporting  
11 requirements. We're doing this in the field. Let's  
12 write down the numbers, let's get a good standard to  
13 report the numbers back.

14 But this is a very detailed almost  
15 scientific literature study type of recording method  
16 that they have in here. We can tone that down a  
17 little bit and still get the results that everyone is  
18 looking for. Farmers, county inspectors, IUB for  
19 their records, Summit Carbon pipeline for their  
20 records, all that. So that's all.

21 BOARD MEMBER BYRNES: And, just to be clear  
22 in the record, you recommended two different types of  
23 pieces of equipment basically. You talked about a  
24 parabolic. Is that more of like a winged type of  
25 device or is it more of a straight shaft?

1                   THE WITNESS:  It's more of a U-shaped  
2 shaft.  Sometimes they have wings on them, sometimes  
3 they don't.  It doesn't -- the wings are more for  
4 cutting roots and stuff.  They don't really add extra  
5 lift to the soil.

6                   So, if you do the de-compaction correctly,  
7 you're looking for that wave in the field that they  
8 have.  And that's enough to fracture your soil.

9                   The other type of one -- again, it has  
10 wings, sometimes it doesn't have wings, they're a  
11 little bit more tightly spaced.

12                   But, again, if used properly, they both are  
13 adequate.

14                   BOARD MEMBER BYRNES:  And what's the name  
15 of the second?

16                   THE WITNESS:  I forget the actual like  
17 common name, but one of the main manufacturers is  
18 called Unverferth.  And so they are a primary maker of  
19 that type.

20                   There's others that are just as good as  
21 theirs, but that's kind of what everyone calls it out  
22 there even if it's a different manufacturer doing it.

23                   BOARD MEMBER BYRNES:  And I guess just a  
24 final question referring back to Chapter 9.

25                   So, your opinion of Chapter 9 and the

1 changes that were made, good? Bad? Good start?

2 Needs more?

3 THE WITNESS: It is a positive step  
4 forward. I just wish that we didn't have to be  
5 collecting three soil samples every 500 foot in the  
6 transect. We get just as good of data without the  
7 third. The data that we're collecting shows that.

8 That would be like -- if you guys came to  
9 me after this, "What do we need to change?" That  
10 would be the first thing I would change on that. And  
11 everything else is moving in the right direction.

12 I'd have to see how it implements out  
13 throughout the project before I could opine on, "Hey,  
14 this also needs changed." But I can opine on the  
15 topsoil. Because we're out there doing it now and  
16 I've looked at the data through there.

17 BOARD MEMBER BYRNES: I think that's all I  
18 have. Thank you very much.

19 BOARD CHAIR HELLAND: All right.

20 Mr. Leonard, any direct?

21 MR. LEONARD: Just a brief one, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. LEONARD:

24 Q. Mr. DeJoia, you're familiar with the Summit  
25 Carbon proposed AIMP; correct?

1           A.    Correct.

2           Q.    You're also familiar with Chapter 9 of the  
3 Board's rules?

4           A.    Yes, I am.

5           Q.    In your opinion, is the vast majority of  
6 the language of the AIMP taken verbatim from the  
7 Board's rules?

8           A.    It is very close, yes.

9           MR. LEONARD:  Thank you.

10           BOARD CHAIR HELLAND:  All right.  I don't  
11 see anybody else.  I think you are finally able to  
12 step down.  Thank you.  Appreciate it.

13           THE WITNESS:  Thank you, sir.

14           BOARD CHAIR HELLAND:  We will take a quick  
15 15-minute break and then proceed with Summit's next  
16 witness.

17                    We'll go off the record for about 15  
18 minutes.

19                    (Recess taken at 9:57 a.m.)

20                    (Hearing resumed at 10:19 a.m.)

21           BOARD CHAIR HELLAND:  Okay.  It's 10:19.  
22 We'll go back on the record.

23                    If Summit would like to call their next  
24 witness.

25           MR. LEONARD:  Thank you, Your Honor.

1 Summit calls Micah Rorie.

2 BOARD CHAIR HELLAND: Go ahead and raise  
3 your right hand.

4 MICAH RORIE,  
5 called as a witness by Summit Carbon Solutions, LLC,  
6 being first duly sworn by Board Chair Helland, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LEONARD:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. Are you the same Micah Rorie who caused to  
13 be filed prefiled direct testimony with an exhibit as  
14 well as Exhibit H staff report testimony with an  
15 exhibit in this proceeding?

16 A. I am.

17 Q. If I asked you those same questions here  
18 today, would your answers be substantially the same?

19 A. Yes.

20 Q. Do you have any corrections or  
21 modifications to make to your testimony at this time?

22 A. Just the Exhibit Hs are less than when we  
23 filed that testimony.

24 Q. As of today's date, how many Exhibit Hs  
25 remain?

1           A.     We are at 892.

2           MR. LEONARD:   Your Honor, I would move  
3 admission of Rorie direct testimony with Exhibit 1 and  
4 Rorie Exhibit H staff report testimony with Exhibit 2.

5           BOARD CHAIR HELLAND:   Thank you.

6           Are there objections other than Mr. Jorde's  
7 standing objection?

8           (No response.)

9           BOARD CHAIR HELLAND:   Seeing none, they  
10 will be admitted and given the weight due.

11          MR. LEONARD:   Thank you, Your Honor.   We'll  
12 tender the witness for cross.

13          BOARD CHAIR HELLAND:   Thank you.

14          Mr. Jorde.

15                           CROSS-EXAMINATION

16 BY MR. JORDE:

17          Q.     All right.   Good morning, sir.   How are  
18 you?

19          A.     Good morning.   Doing well.

20          Q.     Good to see you again.

21                 Now, Mr. Rorie, your business address is in  
22 Iowa.   Is it true you're a resident of Texas?

23          A.     I am a resident of Texas, yeah.

24          Q.     And you are an employee of Summit Carbon  
25 Solutions, LLC?

1           A.    Yes.

2           Q.    Are you also -- do you have an equity  
3 interest as well?

4           A.    I do not have an equity interest, no.

5           Q.    Is your only financial interest that of an  
6 employee and the wages you make or do you have any  
7 other financial interest in the overall Summit  
8 enterprises?

9           A.    I think the arrangement with Summit has  
10 some sort of equity component there, but I haven't  
11 bought into the company.

12          Q.    At this time.

13          A.    Correct.

14          Q.    But you would have the option if you wanted  
15 to exercise that option.

16          A.    I'd have to look at the specifics how that  
17 all works. It's a component of the comp, but it's  
18 not -- I'm not an owner of the company.

19          Q.    Got it. Are you responsible for hiring the  
20 contractors who are out in the field meeting with  
21 landowners, contacting landowners, in Iowa?

22          A.    I am.

23          Q.    And, since the commencement of this  
24 project, can you tell me the contractors, the  
25 companies, that you've worked with?

1           A.    Well, I wasn't here at the commencement of  
2 the project. I joined the project in late January,  
3 early February of '22.

4           There's a number of vendors, right-of-way  
5 service companies, that we utilize on the project.  
6 There's a range in Iowa.

7           It could be -- Contract Land Staff is the  
8 most prominent. You've heard folks talk about  
9 Contract Land Staff. There's also TRC, which is  
10 another vendor there we use for right-of-way services,  
11 right-of-way agents, title research, et cetera.

12           Then there's Upperline Energy Partners and  
13 a couple other remote groups depending on what type of  
14 due diligence we're doing.

15           Q.    And, of the groups you just mentioned, do  
16 all of those have responsibility of landowner or  
17 contact or outreach?

18           A.    Most of them do, yes.

19           Q.    And is it for the same purpose of obtaining  
20 easements?

21           A.    Right.

22           Q.    And so is there a methodology you use to  
23 deploy which specific group toward which specific  
24 county or landowners? Or how do you go about those  
25 decisions?



1           A.    That's a long answer.

2           Q.    Sorry.

3           A.    The methodology really is looking at  
4    experience levels, where they are found in our org.  
5    As far as the agents, supervisors, et cetera. So.

6                    A supervisor would have a region and a  
7    number of agents that they manage. We had no real  
8    preference as to where those particular agents were  
9    placed.

10                   And you sort of go into this kind of blind.  
11    So you don't know exactly what type of folks you're  
12    going to be visiting with. So we don't really pair  
13    those up. We just try to spread it out methodically  
14    and start the conversations with landowners.

15           Q.    Is there any, I guess, plan or system in  
16    place -- for instance, if landowner X, if they have  
17    outreach by one of the firms you mentioned, doesn't go  
18    very well, not getting anywhere, and then here comes  
19    contractor number two or -- I mean, I'm assuming you  
20    have some type of a strategy where you have a  
21    landowner that maybe you're not breaking through to or  
22    having success with.

23           A.    Not really. I mean, sometimes it depends  
24    on the issues or concerns a landowner has. And  
25    sometimes those are elevated to supervisors or folks

1 that coordinate meetings with construction managers or  
2 a variety of folks that go out there and talk with the  
3 landowner.

4 There's no real plan in place to say,  
5 "Okay, well, if agent one is not successful, we're  
6 going to try to bring in agent two."

7 What does happen on these projects, which  
8 is very typical, certainly one of this length and  
9 scale, is that there's a number of folks that rotate  
10 out. So we do our best to take care of our folks.  
11 But they are contracted, and, if they elect to leave  
12 or elect to go to a different region or something like  
13 that, then we need to replace them and pick up where  
14 we left off.

15 So that's the most common scenario.  
16 Especially on something that typically takes six  
17 months to a year and we're two years into this. You  
18 know, some folks have chosen to head back to where our  
19 other projects are and go different routes.

20 So it is very common in a two-year period  
21 to have two to five different right-of-way  
22 professionals visiting with a landowner.

23 Q. Even though that may be common, would you  
24 agree that that can lead to frustrations and some  
25 disconnect between the communications of what prior

1 individual may have told or represented to a landowner  
2 and then what new person from new contractor is  
3 saying?

4 A. It's possible the communication wasn't  
5 good. If the communication is correctly handled,  
6 then -- I imagine it could be a little bit confusing  
7 sometimes to deal with a new person. But, as long as  
8 they pick up where they left off, there's typically  
9 not a bunch of frustration there.

10 Q. And the firms that you mentioned, I think  
11 you mentioned four or five, are all of those still  
12 engaged and contracted by Summit within Iowa today?

13 A. Yes.

14 Q. And have you experienced a fair amount of  
15 turnover or folks leaving to go to other projects over  
16 the last two years?

17 A. Not recently. We had quite a bit of it at  
18 the onset of the project. For a number of reasons.  
19 Another long answer for you. But there's a number of  
20 reasons why that happened on the front end of the  
21 project.

22 Starting this year, really tail end of last  
23 year, we really narrowed down a solidified team and  
24 have folks that have stayed very loyal to us and  
25 committed to executing the project. So we haven't had

1 as much turnover this year compared to last.

2 Q. If you could take me back to last year,  
3 what do you attribute some of that turnover to that  
4 occurred last year?

5 A. There's a number of reasons why that was  
6 happening. Right-of-way folks, especially on the  
7 contracted side, there is not an abundance of those  
8 folks in Iowa, there's not an abundance of  
9 right-of-way work happening in Iowa.

10 So several of these folks are not from  
11 here. There are other projects elsewhere that are  
12 closer to their homes. And there was a higher  
13 frequency of such projects early part of last year,  
14 middle of last year, than there are now. So that's  
15 part of it.

16 The other part of it is it's a natural  
17 process where you figure out the folks that are  
18 completely committed to our culture and committed to  
19 this project. Incentivizing those folks to stick with  
20 you is something that we did.

21 But it's really just a natural process that  
22 happens on every project I've been a part of over the  
23 last 15 years. There's no difference in this one than  
24 any of the others when it comes to this topic.

25 Early on, you sort of figure out what land

1 agents are committed, and you only keep those that are  
2 and those have bought into your values and your  
3 systems, and you part ways with those that aren't.

4 So there's been some releases too. It's  
5 not just land agents voluntarily leaving. I've made  
6 changes from management top down when it came to  
7 right-of-way services to make sure that we're  
8 delivering our message correctly and that we're  
9 aligning with the culture of Summit and doing this the  
10 correct way.

11 Q. Has Summit let people go because they  
12 weren't being effective and weren't getting the job  
13 done, so to speak? Weren't obtaining a certain quota  
14 of easements?

15 A. No.

16 Q. And how are these companies compensated?  
17 Is it hourly? By the project? How do you compensate?

18 A. They typically get paid by the day. So a  
19 land professional is typically paid a day rate. And  
20 then, if they're away from home, there's a per diem  
21 attached to that as well. And then they get paid for  
22 mileage if they drive somewhere.

23 Q. So, if Summit is paying them by the day,  
24 obviously the more they can get done, and certainly  
25 the more easements they can obtain in a given day, the

1 less you pay; right?

2 A. I'm not sure I understand. Help me there.

3 Q. Well, if you're paying by the day, it would  
4 be better for this to take one year than two years.  
5 That's pretty simple math; right?

6 A. Right.

7 Q. And so, therefore, you would want to  
8 incentivize them to get as many easements obtained in  
9 a short amount of time and that would reduce your  
10 costs; right?

11 A. There's other factors there, but, yeah,  
12 we'd want efficient work, if that's the question, yes.

13 Q. When you talk about the values, do you have  
14 a mission statement for Summit? Do you have an  
15 onboarding or an orientation process where you walk  
16 them through, say, a PowerPoint or these are our  
17 values? Or what do you mean when you say that?

18 A. Well, the Summit values have been fairly  
19 public. You can find them on our website. We talk  
20 about kind of the motive behind the project, our  
21 parent company, et cetera, being from Iowa, being  
22 heavily invested in taking care of farmers and the  
23 ethanol industry, et cetera. So that's some basics  
24 there.

25 As far as an SOP for the exact definition

1 of our culture, no. It's really -- that's very  
2 atypical on the right-of-way side of things. You  
3 would address your agents, train them accordingly,  
4 make sure that they fit those values and align with  
5 you, and then you deploy them in the field.

6 Q. When you mentioned the website, I'm just  
7 looking at it now, do you know where the value  
8 statement or the mission statement might be located?

9 A. I don't know of a mission statement -- I  
10 don't know where it would be on the website. I think  
11 if you look at -- there's summitcarbonfacts.com.  
12 There's all sorts of points made there that tie into  
13 what Summit Carbon cares about. Whether it be safety  
14 or ag or other.

15 So a bullet point mission statement, I  
16 don't know if there is one or not, but I'm certainly  
17 aware of the values. And we make sure that our agents  
18 understand those.

19 Q. Do the values of Summit include suing  
20 landowners and making them incur cost and expense just  
21 to later dismiss all the lawsuits?

22 A. I don't know if that's a type of value. I  
23 think that's a function of project execution. But  
24 it's not a core value of Summit.

25 Q. Has Summit, or you on behalf of Summit,

1 fired or terminated individual people or contractors  
2 because of how they were dealing with landowners or  
3 unsatisfactory input from landowners of how they were  
4 treated?

5 A. No. I haven't fired anybody for that  
6 reason.

7 Q. Has Summit received, either through your  
8 contractors or Summit directly, any input throughout  
9 the two years, or concerns, of how landowners believe  
10 they were being treated or approached by you or your  
11 contractors?

12 A. That was a long one. Could you ask me that  
13 again?

14 Q. Yeah. What I'm getting at -- the big  
15 question I'm trying to get at is what kind of informs  
16 Mr. Rorie how you go about deploying or overseeing  
17 these various companies and their interaction with  
18 landowners. And I'm curious if you have become aware  
19 of any complaints, concerns, of Iowa landowners based  
20 on their interactions with you or your contractors?

21 A. Yes.

22 Q. And how have you predominantly become aware  
23 of those kind of concerns?

24 A. Well, I stay in very close touch with all  
25 of my management team. I visit with agents



1 frequently. I feel pretty aware of most conversations  
2 like that. We talk often.

3 I read the reports, I look at contact  
4 notes, I look at records of what the agents are  
5 reporting on a weekly basis typically.

6 So I'm aware of those types of complaints,  
7 and we look into them anytime we hear about them.

8 Q. And when you say, like, the management  
9 team -- again, what is your role specifically? What's  
10 your title at Summit?

11 A. My title is vice president of land and  
12 right-of-way.

13 Q. Okay. And so vice president, land and  
14 right-of-way. And then are there additional Summit  
15 employees under you or do we get right to the  
16 contractors?

17 A. There are additional people that are Summit  
18 employees.

19 Q. Can you just kind of give me, like, who  
20 reports in to you from Summit?

21 A. So we have a title due diligence manager  
22 that handles all of our courthouse research, general  
23 due diligence. Everything that would be covered in  
24 the spectrum of title.

25 And then I have two managers. One that

1 covers South Dakota and Iowa, and one that covers  
2 North Dakota.

3 Q. Can you give me the names of those two  
4 people?

5 A. Kyle Landry is the right-of-way manager for  
6 Iowa and South Dakota. Julie DeMayo is the  
7 right-of-way manager for North Dakota. Our title due  
8 diligence manager's name is Ryan Callahan. And he is  
9 out of North Dakota.

10 Q. The people you just mentioned, those would  
11 be Summit employees that report up to you?

12 A. That's right.

13 Q. Then do those folks have the direct  
14 interaction with the contracting companies that we  
15 discussed earlier?

16 A. They also do, yes.

17 Q. And do you have a centralized database  
18 where people can input their notes from communication  
19 with potential -- well, landowners, potential easement  
20 signers?

21 A. We have a couple of them, yeah.

22 Q. Can you just tell me briefly what are  
23 those, kind of what's the purpose of those.

24 A. "Those" meaning the databases?

25 Q. Yes.

1           A.    Well, it's important to be able to keep  
2 record of interactions with landowners so it's not all  
3 on a verbal basis. So the purpose there is to track  
4 how those interactions have gone, what's taken place,  
5 what landowner concerns there may be, how have we  
6 addressed them.

7                    There's also a lot of technical data in  
8 there tied to easement terms and distances and things  
9 like that.

10                   So it's just -- you have to have a  
11 repository to capture all that information and house  
12 it. That's the purpose of them.

13           Q.    And is it your expectation, or I should  
14 maybe say a directive or a contractual term between  
15 Summit and the contractors, that they need to input  
16 into that system their contacts, their daily contacts,  
17 or whenever they have outreach with a landowner?

18           A.    Yeah, I think eventually they get into that  
19 system. I'm not going to say it's an immediate fluid  
20 process. Those contact notes have to be generated and  
21 then they get put in there.

22           Q.    So contact notes. Is that kind of a term  
23 of art? Is that a specific type of document that's  
24 generated? Contact notes?

25           A.    Contact notes is kind of a -- over the

1 normal course of a right-of-way project, that's a  
2 typical term. It just captures all the interaction  
3 with the landowner. Whether it be via mail or phone  
4 or email or in person. It captures all of the types  
5 of interactions.

6 Q. And you mentioned reports. Is that a  
7 different type of set of data than the contact notes?

8 A. There's a number of reports I look at. But  
9 I look at the agents' -- their rendering of what that  
10 interaction was. And that's how I'm informed about  
11 certain landowner concerns. Unless I speak with a  
12 landowner directly myself. Which I do often.

13 Q. So I just wanted to clarify. So the  
14 contact notes, is that kind of what it seems like it  
15 is? That this is evidence -- I'm evidencing a  
16 contact, whether it's a call, a mailing, or an  
17 in-person, and it's kind of a running list of those  
18 actual contacts?

19 A. Yeah, typically. I mean, mailings  
20 sometimes is captured in more of a broad spreadsheet.  
21 But, if the agent had a conversation with a landowner,  
22 it ought to be in those notes.

23 Q. The fact that a conversation occurred, but  
24 not necessarily kind of the flavor or the substance of  
25 the conversation?

1           A.     Sometimes they include that too. Sometimes  
2 if they left a voicemail, that's what they put. But  
3 they're to at least give us a summary of how that  
4 interaction went. If it occurred. If they mailed  
5 something or there was no response via phone or how  
6 that worked, then they're just going to document that.

7                     So they're responsible for documenting any  
8 attempted interaction with a landowner. It's not  
9 always perfect, but they do their best to capture that  
10 in the database as you mentioned.

11           Q.     And then the reports. If they want to  
12 express to you more of maybe a detailed interaction,  
13 is that known as a specific type of a report that  
14 would come to you? More of a narrative of the  
15 interactions?

16           A.     I don't think so. I think that, in  
17 general, they would type up their reports or their  
18 notes and put them in the database.

19           Q.     But if we wanted to find out, though, the  
20 best evidence and best records that Summit has  
21 documenting the interactions and conversations with a  
22 given landowner, we'd want to look at the contact  
23 notes and what else would we want to look at?

24           A.     Well, I mean, we would provide a summary of  
25 our interactions with the landowner, whether it's via

1 contact notes or if I spoke with them or a member of  
2 my team spoke with them. They would give an account  
3 of how that went. Their version of what was said and  
4 the best recollection they have of how that  
5 interaction occurred.

6 I don't know that it would be all in the  
7 contact notes. I don't know if there would be extra  
8 supplemental information there. It's kind of a mixed  
9 bag depending on what you're asking for.

10 But we would do our best to give the most  
11 accurate account of our interactions with a landowner,  
12 whether that's via databases or affidavits or wherever  
13 that would come from. But it would be the best  
14 interaction we could give you on how things went  
15 between our agents or our management team and a  
16 landowner.

17 Q. So, when the contractors come on that have  
18 the land agents and are doing this work, as part of  
19 the contracting do you attach to your contracts kind  
20 of "this is how we want you to do things"? Or do you  
21 assume that those companies are training their people  
22 in the appropriate ways to interact with landowners?

23 A. Do you mean by how we want them to do  
24 things, do you mean how you want them to interact with  
25 landowners? Or are you talking about the databases?

1 I'm just trying to keep up.

2 Q. That's fair. So, basically, the  
3 interaction with landowners, the tactics  
4 essentially -- I mean, at the end of the day, you're  
5 basically making a sales pitch. "This is what we  
6 want. We'd like your signature."

7 So is that spelled out somewhere of how  
8 Summit wants that to happen? Or do you just say,  
9 "You're an experienced contractor, this is what you  
10 do, just do what you do"?

11 How does that get communicated?

12 A. I think there was general training  
13 materials from the vendors themselves. Right? Their  
14 own versions of giving the agent a general  
15 understanding of our carbon capture project, typical  
16 scenarios that we would run into visiting with an Iowa  
17 farmer versus a rancher versus a commercial property.  
18 There's no real SOP in terms of that training.

19 A lot of it is verbal. A lot of it is  
20 through the vetting process. We make sure the folks  
21 that we hire are experienced and understand what  
22 they're doing. And, if we're not comfortable with  
23 their grasp of what we're needing them to do, we don't  
24 deploy them. And so we spend quite a bit of time  
25 visiting with them, training them. There's a number

1 of ways we do that.

2 But, no, there's no set manual that's --  
3 I'm not aware of one. That Summit would have handed  
4 to a land agent. Because it's not really a sales  
5 deal. There's no process flow for, "If X is said,  
6 then Y is your rebuttal." These are a wide variety of  
7 conversations you have with people about their  
8 individual ground. So there's typically not an SOP  
9 there.

10 Q. Do you send information or, like, best  
11 practices or protocols in a situation where a  
12 landowner is just simply digging in and not agreeing?  
13 I mean, how do you handle a situation like that across  
14 four different companies that are doing the same work  
15 for you across a given state?

16 A. Well, the right-of-way management, those  
17 folks that I mentioned to you, they also manage a  
18 number of directors and supervisors, et cetera, on the  
19 contract side. So there's management orgs in place  
20 right down to the agent in all of our states. But  
21 certainly in Iowa.

22 So, to answer your question, the process of  
23 if we have a landowner we feel is either opposed or  
24 not wanting to deal with us or it warrants further  
25 discussion about individual concerns, then supervision



1 and management is made aware of that.

2 We always offer the opportunity to visit  
3 with the landowner from a management side of things to  
4 see if we can temper those concerns. Maybe provide  
5 more information that they're looking for that perhaps  
6 the agent couldn't provide.

