

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

IN RE: SUMMIT CARBON SOLUTIONS LLC	DOCKET NO. HLP-2021-0001
NUSTAR PIPELINE OPERATING PARTNERSHIP, L.P.	DOCKET NO. HLP-2021-0002
NAVIGATOR HEARTLAND GREENWAY LLC	DOCKET NO. HLP-2021-0003

**JOINDER IN RESPONSE TO MOTION FOR CLARIFICATION**

Summit Carbon Solutions, LLC (“Summit”) hereby joins in and adopts the arguments included in the Response to Motion for Clarification filed by Navigator Heartland Greenway, LLC (“Navigator”) on January 11, 2022.

OCA’s Motion for Clarification (“Motion”) improperly seeks to have the Board construe the meaning of Section 479B.15, rather than to clarify anything in the Board’s December 16 Order. Further, it also seeks to have the Board do so in a manner inconsistent with the plain language of the statute. Section 479B.15, unlike other survey statutes that contain requirements for including a specific date of survey in the notice, contains no such requirement. The legislature’s decision should be given effect in this case.

OCA’s argument also ignores the import of Section 479B.15’s statement that survey performed pursuant to the ten-day notice provision “shall not be deemed a trespass...” By the very definition of trespass, presence on private property *with the owner’s permission* is not a

trespass. OCA acknowledges that Section 479B.15 pertains to the concept of trespass, but then inexplicably ignores that relationship in making its ultimate argument. Section 479B.15 exists to tell us when *involuntary* presence on private property will not be a trespass; it is not necessary for a statute to tell us that trespass does not occur where the landowner *voluntarily* permits that presence.

Finally, in addition to the myriad factors that make setting a specific survey date impractical (weather, equipment issues, unexpected land conditions), and the confusion and annoyance that is likely to result if landowners are required to repeatedly receive new notices with new dates as those factors impact the survey process, OCA's suggested approach would actually impede meeting landowner preferences. In many cases, allowing the parties to discuss voluntary survey permission results in meeting landowner preferences. For example, a pipeline company and landowner may agree to doing survey after harvest, or to do survey now, rather than ten days from now when the landowner plans to be in the field. If the *only* way to do survey is under the 10-day notice approach as OCA suggests, these conversations and outcomes are not likely to occur.

Accordingly, Summit hereby joins in and adopts the arguments in Navigator's Response to Motion for Clarification, and respectfully requests that the Board deny OCA's Motion for Clarification.

Respectfully submitted this 13th day of January, 2022.

By: /s/ Brant M. Leonard

Bret A. Dublinske, AT0002232  
Brant M. Leonard, AT0010157  
**FREDRIKSON & BYRON, P.A.**  
111 E. Grand Avenue, Suite 301  
Des Moines, IA 50309  
Telephone: 515.242.8900  
Facsimile: 515.242.8950  
Email: bdublinske@fredlaw.com  
bleonard@fredlaw.com

**ATTORNEYS FOR SUMMIT CARBON  
SOLUTIONS, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 13<sup>th</sup> day of January, 2022, the foregoing document was electronically filed with the Iowa Utilities Board using the EFS system which will send notifications of such filing (electronically) to the appropriate persons.

/s/ Olivia Lucas

Olivia Lucas