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County Of Greene

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114 N. Chestnut

Jefferson, Iowa 50129

Iowa Utilities Board
1375 East Court Avenue
Des Moines, Iowa 50319-0069

April 11, 2022

RE: Docket No. HLP-2021-0001

Dear Members of the Iowa Utilities Board:

Iowa Code section 479B.7(1) authorizes a governmental entity whose rights or interests may be affected by a proposed pipeline to file a written objection to the issuance of a permit for its construction. Summit Carbon Solutions, LLC has submitted an application for a permit to construct a hazardous liquid pipeline, in excess of 700 miles in length, across the State of Iowa. As presently conceived, one arm of the proposed pipeline would extend into Greene County.

While we, the Supervisors of Greene County, do not oppose the construction of the proposed pipeline per se, we do object in the strongest possible terms to the use of eminent domain to facilitate its construction or future operation. We understand that the Iowa Supreme Court has previously found that the Iowa Utilities Board has statutory authority under Iowa Code section 479B.16(1) to vest a pipeline company with the power of eminent domain. *See Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829 (2019). However, we believe the Supreme Court's decision was wrong as a matter of law, inconsistent with sound public policy, and contrary to the rights and interests of the people of Greene County. As Justice Samuel Chase wrote more than two centuries ago in *Calder v. Bull*, 3 Dall. 386, 388 (1798) (emphasis added):

An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power, on which it is founded. A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys, or impairs, the lawful private contracts of citizens; a law that makes a man a Judge in his own cause; *or a law that takes property from A. and gives it to B*: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers; and, therefore, it cannot be presumed that they have done it.

The use of eminent domain for the construction of the proposed pipeline would be a clear example of the government "tak[ing] property from A. and giv[ing] it to B" in contravention of "the great first principles of the social compact" underlying our system of government. Thus, on behalf of the people of Greene County, we urge you not to vest Summit Carbon Solutions, LLC with the power of eminent domain, and we would object to the issuance of a permit for the construction of the proposed hazardous liquid pipeline to the extent that it cannot be accomplished without the use of eminent domain.

Home Of Mahanay Memorial Carillon Tower

The Takings Clause of the Fifth Amendment to the United States Constitution prohibits the government from taking “private property ... for public use, without just compensation.” Article I, section 18 of the Iowa Constitution similarly provides that “[p]rivate property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof....” These constitutional provisions guarantee that any property taken by the government through the exercise of eminent domain will be put to a “public use,” and without this fundamental limitation on governmental power, the rights of private property owners, without which a free society cannot exist, are put in jeopardy. Indeed, without this limitation on the power of eminent domain, the government could simply transfer property from one private citizen to another whenever it believed the latter would put it to better use.

Justice Clarence Thomas explained the limitation imposed by the “public use” requirement in his dissenting opinion in *Kelo v. City of New London, Connecticut*, 545 U.S. 469, 508-509 (2005), as follows:

The most natural reading of the [Fifth Amendment’s Takings] Clause is that it allows the government to take property only if the government owns, or the public has a legal right to use, the property, as opposed to taking it for any public purpose or necessity whatsoever. At the time of the founding, dictionaries primarily defined the noun “use” as “[t]he act of employing any thing to any purpose.” ... When the government takes property and gives it to a private individual, and the public has no right to use the property, it strains language to say that the public is “employing” the property, regardless of the incidental benefits that might accrue to the public from the private use. The term “public use,” then, means that either the government or its citizens as a whole must actually “employ” the taken property.

In sum, when the government forcibly takes property rights from one private citizen without his consent and transfers those rights to another private citizen through the exercise of eminent domain – that is, when the government “takes property from A. and gives it to B.” – the government violates the original owner’s property rights regardless of whether certain incidental benefits accrue to the general public as a result.

Here, the use of eminent domain to force private landowners in Greene County to provide easements for the construction and operation of the proposed hazardous liquid pipeline would transfer property rights from one private landowner to another without creating a “public use” within the meaning of the Fifth Amendment or article I, section 18 of the Iowa Constitution. While the construction of the pipeline may benefit the environment, promote the use of ethanol, and benefit Iowa farmers, such outcomes, however salutary, simply do not change the fact that Summit Carbon Solutions, LLC is a private company and that the acquisition of easements by Summit Carbon Solutions, LLC through the use of eminent domain would not result in the “public use” of those easements. The words of the Constitution were meant to create lasting constraints on governmental power; the increasing use of eminent domain to force private citizens to transfer their property rights to other private citizens represents an alarming erosion of our basic liberties as citizens of a free society.

For these reasons, we urge you not to vest Summit Carbon Solutions, LLC with the power of eminent domain, and we object to the issuance of a permit for the construction of the proposed hazardous liquid pipeline if it cannot be accomplished without the use of eminent domain.

Thank you for your consideration of our concerns and for your work on behalf of the people of our State.

Sincerely,

A black rectangular redaction box covering the signature of John Muir.

John Muir, Chair
Greene County Board of Supervisors