7 Q. Have you had reports either trickle up to  
8 you or reach your desk of various land agents being  
9 pretty aggressive and multiple contacts in a day,  
10 multiple phone calls, multiple knocks at the door,  
11 waiting on a porch for four hours for instance, things  
12 like that?

13 Have you heard of those type of things?

14 A. I wouldn't call it aggressive, but, yes, a  
15 lot of those agents are doing what I'm asking them to  
16 do. Which is to make every assertive effort they can  
17 to open a dialogue with a landowner and make every  
18 good-faith attempt to have a discussion about an  
19 easement and about the project or anything else a  
20 landowner may want to discuss.

21 But, in general, the instructions to the  
22 agent are make every attempt you can, within reason,  
23 to open a dialogue with somebody. Everybody's  
24 schedule is different, you may not know exactly when  
25 they're going to be available, you may catch them for

1 ten minutes and it may lead to an ability to visit  
2 with the landowner a little bit longer later in the  
3 week. That's typically the way right-of-way is done.

4 Q. Does Summit have a standard that it has  
5 shared with its contractors that if landowner says, "I  
6 am just not interested, please don't contact me," is  
7 that, okay, now they get moved to the other list,  
8 everyone stand down, or is it kind of let's just kind  
9 of keep trying to crack the door open?

10 How do you go about that?

11 A. There's no set way there, but, if someone  
12 is very much not interested, we try to find out why  
13 and see what's driving that.

14 If we can't get there, we can't figure out  
15 why, then we offer to at least keep them updated on  
16 things. You know, it's a long process. We try to  
17 keep folks updated on developments with the project,  
18 where we are in Iowa, how things are going, and that's  
19 been very successful.

20 And in a number of ways -- or a number of  
21 instances, I should say, that's led to a dialogue with  
22 the landowner. Because if we just simply go away --  
23 when they say, "Leave me alone, I don't want to ever  
24 talk about an easement ever again," and we simply go  
25 away, then, in my opinion, we're not really making all

1 the good-faith efforts.

2 I mean, it's a common thing for anyone to  
3 say on the front end of a pipeline project is, "I'd  
4 rather not deal with this right now.

5 So we say, "Okay. Well, when is a good  
6 time to visit?"

7 Hundreds of landowners in Iowa have  
8 executed easements with us based on those types of  
9 continued dialogues.

10 So I wouldn't call it aggressive. We're  
11 being present, being assertive in some ways, but we're  
12 being professional in the sense that we're doing our  
13 jobs and trying to keep a dialogue open.

14 Q. So, when you utilize those strategies of  
15 continually contacting, contacting, contacting, and  
16 eventually get an easement after many efforts over  
17 many months, do you attribute that to either, A, you  
18 finally cracked through and they finally understood  
19 you, or, B, they just got so worn out they gave up and  
20 signed?

21 A. Neither. Neither. Most -- well, it's very  
22 hard to attribute it to one thing, but, if I had to  
23 pick one, it would be that, as this project has  
24 evolved, the public acceptance of what we're doing has  
25 grown. And so, therefore, it's become more acceptable

1 for landowners to visit with us about the easement and  
2 reach an agreement with us.

3 So I don't think it has anything to do with  
4 wearing anybody down. Obviously, it has something to  
5 do with talking about easement terms and working  
6 things out, but, as the project has evolved and as  
7 this process has gone on, we -- I certainly have been  
8 made more and more aware of the public acceptance of  
9 the project. As evidenced by where we are in our  
10 acquisition numbers.

11 And I think that's the main driver for why  
12 eventually folks say, "Okay, now I'm informed, I'm not  
13 simply hearing misinformation or I'm not staying away  
14 from the facts, and I've done my own research and  
15 talked to folks that I trust about this and I feel  
16 comfortable having a dialogue about an easement and  
17 reaching an agreement."

18 So, if I had to put my finger on one  
19 reason, that would be it. I'd like to credit my team  
20 for it, but really it has to do with just the overall  
21 acceptance of the project.

22 Q. And for you to say, sir, public acceptance,  
23 do you have any way of measuring that? Or is your  
24 analysis, "Well, we were at 50 percent, now we're at  
25 70, therefore we have 20 percent more acceptance." Is

1 that how you get there?

2 A. What I mean by "public acceptance" is  
3 landowner acceptance. The folks that we're trying to  
4 visit with.

5 I don't certainly engage the public.  
6 That's not my wheelhouse. But, yes, when I look at  
7 the fact that we have over 1,200 landowners that have  
8 executed an easement with us in the state of Iowa,  
9 yes, I do see that as acceptance.

10 Q. And that's fine. So your perspective is  
11 that's acceptance and not simply just giving up. "I  
12 don't want to deal with these phone calls, emails,  
13 contacts anymore. I'm just ready to be done."

14 A. I see it as the former and not the latter.

15 Q. You had said two answers ago of this kind  
16 of acceptance, that they become more informed and  
17 understand the project.

18 Do you believe that there has been  
19 misinformation about the project that has hindered  
20 your ability to obtain easements?

21 A. I do.

22 Q. Do you believe it's important that a  
23 landowner, before they sign the perpetual forever  
24 easement, is informed and does have the ability to  
25 learn more about the project and its impacts?

1           A.     Sure.

2           Q.     And so then why haven't you released  
3 until basically it had to be forced out of your  
4 counsel by this Board the dispersion and risk modeling  
5 and analysis so that people could actually make an  
6 informed decision of how many thousands of feet a  
7 deadly plume could travel when they're signing an  
8 easement?

9           A.     Well, that's not mine to release. First  
10 off. So it wouldn't be my decision to withhold or  
11 release that. That's a company decision. Mr. Powell  
12 makes that decision. Or somebody else at that level.

13                     What I'm talking about is information about  
14 carbon capture, its ties to the Iowa ag economy, the  
15 safety record of the 5,000-plus miles of CO2 pipelines  
16 in this country, the regulations that will be tied to  
17 this particular project that distinguish us from maybe  
18 a local project, a number of other sources of  
19 information there that eventually folks get a chance  
20 to take a look at and they gain some comfortableness  
21 with this being a pipeline project that's state of the  
22 art, regulated heavily not only by PHMSA but also by  
23 the various state boards.

24                     So, as folks gain that information and  
25 realize that there are a lot of other factors in play

1 tied to safety, I don't often get asked about  
2 dispersion modeling.

3 But I don't release that information  
4 either. I wouldn't know the first thing about it.

5 Q. Well, I mean, certainly you wouldn't get  
6 asked about things that a typical farmer may not ever  
7 have even understood exists; right? I mean, you  
8 wouldn't expect on the first contact with someone in  
9 Any County, Iowa, to say, "Well, what about that  
10 dispersion modeling." I mean, they have to be  
11 educated first to be able to ask questions.

12 Wouldn't you agree?

13 A. I think every conversation is different  
14 when it comes to a landowner. So it's hard for me to  
15 give a general idea what educated means. But we get a  
16 lot of safety questions from landowners, and we do our  
17 best to answer those questions or put them in front of  
18 the right people that have expertise to answer those.  
19 Very rarely do I get dispersion model questions.

20 That doesn't translate into the landowner  
21 being uneducated or uninformed. I don't think that  
22 those are synonymous.

23 Q. So, when you say you get safety questions,  
24 has Summit prepared, like, a bullet point or a fact  
25 sheet that they empower your contractors to say, "Hey,

1 when you get these questions, hit them with this"?  
2 Five thousand miles of pipeline and the kind of  
3 talking points? I mean, how do the agents know how to  
4 respond to safety questions?

5 A. Well, we give them a very short leash so  
6 they don't make a promise or a commitment that's  
7 incorrect or give the wrong impression to a landowner.

8 We take our integrity very seriously.  
9 They're not to lie about things. And they're  
10 certainly not to opine about things they don't know  
11 about.

12 But, to answer your question, there are  
13 FAQs or one-pagers that have been disseminated to a  
14 number of landowners about safety, the track record of  
15 CO2 pipelines. I don't have those memorized, I don't  
16 know when those would have been sent, but there's a  
17 number of safety-related materials that Summit has  
18 been pretty open about.

19 Q. Well, do you have, though, a document or  
20 something that you hand out? Like in the contact  
21 notes, "Farmer Smith. Really concerned about safety.  
22 Okay. Let's give Farmer Smith our safety handout."

23 I mean, how have you been educating them  
24 and responding to landowners that have shared those  
25 concerns? With what information?



1           A.     There's FAQs and one-pagers there that talk  
2 about a number of things. I'd have to look at the  
3 details of the safety-related things that are in  
4 there. So I don't want to misspeak.

5           But if a landowner is overly -- if the  
6 entire conversation is geared toward safety or that's  
7 their primary concern -- and land agents are taught to  
8 cite the things I just cited. Right? That this is  
9 not an unregulated pipeline, there is history behind  
10 these, here are the measures that we take in terms of  
11 valve spacing. A lot of landowners ask about that.  
12 "Is there going to be a valve to shut this thing off?"

13           There's just a number of questions,  
14 Mr. Jorde. It would be a long time for me to go  
15 through all of them. But there's a number of  
16 questions that come up, we provide information  
17 accordingly.

18           If it gets very detailed, a landowner wants  
19 something granular, then my agents are instructed to  
20 never opine or shoot from the hip. We get them in  
21 front of our project manager or another member of our  
22 management team that has the expertise to try to  
23 address those concerns to the extent that they can.

24           Q.     Is it true, sir, that your one-pagers and  
25 your FAQs do not go into any type of information

1 relative to hazard risks, buffer setbacks, warning  
2 areas, dispersion analysis? Those FAQs that are out  
3 there don't touch that.

4 Would you agree?

5 A. I don't know if they do or not. I don't  
6 have them memorized. It's been a long time since I've  
7 looked at our one-pagers. So I don't know if they do  
8 or not.

9 Q. You say in your direct testimony that it's  
10 Summit's desire to obtain easements required for the  
11 project through voluntary agreement.

12 My question to you is you would certainly  
13 agree that with the whether spoken or unspoken ability  
14 to use eminent domain and to take legal interest in  
15 land from a landowner out there, that there never  
16 really can be a voluntary easement; right?

17 A. I don't agree with that, no.

18 Q. Have you had anyone, after this project was  
19 announced, call you up and say, "Please locate this on  
20 my property"? Like, "Please come to me."

21 A. We have.

22 Q. Okay. How many people do you think would  
23 fit in that category?

24 A. It's a very small category.

25 Q. Okay. All right. At least we can agree on

1 that.

2 And so this voluntary aspect. When you say  
3 and put forth to this Board for their consideration  
4 it's Summit's "desire," your "desire" isn't anything  
5 anyone can rely upon. Because, at the end of the day,  
6 we are here because you're asking for the legal right  
7 to take interest in land that hasn't been provided to  
8 you yet.

9 Is that right?

10 A. That was a lot of questions. So I'll start  
11 with your first one.

12 Desire or wishes or intent, however you  
13 want to phrase that, it's absolutely our intent to  
14 reach a voluntary agreement with every landowner on  
15 this project. We don't go into any of those  
16 arrangements or dialogues with the intent of only  
17 utilizing a last of last resort unfortunate  
18 circumstance tied to eminent domain. That's not --  
19 our intent is always to find a way to inform the  
20 landowner, reach an agreement on an easement  
21 voluntarily. Every time.

22 So whether you call it desire, intent, or  
23 whatever, that's our goal. And it's still our goal  
24 regardless of these proceedings. That's our goal.

25 The second question, we're asking for a lot

1 more than just eminent domain authority or the rights  
2 to utilize that in the state of Iowa. We're here  
3 asking for a permit to build a pipeline. That is  
4 simply a function of what we're asking for and it's  
5 not the -- so the way you phrased it, I feel the need  
6 to kind of clarify it.

7 We didn't show up here today with the  
8 intent of the only reason we're here is to talk about  
9 eminent domain.

10 Now, eminent domain is an unfortunate  
11 circumstance. It is an, I believe, completely  
12 necessary function in the event that we're at a  
13 complete impasse with a minority of landowners. That  
14 in order for any infrastructure of this size and scale  
15 to be installed, it would typically need to be in  
16 play.

17 But we, as Summit, to go back to your  
18 question, intend to break our backs to try to make an  
19 agreement with a landowner outside of eminent domain.

20 Q. If that's really your goal and intent, then  
21 you would agree that it's premature that we're here  
22 given all the landowners that haven't yet worked with  
23 you to meet your goal and desire; right?

24 A. No.

25 Q. If it's truly your goal and desire to work

1 with them to obtain voluntary, but yet in a month,  
2 two, three this Board could theoretically grant  
3 involuntary easements against all those people, then  
4 you wouldn't have met your goal.

5 Right?

6 A. Well, our goal is still the same. Is to  
7 try to resolve and settle easements with folks.

8 I certainly don't think it's premature that  
9 we're here. We're at an impasse with a number of  
10 folks.

11 I think there's also a number of folks that  
12 are simply kind of seeing how the permit process plays  
13 out.

14 So we have roughly 74 percent,  
15 73.7 percent, of the mileage acquired on this project.  
16 So, the 26 percent, I expect as these proceedings  
17 conclude and we're able to have a dialogue with some  
18 of these landowners, that those numbers will come  
19 down. For that reason alone.

20 So there are a number of situations where  
21 we feel we're completely at an impasse after  
22 exhausting all efforts and that unfortunate  
23 circumstance would need to be in play.

24 Q. Well, does it really need to be in play? I  
25 mean, that's premised on -- obviously, you're hired to

1 do a job. I get that. But this question of need is  
2 premised on the fact that this project is even needed.  
3 And you understand there's a very differing degree of  
4 opinion on whether this project is, A, needed for  
5 anything, and, B, should it be allowed to utilize  
6 eminent domain. You're familiar with those arguments.

7 A. I'm familiar with the opinions, yes.

8 Q. All right. Now, I don't expect you to  
9 share those opinions, but, I mean, it's true this  
10 project isn't transporting energy; right? I mean, the  
11 CO2 being captured isn't energy; correct?

12 A. I don't know if it's energy or not. I know  
13 it's a commodity and I know that it's tied to a  
14 specific purpose that we feel is certainly necessary,  
15 and that's what we're asking for permission to do.

16 Q. Well, it's obviously not a commodity  
17 because you're just putting it in the ground. And, if  
18 we trust your application, forever. And so we  
19 wouldn't put valuable things in the ground never to be  
20 used, would we?

21 A. I think there's some opinions there about  
22 whether or not it's a commodity. But I'd refer you to  
23 counsel or maybe look at the records on that.

24 Q. And it's obviously a privately owned  
25 project. We know that. This isn't a public utility;

1 right?

2 A. It's not a governing body as far as a  
3 utility. I don't know the exact classification in  
4 Iowa. Whether it's common carrier or public utility.  
5 I think we're classified as a common carrier.

6 Q. Well, but you would agree you're also not a  
7 common carrier because you're just transporting your  
8 own stuff on your own pipeline to your own holes.

9 MR. LEONARD: Objection.

10 BOARD CHAIR HELLAND: State your objection.

11 MR. LEONARD: Calls for legal conclusion.

12 MR. JORDE: Well, he's the one that said,  
13 "We're classified as a common carrier." So he must  
14 have some understanding to make that statement.

15 BOARD CHAIR HELLAND: Mr. Rorie, you can  
16 answer the question if you know the answer.

17 A. I want to make sure I clarify. I'm not  
18 sure whether we're a utility or a common carrier.  
19 It's not really my call and not something I discuss  
20 often.

21 So I think we're a common carrier, but I'm  
22 not going to say that definitively. That's something  
23 I'd have to check with counsel or someone else at our  
24 company about.

25

1 BY MR. JORDE:

2 Q. Or the courts and eventual litigation on  
3 that topic most likely?

4 A. Your guess is as good as mine on that on  
5 what the courts will do.

6 Q. That's probably fair.

7 Okay. So voluntary easement agreements.  
8 Now, you would agree that a pipeline route, which you  
9 rightly stated you're also asking for, is simply a  
10 series of connected easements. You can't have a route  
11 without the easement to locate.

12 Is that right?

13 A. You can't have a route without the  
14 easements? That's correct.

15 Q. And the tracts that are still outstanding,  
16 I think you told Mr. Leonard -- was it eight hundred  
17 and some? Or what are the Exhibit H parcels as we sit  
18 here?

19 A. Eight hundred ninety-two.

20 Q. Would you agree that it's premature to be  
21 before this Board when there's still 892 parcels in  
22 potential condemnation actions? Shouldn't you have  
23 waited and gotten more acceptance?

24 A. No.

25 Q. You would agree that it would be reasonable



1 for this Board to deny your application and eminent  
2 domain request based on the fact that you have no  
3 path -- you have no approvals in North Dakota, or in  
4 any other state, and you don't have the pore space  
5 needed in Oliver County, North Dakota; correct?

6 A. Would I agree with your statement that they  
7 ought to deny our permit?

8 Q. Right.

9 A. Tied to the reasons you just stated?

10 Q. Correct.

11 A. No.

12 Q. You think it's acceptable for Iowa to  
13 approve an application, approve eminent domain on 893  
14 {sic} parcels even though this project has nowhere to  
15 go with the carbon dioxide.

16 A. Well, I wouldn't agree that it's got  
17 nowhere to go. So that's your statement, not mine.

18 I think given the way easements work in  
19 Iowa, and the abandonment provisions tied to easements  
20 in Iowa, that it's perfectly appropriate for  
21 continuing to seek this permit.

22 Q. Even though this project and its viability  
23 in Iowa is 100 percent dependent on whether or not  
24 North Dakota allows you to locate your pipeline there  
25 and then sequester CO2 there; correct?

1           A.     That's your statement, not mine, but I  
2     don't see any reason to not seek a permit in Iowa as a  
3     result of how things are going in other states.

4           Q.     Were you aware that, during our  
5     conversation here, North Dakota has denied Summit  
6     Carbon pipeline's reapplication permit?

7           A.     I'm not aware of that.

8           Q.     Would that change your answers at all?

9           A.     No.

10          Q.     All right. You talk about steps Summit has  
11     taken to work with landowners to negotiate voluntary  
12     easements. I think you kind of went through that.

13                     And one of your exhibits, Exhibit 2, I  
14     guess the Exhibit H staff report, in that document  
15     you've got various designations there. And one of  
16     them is LNI.

17                     What is that designation?

18          A.     So that classification counts as Landowner  
19     Not Interested. So it's a broad classification, but  
20     that's what that stands for.

21          Q.     Okay. Landowner Not Interested. And to  
22     get in the Landowner Not Interested category, is that  
23     a range? Is that, you know, like the ones that scream  
24     at you and say, "Don't come back," and the ones that  
25     are, like, "Well, I don't think so"? I mean, what do

1 you have to do to get into the LNI category?

2 A. I don't know if there's one thing you have  
3 to do to be in that category.

4 And I need to back up here. Those  
5 categories are pretty general in nature and they're  
6 fluid in nature. So they change daily. But an LNI  
7 landowner is typically one that's just opposed to  
8 visiting about an easement. Or they've been advised  
9 by their counsel to not talk to us. That's the two  
10 main categories there. That's subcategories of a  
11 Landowner Not Interested.

12 There's some others in there. Like you  
13 said, if someone has been violent or made threats to  
14 where now we've got a safety issue and it's kind of  
15 hard to visit with those folks in person. We still  
16 try via phone, et cetera.

17 But the vast majority of landowners not  
18 interested, or that category, is folks that we simply  
19 are at an impasse because there's very limited  
20 contact. Or no contact at all. And I would say most  
21 of those folks have been advised not to talk to us by  
22 counsel for a variety of motives I can only speculate  
23 about.

24 Q. Are you referencing me there? Or others?  
25 Or should we get into that?

1           A.    I don't think we should get into it.

2           Q.    Okay. All right. Well, it's certainly not  
3 uncommon when a client is represented by a lawyer that  
4 communications would go through a lawyer. You're  
5 certainly aware of that. Those formalities.

6                    Right?

7           A.    I don't think that's uncommon. I agree  
8 with you there.

9           Q.    And then the In Contact -- starting on  
10 page 14 of this Rorie Exhibit H staff report  
11 Exhibit 2, page 14, then it's In Contact is the  
12 designation.

13                   What do you have to do to be in that  
14 designation?

15           A.    I think that's for folks that have shown a  
16 lot of desire to continue dialogue with us, albeit  
17 sometimes it's infrequent. But they want to keep a  
18 dialogue open or they haven't really shown staunch  
19 opposition or some reason why they wouldn't want to be  
20 contacted anymore.

21                   But it's contingent on maybe their  
22 schedules. "Talk to me after harvest. Talk to me  
23 after you get a permit. Talk to me when I get back in  
24 town. I haven't quite decided yet, but I'm open to  
25 visiting with you guys."

1           I mean, you've heard a number of folks come  
2 up here and say that our folks were respectful.  
3 They're not terrible to visit with by and large. I  
4 don't think so. And a lot of folks are continuing  
5 contact with us, but there's no real finality there.  
6 Not yet.

7           Q. And so the folks in the "talk to us after a  
8 permit" category, that wouldn't be unreasonable in  
9 your view; right? Like, "Well, let's see if you can  
10 get where you need to go and then come back and talk  
11 to me"?

12          A. I don't know that I would call it  
13 reasonable or unreasonable. It's just the objection  
14 that they have to executing an easement right now.

15           So I don't agree with necessarily every one  
16 of those folks that says, "Well, I ought to just wait  
17 for a permit." So I don't know how to call that  
18 reasonable or unreasonable.

19          Q. Is it true that Summit's internal strategy  
20 is, if a permit is granted, that you would go back to  
21 landowners and drop the offers?

22          A. No.

23          Q. Is it true that currently Summit is  
24 decreasing its offers to landowners by 50 percent of  
25 what they were previously?

1           A.    I'd have to look at the specific --  
2 whatever scenario you're talking about, but -- we have  
3 lowered offers in some situations, but there's a lot  
4 more to the story than what you just presented.

5           Q.    Well, what would be the context? I mean,  
6 if you want to work with landowners, you want to do  
7 the right thing, you want to get to yes and you want  
8 to have voluntary agreements, what possibly would be  
9 the motivation for going backwards on offers that you  
10 previously made?

11          A.    There's a couple there. In normal course  
12 of negotiations with a landowner, there's -- often  
13 some finality is a factor involved. So, when we look  
14 at -- if I were negotiating with you on an easement  
15 and I said, "Mr. Jorde, I'm willing to pay you a  
16 thousand dollars for this easement," and you're  
17 thrilled about that. "Do you think logistically we  
18 can get that done in the next 10, 15 days?"

19                   And you shake my hand and tell me, "Yes,  
20 I'll guarantee I'll get this done in the next 10, 15  
21 days," and then you decide at day 16 or 17 that you  
22 changed your mind. Well, those dollars were attached  
23 to the value of time tied to that. There's a number  
24 of other things they're attached to.

25                   If the parameters of that agreement are no

1 longer in play and that fuse is burned out, then we're  
2 back to the drawing board. And that's very typical on  
3 a right-of-way conversation.

4 I think the misperception is that  
5 right-of-way offers just constantly go up forever, and  
6 the longer you wait, the higher they'll be. And that  
7 is a misperception. Especially at the premiums we're  
8 offering.

9 I can understand if we were at bargain  
10 basement, tiny levels, but if -- I have a limited  
11 amount of resources to spend working these out.  
12 Right? One of those resources is time.

13 So, if we're willing to pay an excessive  
14 premium and the conditions of that arrangement with  
15 the landowner were that this would be done in ten  
16 days -- or let's call it a month. Right? If ten days  
17 feels unreasonable. And then we go six months and we  
18 don't hear from anybody. I feel it's unreasonable to  
19 expect the pricing to be at that same level when that  
20 wasn't the agreement in the first place.

21 So that's one example of where all you  
22 would hear, or someone would hear, is that we've  
23 dropped offers, but really what has happened is a  
24 commitment was broken or wasn't upheld and those  
25 dollars were contingent upon that commitment. They

1 weren't perpetual dollars forever.

2 Q. But, given that example where you tied it,  
3 in your example, to, say, 15 days or there's like a  
4 time trigger -- I mean, again, given the fact we're  
5 here, we're going to be here for a while, I don't know  
6 how long the Board will take to make a decision, you  
7 need all these other states to make decisions, putting  
8 landowners on a clock is really an artificial -- it's  
9 a tactic; right? To squeeze them into signing an  
10 easement.

11 A. It's the furthest thing from a tactic to  
12 squeeze anybody. Whether I have folks working on a  
13 different time clock in North Dakota or Minnesota has  
14 nothing to do with what I'm working with in Iowa and  
15 the folks that we have working here.

16 So it's the value of time, that's one of  
17 them, but -- again, very long answer for you. Because  
18 it's not just the value of time. There's also the  
19 framework of a relationship there.

20 You've heard folks say earlier that -- the  
21 folks that worked with us earlier on, I think they  
22 took a little bit more of a risk. And dollars are  
23 tied to risk.

24 So, as this thing progresses and as the  
25 public acceptance I mentioned continues to evolve, as



1 we go along these permitting processes and gain more  
2 traction or get to the final stages of this process,  
3 it's less of a risk.

4 So there's a variety of reasons why an  
5 offer last fall may be different than an offer now.  
6 Sometimes they're higher too. It just depends. So  
7 there's not a general way of saying any of this. But  
8 I wanted to cite some of the situations in which the  
9 fiscal side of this could drop.

10 Q. Are you taking this opportunity to send a  
11 message to those listening and interested in these  
12 proceedings that the offers are going to be going down  
13 or do you have a commitment to hold them where they  
14 are? Or what can you tell us about that?

15 A. Well, no, I'm not using this as an  
16 opportunity to send a message to anybody about this.  
17 I'm here to answer your questions. That's a common  
18 question. Are we going to keep things the same  
19 dollars-wise. Really -- not in an effort to be  
20 Socratic here, but for what?

21 We're missing quite a bit about what's  
22 being purchased here, which is the easement language,  
23 and there's a variety of back and forth in that  
24 easement language that has to do with value.

25 So to say I'm going to keep an offer the

1 same across the state is not realistic. Every one of  
2 those easements may have something different about it  
3 that either adds value for the landowner that reduces  
4 that payment or adds value for us that increases the  
5 payment.

6 And I tell landowners all the time, to the  
7 extent they'll talk to me, is what we're purchasing at  
8 the end of the day is that language and the  
9 relationship. Because that's what's binding. Right?  
10 That's the relationship. And there's a variety of  
11 terms and conditions that could cause the dollar  
12 amount to change.

13 So, no, I can't commit to saying I'm going  
14 to pay everybody the same or certainly the same  
15 amount. I can commit to paying them the last thing  
16 that we offered them. But every one of these are a  
17 case-by-case, individual negotiation, individual  
18 situation.

19 Not all properties are equitable. Not all  
20 impacts are equitable. And I think it does a little  
21 disservice to the landowner to say that we would do  
22 something in general form across the remaining 470  
23 folks we need to reach an agreement with.

24 Q. You said that dollars are tied to risk. In  
25 that statement, is the "risk" meaning the risk of your

1 project. So early on, when it's more speculative,  
2 maybe you pay less, and, as it gets closer, you pay  
3 more? Or what was the "risk" analysis in that  
4 statement?

5 A. Well, what I mean by "risk" there is if  
6 early on -- or I guess if you break it up into  
7 quarters.

8 In the first quarter of this process, a  
9 landowner is being asked to have an encumbrance on  
10 their property that may not be built for a while.  
11 Right? So he's got some scheduling and some things,  
12 or she does, that they've got to look at to say,  
13 "Okay. This is not happening for a while, or it may  
14 not happen at all, and I'm going to have an  
15 encumbrance on my property that I may have to get  
16 released." And that's a little bit of a time risk for  
17 them. The way I see it.

18 As we get further along the process and  
19 1,210 people have executed easements in Iowa, every  
20 one of those is an affirmation that the project is  
21 headed in the right direction.

22 So the way I see this on the risk side is  
23 just the timing of everything. As to when they need  
24 to farm things or when they feel like they can kind of  
25 get both, their crop damages and get their crops out

1 of the field at the same time, that's a little bit  
2 different.

3 But, again, you're citing one aspect of  
4 this. And there's many.

5 Q. Okay. But I just want to clear it up.  
6 When you said dollars are tied to risk, you were  
7 looking at it as risk from the landowner's side and  
8 not risk from the company's side or both?

9 A. I was looking at it more on the landowner's  
10 side. I'm asking the landowner to commit to something  
11 earlier than his neighbors. Right? I'm asking him to  
12 do something and be one of the first. Or the first  
13 few. And that's not always the most comfortable thing  
14 to do.

15 Q. So speaking of when you're asking a  
16 landowner to do something, you know, to be first  
17 amongst neighbors, have you received any reports to  
18 your office of land agents telling people, "Well, all  
19 your neighbors have signed, so you should too," but,  
20 in fact, that's not true? Have those complaints  
21 trickled up to you?

22 A. Well, if I was aware of land agents being  
23 deceitful about that, then they would be removed from  
24 our project. We would part ways with them.

25 I'm not aware of any instances where a land

1 agent went to a landowner and said, "A number of  
2 people in your county have signed," or however they  
3 phrased it, and that they were being deceitful about  
4 that.

5 What happens a lot of times is the  
6 landowner asks us. And we have to be very careful to  
7 protect kind of the arrangements with folks on the  
8 other side of their property line. But we get asked a  
9 lot of questions about, "Well, how are you doing in  
10 the county" or "how are you doing past the highway" or  
11 "how are you doing next door" or "down the road."

12 If the neighbors are comfortable with us  
13 saying that -- it's also sort of obvious in terms of  
14 if you look at Exhibit Hs -- we say, "Yeah, we're  
15 doing pretty good" or "we're struggling" or "we feel  
16 hopeful that things are going to improve." But  
17 there's a number of ways we answer that.

18 If a land agent was to say, "Your neighbor  
19 has signed," and the neighbor has not signed, then  
20 that's deceitful and they would be fired.

21 Q. Are any of your company's loan covenants or  
22 financing arrangements tied to percentage of easement  
23 acquisition in a given state?

24 A. I have no idea. I don't deal with our  
25 loans.

1           Q.    Back to that Exhibit H staff report.  The  
2 next designation is called Legal Assessment.  What  
3 does that category cover?

4           A.    There's a couple situations there.  As you  
5 well know, landowners, some hire counsel.  If we are  
6 having interactions between our counsel and their  
7 counsel going through a red line process, whatever it  
8 is, that may take some time.  For both sides.  So  
9 that's one of those scenarios in Legal Assessment.

10                    Another Legal Assessment would be if the  
11 property had recently changed hands, if there was a  
12 foreclosure on it, something like that to where we're  
13 sort of delayed in working that out.  Then that's not  
14 necessarily the landowner -- they could be very much  
15 interested in signing an easement with us.  We may be  
16 holding it up if we want to make sure everything is  
17 copacetic and lined up.

18                    But a majority of those are just red line  
19 reviews between our counsel or myself and landowner  
20 counsel.

21           Q.    And then it looks like the last category I  
22 have here is High Counter.  I take it that that's  
23 someone who has responded but responded at an amount  
24 that you believe is unreasonably high?

25           A.    Yes.

1           Q.    And the High Counter, do you go back to  
2 those people and try to get them into the Legal  
3 Assessment or in one of the other categories? Or how  
4 do you work that?

5           A.    I don't know that we would try to get them  
6 into another category. We do try to continue a  
7 dialogue with folks and try to reason with them in  
8 terms of -- if they're asking for excessive dollars or  
9 premiums that are unworkable, we try to reason with  
10 them and push back to the basis of our offer and what  
11 we're willing to compensate the landowner for. But I  
12 don't know that we would try to put them in another  
13 category.

14           MR. JORDE: So, before I leave this topic,  
15 I'd like, if we could, to have Landowner 556 pulled  
16 up, please.

17 BY MR. JORDE:

18           Q.    And, sir, while they're doing this, this is  
19 just an exemplar. What I'm going to show you is the  
20 Emmet County survey contact report as filed by your  
21 company to the IUB once we can pull that up.

22           MR. JORDE: Perfect. Thank you.

23 BY MR. JORDE:

24           Q.    So, again, kind of as an exemplar. It got  
25 a little muddled at the top. I'll just report to you

1 that this was filed by most likely your counsel on  
2 July 27, 2023. I happened to pull this. But when you  
3 said "contact report," is this generally the format of  
4 Summit's contact report?

5 A. I think that's a summary for the testimony  
6 purposes. The formats are a little bit different when  
7 you get into the actual details of a conversation. It  
8 could be in paragraph form.

9 Q. Okay. And that's what I was curious about  
10 because you had said sometimes people can input the  
11 nature of the communication. So this might be a  
12 summary of your reports simply for reporting to the  
13 IUB purposes?

14 A. I think that's fair. I mean, there's ways  
15 to drop down the type of contact methods. And I think  
16 those are reflected accurately.

17 Q. And then, again, just so I understand, it  
18 seems obvious, but the Contact Method, that's how the  
19 contact was made. In person, voicemail, phone. I  
20 don't -- yeah, email, letter. So that covers it. And  
21 then the Date, the Agent.

22 And then, if we go back to the middle  
23 there, it says the Landowner or the Contactee. So  
24 that's the person who would have been contacted?

25 A. Yes.



1           Q.    And then obviously their tract in  
2 Exhibit H. Okay. I just wanted to confirm.

3           MR. JORDE: I'll offer Exhibit 556.

4           MR. LEONARD: No objection.

5           BOARD CHAIR HELLAND: With no objection,  
6 the exhibit will be admitted as Jorde Landowner  
7 Hearing Exhibit 556.

8           MR. JORDE: Thank you.

9 BY MR. JORDE:

10          Q.    Okay. You were asked to provide a general  
11 description of the content of the easement and you  
12 attached what you describe as a template easement. I  
13 want to go through that with you.

14                You talk a little bit about -- I'm going to  
15 wait on that though.

16                You talk a little bit about making fair  
17 easement offers and you talk about CSR2 rating. The  
18 corn suitability rating index. And is that, sir, a  
19 piece of data that is fairly heavily weighted when  
20 you're making your initial offers on a given tract?  
21 Or how do you use that?

22          A.    How do we use the CSR2 scores?

23          Q.    In order to inform what an offer might be  
24 on a given piece of property.

25          A.    We look at the CSR2 scores for an area. We

1 look at it for specific properties. Based on the soil  
2 types, it determines that score. And then we look at  
3 the county price point per CSR2 point to see what that  
4 per acre is going to be. If that was your question.  
5 I'm not sure if I answered your question.

6 Q. Well, I didn't know if you had a metric.  
7 Like, for instance, CSR2 score X and then a way to get  
8 to value is that score times a multiplier.

9 A. It's that score times the county price  
10 point. The county price points were kind of a hybrid  
11 determination based on Iowa land surveys to see, okay,  
12 here's what the price point is for the county. And  
13 it's typically an average.

14 But, if we look at specifics on a property,  
15 that may change a little bit. So we always make it a  
16 little bit higher.

17 So it's a multiple times the CSR2 score and  
18 then look at -- that's where you come up with your  
19 acreage value.

20 Q. You also discuss crop damages and how you  
21 determine those. And your testimony states here on  
22 page 6 of 6 that, quote, The typical offer for crop  
23 damages totals 240 percent of the value of crops,  
24 spanning a three-year period with assumed rotation of  
25 crops, end quote.

1                   That's your testimony; right?

2           A.    Yes.

3           Q.    But you're not paying 240 percent of the  
4 value. What you did there is you added up 100 percent  
5 in year one plus 80 percent in year two plus  
6 60 percent in year three which totals an aggregate of  
7 240 percent; right?

8           A.    That's right.

9           Q.    Okay. I just want to be clear. If I have  
10 a dollar in yield loss, you're not paying me  
11 240 percent or \$2.40; correct?

12           A.    The way we structured this is the 100, 80,  
13 60 tiers. Right? So we're paying 240 percent  
14 covering a three-year period. For crop losses inside  
15 that easement. Assuming a rotated crop model.

16                   MR. JORDE: I'm now, for everyone's  
17 purposes, going to switch gears to the Rorie Direct  
18 Exhibit 1. Which is the supplemental easement. I'm  
19 going to be lengthy on this. And so I just say that.  
20 I'm fine to keep going. I know we have a short day.  
21 I didn't know if there's a plan for lunch or what  
22 we're doing. I'm happy to keep rolling or stop. It's  
23 up to you.

24                   BOARD CHAIR HELLAND: Thank you.  
25 Appreciate that. Let's roll till 12 and then break

1 for an hour if that helps.

2 MR. JORDE: That is helpful.

3 And I might ask, please, if we could pull  
4 up -- this is page 2 of Summit Rorie Direct Exhibit 1.  
5 It's the start of the easement agreement.

6 Actually, I'll have you start on page 1 of  
7 that. Perfect. If you could just stop there for a  
8 second.

9 BY MR. JORDE:

10 Q. So here it says grantee is Summit Carbon  
11 Solutions, LLC. And that means that's the entity that  
12 is the other contracting party, along with the  
13 landowner, who would be known as grantor; correct?

14 A. Right. The grantee is Summit Carbon.

15 Q. And that's also the name of the applicant  
16 in these proceedings; correct?

17 A. That's my understanding. I'd have to look  
18 at the exact entity name that was used.

19 Q. For the easements obtained, are those held  
20 within Summit Carbon Solutions, LLC, for now or will  
21 those at some point be transferred out to a different  
22 Summit entity?

23 A. I have no idea.

24 Q. All right. Thank you.

25 MR. JORDE: If we can scroll down to the

1 next page, please. And if you wouldn't mind just  
2 blowing it up a little bit so we can follow along.

3 Perfect. Thank you.

4 BY MR. JORDE:

5 Q. All right. Now, Summit Carbon Solutions,  
6 LLC, we had some questions early on about who is on  
7 the Board. And I think I got a couple names. Or at  
8 least Mr. Rastetter.

9 Are you aware of any other folks who are on  
10 the Board?

11 A. No.

12 Q. Let me read off some names and tell me if  
13 any of these ring a bell. Justin Kirchhoff?

14 A. Does Justin Kirchhoff ring a bell?

15 Q. Do you know him?

16 A. Yes.

17 Q. Are you aware he's on the board of  
18 directors?

19 A. I have no idea.

20 Q. What about Jonathan Probst. Do you know  
21 Jonathan?

22 A. I know Jonathan.

23 Q. Are you aware if he's on the board?

24 A. No.

25 Q. And Harold Hamm I believe we established.

1                   Do you know a William Berry with  
2 Continental?

3           A.    I don't.

4           Q.    What about an Emil Henry with Tiger  
5 Infrastructure?

6           A.    I don't.

7           Q.    Mike Stone with TPG Rise?

8           A.    No.  Never met with our board.  I have no  
9 idea.  I'm sorry.

10          Q.    Well, you may have met them in a different  
11 capacity.

12                   Do you know a Jonathan Garfinkel with  
13 TPG Rise?

14          A.    That sounds familiar, but I don't know.

15          Q.    And then, I apologize for this, but Jeong  
16 Joon Yu with SK E & S.  Ever met that gentleman?  Or  
17 woman?

18          A.    No.

19          Q.    All right.  So then back to the easement.  
20 It's with Summit Carbon Solutions, LLC.

21                   Any idea why you're a Delaware limited  
22 liability company?

23          A.    I can't speak to that.  It's pretty common  
24 for LLCs to be Delaware limited liability companies.  
25 I mean, I don't know that I've seen very many in my

1 career that aren't. But I have no idea. I can't  
2 speak to Summit's reasoning.

3 MR. JORDE: If we can scroll down just a  
4 bit, we'll start at paragraph 1, Grant. Thank you  
5 very much.

6 BY MR. JORDE:

7 Q. So, here, the first sentence, "Landowner  
8 owns the real property described on the attached  
9 Exhibit A." And then that's known as "Landowner's  
10 Property."

11 Is it true, sir, that "Landowner's  
12 Property," as a capitalized term throughout the  
13 easement, references the entire parcel?

14 A. No. That's not the intent of that and  
15 that's not what that means. The "Landowner's  
16 Property" is just -- instead of saying tract or parcel  
17 or ground or farm or row crop, we want to contain a  
18 consistent definition.

19 I think another -- I'm not sure how  
20 "Landowner's Property" is defined. I think it's the  
21 same way in the Exhibit H easement. You're looking at  
22 a voluntary easement. So I don't know if you're  
23 asking about both or if you just simply want to talk  
24 about this document.

25 Q. Yeah, I just want to go through what you

1 attach to your testimony here. Which is what we're  
2 looking at.

3 But "Landowner's Property" is intended to  
4 mean the overall property on which there will be a --  
5 or could be a 50-foot easement somewhere.

6 A. That's right. That's correct.

7 Q. And then it goes on, obviously, to talk  
8 about grant, sell, convey. And then the "for use by  
9 company," and then the long list of people; agents,  
10 employees, successors, assigns and then all those  
11 acting "on behalf of it."

12 So, I mean, is there anyone that's left out  
13 of that? It seems like you've pretty much got it  
14 covered for anyone and everyone that can have access  
15 to or rights in the landowner property.

16 A. It's just a very typical way of defining a  
17 grantee.

18 Q. Then, in the fifth sentence {sic} there, it  
19 starts "Landowner's Property" and then "in the  
20 approximate locations."

21 And you would agree that on the  
22 attachments, the Attachment B that are attached  
23 typically to your offers, those are approximate  
24 locations that are depicted. Of the permanent and  
25 temporary easements.



1           A.    They'll need to be approximate, yes.

2           Q.    And they're approximate because that gives  
3 you the ability to move the easement around, and the  
4 pipe specifically, if needed.

5           A.    Right. It gives us some flexibility if we  
6 need to adjust things.

7           Q.    And then subparagraph (a), Pipeline  
8 Easement. Is that what's also known as the permanent  
9 right-of-way?

10          A.    Yes.

11          Q.    That would be the 50-foot width; correct?

12          A.    That's right.

13          Q.    And, within the 50-foot right-of-way, you  
14 reserve the right to move the pipe, whatever diameter,  
15 anywhere within the right-of-way.

16          A.    As far as the permanent easement? Yes, I  
17 think that's the case.

18          Q.    And then that goes on in line 2. And  
19 there's several lines there of "purposes." The  
20 document is in evidence, so I don't need to go through  
21 every single one, but it goes on for several lines.

22                   And then we get down into kind of the  
23 middle there, and it talks about relocating or  
24 changing the route or routes.

25                   So you, or your successors and assigns,

1 reserve the right to relocate or change the route or  
2 routes; correct?

3 A. Yeah, it's very typical language for an  
4 easement to have the ability to realign or relocate or  
5 change a route or routes of the pipeline.

6 Q. And then "abandoning in place." So you,  
7 Summit, or your successors, assigns, future owners,  
8 have the exclusive right to leave the pipe in the  
9 ground or abandon it; correct?

10 A. No. So Iowa rules are different. So an  
11 Iowa landowner -- if we abandon the pipeline or if  
12 it's determined to be not in use, and there's a long  
13 road we can go down there, but, if the pipeline is  
14 abandoned, then the landowner has discretion on their  
15 end.

16 The default would be that we leave it in  
17 place. And that's per Iowa rules. But, if the  
18 landowner elects for that pipeline be removed and the  
19 pipe facilities be removed, then we would need to  
20 comply with that.

21 So we have the ability to abandon in place  
22 and the default to abandon in place. Per Iowa law,  
23 the landowner can change that. We have the ability to  
24 abandon it at will. Which is what that is stating  
25 there.

1           Q.    And I do appreciate the clarification, but  
2 what I'm trying to get at is if you and I, I'm  
3 landowner, you're Mr. Rorie, we agree on an easement  
4 and it's certainly legal for it to be abandoned in  
5 place and I sign this, I have contracted away my  
6 future right to say, "Oh, wait a minute, Iowa law says  
7 I have a choice." Right? Because I've contracted it  
8 away here.

9           A.    No.

10          Q.    That's not your understanding?

11          A.    We can get deeper into the easement and it  
12 will talk about being subject to Iowa law. And that  
13 would control.

14          Q.    Okay. We will. I'm just going to walk  
15 through it. So we'll have that as a -- I'll make a  
16 note.

17                    So you think the text later is going to  
18 control this paragraph here on the abandonment.

19          A.    Right. And this gets very technical,  
20 Mr. Jorde, about abandonment. And what those verbs  
21 are doing is allowing us to operate and maintain the  
22 pipeline. If there's a section of pipe that we had to  
23 remove, replace, there are people out there that would  
24 say that it was abandoned, we just need the ability to  
25 do that. There's really nothing hidden there.

1 Q. Well, yeah, I get it. I mean, I can read  
2 it. What I'm getting at is because, again, you're  
3 here asking for eminent domain powers and then the  
4 ability to have these terms unwillingly put on Iowa  
5 landowners. So I need --

6 MR. LEONARD: Objection, Your Honor. I'm  
7 going to object to that characterization. This is a  
8 template voluntary easement. The Exhibit H easement  
9 is much different than this.

10 So I'll object to the characterization that  
11 anybody is trying to force this easement unwillingly  
12 upon a landowner.

13 MR. JORDE: I'll remove the word, if I said  
14 "force," to "unwillingly." So let me just rephrase.

15 BY MR. JORDE:

16 Q. What we're looking at here, though, if  
17 someone voluntarily agrees, obviously this is the  
18 language, but your point is later in the document you  
19 say Iowa law controls and you believe that would then  
20 automatically modify my agreement to allow you to  
21 abandon it in place.

22 Is that what you're saying?

23 MR. LEONARD: Objection. I'm going to  
24 object to the extent it calls for the witness to give  
25 a legal conclusion.

1                   MR. JORDE: Well, he's the one that started  
2 the Iowa law discussion and was educating me on Iowa  
3 law. So I think he's capable.

4                   BOARD CHAIR HELLAND: Mr. Rorie, you may  
5 answer the question.

6                   A. Could you ask it again, please?

7 BY MR. JORDE:

8                   Q. Yeah, I'll try. All I'm trying to clarify,  
9 sir, is you understand that any two people can  
10 contract to anything as long as it's legal; correct?  
11 I mean, do you have that basic understanding?

12                   A. Sure.

13                   Q. I mean, we can't contract to do illegal  
14 things. That would be a void contract.

15                               And what I'm getting at is, if I agree,  
16 yes, I will sign this, which I have given you, Summit,  
17 the right to abandon the pipeline in place. I'm just  
18 trying to confirm your point is, yes, but, later in  
19 the agreement, it says Iowa law controls, and so even  
20 though I have signed this, I can later say, "Hey, Iowa  
21 law gives me an out."

22                   A. Part of my answer is that if there would be  
23 a conflict there, that I would imagine Iowa law would  
24 control. But, to our counsel's point, I'm certainly  
25 not a lawyer, and we'd have to look at that.

1                   My point that I was making is that what you  
2   are reading, and, yes, you can read it, it says  
3   abandonment, it is not translated that way always in  
4   the field when it comes to maintenance. And so that's  
5   part of the reason -- and I've seen this in my career  
6   several times. Where you replace a piece of pipe and  
7   someone says, "Well, it's abandoned."

8                   Well, no, we have the ability to place it  
9   at will. That old pipe was abandoned, but we can  
10  replace it at will so long as it's the intention and  
11  anticipation of use.

12                  There's a lot more to that verb than what  
13  you're citing there.

14                 Q. Well, I'm just reading it. And I can agree  
15  it can be interpreted in many ways, which is kind of  
16  part of why I need your help to go through this, but  
17  let's move on and go down a couple lines.

18                  So those are all the lead-in to all the  
19  things you can do. And then it's to place "one  
20  pipeline not to exceed," and then depending what the  
21  inches are on the given property, "in nominal diameter  
22  for the transportation of carbon dioxide and its  
23  naturally occurring constituents and associated  
24  substances and any appurtenant facilities."

25                  Now, are you able to tell me what do you

1 believe is covered under the phrases, quote, and its  
2 naturally occurring constituents and associated  
3 substances, end quote?

4 A. I am not the right person to go through the  
5 whole CO2 envelope. I don't -- I couldn't list all of  
6 the constituents. It's a very generic, general form  
7 of describing a product that limits things to CO2 and  
8 CO2-related things. That would be the best answer I  
9 can give you. I'm not the chemist.

10 Q. And that's fine. Are you aware that some  
11 landowners are concerned of what 10, 20, 30, 40, 50  
12 years looks like in that, "Hey, they say CO2 now, but  
13 this language, what could I be dealing with in  
14 generations."

15 Are you familiar with those type of  
16 concerns?

17 A. We have had those questions periodically  
18 from folks, yeah.

19 Q. And, in terms of the individuals that are  
20 coming to testify, are you aware of someone that would  
21 be better to direct that question to of how expansive  
22 that language is?

23 A. Perhaps Mr. Schovanec. Perhaps Mr. Powell.  
24 I don't just deal with naturally occurring  
25 constituents of CO2 on a daily basis.

1 Q. I don't either, and that's why --

2 A. I understand, but I would be shooting from  
3 the hip if I tried to list. I know that there are  
4 very small fractions and that the vast majority of  
5 this is CO2 into the 98, 99 percent range, something  
6 there, but every either immeasurable or barely  
7 measurable constituent and what could occur there, I  
8 don't know.

9 Q. Are you familiar with the Tallgrass  
10 pipeline project generally?

11 A. Barely.

12 Q. Well, are you familiar that it was -- when  
13 they got their easements decades ago, it was for  
14 natural gas, and now they're trying to do a conversion  
15 to run CO2 through it?

16 A. I've heard it's a conversion. I don't know  
17 what from.

18 Q. And that's all I'm getting at. If your  
19 request here of the Board is to allow you to have the  
20 right to potentially in the future transport whatever  
21 that covers, I'm just trying to understand what that  
22 is. But you're not the guy for that.

23 A. I can answer the question in the sense of  
24 what we tell the landowners.

25 Q. That would be fine. Let's do that.



1           A.    We tell the landowners this is a CO2  
2 pipeline.  And that if we wanted to change the product  
3 to oil or saltwater or something that folks would be  
4 concerned about -- a lot of the concern we hear is,  
5 "We don't want you to turn it into a natural gas line  
6 because that can explode.  That's combustible."

7                   What we tell landowners is what we're  
8 seeking the permission from the Board for in all of  
9 our state permits is for a CO2 pipeline only.  That  
10 there is no way for us to change that without coming  
11 back and amending that easement or getting an entirely  
12 new easement from the owner of record at that time.

13                   So, aside from all the permitting  
14 retrofitting you'd have to do to change from a CO2  
15 line to a crude line to a gas line or whatever product  
16 folks are worried about, that easement only allows us  
17 to do that.  And that's the truth and that's what we  
18 tell landowners.

19           Q.    But you would agree the language --  
20 anything that Summit or its assignee's lawyers years  
21 from now could argue falls under associated  
22 substances, you would already have the easement to  
23 transport that.

24           A.    I don't agree there.  And, I mean, I don't  
25 know the rules in terms of whether -- PHMSA or some

1 other regulatory body defines that envelope. I'm just  
2 simply not the guy to comment on that.

3 Q. That's fine. Let's go to part (b),  
4 Temporary Easement. So we've got the permanent, the  
5 50-foot right-of-way we discussed. Now we're on the  
6 temporary.

7 And, as we read through that first line  
8 into the second, it terminates on company, Summit or  
9 whomever, "delivery to landowners of written notice of  
10 termination."

11 So it's not tied to the typical, like,  
12 24-month limitation. The temporary is as long as and  
13 until you, Summit, delivers notice to the landowner.

14 A. No, we're required to do it within a  
15 reasonable time of the completion of construction is  
16 what it says there.

17 Q. And completion of construction, no idea.  
18 Weather, labor, all sorts of things can affect that.

19 Right?

20 A. The completion of construction?

21 Q. Correct.

22 A. Yes. There's a lot of things that can  
23 affect that, yeah.

24 Q. So, again, the temporary easement, it's  
25 defined generally, but it's without limitations as to

1 time because we don't know what the completion of  
2 construction looks like.

3 A. Other than that time frame needs to be  
4 reasonable and close in proximity to the completion of  
5 construction.

6 Q. And the reasonability is something that's  
7 determined by Summit.

8 A. I would think it would be determined by  
9 both parties. That's probably more of a legal  
10 conclusion on "reasonable."

11 Q. Well, the landowner can't determine when  
12 it's reasonable to force you to send them a letter;  
13 right?

14 A. I think the landowner can say, "Are you  
15 done?" And we would have to provide reasons that were  
16 practical as to why we weren't. And, if we were, then  
17 we need to provide something in writing that the  
18 temporary workspace is terminated.

19 Q. All right. Then this, too, goes on, there  
20 a couple lines, it's free and unobstructed. And then  
21 it talks about "for the purposes of," and essentially  
22 I believe it utilizes all of the same terms from the  
23 pipeline easement, the 50-foot easement, and then it  
24 talks about "relocating and changing the route or  
25 routes of."

1                   So does that mean, sir, that within the  
2 temporary easement -- you could go outside of the  
3 50-foot into the temporary to change the route into  
4 the temporary? Or what does that language mean?

5                   A. On this form?

6                   Q. Yes, sir.

7                   A. It just gives flexibility and it couples  
8 the temporary easement to be adjacent to the permanent  
9 easement. And so, if the permanent easement had to  
10 fluctuate or we needed some flexibility there to move  
11 around a cultural feature or whatever the reason would  
12 be, that the temporary workspace would match the  
13 parallel fashion of that easement. So that's why you  
14 see the repetition of all those verbs.

15                  Q. And then let's go to (c), the Access  
16 Easement.

17                   Now, we may have, in another state, talked  
18 about this before. Access easement -- the way it's  
19 written here -- I'll give my take. You tell me if you  
20 agree or disagree.

21                   The way that it's worded, I believe,  
22 appears to give unlimited and free and unobstructed  
23 access across the entire landowner property to get to  
24 the permanent easement.

25                   What are your thoughts?

1           A.     Again, pretty generic comment in a lot of  
2 long haul CapEx projects to have access to the  
3 right-of-way. I suppose I could talk about intent  
4 there is just to be able to get to the pipeline to  
5 operate and maintain it. We obviously have no  
6 interest in disturbing ground we don't need to.

7                     It does talk about things being adjacent to  
8 the right-of-way and in between that and public and  
9 private roads. So that does not necessarily mean that  
10 it's the whole property. If you were to look at a  
11 property and public roads were on the south end and  
12 not on the north end, then that's just the ability to  
13 pull off the road and get to the right-of-way if we  
14 need to.

15                    I can tell you in general what this is for  
16 is for emergency situations. And, if you look at the  
17 Exhibit H rights that we're seeking, that's exactly  
18 what it says.

19                    But it's very common for pipeline  
20 companies, certainly those that I've worked for, to  
21 ask for an access easement. I don't see it as blanket  
22 access to the entirety property. I think it's  
23 contingent upon the location of public rights-of-way.

24                    So it's not the entire property, but also  
25 it's almost always tied to emergency situations.

1           Q.    And I appreciate the intent and how  
2 typically things might happen, but there's no  
3 disclaimer or there's no requirement related to the  
4 public right-of-way. Those words aren't even in this  
5 paragraph; correct?

6           A.    It says in the third line "adjacent to the  
7 easement and lying between public or private roads."

8           Q.    Well, let me just read the sentence before  
9 that. "A free and unobstructed non-exclusive easement  
10 in, to, through, on, over, under, and across the  
11 landowner's property and over the property of  
12 landowner adjacent to the easement."

13                    So wouldn't you agree you can go anywhere  
14 and everywhere you want across the entire property to  
15 get to the easement?

16           A.    I don't see it that way. And we certainly  
17 wouldn't treat it that way. But I don't see it that  
18 way.

19           Q.    And then it goes on to say in the third  
20 line from the bottom on the right-hand side there "for  
21 all purposes necessary and at all times convenient to  
22 exercise the rights granted to it."

23                    And that's based on your or the future  
24 owner of this project's decision as to what's  
25 necessary and convenient for them; right?

1           A.     Convenient for them to exercise the rights  
2 granted. Not convenient for them just for sport. It  
3 would have to be tied to the rights granted. Just to  
4 clarify there.

5           Q.     Sure. And the rights granted are access  
6 anywhere, everywhere, at any time, convenient; right?

7           A.     For the purposes -- the rights granted to  
8 operate and maintain the pipeline, relocate, abandon,  
9 some of the things we went over.

10          Q.     Sure. No, I get that. I mean, eventually  
11 you're going to do something. But getting there -- my  
12 point is the way it's worded is you can travel  
13 anywhere on the property that you see fit.

14          A.     I see it as in between public roads and the  
15 right-of-way. And also I see it as a voluntary  
16 easement template versus the rights being sought in  
17 Exhibit H.

18          Q.     So that brings up a good point. Did you  
19 give worse terms to the people that signed  
20 voluntarily? Because you keep talking about the  
21 differences between Exhibit H terms and the voluntary  
22 terms.

23          A.     No, I wouldn't say that they're worse  
24 terms. It's just there's a different dynamic there in  
25 terms of what we worked out with landowners. A vast

1 majority -- I could not give you a percentage, but I'm  
2 under oath. A vast majority of folks were comfortable  
3 with that language, including your client that's  
4 executed an easement with this exact language.

5 Q. Is that the one and only one?

6 A. It's the one easement that we've gotten  
7 through discussions with you. But that's the exact  
8 language that was there, so I have to assume that  
9 there was some comfortability {sic} there.

10 Q. Well, would you agree that people's life  
11 situations are often different and there's vastly  
12 different motivations of why and when and timing on  
13 when someone might sign an easement?

14 A. There's a variety of those situations, but  
15 I don't think there's any variety in someone's  
16 reliance on their counsel to give them guidance on  
17 language.

18 Q. Assuming that occurred.

19 Right?

20 A. I have to assume, if you were their  
21 attorney, it occurred. But I wasn't there. But they  
22 certainly executed that under your guidance. I'm  
23 sorry.

24 Q. But --

25 A. That's just one example. The broader point



1 is that so many landowners have agreed to this because  
2 it looks very similar to other types of easements that  
3 they've agreed to as they've held their ground.

4 And, obviously, the company has no  
5 intention of running roughshod all over property for  
6 sport. We have to pay for those damages. The damages  
7 in relationship I cited earlier to just to be out  
8 there for no reason. We're not going to be out there.  
9 Plus it's an absolute waste of money and time for us.

10 So we'd like the ability to get to our  
11 right-of-way. In case the property changes, we need  
12 to be able to get to the right-of-way. But, beyond  
13 that, that's really the entire motive there. It's not  
14 to have blanket access to give to another company or  
15 however you phrased it.

16 Q. And the client that you're referencing, I'm  
17 not going to say their name of course, but that would  
18 be someone from South Dakota. Are you aware that  
19 their family was experiencing giant medical bills and  
20 felt pressure to accept this easement offer?

21 A. I'm aware that you shared that with me. I  
22 didn't visit with them.

23 Q. So let's go on to Location. Number 2.  
24 Exhibit B, again, shows the approximate locations.

25 And then the second sentence there,

1 "Company shall have the right to select the exact  
2 location of the easements." And "the easements"  
3 refers back to all three. The pipeline permanent, the  
4 temporary, and the access.

5 So, again, you have that right to select  
6 the locations of all of those easements. Do you agree  
7 with that?

8 A. Yeah, we are showing an approximate  
9 location of the easement footprint. We are asking for  
10 flexibility, via this document, to alter that if we  
11 need to.

12 Q. And then we'll drop down to Number 3, the  
13 Damages paragraph. You reference a damage calculation  
14 sheet. Now, you didn't attach an exemplar. But is it  
15 true, sir, if someone accepts the damages on the  
16 damages calculation sheet, which includes the  
17 three-year payment for future crop loss, that then  
18 they are prohibited from coming back if the losses in  
19 those first three years are actually higher?

20 A. I don't really see it that way. I mean,  
21 that's the way it reads is that -- we're trying to  
22 offer in excess of what anticipated damages would be.  
23 And, again, very common to pay above and beyond on  
24 damages on the front end. It avoids those scenarios  
25 you just described. We feel 240 percent is ample.

1                   But, if a landowner came back to us and  
2                   said that they had a problem in year three to where  
3                   they had yield loss -- they couldn't get more than a  
4                   20 percent yield, which is -- I've never experienced  
5                   that. But, in the event that that happened, we would  
6                   work with them and take care of that.

7                   It's just the way that this is written is  
8                   that there has to be a tie to what was paid, there has  
9                   to be a tie to the paper and what was exchanged, and  
10                  the damage calculation sheet shows a three-year  
11                  period.

12                  I'm comfortable -- in my experience in  
13                  having been a part of installing pipelines in Iowa, I  
14                  don't expect anybody is going to call me in year three  
15                  about 20 percent.

16                  Q. Let's get through one more paragraph here  
17                  before lunch. The Restoration paragraph. Now, you've  
18                  heard I think it was Mr. Schovanec, I believe, and  
19                  others say, "Well, crop loss, compaction, we'll pay  
20                  for that, we'll pay for that."

21                  You've heard that testimony, haven't you?

22                  A. Yes.

23                  Q. So let's look at paragraph 4. And the main  
24                  things in paragraph 4, it talks about in the fourth  
25                  line restoring ground. And then we talk about

1 restoring fences kind of towards the middle. And then  
2 further toward the bottom it's dealing with drain tile  
3 or irrigation systems.

4 And would you agree, sir, that your  
5 commitment to compensate landowner for damage or  
6 problems in any of those situations is dependent upon  
7 the landowner proving to you that you or your  
8 contractors were the actual proximate cause of the  
9 damage?

10 A. Well, we certainly need to see the reason  
11 why it happened and what the claim is. It's just part  
12 of the natural process of that conversation.

13 So, yes, if the landowner said, "I've got a  
14 deficiency." Well, let's look at that. Where is the  
15 deficiency? Is it even on our right-of-way? What is  
16 this tied to? Is it tied to a piece of tile,  
17 et cetera.

18 So, yes, I would need them to show me why  
19 this is tied to us.

20 Q. Sure. But, ultimately, you're, or whoever  
21 owns this, is the arbitrator and you can just say,  
22 "Thank you, Landowner, for all this evidence, we  
23 decline," and then their remedy is to hire a lawyer or  
24 sue or just give up.

25 A. I think there's other remedies there

1     afforded under the Iowa law. I think there's some  
2     compensation committee stuff that they can go through  
3     that's independent of eminent domain. That they could  
4     go that way.

5             Again, I've never seen it go that far. So,  
6     typically, if -- it's very obvious -- if a pipeline  
7     had the unfortunate, rare situation of having caused  
8     damage that wasn't anticipated, it's very obvious.  
9     It's not really an eye of the beholder thing.

10            But we also can't be in a position via an  
11     easement, to your point it's a contract, right, where  
12     someone can just call and extract money from us with  
13     no proof as to what that money was tied to and what  
14     we're paying for.

15            So I think that's why it's written that  
16     way.

17            Q. To your point that you've never seen  
18     something like that before, you would agree that it's  
19     intelligent when we're talking about a perpetual,  
20     forever, to the end of earth document that we think of  
21     not only what we've seen but situations that may have  
22     occur; right?

23            A. It's intelligent to think that way. Again,  
24     back to your question, this is a very common  
25     conversation where a landowner would say, "Look, I

1 think you guys have messed something up here." We  
2 would go look at it. If we did, we would keep them  
3 whole.

4 MR. JORDE: Your Honor, this would be a  
5 good time to break.

6 BOARD CHAIR HELLAND: Thank you for that.  
7 We will break --

8 MR. DUBLINSKE: Your Honor?

9 BOARD CHAIR HELLAND: Sorry. Go ahead.

10 MR. DUBLINSKE: I think it's important to  
11 clarify the record.

12 Mr. Jorde interjected early in his  
13 conversation with Mr. Rorie his belief apparently, I'd  
14 like to hope it was his belief, that North Dakota  
15 denied the application for reconsideration this  
16 morning.

17 My understanding is that is just simply not  
18 correct. They had a work session. No vote was taken.  
19 I won't characterize it farther than that, but I will  
20 say I think Mr. Jorde's characterization was simply  
21 incorrect.

22 MR. JORDE: Yeah, I asked him a question.  
23 I didn't state it was fact. I can tell you my email  
24 is blowing up. But, in any event, whether it did or  
25 didn't, he didn't know, so it's really a moot point.

1                   MR. DUBLINSKE: I think Mr. Jorde should  
2 certainly be required to not engage in things that are  
3 not factual in his questioning.

4                   But, be that as it may, North Dakota didn't  
5 make any decision, and I think that's important to  
6 clarify for the Board.

7                   BOARD CHAIR HELLAND: Thank you.

8                   We will be back at 1 p.m. on the record.

9                   (Recess taken at 12:00 p.m.)

10                  (Hearing resumed at 1:00 p.m.)

11                  BOARD CHAIR HELLAND: It's 1:00. We'll go  
12 back on the record.

13                  Mr. Jorde.

14                  MR. JORDE: Yes. Thank you. And I do just  
15 want to make a clarification based on where we left  
16 off.

17                  What had occurred is that the South Dakota  
18 PUC staff filed a motion to deny Summit's application.  
19 And, in North Dakota, the PSC had a work group  
20 meeting.

21                  So Mr. Dublinske is correct. I did not  
22 intend to cause Mr. Powell a heart attack. That  
23 wasn't my intent.

24                  So I just wanted to clear that up for the  
25 record.

1                   BOARD CHAIR HELLAND: Appreciate you making  
2 the clarification.

3                   MR. JORDE: Yes.

4 BY MR. JORDE:

5                   Q. All right, Mr. Rorie, I think --

6                   MR. JORDE: And if I could trouble the  
7 staff to pull that easement back up, please. Rorie  
8 Direct Exhibit 1.

9 BY MR. JORDE:

10                  Q. I think where we left off, sir, was on  
11 landowner uses. That's paragraph 5. And is it  
12 correct that the landowner can use the property for  
13 all purposes not inconsistent with the purposes set  
14 forth within the easement agreement?

15                  A. Not inconsistent, yes.

16                  Q. Okay. And then you go through, in the  
17 easement, a few sentences of explanation there, and  
18 then it goes down to -- it says "and provided that  
19 such use does not, in the company's sole discretion,  
20 cause a safety hazard or unreasonably interfere with  
21 the company's rights under this agreement."

22                         Would you agree that's a way of saying you,  
23 company, or whoever owns the easements, can solely  
24 determine if a landowner's use interferes?

25                  A. It would be our discretion whether or not



1 they've unreasonably interfered.

2 Q. And then the last sentence -- and, if this  
3 isn't what you were referencing, tell me, but do you  
4 see the last sentence where it talks about "The use of  
5 the pipeline easement by landowner shall be regulated  
6 by all appropriate ordinances, regulations,  
7 resolutions, or laws of the governmental entity with  
8 authority over the pipeline easement"? Is that what  
9 you were talking about earlier when you said that Iowa  
10 law would control?

11 A. Well, this is talking about use by the  
12 landowner. What I was talking about was use by the  
13 company. So I think there's a mention of Iowa law  
14 later in the Miscellaneous section of the easement,  
15 but I would have to get there to look at it.

16 Q. So that wasn't the provision that you were  
17 referencing?

18 A. I believe we were talking about abandonment  
19 in place or at will by the company, not by the  
20 landowner.

21 Q. Okay. Very good. So then if we go down to  
22 (b) --

23 MR. JORDE: Which is on the top of the next  
24 page, please.

25

1 BY MR. JORDE:

2 Q. -- it talks about that landowner may not  
3 use any part of the easement that may destroy or  
4 damage or injure or interfere with company's rights.

5 Do you provide a list of those things or  
6 essentially that general restriction?

7 A. "A list of those things." Can you help me  
8 there? A list of things the landowner could do or --

9 Q. Or can't do. Like, essentially, "Just to  
10 let you know, Farmer So-and-So, you're specifically  
11 prohibited from doing" certain kinds of things? Or is  
12 it just a general prohibition?

13 A. There are some things listed there in that  
14 paragraph. Impounding water, drilling a well,  
15 constructing permanent structures, et cetera. So  
16 there's some things listed there. But that's not all.

17 Certainly the idea there is that we're  
18 asking for the landowner -- or paying for the rights  
19 to not have that easement obstructed or interfered  
20 with unreasonably.

21 Q. And, earlier in our discussion, you had  
22 mentioned that the way you look at it is you're  
23 basically buying the language and the relationship, I  
24 believe, is what you said.

25 A. That's a big part of it, yeah.

1           Q.    And so, therefore, is it your testimony  
2   that in some easements there might be language that  
3   you believe is more favorable to Summit and therefore  
4   you might pay more or if the landowner negotiates  
5   maybe more restrictions for them, there's a trade-off  
6   of paying less? Or help me with the "buying the  
7   language." What were you getting at?

8           A.    Well, "buying the language," I wasn't  
9   really talking about devaluing as a result of  
10  restrictions in favor of the landowner -- or I guess  
11  "favor" wouldn't really be the right word. What I was  
12  talking about is that's our commitment.

13                I mean, I can say things, you can say  
14  things, but if you go away -- it's their land and it's  
15  their easement. And that language is binding. It's  
16  typically public, but it's certainly binding. And  
17  those are the commitments that both parties are making  
18  in that contract.

19                So, when I say "buying the language," we  
20  don't typically, certainly on the right-of-way side,  
21  agree to anything that doesn't make its way into this  
22  document for that reason.

23                So, if there are special circumstances that  
24  we agree to in a negotiation with the landowner, we're  
25  going to document those so that our feet can be held

1 to the fire on those and so that anyone in the future  
2 that owns that property can be reminded or have  
3 something to reference as it relates to the  
4 commitments that were made. That's what I mean by  
5 "buying the language."

6 Q. And then subparagraph (b) there, it  
7 continues on and it has a list of some specific things  
8 that aren't allowed without written permission of  
9 company. Or Summit.

10 And, obviously, you don't allow temporary  
11 or permanent structures. Do you ever make exceptions  
12 or is that pretty much something that you don't want  
13 to bend on?

14 A. Sometimes there are exceptions to temporary  
15 structures. Not permanent.

16 Q. Would that include, for instance if it was  
17 a commercial property, you cannot pave over it or  
18 could there be, like, a parking lot over the easement  
19 or preferably not?

20 A. Preferably not, but it's case-by-case  
21 depending on what situation we're dealing with there.

22 Q. And then subparagraph 2 talks about  
23 prohibiting "the production or development of  
24 minerals."

25 Does that mean, presuming -- and there may

1 not be, but presuming there's some minerals or some  
2 type of value subsurface, the landowner can't access  
3 the easement to get to those?

4 A. Well, what it says is they can't -- they're  
5 prohibited from using the equipment utilized for the  
6 production of those minerals within the boundaries of  
7 the easement.

8 They can drill and get to those minerals,  
9 or however they need to get to them, but what we  
10 prefer or ask for in this easement is for no one to  
11 place a rig or a well or any of the operating  
12 equipment in order to extract those minerals within  
13 that narrow 50-foot strip and the workspace while it's  
14 in effect.

15 Q. And the prohibition on that equipment is  
16 because why? The weight? The size? The activity?

17 A. Well, they're drilling into the ground and  
18 there's a pipeline down there. So we don't want them  
19 to hit it.

20 Q. Okay. Very good. And do you have any  
21 restrictions as to quote-unquote normal farming  
22 activities that would be prohibited on or across the  
23 easement?

24 A. Normal farming activities is kind of broad,  
25 but we don't have any intent in restricting folks from

1 being able to farm their ground.

2 Q. Are you aware of the load analysis, if any  
3 has been done, as to the weight or the rate of type of  
4 equipment that you authorize on top of the easement?

5 A. I'm not aware of a load analysis as far as  
6 axle weights and things like that. And the reason I'm  
7 not is because these folks are operating heavy farm  
8 equipment on top of tile that is made of something  
9 very different and it's typically much shallower than  
10 this pipeline is going to be. They go back and forth  
11 on that tile over and over and over again.

12 There are also many other pipelines in the  
13 state of Iowa that have farm implements, farm  
14 equipment, driving over them daily.

15 So I don't spend a lot of time looking at  
16 the load analysis given that we're typically going to  
17 be deeper than those older pipelines. We're steel  
18 instead of material that's used for tile. And, if  
19 they're not crushing their tiles, they're not likely  
20 going to crush our pipeline.

21 Q. And, in terms of tile, would you agree that  
22 tile isn't transporting a hazardous material?

23 A. Not that I'm aware of.

24 Q. And, if a farmer were to drive across an  
25 area where there's tile and crush their own tile,

1 they're probably not going to sue themselves or face  
2 any personal liability for that, are they?

3 A. I don't know what they would do as far as  
4 to themselves, but it would certainly affect the way  
5 their ground drains. And, if they were crushing it on  
6 a regular basis due to the weight of their equipment,  
7 that would be a rampant problem across the state.  
8 There's a lot of tile here.

9 Q. Is it true in Iowa you are committing to go  
10 four feet below the surface unless there's some type  
11 of extraordinary circumstances?

12 A. At least four feet. I think Mr. Powell  
13 touched on rock. We're not aware of any spots that I  
14 know of that we would need to go shallower. But four  
15 feet is a safe commitment there.

16 MR. JORDE: Can we pull up, please, Exhibit  
17 Landowner 558.

18 BY MR. JORDE:

19 Q. And, while they're doing that, we looked at  
20 this before in North Dakota, but do you have any  
21 concerns about as equipment gets larger and heavier,  
22 it seems like every year it's getting bigger and  
23 bigger, that instances like this where you can see the  
24 rear wheels there sunken down and if a pipeline is  
25 only four inches, the kind of potential issues that

1 might cause? Do you have those concerns?

2 A. If a pipeline is only four inches --

3 Q. Four foot. Four foot. Pardon me.

4 A. I don't have any real concerns about that.

5 In my career, I've managed the land side of thousands

6 of miles of pipe when it comes to operational

7 maintenance, lifetime of a pipeline-type scenarios

8 with all types of farm equipment.

9 It's very rare that that would happen, but,

10 in the event that it does happen, I'm not concerned

11 that that would crush the pipe or sever the pipe.

12 I've never seen that happen. Put it that

13 way.

14 Q. Right. And, again, we're talking about

15 forever easements and things that might happen. Do

16 you think -- I asked you about your concern, but do

17 you think it would be reasonable for a landowner to be

18 concerned about whether or not they can operate their

19 heavy and large equipment back and forth across where

20 a hazardous pipeline would be located?

21 A. I don't really discount landowners'

22 concerns. So, I mean, I have to say, yes, it would be

23 reasonable to be concerned about whatever they're

24 concerned about.

25 I think that we arm them with information



1 about compaction, what our requirements are via this  
2 Board. As far as reclamation and soil compaction or  
3 de-compaction. The depth of the pipeline is another  
4 big concession on our part juxtaposed with what the  
5 DOT requirements are for a pipeline to be depth-wise.

6 So those conversations can happen pretty  
7 easily. Again, what I fall back on is there are quite  
8 a few pipelines -- I can't tell you the number, but  
9 there is quite a few pipelines in Iowa that are much  
10 shallower than what we're planning to be. And this  
11 type of equipment drives over them all the time.

12 I'm fairly confident that whether it's a  
13 combine or this tractor or something else, that if it  
14 sunk down in the ground, it's very unlikely that it  
15 would break the pipeline. Create a guillotine break  
16 or anything like that.

17 I don't know -- I see the width or the  
18 diameter of the wheel there. I don't know how deep  
19 that tire is, but the pipeline would be below that. I  
20 can tell you that.

21 Q. I was looking at the ones in the back  
22 there. They're obviously, you know, fairly sunken in  
23 there.

24 But, in terms of the liability features in  
25 the indemnification provisions, would you agree that

1 if a farmer or their tenant was utilizing farm  
2 equipment like this and damaged the pipeline to some  
3 degree, would you agree that you, Summit, would have  
4 the right to take legal action against them?

5 A. If they sunk their tractor on top of the  
6 pipeline because we didn't de-compact the soil  
7 correctly or we did something wrong, or if they sunk  
8 it, period, and it wasn't a willful act to try to  
9 damage the pipeline, it wasn't something that would  
10 qualify as grossly negligent, then we have no reason  
11 to go after the landowner or however you phrased it.  
12 I don't recall.

13 No, that's typical practice. They're  
14 driving over it with their equipment, they're farming  
15 the ground. I see that as not grossly negligent and  
16 not a voluntary attack on the pipeline.

17 Q. And of course that may be your  
18 interpretation, but would you agree unless that's  
19 spelled out, other future lawyers for Summit or other  
20 persons might not share your interpretation and could  
21 take legal action against a landowner?

22 A. I don't agree. I think that would be  
23 really tough for them to do considering -- at least  
24 the pipelines I've worked for, again thousands of  
25 miles of this all over farm ground, I've never seen

1 that action taken anywhere. That would be a tough  
2 precedent.

3 Q. Are you aware of the rights of insurance  
4 companies, for instance, whoever would insure Summit,  
5 that if your insurance company pays out a claim for  
6 damage, that your insurance company could actually go  
7 back against a landowner and try to collect from the  
8 landowner?

9 A. I'm not aware of that at all.

10 Q. Have you ever heard of those type of cases?  
11 Like subrogation interests? Are you familiar with  
12 anything like that?

13 A. No.

14 MR. JORDE: Can we pull up LO 4, please.

15 Oh. I should offer 558 before we forget.

16 BOARD CHAIR HELLAND: Are there objections?

17 MR. LEONARD: Yes. We'll object to  
18 foundation. I don't believe there was any foundation  
19 laid for what that picture is or who took it or where  
20 it was taken. Lack of foundation.

21 BOARD CHAIR HELLAND: We will admit it as  
22 Jorde Landowner Hearing Exhibit 558 and give it the  
23 weight due.

24 MR. JORDE: And if we could move on to  
25 Landowner 4, please.

1 BY MR. JORDE:

2 Q. While we're waiting for that, sir, the next  
3 paragraph we have here is Indemnification.

4 In response to a previous answer regarding  
5 this type of scenario with the submerged tractor tire  
6 and wheel, you used the phrase "willful," I don't know  
7 if you said intentional, but essentially a bad act and  
8 then gross negligence.

9 Do you remember that discussion?

10 A. Yes.

11 Q. But in the indemnification provision that  
12 you have in the document we've been walking through,  
13 the proposed -- or the standard easement, you're aware  
14 that gross negligence or willful or intentional  
15 misconduct, none of those disclaimers appear in that  
16 paragraph; right?

17 A. If you could pull it up for me, I could try  
18 to help you there. And I don't know if we're looking  
19 at the Exhibit C which controls the document. There  
20 are a lot of our documents that have indemnification  
21 language that clarifies and uses the exact words I  
22 just mentioned. I don't know if this particular  
23 exhibit has that. We'd have to look at Exhibit C to  
24 the enhancement of the indemnity language.

25 MR. JORDE: So, just for staff purposes, we

1 can look at paragraph 6. And then, in the meantime,  
2 if you can still try to locate LO 4 and I'll go back  
3 to that.

4 BY MR. JORDE:

5 Q. Paragraph 6 -- and, again, I appreciate you  
6 wanting to go to the other exhibits, but this was the  
7 one attached to your testimony here.

8 And so, again, paragraph 6,  
9 Indemnification, of the exhibit that Summit attached  
10 to your testimony, there's no mention of gross  
11 negligence or willful conduct or intentional bad acts;  
12 right?

13 A. Well, I'm not our attorney, so I don't know  
14 if the noun "acts" there in Iowa encompasses only  
15 negligent or grossly negligent acts. I just couldn't  
16 tell you. I can tell what you the intent is, but I  
17 can't tell you whether that covers it. I'm just  
18 simply not our lawyer.

19 But what I'm talking about is not a  
20 different exhibit. I don't know if this exhibit  
21 includes what I'm referring to as an addendum to the  
22 easement called Exhibit C. Which has controlling  
23 language. I just don't know if it's in there. If you  
24 can scroll back, you might be able to show me.

25 But some of that indemnity language is

1 enhanced and certainly something that we included in  
2 our easements as the project evolved to temper this  
3 concern.

4 Q. Sure. And, again, this is your exhibit  
5 that you have signed an affidavit on and I'm walking  
6 through your attachment to your exhibit.

7 And so sticking on, again, paragraph 6,  
8 Indemnification, I don't think you answered the  
9 question, but it's pretty obvious from the text that  
10 nowhere do we see gross negligence, intentional act,  
11 or willful misconduct. We don't see any of those  
12 qualifiers in that paragraph.

13 A. I don't see those words. I just don't know  
14 if "acts" covers it. Again, I'm not an attorney on  
15 this one.

16 Q. All right. Let's start at the beginning of  
17 that paragraph, Indemnification. It says that  
18 "Company agrees to indemnify and hold landowner  
19 harmless from and against any claim for liability or  
20 loss from personal injury or property damage resulting  
21 from or arising out of the use of the easement by  
22 company." And then "servants, agents, and invitees."

23 Did I read that correctly?

24 A. Yes.

25 Q. So this is limited to acts that the

1 company, or those working on your behalf, might take  
2 within the easements.

3 A. Within the easements, yes, that's the way I  
4 read it, but, again, I don't know if it's a legal  
5 conclusion -- you're venturing into one of the few  
6 things that right-of-way does not talk much about in  
7 depth in terms of legal semantics. So you've done  
8 good at that.

9 The insurance piece, the waivers of  
10 subrogation and things like that, we immediately get  
11 our attorneys involved to make sure we say things  
12 correctly there. And indemnification.

13 So getting into the nuances of all the  
14 various types of indemnity really isn't my wheelhouse,  
15 but the way you just read that, it sounds like those  
16 are the words that are on the page.

17 Q. And I appreciate that disclaimer, but,  
18 again, sir, for whatever reason, your counsel, your  
19 superiors, have chosen you to be the person to talk  
20 about this. So it's important that we walk through it  
21 the best we can.

22 As that paragraph goes on, on the  
23 right-hand side in line 3, it says "excepting,  
24 however, such claims, liability, or damages that may  
25 be due or caused by the acts of landowner or its

1 servants, agents, or invitees."

2 Did I read that correctly?

3 A. You did read that correctly, yes.

4 Q. So this language, would you agree, is not  
5 covering, not indemnifying, not holding harmless for  
6 damages that may be due or caused by the acts of  
7 landowner. Or servants, agents, or invitees.

8 A. It depends on the definition of acts. I  
9 don't mean to be redundant here, but I don't know what  
10 that would encompass.

11 I also need to point back to this is our  
12 base generic easement. Our base generic easement also  
13 includes exhibits such as the legal description, the  
14 sketch, and what I keep referring to as Exhibit C.  
15 Exhibit C has additional language that typically cites  
16 indemnity.

17 If that was not part of the exhibit, then  
18 that's a mistake on our part. Because Exhibit C would  
19 be part of every easement we put in front of a  
20 landowner.

21 Q. Well, again, I'll submit to you that it's  
22 not part of the Summit exhibit. And so I'm just  
23 walking through the evidence that you've brought here.

24 And you've heard, no doubt, worries and  
25 concerns, you might have touched on it in your



1 testimony, about landowners who have attempted to see  
2 if they could obtain coverage to get around pollution  
3 exclusions and to protect themselves in case there are  
4 claims in the future of damages or loss caused by  
5 carbon dioxide.

6 Are you generally familiar with those  
7 concerns?

8 A. I'm familiar with the concerns or I've  
9 heard some accounts of landowners being concerned  
10 about that. I've not, in my experience, ever seen a  
11 landowner that couldn't get insurance on their farm as  
12 a result of the presence of a pipeline.

13 We also have insurance. We've talked about  
14 that, I believe, some in these hearings. But we have  
15 insurance to cover those problems and those claims.  
16 Whether a landowner can obtain their own insurance is  
17 not really something I'm familiar with.

18 All I can really say there is that there  
19 are a number of landowners, hundreds in Iowa, where  
20 we're not the only pipeline on their property. And  
21 there have been recent pipelines placed on their  
22 property.

23 I've never heard of a landowner telling me  
24 or saying or currently not being covered from an  
25 insurance standpoint on their property.

1                   It's also sort of evidence that a lot of  
2 those landowners have executed easements with us. So  
3 they certainly didn't have any concern about insurance  
4 or being excluded insurance-wise as a result of a  
5 pipeline that was already there or our pipeline being  
6 placed there.

7                   I have not looked into whether or not  
8 someone was able to get covered. That's really,  
9 again, not my area of expertise. But I've never heard  
10 of a landowner not being able to get insured. That's  
11 not something I've seen.

12                  Q. So I take it from that answer that it's  
13 your conclusion that if someone signs an easement,  
14 that they, therefore, must not have concerns about  
15 much of anything.

16                  A. That's not accurate.

17                  Q. Okay. Well, you just said that if they've  
18 signed the easement, they must not have been concerned  
19 about the insurance piece or lack thereof. That's  
20 what you just said.

21                  A. If a landowner couldn't get insured because  
22 of our easement, then they would tell us that. And  
23 it's very unlikely that they would sign an easement  
24 and sign themselves into a situation where they  
25 wouldn't be able to be insured. That's unlikely.

1 It's a valid concern for them to bring up and look  
2 into and explore for themselves.

3 But my point is that this idea that's been  
4 disseminated widely -- and we've been able to quell it  
5 quite a bit in certain states. Because insurance  
6 bureaus, et cetera, have stated their own opinions.

7 But this idea that Summit Carbon Solutions  
8 is going to put a pipeline in and you won't be able to  
9 get insurance on your farm is a false idea. That's  
10 not real. And it's also been a hindrance in our  
11 conversations with landowners. So we have talked  
12 about that some with landowners that have brought it  
13 up.

14 But, to go back to your question, do I  
15 believe that someone signs an easement and therefore  
16 has no concerns about anything? No. What I do  
17 believe is if they execute an easement with us, then  
18 they've taken the time to talk to us and give us an  
19 opportunity to present facts and address those  
20 concerns and temper them. So they can understand the  
21 full picture.

22 So, if we don't have a dialogue with them,  
23 there's no conversation happening, then those concerns  
24 tend to marinate and grow.

25 So, when it comes to insurance, I've just

1 not heard of this in Iowa or Pennsylvania or southern  
2 Louisiana where a landowner or a farmer could not get  
3 insurance on their property because of the presence of  
4 a pipeline. So I don't believe that to be real.

5 Q. Let's break that down. So the phrase you  
6 used there is you don't believe that a landowner could  
7 "get insurance." And I want to ask you this: Would  
8 you agree that the ability to call up State Farm or  
9 whomever and get a policy and pay them money has  
10 nothing to do with whether or not, if there's a claim,  
11 State Farm will pay out for a specific loss? Those  
12 are two different things.

13 A. I would agree that it depends on coverage.  
14 Right? What the customer selects. I don't really  
15 dive into landowner insurance declaration pages to  
16 know what all is covered there.

17 I've just not had a landowner say, "I can't  
18 get insurance because I signed an easement with you"  
19 is my point.

20 Q. Sure. And, again, "get insurance."  
21 Insurance companies will take your money. I'm sure  
22 you pay premiums, we all pay premiums. The question  
23 is, when you come with a claim, will you be covered.  
24 That's the concern. Not can I give money away to an  
25 insurance company. But if there's a claim, do they go

1 to the 60 pages of fine print exceptions or are they  
2 going to cover me.

3 You understand that's the concern.

4 A. Well, I suppose -- what I'm saying -- "get  
5 insurance" would be synonymous with being made whole.  
6 So that would be -- that would constitute the actual  
7 payment of a claim. That's what I mean by that.

8 Q. And have you had experience with what's  
9 known in the industry as the pollution exclusion and  
10 exceptions in insurance policies to not pay out claims  
11 if the damage, or the proximate cause of the damage,  
12 is a pollutant; i.e., carbon dioxide or a hazardous  
13 material?

14 A. No. I've seen some riders that showed  
15 things about pollution, but -- no, typically I don't.

16 MR. JORDE: I'm going to ask staff to try  
17 to pull up LO 12 if you can, please. If we could  
18 minimize that a little bit.

19 BY MR. JORDE:

20 Q. Sir -- well, I don't want to put words in  
21 your mouth, but I thought you had said you hadn't  
22 heard of any reports of a landowner not being able to  
23 get coverage -- strike that, not being able to have  
24 coverage for damages caused by carbon dioxide. That  
25 you weren't familiar with those type of letters.

1           A.    I wasn't really talking about damage for  
2 carbon dioxide or however you phrased that. What I  
3 was dispelling was the notion that a landowner  
4 couldn't get insurance or get claims paid on their  
5 property as a result of our pipeline being present.

6           Again, our company has insurance policies.  
7 I am not the expert on our insurance policies. I know  
8 that they are confidential by nature in terms of the  
9 declarations. But I don't deal in that world to know  
10 exactly all the different tranches of insurance we're  
11 going to maintain. There's perhaps someone else in  
12 our company that could talk about that, but I'm not  
13 the guy.

14           What's been disseminated out there that  
15 I've seen, and it can be a little bit rampant in  
16 certain areas, is that landowners could not get  
17 coverage on their property. Period.

18           Now, if you're talking about pollution,  
19 environmental, something tied to land, water, and air,  
20 whatever you've got here, I don't know what individual  
21 carriers are talking to whom about that.

22           I don't concern myself too much with it  
23 because we're the ones carrying the insurance for  
24 things that we do and problems that we cause. And the  
25 indemnity language states that. I mean, we have to

1 cover those things.

2 So that's the extent that I can talk about  
3 it today.

4 Q. Well, but, remember, your only liability is  
5 per the easement, paragraph 6 that we looked at, is  
6 for damages you cause within the easements. If the  
7 landowner farming, tractor sinks, causes damage,  
8 you're not covering that, that's not part of your  
9 indemnity language.

10 Do you understand that?

11 A. Well, you're misrepresenting what I'm  
12 saying. Again, you're referring back to the exhibit  
13 that was filed. That's not the whole easement. The  
14 Exhibit C that controls that easement has indemnity  
15 enhancements in it. Typically. And, if it didn't, we  
16 would always include that or always offer that.

17 That would obviously and specifically  
18 exclude the idea of someone sinking their combine as  
19 being on the hook to pay for the damage to the  
20 pipeline.

21 So I understand it's an exhibit, I  
22 understand you're referring to it, but it's not the  
23 whole story.

24 Q. You were framing your prior answers related  
25 to, I guess, misinformation, in your opinion, that you

1     couldn't get coverage due to the presence of the  
2     pipeline.

3             But do you understand the purpose of my  
4     questions are if something were to happen to the  
5     pipeline once it's there, such as the impact, such as  
6     an unintended release, I'm getting at the damages that  
7     occur after that.

8             Do you understand?

9             A.    Yes.  And I am trying to wrap that in  
10    alignment with you of -- gross negligence and willful  
11    misconduct and purposeful voluntary things to damage  
12    the pipeline, sure, we would not insure someone for  
13    that.  But everything else we would.

14            Q.    Are you making that commitment on behalf of  
15    Summit today?

16            A.    From an indemnity standpoint, I believe I'm  
17    echoing what's already been said.  That unless there  
18    was something grossly negligent that occurred or there  
19    was willful misconduct on behalf of the landowner or  
20    their invitee, their guests, their tenant, whatever  
21    party is appropriate on the landowner side to be out  
22    there, if they cause damage to that pipeline  
23    purposefully, willfully -- under the definition of  
24    gross negligence, however the semantics of that work  
25    in Iowa, if they damage something willfully and are



1 grossly negligent, then that's not us. Everything  
2 else is.

3 So normal life, normal farming practices,  
4 sinking a combine, ground got soft, dug in, caused a  
5 problem with the pipe, chisel plowing, running tile,  
6 whatever it is that would be normal for their farming  
7 practices, I believe that's already been covered by  
8 Mr. Powell and my intent is to echo that.

9 Q. Okay. But I want to be clear now. You  
10 said a lot there. Is that Micah Rorie's opinion or  
11 you as an agent of Summit? Are you here today before  
12 this Board able to bind Summit and make that  
13 commitment of what you just said?

14 A. Well, I don't have the authority to bind  
15 us. I am an employee of Summit. What I am saying is  
16 that that is certainly our intention and what we relay  
17 to landowners and it translates into our easements.

18 So the indemnity language has been quite  
19 exhausted throughout this process for the last couple  
20 of years. We haven't changed our stance on that in my  
21 mind.

22 So you're asking me under oath what I  
23 think. And how to answer your question is that unless  
24 somebody does something harmful on purpose to damage  
25 our pipeline and interfere with it, which specifically

1 contradicts the rights that we're purchasing and that  
2 we need to operate a pipeline safely, then that would  
3 be on them. And everything else is on us.

4 If it's tied to our acts or tied to normal  
5 farming life, however you would define that, then  
6 that's -- I don't feel that we're going to be seeking  
7 anything from the landowner there.

8 Q. And, if what you just said isn't maybe  
9 totally clear in the easement or the Exhibit H  
10 attachment, are you able to agree here today that if  
11 this Board were to approve this project, that they  
12 could take this transcript and make a condition, the  
13 last two answers you gave me, on how you believe the  
14 liability shakes out?

15 A. I have no say or idea what the Board could  
16 and couldn't do and I'm not familiar enough with the  
17 parameters or the rules of what's in their  
18 jurisdiction. I have seen other permitting bodies  
19 include indemnity language in the criteria of their  
20 permit. That is something that's happened before in  
21 South Dakota.

22 Our indemnity language mimics that language  
23 almost exactly. I'm confident that that type of  
24 language that we're utilizing would apply in Iowa just  
25 the same.

1                   But, again, I can't speak to what the Board  
2 is going to implement there as far as criteria.

3                   MR. JORDE: Well, I think we've kind of  
4 covered indemnity, but I would offer Exhibit 12.  
5 LO 12.

6                   BOARD CHAIR HELLAND: Are there objections?

7                   MR. LEONARD: Is that what's on the screen?

8                   BOARD CHAIR HELLAND: Is that what you are  
9 calling LO 12?

10                  MR. JORDE: I believe that's page 1. There  
11 should be hopefully some letters just like that that  
12 deal with coverage if we can maybe go down. I hope  
13 there's a couple more. Yep. Yep, that's LO 12,  
14 correct.

15                  MR. LEONARD: Thank you for the  
16 clarification.

17                  Yes, we'd object to lack of foundation.  
18 There's been no testimony as to what exactly this is.

19                  BOARD CHAIR HELLAND: Hold on one second.  
20 (Brief pause.)

21                  BOARD CHAIR HELLAND: Okay. Mr. Jorde,  
22 we're having some difficulties kind of understanding  
23 how you organized this. So, just to get some  
24 clarification, what you refer to as LO 12 is specific  
25 pages within this 356-page document?

1                   MR. JORDE: Good question. So I thought my  
2 staff -- they told me that they extracted from this  
3 document, or those like it, what is Attachment 12 and  
4 separately made that its own discrete, I don't know,  
5 eight-, nine-page exhibit that I referred to as LO 12.  
6 If that didn't get done, it will get done.

7                   But, to directly answer your question, I'm  
8 only talking about those few pages, not the whole  
9 thing.

10                   BOARD CHAIR HELLAND: We do not appear to  
11 have Attachment 12. Can we delineate the pages in  
12 this document and use the pages -- the 142 of 356.  
13 Let's use the document as we can see it here.

14                   MR. JORDE: Okay. My apologies. So  
15 Attachment 12.

16                   Could you just type in page 1 just so we  
17 can reference which landowner's testimony this is,  
18 please. Yeah, right there. Okay. Bonita Schiltz.  
19 Then if you could go back to that page we were at,  
20 please.

21                   All right. So, Your Honor, I would offer  
22 starting at page 137 -- and if we could scroll all the  
23 way down, please. Through, I believe -- does that say  
24 148?

25                   BOARD CHAIR HELLAND: 146, I believe.

1 MR. JORDE: 146. Thank you. So 137  
2 through 148 {sic}, which is also known as  
3 Attachment 12 of the Bonita Schiltz prefiled  
4 testimony. And I will separately upload an Exhibit 12  
5 so we don't have confusion in the future.

6 BOARD CHAIR HELLAND: That says 146, but  
7 you just said 148 again.

8 MR. JORDE: 146. Thank you.

9 BOARD CHAIR HELLAND: Okay. The Board will  
10 admit pages 137 through 146 of the Bonita Schiltz  
11 filing as Jorde Landowner Hearing Exhibit 12.

12 MR. JORDE: I appreciate that. And sorry  
13 for the confusion.

14 BOARD CHAIR HELLAND: And it will be given  
15 the weight due.

16 MR. JORDE: Thank for you having that up  
17 there. We can move on. I want to get to paragraph 7.  
18 Back to that easement we were looking at earlier,  
19 please.

20 BY MR. JORDE:

21 Q. That's the Assignment provision. And,  
22 quite basically, this simply allows company, Summit,  
23 to sell, assign, transfer some of the rights of the  
24 easement, all of the rights of the easement, as your  
25 company sees fit at any time to anyone; correct?

1           A.    It's a generic form of assignment, yes.

2           Q.    Along those lines, are you aware whether or  
3 not the exit strategy on Summit Carbon Solutions is to  
4 sell the company prior to the 12-year expiration of  
5 the 45Q tax credits?

6           A.    No. I have no idea.

7           Q.    No idea either way?

8           A.    I've never said the words "exit strategy"  
9 in my employment at Summit.

10          Q.    But not something that's come up in a  
11 conversation with Mr. Powell or others?

12          A.    No.

13               MR. JORDE: Then if we can go to  
14 paragraph 8, please. Which is Landowners Interest.

15 BY MR. JORDE:

16          Q.    Is this the paragraph where you reference  
17 that you think Iowa law might apply or are we not  
18 there yet?

19          A.    I think this paragraph talks more about the  
20 landowner confirming or acknowledging that they own  
21 the property. That they're not fraudulently signing  
22 an easement and collecting money on something they  
23 don't own.

24          Q.    Got it. The last sentence, do you know  
25 what the purpose of that is where it says "Landowner

1     relinquishes, releases, and waives all rights of  
2     dower, homestead, and distributive shares in and to  
3     the easements"?

4             A.     Admittedly, I don't really know the details  
5     of that last sentence.  It's an Iowa-specific or maybe  
6     a Midwest specific-type thing.  You'd have to ask our  
7     counsel.

8             MR. JORDE:  Then we can go on, please, to  
9     the next page.

10     BY MR. JORDE:

11             Q.     Property of Company.  Paragraph 10.  I had  
12     a question there.

13             Again, correct me if I'm wrong, it seems to  
14     suggest, sir, that Summit can abandon in place the  
15     pipeline or any appurtenances or valves or  
16     aboveground, et cetera, equipment, but yet it still  
17     remains property of the company.

18             Can you help me out with that?  If you  
19     abandon it but yet you still claim ownership to it.

20             A.     This is probably a better question for our  
21     counsel on that.

22             MR. JORDE:  And then if we can go to the  
23     next page, please.

24     BY MR. JORDE:

25             Q.     So the second half of that first paragraph,

1 it says that "this agreement contains the entire  
2 agreement between the parties and there are not any  
3 other representations or statements, verbal or  
4 written, that have been made modifying, adding to, or  
5 changing the terms of this agreement."

6 Is that Summit's way of saying, "Whatever  
7 we talked about with you before, unless it's in here  
8 it doesn't count"?

9 A. Well, I think if we made the mistake of  
10 making a verbal commitment that we didn't capture in  
11 the agreement, our tendency would be to keep that  
12 commitment. But I think what this is saying is, in  
13 order to alter the terms of the agreement, there would  
14 need to be a separate document to do so. It would  
15 need to be in writing.

16 I mean, obviously, the capitalized -- the  
17 fine term of "Agreement" here also includes any of the  
18 agreement's exhibits. And I know I keep referencing  
19 Exhibit C as a controlling piece of that.

20 So it's not just this document we're  
21 looking at, but, yeah, if there's anything agreed upon  
22 between the parties, it needs to be bound in this  
23 agreement. And it also prevents difficulties in  
24 remembering what the agreements were. Some of these  
25 folks may have signed an easement a long time ago, and



1 it helps remind to say, look, nothing outside of  
2 this -- outside of what's bound by the Board, which  
3 again, you can reference that in the document that's  
4 tied to Iowa law.

5 It's, again, a very generic, miscellaneous,  
6 typical paragraph to include in any type of a  
7 contract, certainly an easement.

8 Q. And would you agree, just generally and/or  
9 as a condition should this project be approved, to  
10 include what's known as a most favored nations clause  
11 so that persons in the future who haven't yet signed  
12 an easement wouldn't be able to be treated unfairly  
13 and they would essentially get the best terms that you  
14 have granted in prior easements?

15 A. No, we can't agree to that.

16 Q. Would you, for Summit, be able to agree  
17 that you will not use the power of eminent domain and  
18 sue anyone in condemnation for purposes of obtaining  
19 easements?

20 A. No.

21 Q. All right. Just give me one moment,  
22 please.

23 On the surveys, it's true that you, Summit,  
24 has not performed or received results from all the  
25 surveys necessary to commence this project?

1           A.    I wouldn't be the right person to answer  
2   that.  I don't know what we've confirmed or received  
3   or what would constitute as what's necessary to  
4   perform the project.  I simply don't know.

5           Q.    Well, you and I have been in court before,  
6   and you were testifying there about surveys and the  
7   types of surveys; right?  And the number of surveys  
8   you had.

9                    Do you no longer perform that role or have  
10   that knowledge?

11           A.    If I remember correctly -- I'd have to  
12   check the court record, but, if I remember correctly,  
13   what I was describing to you were the various types of  
14   survey and the need to conduct those.

15                    I don't tally the data.  Mr. Schovanec  
16   does.  I don't know, to your point, and I don't know  
17   if I talked about it in court with you or not, what  
18   those thresholds are or the amount of data necessary,  
19   as you put it, to get a permit.  I'm just not that  
20   guy.

21           Q.    But are you aware that Summit has not yet  
22   obtained the phase two geohazard surveys?

23           A.    I have no idea.

24                    MR. JORDE:  And it didn't look like we were  
25   able to get LO 4 up, but I am going to offer that as

1 part of the record.

2 BOARD CHAIR HELLAND: I think we may have  
3 found it.

4 MR. JORDE: Oh. Thank you. Or do you want  
5 to do the same thing? With Exhibit 4?

6 BOARD CHAIR HELLAND: Let's make sure we  
7 have the right one.

8 MR. JORDE: It should be Attachment 4.  
9 Thank you.

10 BOARD CHAIR HELLAND: So page 71 through --

11 MR. JORDE: It's probably about six pages,  
12 71 through 76.

13 So, Your Honor, Landowners would offer from  
14 the Bonita Schiltz Trust, pages 71 through 76,  
15 otherwise known as Attachment 4 and request that that  
16 become LO, or Landowner, 4.

17 BOARD CHAIR HELLAND: Are there objections?

18 MR. LEONARD: Yes. We'll object to lack of  
19 foundation. It hasn't been established what the  
20 document is. Object to relevance. It appears to be a  
21 court complaint from a court in Nebraska.

22 MR. JORDE: I can lay foundation or I can  
23 discuss it more. That's fine.

24 BY MR. JORDE:

25 Q. Sir, you and I were talking about that

1 indemnity provision --

2 BOARD CHAIR HELLAND: Why don't you just  
3 lay the foundation real quick and we can kind of go  
4 through the evidence motion.

5 MR. JORDE: Okay. Sure.

6 BY MR. JORDE:

7 Q. Sir, we talked about subrogation and  
8 potential lawsuits and liability. I asked you the  
9 question about an insurance company, a pipeline  
10 insurance company, being able to go back against a  
11 landowner. This is an exemplar of that type of a  
12 lawsuit.

13 Are you familiar with those type of claims  
14 or abilities?

15 A. No.

16 MR. JORDE: Okay. Well, I'll still offer  
17 the Exhibit LO 4.

18 BOARD CHAIR HELLAND: The Board will admit  
19 the Bonita Schiltz Trust, pages 71 through 76, as  
20 Jorde Landowner Hearing Exhibit 4.

21 MR. JORDE: Thank you. And I don't have  
22 anything further.

23 Thank you, sir.

24 BOARD CHAIR HELLAND: Oh. I'm sorry. Did  
25 you say no more questions?

1                   MR. JORDE: Can you believe it? Yeah, no  
2 more questions. Thank you.

3                   BOARD CHAIR HELLAND: Ms. Gruenhagen.

4                   CROSS-EXAMINATION

5 BY MS. GRUENHAGEN:

6           Q. Good afternoon.

7           A. Good afternoon.

8           Q. I do have some questions about the  
9 Exhibit H easement, but, since you've spent quite a  
10 bit of time on that, we'll talk about some other  
11 issues first and then we'll get back to that.

12          A. Sure.

13          Q. In your direct testimony on page 5,  
14 starting on line 7, you talk about kind of the initial  
15 price formula that had been established for setting  
16 the price.

17          A. Uh-huh.

18          Q. And I think you talked with Mr. Jorde just  
19 a little bit about the CS2 values?

20          A. CSR2s.

21          Q. CSR2s.

22          A. Yes.

23          Q. Could you explain a little bit what the  
24 formula price was used for?

25          A. What it was used for?

1 Q. Was it the initial offer that was given to  
2 landowners?

3 A. They did look at CSRs and the county price  
4 points along with crop yields, average crop yields,  
5 and they looked at the prevailing price of the rotated  
6 crops all collectively as part of the initial offer  
7 for ground. For easements.

8 Q. That CSR point per acre, was that filed in  
9 the docket? There's a list of land values by county  
10 filed in the docket on October 27 of 2021. Does that  
11 sound --

12 A. It's possible. I wasn't here when it was  
13 filed, but it sounds correct. I just -- I'm not sure.

14 Q. So around the time of the information  
15 meetings?

16 A. That sounds right.

17 Q. What was the formula price established for  
18 the temporary construction easement?

19 A. So the temporary -- I call it temporary  
20 workspace, temporary construction easement, that is  
21 coupled with what we were pricing as the fee cost of  
22 the property. So it's typically 50 percent of what  
23 that per acre would be. Even though an easement  
24 really is a discount to the fee, it's limited service  
25 rights, it's not -- we're not buying the property,

1 fencing it off, farming it ourselves, the use is  
2 returned to the landowner, they continue to generate  
3 income off of it, we still price it that way as a  
4 premium.

5 So we look at the fee schedule or the fee  
6 price per acre. Temporary workspace typically  
7 constitutes -- it's almost synonymous with rent, but  
8 we inflate that quite a bit to 50 percent.

9 Q. Thank you. And I want to follow up on the  
10 last line of questions that Mr. Jorde was asking you.

11 MS. GRUENHAGEN: If I can ask the Iowa  
12 Utility Board staff to bring up Iowa Code  
13 Section 480.9.

14 Sorry. I didn't give them a warning about  
15 that one.

16 BY MS. GRUENHAGEN:

17 Q. Are you generally familiar with Iowa's One  
18 Call law?

19 A. Very generally, yes.

20 Q. What is the nature of Iowa's One Call law?

21 A. Well, I have to imagine it's similar to  
22 most One Calls. You've got to call before you dig if  
23 you're going to do any excavation activity on your  
24 property. I believe it's statutory. You called it a  
25 law in Iowa. That they need to provide operators an

1 opportunity to mark their infrastructure in order to  
2 prevent the possibility or the likelihood of that  
3 infrastructure being hit during those activities.

4 Q. So that I don't ask you for a legal  
5 conclusion, would you mind reading the code section  
6 that's been posted there. Section 480.9.

7 A. Sure. "An owner of farmland used in a farm  
8 operation as defined in Section 352.2 who complies  
9 with the requirements of this chapter shall not be  
10 held responsible for any damages to an underground  
11 facility, including fiber-optic cable, if the damage  
12 occurred on the farmland in the normal course of the  
13 farm operation unless the owner intentionally damaged  
14 the underground facility or acted with wanton  
15 disregard or recklessness in causing the damage to the  
16 underground facility. For purposes of this section  
17 an, quote, owner includes a family member, employee,  
18 or tenant of the owner."

19 Q. Thank you. So Iowa's One Call law, if  
20 they're calling in, then this code section would  
21 likely apply since it's in Iowa law?

22 A. If it's subject to Iowa law, I would think  
23 so.

24 MS. GRUENHAGEN: That's all I need for  
25 that. Thank you.



1 BY MS. GRUENHAGEN:

2 Q. And were you present the first couple of  
3 weeks of the hearing when many of the non-intervening  
4 landowners testified?

5 A. I was.

6 Q. And did you hear some of the landowners  
7 testify about that they had CRP land and they wanted  
8 to make sure that that CRP land remained -- that they  
9 remained compliant with that contract?

10 A. I did.

11 Q. On page 6 of your direct testimony, I  
12 believe.

13 MS. GRUENHAGEN: If we could switch back to  
14 the direct testimony. And then lines 15.

15 We must be talking about a different -- let  
16 me -- I'm going to come back to that when we get the  
17 right page number on that.

18 I do have a hearing exhibit I'd like to  
19 hand out. Or I should say I want to talk about IFBF  
20 Hearing Exhibit 2. It was handed out earlier this  
21 week when Mr. Powell was testifying and then he  
22 suggested that Mr. Rorie would be the better person to  
23 ask about that.

24 I do have some additional copies in the  
25 event that folks were not here at that time.

1 BY MS. GRUENHAGEN:

2 Q. We'll go ahead and talk about this, and  
3 then we've figured out -- it was in your other  
4 testimony.

5 This was a data request that Summit  
6 responded to questions that IFBF had. Did you assist  
7 in this? This was last September. Last fall.

8 A. I assisted with parts of it, yes. I didn't  
9 answer all the questions, but the ones that were  
10 related to my stuff, I did.

11 MS. GRUENHAGEN: Could you go ahead and go  
12 down to the second page.

13 BY MS. GRUENHAGEN:

14 Q. Did you assist with paragraph (c)? I'll  
15 give you a minute to read it.

16 A. Give me one second.

17 I'm sure I provided input on that one.  
18 But, if I didn't, I certainly agree with it.

19 Q. So is this a commitment that Summit is  
20 making to landowners with regard to those contracts?

21 A. Absolutely.

22 Q. And similarly with paragraph (e). Could  
23 you review that one as well. Also relating to the CRP  
24 contracts.

25 A. I didn't weigh in on that one, but it's

1 very familiar to me and certainly a valid commitment.

2 MS. GRUENHAGEN: Your Honor, I would like  
3 to offer into evidence IFBF Hearing Exhibit 2.

4 BOARD CHAIR HELLAND: Are there objections?

5 MR. LEONARD: No objection.

6 BOARD CHAIR HELLAND: I'm sorry,  
7 Mr. Leonard. Was that "objection"? Or "no  
8 objection"?

9 MR. LEONARD: No objection. Sorry.

10 BOARD CHAIR HELLAND: The Board will admit  
11 the exhibit as Iowa Farm Bureau Hearing Exhibit 2.

12 MS. GRUENHAGEN: Thank you, Your Honor.

13 BY MS. GRUENHAGEN:

14 Q. Also dealing with CRP contracts, let's go  
15 to the staff report rebuttal testimony on page 6.  
16 Starting on line 15.

17 In this question, you're also responding to  
18 concerns of landowners regarding CRP.

19 Is that correct?

20 A. That's correct.

21 Q. And the response here refers to language in  
22 an easement?

23 A. Yes.

24 Q. Is that language that is only offered if a  
25 landowner asks for it?

1           A.     Well, there's really two answers there.  
2     Yes, if a landowner asks for that, and they feel like  
3     they need that in writing, we immediately put it in  
4     the easement.

5                     But the easement itself, the way it's  
6     worded when it comes to damages, is that if it's not  
7     in that damage calculation sheet -- in other words, if  
8     we haven't cited CRP damages on an up-front basis,  
9     which is very rare, but, if it's not in there, then  
10    we're on the hook for them anyway.

11                    So whether a landowner executed an easement  
12    with us at some point in time and didn't get CRP  
13    language put into their Exhibit C, the addendum to the  
14    easement, whether that's there or not, we are still  
15    obligated to pay those damages. Because those are  
16    damages that are not captured on that calculation  
17    sheet. They're not a part of the crops at all.  
18    Right?

19                    So, if someone had residual damage as a  
20    result of the easement, in this case being partial  
21    forfeiture or partial unenrollment in one of these  
22    programs, then we would have to pay for it because it  
23    wasn't covered in the initial consideration via the  
24    easement.

25                    So whether the paragraph 3 or 4, depending

1 what state we're in as far as damages is concerned,  
2 it's essentially omitted there, which means we would  
3 have to pay it, or whether we went out of our way to  
4 put that language in the Exhibit C to temper that  
5 concern with the landowner, either way we'll pay it.

6 Q. Will you also pay if it's an Exhibit H  
7 landowner whose land was subject to -- or who went  
8 through eminent domain?

9 A. And they were subsequently unenrolled in  
10 CRP as a result?

11 Q. Yes.

12 A. Yes.

13 Q. And, similarly, with some of the  
14 landowners, did you also hear some concerns about just  
15 farm program eligibility in general?

16 A. Could you ask that again? I'm sorry.

17 Q. When you were listening to the landowners  
18 testify earlier in this hearing, did you also hear  
19 some of them express some concerns about just  
20 conservation compliance or farm program eligibility?

21 A. I did.

22 MS. GRUENHAGEN: I have another exhibit.  
23 And that would be IFBF Hearing Exhibit 3.

24 BY MS. GRUENHAGEN:

25 Q. Again, this is a data request that was

1 served on Summit and their responses to that.

2 Were you involved in responding to this as  
3 well?

4 A. Very little. I think, at first glance,  
5 that is talking more about nationwide permits, PCNs,  
6 things of that nature, corridors, et cetera. It's way  
7 more in the --

8 Q. In the weeds?

9 A. Well, it's way outside of my scope. I  
10 mean, I'm familiar with these terms, but I tend to shy  
11 away from them in a hearing because it's not my  
12 expertise. Jon Schmidt, I believe at some point, will  
13 be visiting about these types of things, but I may not  
14 be the right guy.

15 Q. Could you look at paragraph (e). Because I  
16 think that might be more in line with...

17 A. Okay.

18 Q. Are you familiar with the policy of Summit  
19 with regard to paragraph (e)?

20 A. I am. Again, I don't -- I'm not very  
21 familiar with the restoration requirements dictated by  
22 the Corps. I'm familiar with our mitigation plans and  
23 our environmental construction plans. And I'm  
24 certainly familiar with the first part of this that  
25 said that in the unlikely event that they would lose

1 eligibility that we would need to keep them whole on  
2 that.

3 Q. Right now I'm just trying to establish  
4 foundation that this might be something you recognize.  
5 I can ask questions of Mr. Schmidt about it. I can  
6 save those questions.

7 A. I certainly recognize the document. It's  
8 just there were parts of these questions that I wrote  
9 almost directly and others it was delegated to people  
10 that speak nationwide permits better than I do.

11 MS. GRUENHAGEN: Well, I'll save my  
12 questions about this for Mr. Schmidt, but, in the  
13 meantime, I'd like to offer IFBF Hearing Exhibit 3  
14 into evidence.

15 BOARD CHAIR HELLAND: Are there objections?

16 MR. LEONARD: No objection.

17 BOARD CHAIR HELLAND: Hearing no  
18 objections, the Board would admit IFBF Hearing  
19 Exhibit 3.

20 MS. GRUENHAGEN: Thank you, Your Honor.

21 BY MS. GRUENHAGEN:

22 Q. Before we get to the easement language, I  
23 have one more kind of detail question here.

24 Other than the initial information meeting  
25 letter that went out to landowners, did your land

1 agents ask again whether a landowner had a farm  
2 tenant? Or did any conversations occur about that  
3 other than the initial informational meeting?

4 A. Oh, sure. They ask that all the time.  
5 Because tenants can change. It's not always readily  
6 offered to us who the tenants are, but we tend to ask  
7 that very often. And certainly with folks that we  
8 have reached an agreement with, we have an obligation  
9 to ask that. Or try to figure out, to the extent that  
10 we can, who the tenants are. So we ask that very  
11 often.

12 Q. Do you know of, I guess, any reason or -- I  
13 don't want to ask you to speculate, but any reason  
14 why -- when we were going through the landowners the  
15 last couple weeks, there were quite a few properties  
16 that didn't have a farm tenant listed on them, but the  
17 landowner then testified that there was one.

18 Do you know what reasons there might be  
19 about why it wasn't listed on the Exhibit Hs?

20 A. The primary reason for that is that they  
21 didn't tell us. So they may have said it here. And  
22 you saw some reluctance to even share who their  
23 tenants were here. So it's the same reluctance in an  
24 individual conversation in their field or at their  
25 farmstead.



1           So the challenge with tenants is that the  
2 vast majority of them are not public record. Right?  
3 There's so many tenant arrangements that are  
4 handshakes or verbal. And they also change growing  
5 season to growing season.

6           So, unless the landowner shares that with  
7 us, it's very difficult to know exactly who the  
8 tenants are. We can give it our best guess, which  
9 we've done, to the extent that we can figure it out.  
10 But even that's speculative.

11           The primary source and the catalyst for us  
12 knowing who the tenants are are the landowners sharing  
13 that with us. So if -- in some instances, there's  
14 been landowners that won't talk to us at all. So, of  
15 course, we haven't even really been able to ask other  
16 than in informational packages and things like that.  
17 And then there are other landowners that won't share  
18 that information.

19           And we try not to insert ourselves in  
20 between a landowner and a tenant. There's a variety  
21 of types of relationships there, and it's really none  
22 of our business in terms of those dynamics, but, if a  
23 landowner won't tell us, then we have no idea.

24           Q.    Have you and your staff talked at all about  
25 how to get landowners to be comfortable sharing that

1 with you given you're looking at filing these as  
2 eminent domain actions?

3 A. So we don't look at methods to get them to  
4 share it. That comes with the individual and what  
5 talent and skills they have to be relatable with folks  
6 and see if those folks are comfortable sharing that  
7 information.

8 We have stressed the importance that we've  
9 got to try to figure that out. That if we don't make  
10 an attempt, it's much less likely that it's just  
11 offered up. So we have to ask.

12 But I don't give them a method of asking.  
13 It's just, "Please check with the landowner and see if  
14 they're comfortable with us knowing who their tenant  
15 is so we can include them as a form of an interest  
16 holder on this project." We've got to do that. But,  
17 again, if we don't know, we don't know.

18 Q. So, in the event that the landowner doesn't  
19 tell you who the farm tenant is and the construction  
20 is started and all of a sudden you startle a farm  
21 tenant who didn't know about it, how is Summit going  
22 to proceed in that instance?

23 A. Well, it's a case-by-case, but, in general,  
24 if we're constructing on the property, we have an  
25 easement there. If the -- depending on what type of

1 easement -- I'd have to look at the Exhibit H rights.  
2 Admittedly, I'm not real sure what it says about  
3 tenants. But we can look at it together and see.

4 But our voluntary easement basically says,  
5 look, this is consent for the landowner and the  
6 tenant, that the compensation or consideration paid  
7 via this agreement includes any damages tied to -- if  
8 leased, to a tenant. So we would feel it's pretty  
9 enforceable we have the right to continue to be there.

10 Now, whether the landowner paid their  
11 tenant, or if there was some other arrangement made,  
12 or maybe this is a new tenant and the old tenant got  
13 the money from the landowner, I can't control that. I  
14 don't encourage that, but I can't control that.

15 And I certainly can't dictate to a  
16 landowner how they're supposed to interact with their  
17 tenant. That's not my place at all to do that. So I  
18 don't tell them one way or the other what I suggest.

19 What I'd like to avoid is what you just  
20 described. Which is someone showing up out there  
21 surprised when it would have been of record, it would  
22 have been clearly stated in that agreement, there were  
23 real dollars exchanged, and typically much prior to  
24 that construction occurring. So plenty of time for  
25 that communication to have happened.

1                   But, if I don't know the tenant, there's no  
2 way for me to tell him.

3           Q.    As a part of the voluntary easements, I  
4 think you mentioned also that the crop damages were  
5 paid at that time?

6           A.    Say that again. I'm sorry.

7           Q.    At the time that you acquired the voluntary  
8 easements, were crop damages also paid at that time?

9           A.    The vast majority, yes. At the project's  
10 onset, the original compensation structure was to pay  
11 the crop damages either right before construction or  
12 right after construction.

13                   When I joined the project late January,  
14 early February, that changed, and we turned it into an  
15 all up-front payment unless the landowner dictated  
16 differently. That they wanted parts of it paid the  
17 next year or whatever it was.

18                   So really it's both. There are some  
19 landowners right now in Iowa that initially were paid  
20 the permanent easement, the temporary workspace, and  
21 the damages were deferred. We have since tried up the  
22 vast majority of those. I don't think there are any  
23 hanging out there that haven't been paid in full up  
24 front at this point.

25                   But the method of compensation was twofold

1 from the project's onset until early 2022.

2 Q. And so, in the event there's a farm tenant,  
3 those crop damages were paid to the landowner or were  
4 they paid to the tenant?

5 A. The landowner drives that. So, if the  
6 landowner defers those damages to their tenant, then  
7 obviously we know who they are, we get a W-9 from  
8 them, we get a tenant consent, we pay them that check.  
9 So it's a variety.

10 There are instances where we've paid the  
11 tenant directly if the landowner did a payment  
12 directive, and there are many instances where all of  
13 the dollars go to the landowner.

14 So the landowner drives that for us. We do  
15 what the landowner tells us to do on that.

16 Q. So what will happen in the event that you  
17 paid the crop damages to the landowner and actually,  
18 when you start construction, it's the farm tenant who  
19 owns the crop and their crop was destroyed?

20 A. Can you help me understand. What do you  
21 mean by -- what action would we take?

22 Q. Yes, what action would you take.

23 A. I feel like our part of the transaction  
24 would be done there. I think -- we certainly wouldn't  
25 want to double pay simply because the landowner didn't

1 communicate with the tenant.

2 We feel like that we would have documented  
3 that we paid for those damages and those damages were  
4 covered as part of the consideration of the easement.  
5 It's unlikely that we would double or triple pay folks  
6 that kept coming back and saying, "Well, I didn't  
7 know."

8 I don't know what the law says about that  
9 in Iowa. I don't know what we're required to do  
10 there. I can tell you, in general, in all the  
11 pipeline right-of-way that I've managed, it is half of  
12 one hand of instances where a tenant has shown up and  
13 didn't know a pipeline was coming. And we're talking  
14 about 5,000 miles of pipeline. And a lot of it farm  
15 ground. So it's not very common.

16 But we would want to get in touch with the  
17 landowner and circle up and talk about, "Here's what's  
18 transpired. And we cannot stop our construction crews  
19 for something that we've already paid for, we need to  
20 work this out."

21 If concessions need to be made some way,  
22 then we would explore that, but I can't commit that we  
23 would double or triple pay.

24 Q. Have you entered into any agreements with  
25 farm tenants directly?

1           A.    "Agreements" meaning easement agreements?

2           Q.    Or contracts with them.  Because -- I don't  
3 want to get into, again, legal conclusions, but, if  
4 they have a lease on the property, they have  
5 possession.  And the pipeline would be interfering  
6 with that possession.

7                    So do you have any separate contracts with  
8 the farm tenants at all?

9           A.    We do.  We have what's called a tenant  
10 consent.  It's coupled with the easement document, and  
11 it's typically procured at the same time the easement  
12 is procured.  And that would be in every easement  
13 package that I know of that we've put in front of  
14 landowners.

15                   We try to procure those during the  
16 cancellation period at the latest, but we, most of the  
17 time, I would say the vast majority, gain those at the  
18 same time we pick up the signed copies of the  
19 easements.

20                   And it's a document -- and I couldn't quote  
21 it word for word.  I'd be glad to submit it as an  
22 exhibit at some point.  It's just a consent with the  
23 tenant acknowledging, "Yes, I understand the terms of  
24 this, I understand dollars have taken place, I have no  
25 problem with this pipeline coming through."

1                   We can submit that if you wanted it, but,  
2   yes, there are documents that we put in front of  
3   tenants to the extent we know who they are and they  
4   talk to us.

5           Q.    Very good. Thank you. So, with regard to  
6   the Exhibit H easements, is all of the easement  
7   language substantially the same from Exhibit H to  
8   Exhibit H requests?

9           A.    There are some differences.

10          Q.    What differences?

11          A.    The temporary workspace has a fuse on it.  
12   It's a two-year fuse versus a written notification  
13   within a reasonable time frame of completion of  
14   construction. So it's a limited two years from  
15   commencement of construction.

16                   The access easement is a little bit  
17   different than what Mr. Jorde was describing on the  
18   voluntary easement. It's actually substantially  
19   different, but the intent is about the same anyway.  
20   It's got to be shown. Whereas, in the voluntary  
21   easement, not in all instances is that access easement  
22   shown. And it's for emergency purposes, et cetera.

23                   So there's some differences there.

24          Q.    Let me restate my question. I understand  
25   there are differences between your Exhibit 1 and the



1 Exhibit H easement language.

2 A. Okay.

3 Q. My question is if I brought up -- or have  
4 the staff bring up an Exhibit H with the easement  
5 language, would they all be substantially similar?  
6 So, if we looked at one, we would be essentially  
7 looking at all of them?

8 A. I misunderstood your question. Yes,  
9 they're all identical with the exception of some of  
10 them ask for surface sites and some of them don't.

11 Q. So I'm just going to pick one that I think  
12 we have looked at in the past couple of weeks just as  
13 an exemplar, but, as you've identified, they're all  
14 the same.

15 MS. GRUENHAGEN: If we could pull up  
16 PA-006. Or if there's another one the staff wants to  
17 pull up, that's fine too.

18 BY MS. GRUENHAGEN:

19 Q. And, while we're waiting for that, so the  
20 Exhibit 1 that Mr. Jorde went through with you, that's  
21 the voluntary easement template; is that correct?

22 A. That was our base generic form of an  
23 easement. I didn't scroll through the whole exhibit  
24 to see whether our Addendum C, or Exhibit C, was tied  
25 to it. But it's our generic form for a base easement.

1 Q. Just so I understand, do you know, is that  
2 form voluntary easement, is that something that Summit  
3 is asking the Board to make a decision on?

4 A. No. I don't think so. I have no idea.  
5 But, no, I'm certainly not asking for a decision based  
6 on those terms.

7 Q. And that agreement is something that gets  
8 negotiated between the landowner and Summit?

9 A. That's right. So there's a wide variety of  
10 the final results of those agreements, but, yes, that  
11 is an agreement that gets negotiated back and forth  
12 with the landowner and our folks.

13 Q. And so the language in the Exhibit Hs --  
14 MS. GRUENHAGEN: If you could just -- on  
15 that particular one, it might be page 3.

16 BY MS. GRUENHAGEN:

17 Q. And so that language, is that language  
18 something that Summit is seeking permission as a part  
19 of their eminent domain request?

20 A. That's correct.

21 Q. So I want to ask you some questions about  
22 this particular one. And, as you noted, there are  
23 some differences between your Exhibit 1 template and  
24 Exhibit H.

25 A. There are.

1           Q.    One of those, you mentioned the access  
2 easement is different.  In the Exhibit 1, it talks  
3 about the access easement being non-exclusive.

4                    Are you familiar with that term?

5           A.    Yes.

6           Q.    That language is missing, or seems to be  
7 missing, from the Exhibit H.  Is that an intentional  
8 difference?

9           A.    No.  No.  That's not intentional.  And,  
10 also, I think the way the Exhibit H is structured it  
11 would need to cite that there was an actual access  
12 easement there.  So it says "access easement, if any."  
13 And it would need to be defined in there.  Otherwise  
14 you can assume there isn't one other than for  
15 emergencies.

16                    I mean, I'll unpack that a little bit for  
17 you.

18           Q.    Please.

19           A.    So, if there was a valve site, there you  
20 would see some obvious things about an access  
21 easement.  And the valve site would be an exclusive  
22 easement.  Right?  It's got to be fenced off.

23                    I don't have one of those examples in the  
24 back of my mind to refer to to see how exclusivity is  
25 handled on the road itself to that valve.

1                   But I can say that our access easement  
2 would be a non-exclusive easement regardless.

3                   Q.    The valve site would be.

4                   A.    Well, a valve site -- I mean, we would hope  
5 nobody would tear it up or cross it too bad. We  
6 certainly wouldn't want them to interfere, we've got  
7 to get to our valve, but it's still probably a  
8 non-exclusive access. The valve site itself is  
9 exclusive.

10                  Q.    And, similarly, with the temporary  
11 construction easement, the word "non-exclusive" was  
12 included in the Exhibit 1, but it's not in the  
13 Exhibit H easement.

14                               Was that an intentional difference?

15                  A.    You'd have to ask our counsel who  
16 structured that whether they intended to omit that or  
17 if this is just a typical list of Exhibit H rights  
18 that are asked for. I don't know if it's a bare  
19 minimum-type thing, but it's -- I don't know if  
20 exclusivity was purposely or intentionally excluded or  
21 included in certain spots versus others. I couldn't  
22 tell you.

23                  Q.    For those that aren't aware, do you know  
24 what the difference is between an exclusive and a  
25 non-exclusive easement?

1           A.    It's a long answer, but I'll try to give  
2    you the short version.

3           Q.    Please.

4           A.    So, an exclusive easement, the easement  
5    holder has substantially more rights about how that  
6    easement is treated by the landowner or any other  
7    operator.  They have a lot of rights.

8                    Depending what state you're in and  
9    what their -- you know, filing of injunctions and what  
10   that would require for another operator to cross you.  
11   They have a lot more say in their crossing  
12   requirements.  They have a lot more say, in general,  
13   of what happens on that easement.  Exclusive easements  
14   are becoming more rare these days.

15                   Non-exclusive easements is what we're  
16   seeking.  Right?  For the pipeline easements.  Which  
17   means some of the things I touched on earlier.  
18   Typical farming practices, the ability to generate  
19   income.  Outside of some minor -- well, I shouldn't  
20   say "minor," but outside of a short list of  
21   restrictions; drilling wells, impounding water,  
22   et cetera, the landowner, and future landowners, have  
23   the use and enjoyment of that easement so long as it  
24   doesn't interfere with the specific rights that are  
25   granted.

1           An exclusive easement, it operates a little  
2 bit more like a fee ownership. Not entirely, but it's  
3 much more of a hybrid-type fee arrangement where, if  
4 another pipeline wanted to cross our pipeline or a  
5 tile line wanted to or a drainage district or -- I  
6 don't know, pick an example, other than us pointing  
7 out what would totally interfere, unreasonably  
8 interfere, with our pipeline, there's no 40-page thick  
9 crossing agreement that we would make that operator  
10 sign, and, if they didn't, we'd file an injunction and  
11 they'd have no legal right to cross their easement.

12           So that was supposed to be a short version.  
13 The short version is that non-exclusivity waters down  
14 the rights substantially of the operator. It's Venus  
15 and Mars.

16           Exclusive easements are rare, as a result  
17 of that, because it's much more of a forfeiture of  
18 rights. That's why the only exclusive easements we're  
19 seeking, my understanding, would be the valves,  
20 because we don't want anybody trying to do something  
21 inside that valve for safety reasons. They need to  
22 not get inside the fence. There's no reason for them  
23 to be in there. We need exclusive ability -- I don't  
24 want another operator getting in there and sharing  
25 space without my full consent.

1                   Everything else is non-exclusive.

2           Q.    So, for example, the access easement.  Is  
3   there an intent by Summit to exclude the landowner  
4   from accessing in through that same path?

5           A.   No.  I mean, sometimes it's a case-by-case  
6   depending how that road approach is.  But, no, we  
7   don't have the intent of them not being able to use  
8   that road.

9           Q.    And, similarly, with the construction  
10  easement -- you mentioned a 24-month period of time on  
11  the construction easement.

12                   Is there intent by Summit to exclude the  
13  landowner from the easement during that 24-month  
14  period?

15           A.   No, only to the extent that we don't want  
16  the easement obstructed and we certainly don't want  
17  folks getting in the way during construction.  So, for  
18  safety reasons, we're paying for that right.  And  
19  they're welcome to farm that the entire time until we  
20  construct.

21                   So we have no problem with them accessing  
22  the workspace.  It just makes sense that once we're  
23  constructing, that they not spend too much time  
24  getting in the way of the construction crews.  That  
25  would be obstructing with the rights that were granted

1 in there for installing the pipeline.

2 So, other than that, it's a non-exclusive  
3 thing.

4 Q. Thank you. Also in Exhibit 1, the  
5 easement, it directly references the description, it  
6 provides an exhibit, and the Exhibit H easement  
7 language doesn't specifically identify the location by  
8 saying "like as described in Exhibit A."

9 Is there a reason for that?

10 A. The Exhibit H template itself, the last  
11 page is the metes and bounds description of the  
12 location of the easement. It's very different than  
13 the voluntary easement.

14 I don't know if we can scroll through there  
15 and maybe I can talk about that, but --

16 MS. GRUENHAGEN: Scroll down to the  
17 pictures. I should say drawings.

18 A. So, if we go one page further out, that's  
19 what I'm talking about. Well, I was wrong. The next  
20 page would be --

21 BY MS. GRUENHAGEN:

22 Q. Are you looking for the drawings or the  
23 legal description?

24 A. That right there. The legal description.

25 So, whereas, in our voluntary easements, we



1 have an Exhibit A that talks about the parent parcel  
2 and they pare it down to some of the area where we're  
3 looking at installing the pipeline, this is exactly  
4 specific where we need to install the pipeline. So we  
5 have much less leeway in Exhibit H to bury the  
6 pipeline route. We have to stay within that 50-foot  
7 stretch.

8 But the reason, I think, there's no  
9 Exhibit X or whatever it would be that would have a  
10 property description is because it's right there.

11 Q. So does that get filed with the easement  
12 language as well?

13 A. I'm not sure. I'm not sure what all gets  
14 filed. But, as far as what's get recorded in the  
15 courthouse, I believe so.

16 Q. And so the intention is to only ask for an  
17 easement over what's in the drawings and the legal  
18 description.

19 A. That's right.

20 Q. Also, in the Exhibit 1 versus the Exhibit H  
21 easement, in the Exhibit 1 it has -- for the size of  
22 pipe, it has a blank space to fill in.

23 A. Uh-huh.

24 Q. And, in the Exhibit H, it says 24 inches.

25 A. Uh-huh.

1 Q. Is that correct?

2 A. That's right -- well, it -- the Exhibit 1  
3 was our base generic form. If you were the landowner,  
4 it wouldn't have a blank. We would say 24 inches in  
5 it.

6 But that was just -- with varying sizes,  
7 that's what was submitted as an exhibit. But, yes,  
8 they would both say 24 inches.

9 Q. Would you agree there's a difference  
10 between placing a 6- or 8-inch pipe and placing a 24-  
11 or 30-inch pipe through someone's property?

12 A. Construction-wise or --

13 Q. Construction-wise. Impacts.

14 A. Construction-wise, certainly there's  
15 different constraints when you have a heavier one or a  
16 larger pipeline versus a small. I don't see a huge  
17 difference there, but there's different methods of  
18 construction. I don't really -- I'm not the guy to  
19 get into that.

20 If you're asking if there's a difference  
21 between a small diameter pipe and a big diameter pipe,  
22 sure. The Exhibit Hs all are going to be congruent  
23 and consistent across the board. That's typical  
24 practice there. I think they're all going to say  
25 24 inches.

1           The voluntary easement almost all of the  
2 time that we work out with the landowner has this  
3 Exhibit C that I keep mentioning. And that pares down  
4 the diameter, you know, within a few inches typically  
5 of what's going to be installed.

6           So every base easement -- I say "every."  
7 Thousands of the base easements will say 24 inches in  
8 that opening paragraph. Or in that granting paragraph  
9 for the pipeline easement. And then have an Exhibit C  
10 that pares down that diameter. Sometimes it's both.  
11 If it really is a 24-inch, it would say it in both  
12 spots.

13           But that was instituted after the project's  
14 onset for the concern you just mentioned. Some folks  
15 want it to say the exact diameter, some folks didn't  
16 care, some folks are fine with it being able to be a  
17 varying diameter. They don't want to deal with  
18 another easement. "Fine, if you've got to come  
19 replace it, just pay me the damages," of which the  
20 easement allows you to. It's a mixed bag.

21           But our base easement -- it's a long answer  
22 to your question, but the base easement and the  
23 Exhibit H are going to say 24 inches in the first  
24 pages there.

25           Q. And does the Exhibit H easement allow

1 Summit to change the size of the pipe?

2 A. I believe so.

3 Q. So, if you placed a 6-inch pipe through  
4 someone's parcel, the easement says 24 inches, is  
5 Summit also looking for the right to come in later and  
6 put a 24-inch pipe in there instead of the 6-inch?

7 A. I don't know that we're looking for that.  
8 I think it would allow it. Certainly the flexibility  
9 of being able to replace that pipe with a larger pipe,  
10 I think so. But I think we're venturing into what our  
11 counsel wrote for our Exhibit H rights.

12 Certainly there would be an advantage of  
13 being able to adjust the diameter of that pipe. I can  
14 tell you the intent on my end and really what I'm  
15 hoping it mitigates is Exhibit H is a function of  
16 eminent domain. Right? Exhibit H is also a function  
17 of the Board process, but, as you mentioned, it's part  
18 of what you'd be seeking through eminent domain.

19 If you have a piece of property that we  
20 have to go through the unfortunate circumstance --  
21 which I hope we wouldn't, but if we did and had to  
22 file eminent domain and go down that road, the last  
23 thing on the planet we'd want to do is do it twice.

24 So, if your neighbors had signed voluntary  
25 easements and had an Exhibit C that showed let's call

1 it a 16-inch diameter, the risk assessment we do when  
2 we look at that is say it's much more likely that if  
3 we had to change the diameter on that pipe on their  
4 easements, that they would work with us on that, and  
5 we would be able to amend those.

6 If we're in a situation with you where we  
7 exhausted years' worth of effort and resources trying  
8 to reach an agreement with you and then we went  
9 through the dually painful process of eminent domain,  
10 which is not fun, it's certainly not fun for us and  
11 it's never fun for the landowner, we don't want to do  
12 that twice.

13 So we want to get the basic rights that we  
14 would need to operate this pipeline system and not  
15 have to disrupt that person's program again or have to  
16 go through that process again.

17 So that's part of the intention there.  
18 But, also, all of the Exhibit Hs are really going to  
19 look the same.

20 Q. For this project, is it necessary that you  
21 have the ability to change the pipe size?

22 A. I think so. I'm certainly not the engineer  
23 that draws up the reasons why, but I think it's good  
24 to have that right.

25 Q. So is Summit looking at changing the

1 project and increasing the capacity then? Or why  
2 would they need a larger pipe in those areas?

3 A. That's a great engineering question. I'm  
4 certainly not looking at expanding the diameter of the  
5 pipe. But, if there was a reason that warranted that,  
6 hydraulically or some other reason, we'd certainly  
7 want the flexibility to do that without having to  
8 amend the easement.

9 But, as it sits right now, we have over  
10 1,200 easements -- I'm sorry, over 1,200 landowners  
11 that have reached an agreement with us. So all of  
12 those landowners would have to be amended if we  
13 changed the diameter somewhere.

14 Q. And also in the easement rights -- I think  
15 you briefly talked to Mr. Jorde about this already,  
16 but changing the route of the pipe.

17 Are you looking at only changing the route  
18 of the pipe within the easement area or are you  
19 looking at changing the route of the pipe within the  
20 parcel?

21 A. I mean, as it relates to the Exhibit Hs, it  
22 would be in the easement area. If it's a voluntary  
23 arrangement in which the landowner is comfortable, for  
24 one reason or the other for more flexibility, then we  
25 would work that out individually.

1 Q. So that would be another difference between  
2 the voluntary versus the Exhibit Hs.

3 A. That's correct.

4 Q. Then you also discussed abandonment.

5 The intention with Exhibit Hs is for the  
6 abandonment law to apply? The reversion of use  
7 provisions?

8 A. Yes.

9 Q. Does Summit have an intent to, with the  
10 Exhibit Hs, give Summit the choice about whether or  
11 not to leave it in place upon abandonment?

12 A. No, I think that the rules would apply  
13 about abandoning in place being default unless the  
14 landowner elected otherwise. I could say, on our  
15 standpoint, we're fine either way.

16 Q. And then, also, as far as the scope of the  
17 Exhibit H easement, it talks about allowing  
18 telecommunications, power lines, and any other such  
19 equipment that's used or useful.

20 Is there any intention by Summit to place  
21 fiber-optic or electric lines, or lease that right to  
22 do it, in order to provide services? Those kinds of  
23 services?

24 A. Not that I'm aware of. I think that what  
25 you're looking at is just generic language that talks

1 about anything necessary to run pipeline facilities.

2 We certainly don't have the intention of  
3 running power lines all over these easements. But, if  
4 there's a rectifier that needs power to it that's tied  
5 to cathodic protection, we'd like the ability to do  
6 that.

7 Again, all for the same reasons I just  
8 stated. How painful it would be to have to go back to  
9 a landowner over a rectifier to keep electrons  
10 rectified cathodically on a pipeline that may require  
11 power.

12 Fiber-optic. Mr. Powell touched on that  
13 earlier. I'm not a fiber guy. I don't know if we  
14 would or would not. That's not something I've talked  
15 to landowners about.

16 But what you're looking at is generic,  
17 standard pipeline facility language about  
18 appurtenances.

19 Q. So Summit is not looking to lay fiber-optic  
20 line, or lease that right to somebody else, to sell  
21 internet services to somebody.

22 A. Not at all. And internet services would  
23 not be tied to the operation of a pipeline facility.  
24 So I think that would be a violation of the easement.  
25 I'm not a lawyer, but that's certainly not our



1 intention.

2 Q. And, similarly, with electric lines.

3 There's no intent to lease the ability to lay electric  
4 lines for somebody to sell transmission services or  
5 electricity services?

6 A. No. That's certainly not our intention.

7 We do have the intention of placing some  
8 electric lines down access roads to those valves. We  
9 need to power those. Launcher/receivers, same thing.

10 But, no, we have no intention of partially  
11 assigning our easements to a third-party power  
12 provider that has nothing to do with us.

13 I don't know that we could, but I know that  
14 we shouldn't, and we have no intention to.

15 Q. So your use of that equipment, the intent  
16 is just to use it for purposes of operating the  
17 pipeline.

18 A. It's entirely for that purpose.

19 Q. And then, also, in paragraph 5 of the  
20 Exhibit H language, and we can scroll back up to that,  
21 it talks about temporary and permanent gates that will  
22 be installed.

23 So I assume if fencing is torn out, there's  
24 already rules regarding that. My question is  
25 regarding the gates. Say if Summit places gates at

1 the end of the easement so they can get access from  
2 the road, is that something that -- like if it was a  
3 locked gate, that they would also provide the key or  
4 the combination to the landowner? To access the  
5 property that way?

6 A. Typically, that's the case. I mean, if --  
7 they're typically keyed locks. It certainly provides  
8 the landowner the ability to -- you know, we can cut a  
9 link and they could put their own lock in that chain  
10 if someone was going to put it past ours. But, if the  
11 question is whether the landowner would have access  
12 through that gate, yes, they would. We'd figure it  
13 out one way or the other.

14 Q. True. Thank you.

15 MS. GRUENHAGEN: I believe that's all the  
16 questions I have. Thank you.

17 BOARD CHAIR HELLAND: Okay. Thank you,  
18 Ms. Gruenhagen.

19 We are getting dangerously close to 3 p.m.  
20 I don't want to cut anybody off, but I want to get a  
21 sense of how much time we're going to need.

22 Mr. Murray is shaking his head like he's  
23 going to need more than 15 minutes?

24 MR. MURRAY: Your Honor, yes.

25 BOARD CHAIR HELLAND: That's fine.

1                   Mr. Taylor? I assume you'll need --

2                   MR. TAYLOR: I imagine maybe about 20  
3 minutes or so with him.

4                   Mr. Meyer. I won't hold you to it. If  
5 somebody has only got a couple, we can squeeze them in  
6 and be done.

7                   MR. MEYER: Mine are probably 15, 20.

8                   BOARD CHAIR HELLAND: Ms. Kohles. I see  
9 your nametag. Five minutes? Use your mic, please.

10                  MS. KOHLES: Probably five to ten minutes.

11                  BOARD CHAIR HELLAND: Let's do this. I've  
12 got everybody listed down. So we'll make sure that  
13 you're not left out. We'll have Ms. Kohles ask her  
14 questions and then we'll hit the pause button.

15                  Go ahead, Ms. Kohles.

16                                   CROSS-EXAMINATION

17 BY MS. KOHLES:

18                  Q. Good afternoon, Mr. Rorie.

19                  A. Good afternoon.

20                  Q. I'm Jean Kohles with Kohles Family Farms,  
21 and I've had experience with your land agents and  
22 trying to negotiate an easement agreement. And, since  
23 you were the one you stated who hired and trained  
24 these agents and they work under your direction -- is  
25 that correct?

1           A.    Yes.  I did hire them.  Either indirectly  
2 or directly, yes.

3           Q.    And you held them to certain standards.

4           A.    We do our best to, yes, ma'am.

5           Q.    And you said earlier that you had not  
6 terminated anyone's employment with your agents --  
7 with you.

8           A.    Oh, no, ma'am, I've certainly terminated  
9 people on our project.  I'm not sure I understand the  
10 question, but I certainly have terminated folks on  
11 this project.

12          Q.    Okay.  I misunderstood your response then.

13                Well, I'm going to start with a few things.  
14 When I initially received the easement agreement, I  
15 talked to a land agent and I asked him if there was a  
16 possibility of a route adjustment.  And he said,  
17 "Absolutely not.  There is no negotiation because of  
18 safety protocols."

19                Is this a typical answer on the first  
20 contact with a landowner?

21          A.    Sometimes.  You know, if there's areas on  
22 this pipeline project where route fluctuations are  
23 much more difficult or not an option than others --  
24 it's a little bit random, and it gets pretty  
25 scientific, but there are certain areas that right off

1 the bat we meet with a landowner and if they ask for  
2 our route to be changed, we know that it's not  
3 feasible, that this is the only thread of the needle  
4 we can go.

5 Q. Even if it was on the same parcel? It was  
6 not out of the parcel. Would that create a problem?

7 A. Again, there are certain areas where our  
8 agents are instructed by project management and others  
9 to say, "This is a zone where we can't move very  
10 much." There might be some micro changes and things  
11 like that, but I have to go with my agent there. If  
12 they told you that it wasn't much of an option, it's  
13 probably because they were told that before they got  
14 there.

15 Q. Would that be because of the relationship  
16 to an ethanol plant?

17 A. I can't imagine that being a reason.

18 Q. Would it be because of the boundaries the  
19 pipe is going through on neighbors to the north or  
20 south?

21 A. It's possible in what they may be  
22 encountering as an adverse effect of moving on your  
23 ground, sure, it's possible.

24 Q. Even if it crosses a waterway it doesn't  
25 make any difference?

1           A.    I'm sorry. I'm not sure I understand that  
2 question. Even if it crosses a waterway it doesn't  
3 make much of a difference to move the pipeline? I'm  
4 struggling here.

5           Q.    Yeah, to relocate it.

6           A.    There are certain ways we have to cross  
7 waterways. It's tough to have some flexibility there.

8                    But I just want to make sure I'm answering  
9 your question and not answering the opposite there.

10                   If we have a set way across the waterway,  
11 then that's right. There's some tough constraints  
12 there that make it difficult to move.

13           Q.    Okay. So we negotiated -- the initial  
14 easement agreement was ridiculous. Okay? And I was  
15 questioning and you did answer some areas of how you  
16 came to those terms.

17                   I was attempting to get those changed, and  
18 I gave very valid reasons for the appraisal being  
19 incorrect.

20                   In subsequent easement agreements, I did  
21 not get a difference in rate. Even though you  
22 indicated that. I did, thankfully, get possibilities  
23 of how to deal with the tile they were crossing on the  
24 route with depth, et cetera, which I was happy to see.

25                   But one of the areas that I had big

1 questions was was safety of the pipeline and  
2 accessibility to the way it's cutting across my land.  
3 It really eliminates a huge portion of my property.

4 And three sides of my property are farmland  
5 for other people. Some with easements, some without.  
6 And I only have one road access.

7 So it's basically a north/south pipe, but  
8 the only access would be east and west completely  
9 cutting across. And the easement agreement did not  
10 address that right-of-way for pricing. To the  
11 easement area.

12 A. I apologize. I'm not sure I -- you're  
13 doing an excellent job of describing your property.  
14 And I have looked at your property. I've seen you  
15 here the last couple of weeks, I've heard some of your  
16 questions, and so I did a little bit of homework to  
17 make sure that I could answer your questions the best  
18 I could.

19 I'm not sure I understand what you mean  
20 about access east to west. We certainly don't prevent  
21 a landowner from going across the easement if that's  
22 what you mean. Or are you just talking about the fact  
23 that there would be an easement there?

24 Q. You would be going across tillable acres or  
25 the farms. You say we can operate going ahead, but,

1 if you cut smack-dab straight across -- because I  
2 think, on your proposal, it indicated there was a  
3 county road to the south of my property which might  
4 have provided access, but that access was terminated  
5 when the buildings and the homestead were demolished.  
6 And that road has a bridge across it that has not been  
7 maintained by the county.

8 So that's where I'm getting -- why I wanted  
9 to have a discussion was because of the access to get  
10 to. You can't go across other people who haven't  
11 signed an easement agreement; correct?

12 A. I'm struggling here. Can we pull up your  
13 property? Would that help? It certainly would help  
14 me if we could pull this up and look at it. You're  
15 talking about a county road that's been abandoned  
16 that's got a bridge on it and how you guys would be  
17 able to maintain and farm either side of the easement.  
18 I want to be able to help you, but it would be --

19 THE WITNESS: I don't know her Exhibit H  
20 number or --

21 BY MS. KOHLES:

22 Q. Why wouldn't your agents discuss this with  
23 me prior to this procedure?

24 A. Well, I'm certainly -- not to offend, and I  
25 don't think there's much utility in me disagreeing



1 with you much, and it's not my intent to, but we've  
2 got some pretty reputable people that have visited  
3 with your farm manager.

4 We have reached agreements with the vast  
5 majority of landowners and farmers that are managed by  
6 that farm management group. Those were done a long  
7 time ago. They were very amenable. They had  
8 extensive terms about tile and a lot of other  
9 concessions in those agreements.

10 We were under the impression from the farm  
11 manager, I believe his name is Grant --

12 Q. Correct.

13 A. -- a long time ago that the signature pages  
14 and the packages had been sent out to you to sign. We  
15 were certainly disappointed and it was unfortunate  
16 that they weren't signed.

17 We have tried to keep in touch with your  
18 farm manager and can document that very easily. We've  
19 tried multiple attempts to reach out and see how you  
20 guys were doing, if there's anything we can do to  
21 answer your questions. We've had some of the best  
22 supervisors and leads that I've employed in Iowa reach  
23 out to you and to your farm management group over the  
24 course of a year.

25 We're still here to visit with you. I'm

1 thrilled to visit with you and see if we can work  
2 something out and get those questions addressed.

3 The answer we've gotten most of the time,  
4 and these are from people that I will certainly vouch  
5 for, is that you're running a business and you're very  
6 busy.

7 We were under the impression that you  
8 guys -- everything had been agreed to through your  
9 farm manager, that was our primary contact, and that  
10 you had some questions, but we didn't know what the  
11 specific questions necessarily were. We sent you all  
12 the project information we could think of, including  
13 some direct testimony from Mr. Powell. We reached out  
14 to Grant repeatedly, "How are we doing here, what can  
15 we do to help," and that's where things left off.

16 So, again, I can't stress this enough. I  
17 am not trying to argue with you about that, but I have  
18 to dispel the notion that we haven't tried to answer  
19 your questions. I just think you guys have been  
20 pretty swamped lately.

21 Q. I also had three surgeries that I was  
22 recovering from.

23 A. Understood. And that's a valid reason.  
24 But it still doesn't change the fact that we've tried  
25 really hard to visit.

1                   So I don't know that the notion that we're  
2 not here to answer your questions -- I'll be glad to  
3 visit with you at any time or certainly put you in  
4 front of some people that will answer your questions  
5 if you have them, but we just simply need a dialogue  
6 with you.

7                   Q.    Yeah, because I just got --

8                   A.    I'm glad you've recovered from your  
9 surgeries though.

10                  Q.    I just got slick merchandise. Three times.  
11 The same information.

12                  A.    Yeah, I think one of the information that  
13 we sent -- pieces of information simply just had a new  
14 year on it. Because we expected all of this to be  
15 resolved last year. So it was just a whole new year,  
16 and that's why we sent that in the event that you  
17 elected to sign those easements.

18                  But, again, we are glad to visit with you  
19 and try to work out any of your safety concerns, or  
20 any concerns for that matter, on your property as  
21 relates to the easement. Our door is always open for  
22 that.

23                  Q.    It hasn't been up to this point. When I've  
24 asked for information, I was told they couldn't  
25 discuss it or, like you said, the route couldn't be

1 changed.

2 A. Well, asking for information and asking for  
3 the route to change can be two different things. But,  
4 again, I'd be glad to visit with you about that. I'll  
5 be able to give you the brass tacks on how that looks  
6 and what answers we can provide you. Depending on  
7 what you're asking. There's some things I'm not  
8 allowed to answer. But we've been available to talk.

9 Q. You also indicated that most people have  
10 received a onetime, up-front payment.

11 A. Most people that have signed easements?

12 Q. I was under the impression that it would  
13 only be an up-front, onetime payment that would go as  
14 a capital gain.

15 Is that correct?

16 A. Well, diving into capital gains -- I'm not  
17 a tax professional, but, no, there's two components  
18 there. I would encourage you to talk to your CPA  
19 about that, but there's two components when it comes  
20 to the tax side of this.

21 So I can talk in layman's terms about it,  
22 but there's -- it's a two-way scenario. There is  
23 capital gains and ordinary income. There's a 1099-S  
24 and a 1099-Miscellaneous. And the permanent easement  
25 falls on one, and pretty much everything else in its

1 subcategory falls on the other. Either way that's a  
2 tax scenario which I cannot manipulate. It's just tax  
3 law.

4 So it's not one or the other. The cap  
5 gains typically applies to the permanent easement.  
6 Typically.

7 Again, please check with somebody. I'm not  
8 a very good CPA. But --

9 Q. I did.

10 A. -- the temporary workspace, the crops that  
11 are forfeited, all of that is technically ordinary  
12 income or rent, however they want to subcategorize  
13 that, and that would fall under a 1099-Miscellaneous.

14 So it is rare for a right-of-way agent to  
15 go to the extent of what I just did. Because we run  
16 the danger of saying it wrong and then we've mislead  
17 someone, but I'm comfortable telling you that.

18 So right-of-way guys and gals are not tax  
19 professionals, but they can tell you you're going to  
20 get two 1099s unless it's a drill with no damages.

21 Q. But it was in the same calendar year. So  
22 they're pretty much both taxable.

23 A. That sounds right to me. I don't determine  
24 what is and isn't taxable. I can just tell you which  
25 buckets they fall in.

1 Q. Well, was it true that he -- okay. So that  
2 person did not have the authority to answer if I could  
3 take the payments on different years.

4 A. Well, if you wanted to take -- defer a  
5 payment to the following tax year, sometimes we can do  
6 that. Landowners request that. We don't extend those  
7 out over long periods of time as an annual payment.  
8 Just whatever can help accommodate you in terms of  
9 your preferences in a 12-month period.

10 Q. Wouldn't it help most of the landowners in  
11 Iowa by breaking it out instead of one lump sum?

12 A. You'd be surprised. There are hundreds of  
13 people that have said, "Absolutely not. I want it all  
14 up front and I want it all right now."

15 Q. What is the age demographic of Iowans?

16 A. That I can't answer. That's a great  
17 question. I have no idea.

18 Q. Two-thirds of the landowners are 65 and  
19 older and 37 percent are 75 and over.

20 A. Okay.

21 Q. Does that sound right?

22 A. I have no idea. I would not be a good  
23 judge of that.

24 Q. So a lot of those people have to take RMDs,  
25 pensions, and that kind of thing in the course of a

1 year. And their rents and all their income. And  
2 their social security benefits are on total gross  
3 income regardless of how it's classified.

4 And, if they have to take a hit of income  
5 of probably a substantial amount in the course of one  
6 year, it affects their monthly social security  
7 benefits. They get less money the more money they  
8 make. And a lot of them are widowers or whatever. So  
9 they even have a smaller level -- I'm not saying it  
10 right.

11 But there's different stratas of income on  
12 what is taxable. And different stratas of what  
13 Medicare A, B, and D will take out of the monthly  
14 social security checks for these retired individuals.

15 So, by a lot of the seniors receiving this  
16 onetime payment, it will affect their income. Reduce  
17 their income for the next year.

18 A. I'm sorry. Was there a question there?

19 Q. Well, I'm just giving you some information.  
20 It's not that great a deal when you look at total  
21 gross money that you're willing to pay. Because it  
22 actually hurts the seniors or probably over 70 percent  
23 of the landowners in Iowa.

24 Do you agree?

25 A. I don't agree that it hurts people. I'm

1 listening to the scenario you're describing. I think  
2 there's one caveat there when you mentioned they get  
3 less money. They may get less money from that  
4 program, but they get money from us.

5 I understand the income brackets and what  
6 you're talking about there. We sympathize with that,  
7 but we can't not install infrastructure based on  
8 someone's tax situation. Nothing would ever get done.

9 If a landowner requests that an easement  
10 payment be deferred, or partially deferred, within a  
11 12-month period to help quell some of that or make  
12 that more palatable, then we're always willing to  
13 comply with that.

14 But I can't adjust payments and payment  
15 structures beyond that because I can't get into a spot  
16 where I'm breaking rules. And so I understand the  
17 concern there.

18 It hasn't been a huge concern with the Iowa  
19 landowners. And we're talking 1,210 that have signed  
20 easements. That topic has come up maybe once in two  
21 calendar years. Now twice. So it's not a very common  
22 complaint or concern from a landowner. Which leads me  
23 to believe they're comfortable with it or they have  
24 adjusted to it.

25 But I can't manipulate things tax-wise for



1 you or anybody else. As much as I would want to to  
2 make this less stressful for you, I have to stay in a  
3 certain lane. And I'm going to do that.

4 Q. Well, their net income goes down and it  
5 affects their tax rate. It can increase maybe one or  
6 two tax brackets.

7 A. Understood. Understood.

8 Q. So that is how the onetime payment could be  
9 detrimental to the landowner's taxable income -- the  
10 income taxes they are forced to pay.

11 Correct?

12 A. I'll take your word for it. I have no  
13 idea.

14 Q. Also, I question the real estate  
15 evaluation. Can you clarify for me, was that  
16 basically 50 percent of the value of the land?

17 A. The real estate evaluation? Can you help  
18 me understand? You mean the offer or --

19 Q. Your calculations. Was it based on the  
20 appraised value or on sale of the property for the  
21 current value.

22 A. It's sort of a hybrid. So we look at the  
23 CSR2 scores for the ground. Those tend to not change.  
24 Right? They were pretty set in 2012.

25 We look at the CSR2 scores. Then we look

1 at Iowa land survey data for comparables. And we look  
2 at some of our own data for comparables. And we  
3 typically pick the higher of the two. We multiply  
4 those two things together to come up with a per acre  
5 for that tract.

6 So let's call it 5,000 an acre. So then we  
7 would say the temporary workspace is 50 percent of  
8 that per acre. So now we're at \$2,500 an acre for the  
9 temporary workspace we're borrowing from you to  
10 construct the pipeline and install it.

11 Then we would look at the value of the  
12 crops. Typical yields. Try to take a weighted  
13 average of that to make you whole on that. And look  
14 at a three-year period assuming rotated crops.

15 That, all bundled together, is the  
16 compensatory offer that you've seen.

17 Q. And what year did you base those numbers  
18 on?

19 A. Well, it looked -- initially, the project's  
20 onset was in 2021. But we keep an eye on things. If  
21 the price of corn or beans change, if there was a  
22 substantial difference in that per acre, that would  
23 exceed what our premiums were.

24 So, if our premiums already captured any  
25 fluctuation -- and that's sort of on purpose. That if

1 our premiums capture that fluctuation, there's no real  
2 sense in adjusting it.

3 Unless you told me to. Some landowners  
4 have and some don't care and some agree with our  
5 pricing.

6 Q. We were questioning that. Grant questioned  
7 that. And it was not changed.

8 A. I'd have to go back and look at the other  
9 landowners tied to that farm management group. I  
10 certainly can't discuss their compensation here. I'd  
11 have to look at it and see if they adjusted them.

12 But, regardless, it makes no difference to  
13 me. If you feel like it's justifiable that your per  
14 acre is a little bit higher, within reason so I'm not  
15 breaking IRS rules here, then we'll adjust that.

16 It doesn't change the total amount of  
17 compensation. It changes how much is allocated that  
18 way. Because the total compensation is far and above  
19 and beyond what that value is.

20 I don't know if I'm doing a good enough job  
21 of making sense of this, but I'm trying to.

22 Q. Yeah, I'm still concerned about the  
23 right-of-way access to get to the easement area for  
24 construction. I'm not aware that anything was paid  
25 for that land to access that.

1           A.    Anything was paid to access the land --

2           Q.    Well, anything was negotiated related to  
3 maybe having a completely separate track.

4           A.    Well, this right here -- I mean, unless  
5 there's an access road to get to it, they would go up  
6 and down the right-of-way.

7           Q.    So you'll go around three to five miles to  
8 get to construction?

9           A.    I'm not following why we'd go around three  
10 to five miles. This white line, we would just take  
11 our crews down the white line.

12          Q.    Down the easement area.

13          A.    That's right. That's right.

14          Q.    Okay. I didn't get that answer before.

15          A.    Okay.

16                MS. KOHLES: Thank you. No further  
17 questions.

18                BOARD CHAIR HELLAND: Okay. Thank you.

19                So, with that, we will recess until Tuesday  
20 at 8 a.m.

21                Yes? Mr. Jorde.

22                MR. JORDE: Yes. Thank you.

23                So clarification. Is the Board able to  
24 tell us what the intention is of how long -- I mean,  
25 are you intending to go the entire month of September?

1 Or I'd like some clarification on what the intent is  
2 for the remainder of the hearing.

3 BOARD CHAIR HELLAND: I think we have a lot  
4 of witnesses to go through that accounts to a to-do  
5 list, and we will work our way through it and act  
6 accordingly. It's really going to be up to how things  
7 move along.

8 MR. JORDE: Well, I understand we have  
9 witnesses, but --

10 BOARD CHAIR HELLAND: I know we won't have  
11 a set schedule for you. We have a to-do list,  
12 Mr. Jorde, and we have a lot to do.

13 MR. JORDE: Yeah, but the question is a  
14 little different. There's a lot of witnesses. They  
15 have to testify. But, I mean, is this place leased  
16 for the next two months?

17 I mean, I'm just trying to figure out  
18 parameters, because right now it's basically every day  
19 we just kind of wonder what's happening next. I'm  
20 just looking for some clarification.

21 BOARD CHAIR HELLAND: We have a Weekly  
22 Digest. It's -- is it up yet? I think it's already  
23 up. So we look forward to seeing your witness  
24 availability for next week and we'll push on.

25 I think Mr. Taylor was first.

1                   MR. JORDE: Well, I make a motion to move  
2 the Jorde Landowners from Number 9 to the very end of  
3 the sequence.

4                   (Brief pause.)

5                   BOARD CHAIR HELLAND: Okay. We can take it  
6 under advisement.

7                   Mr. Taylor.

8                   MR. TAYLOR: Thank you. According to the  
9 schedule you put out today, my witnesses are set for  
10 next Thursday. But it looks to me like, with all due  
11 respect, that maybe that's a little aggressive.

12                   I've got two witnesses from out of state,  
13 and I would hate to bring them here and then not have  
14 them testify at that time.

15                   As an alternative, I'm wondering maybe in  
16 order to be more flexible would it be possible to have  
17 them testify virtually?

18                   BOARD CHAIR HELLAND: Mr. Dublinske. Did  
19 you have something to say?

20                   MR. DUBLINSKE: Not about that. I'm just  
21 waiting to talk about witness availability for next  
22 week.

23                   (Brief pause.)

24                   BOARD CHAIR HELLAND: We can discuss  
25 virtual testimony of witnesses. It's not something

1 we're going to commit to right now. But we can take  
2 it under consideration. Appreciate it.

3 MR. TAYLOR: That's fine. It just seemed  
4 to me that six of Summit's witnesses on Tuesday might  
5 be difficult. And then we wouldn't get to my  
6 witnesses on Thursday. But, if I'm committed by the  
7 schedule to have them here on Thursday and then not  
8 have them testify, that would be unfortunate.

9 BOARD CHAIR HELLAND: Thank you.  
10 Appreciate it.

11 Mr. Dublinske.

12 MR. DUBLINSKE: The only thing I would add  
13 to that is I think that has to be an all or nothing  
14 proposition. Either everyone has the option of having  
15 witnesses testify remotely or nobody does.

16 Next week obviously Mr. Rorie is still on  
17 the stand. I just wanted to advise the Chair that on  
18 Tuesday we have had two witnesses that won't be  
19 available. One is Mr. McCown who teaches at Miami  
20 University on Mondays and Tuesdays. The other is  
21 Jimmy Powell who will be up in South Dakota.

22 All the rest of our witnesses will be  
23 available, and we would proceed with Rorie, finish  
24 Micah up, and then Louque, Lumpkin, and Muhlbauer.

25 And then we'll have other people here if

1 we, by chance, get through that list.

2 BOARD CHAIR HELLAND: Thank you.

3 Mr. Whipple, your card is back down.

4 MR. WHIPPLE: I was optimistic you would  
5 call on me, Your Honor. Thank you.

6 We're able to offer substantial  
7 flexibility. The Counties only have one out-of-state  
8 witness. And, similar to Mr. Taylor, just want to be  
9 able to identify specifically what day.

10 And so we would be willing, if the other  
11 parties and the Board are willing, to kind of have  
12 some intervening party witnesses go here and there  
13 based on scheduling more than which party they're for.

14 But three of our witnesses are local. And  
15 I think the Hardin County witnesses are both local.  
16 So, since we can get our people here, we're willing to  
17 kind of mix and match if that helps things along next  
18 week.

19 BOARD CHAIR HELLAND: Much appreciated.

20 Thank you.

21 Mr. Meyer. And then Mr. Long.

22 MR. MEYER: Nothing, Your Honor.

23 BOARD CHAIR HELLAND: False alarm.

24 Mr. Long.

25 MR. LONG: We can also offer some



1 flexibility with our witness. I've spoken with him.  
2 He could be available Tuesday, probably in the  
3 afternoon, if needed. We would want some advance  
4 notice of that. And then -- he's scheduled for  
5 Wednesday. He could be available Thursday.

6 Beyond that, I'd have to check with him on  
7 any other commitments he has, but we can offer  
8 flexibility as well.

9 BOARD CHAIR HELLAND: Okay. As we all  
10 know, it's unpredictable when we have no idea how many  
11 questions from the parties. Frankly, some of the  
12 witnesses have taken far longer than we expected, some  
13 of them have taken far less than expected. So it  
14 becomes extremely unpredictable.

15 I appreciate everyone's suggestions,  
16 appreciate the flexibility. We will take it under  
17 advisement. It is Friday, so I think we need to --  
18 there's enough moving pieces here and I think they're  
19 great suggestions.

20 So we will be here Tuesday, 8:00, and will  
21 be working through Summit's witnesses. And we can  
22 start trying to see if we can put the pieces together  
23 so that we're using everybody's time as wisely as we  
24 can.

25 Thank you all. Have a good weekend.

1                   Oh. We'll go off the record and wish our  
2 court reporter a happy birthday.

3                   Thank you.

4                   (Hearing concluded at 3:09 p.m.,  
5 September 8, 2023.)

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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the proceedings in the above-entitled matter at the time and place indicated; that I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated this 23rd day of September, 2023.



CERTIFIED SHORTHAND REPORTER  
Melissa A. Burns, Iowa CSR #527

IN RE: SUMMIT CARBON SOLUTIONS  
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