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STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

- - - - - X
IN RE: : Docket No.
: HLP-2021-0001
SUMMIT CARBON SOLUTIONS, :
LLC :
- - - - - X



TRANSCRIPT OF HEARING

VOLUME 11

PUBLIC TRANSCRIPT

Cardiff Event Center at
Fort Frenzy
3232 First Avenue South
Fort Dodge, Iowa 50501
Tuesday, September 12, 2023

Met, pursuant to order, at 8:30 a.m.

BEFORE: THE IOWA UTILITIES BOARD

ERIK M. HELLAND, Board Chair (Presiding)
JOSHUA J. BYRNES, Board Member
SARAH M. MARTZ, Board Member

(Pages 2750 through 3063)

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IN RE: SUMMIT CARBON SOLUTIONS
IUB HEARING 09/12/2023

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23			
24	(phonetic) indicates a phonetic spelling.		
25	{sic} indicates the text is as stated.		
	Quoted text is as stated by the speaker.		

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

2 BOARD CHAIR HELLAND: Good morning.

3 It's 8:30, September 12, 2023. We will go back on the
4 record for HLP-2021-0001, Summit Carbon Solutions.

5 We need to pick up with Micah Rorie. I
6 have as of last week -- That's turned up very high. I
7 have as of last week Murray, Meyer and Taylor left in
8 that order for questions. So if anybody else has
9 questions, we can address that.

10 Do you have questions for Micah or anything
11 else, Ms. Ryon?

12 MS. RYON: For Mr. Rorie, but just very
13 few.

14 BOARD CHAIR HELLAND: Okay. Very good.
15 Okay. Let's get started, Mr. Dublinske.

16 MR. DUBLINSKE: Yes, Your Honor. I wanted
17 to give a heads-up. When we left on Friday, I had
18 said our order today, we intended to finish Rorie and
19 go Louque, Lumpkin, Muhlbauer.

20 I believe the Board is aware of Sierra
21 Club's motion regarding Mr. Taylor's unavailability
22 tomorrow. I think, because of the small number of
23 witnesses, it's unlikely that we can avoid both
24 Schmidt and Lumpkin with certainty tomorrow, but to
25 try and accommodate Mr. Taylor, we have agreed to call

1 Mr. Schmidt after Mr. Rorie.

2 So just to give everyone a heads-up so
3 there aren't any surprises, our plan is to finish,
4 call Schmidt and then Louque, Lumpkin, and Muhlbauer
5 as planned.

6 BOARD CHAIR HELLAND: Say that again?

7 Rorie, Schmidt --

8 MR. DUBLINSKE: -- Louque, Lumpkin,
9 Muhlbauer.

10 BOARD CHAIR HELLAND: All right. Thank
11 you.

12 Mr. Taylor?

13 MR. TAYLOR: As a further heads-up, as I
14 mentioned previously, I have a witness from California
15 who will be gone from the country the 20th through the
16 27th, so I'm trying to get him here.

17 All the parties agreed -- and I have talked
18 to Mr. Dublinske, Mr. Whipple and Mr. Long. That's
19 Mark Jacobson. If we could do him very first thing on
20 Tuesday next week, I think that would work.

21 BOARD CHAIR HELLAND: Okay. Thank you. I
22 think that works. We'll plan on that. I appreciate
23 that.

24 MR. TAYLOR: Thank you.

25 BOARD CHAIR HELLAND: Okay. Any other

1 announcements or questions before we finish up with
2 Mr. Rorie?

3 (No response.)

4 BOARD CHAIR HELLAND: Okay. Mr. Rorie,
5 please return.

6 Thank you, Mr. Rorie. Just a quick
7 reminder you are still under oath.

8 THE WITNESS: Understood.

9 BOARD CHAIR HELLAND: Thank you.

10 MICAH RORIE,
11 re-called as a witness by Summit Carbon Solutions,
12 LLC, having been previously duly sworn by Board Chair
13 Helland, was examined and testified as follows:

14 BOARD CHAIR HELLAND: I believe, according
15 to my list, Mr. Murray is next. Go ahead.

16 MR. MURRAY: Thank you, Mr. Chair.

17 CROSS-EXAMINATION

18 BY MR. MURRAY:

19 Q. Mr. Rorie, I'm over your right shoulder, so
20 let's logistically make sure we have something that
21 works here. Sometimes what we've found is when I'm
22 asking question, the tendency of the witness is
23 perhaps to miss that microphone.

24 So I just wanted to kindly inform you that
25 this has been a problem. Okay?

1 A. Okay.

2 Q. If we run into that problem, we'll just
3 stop and reposition. Okay?

4 A. Okay.

5 Q. All right. I represent a couple of
6 landowners in this case, and I've got quite a few
7 questions for you.

8 I'm going to start with where the Iowa Farm
9 Bureau had asked you about the temporary construction
10 easement. Okay?

11 A. Okay.

12 Q. As I understand it, Summit wants a
13 nonexclusive temporary construction easement; is that
14 correct?

15 A. Yes.

16 Q. And by "nonexclusive," would it be correct
17 to say that Summit cannot prevent a landowner from
18 coming upon their property while during a temporary
19 construction easement period by virtue of claiming
20 that the landowner's committing a trespass? Would you
21 agree that Summit cannot claim the landowner is
22 committing a trespass in that situation?

23 MR. LEONARD: Objection. Calls for a legal
24 conclusion.

25 BOARD CHAIR HELLAND: Mr. Rorie, you may

1 answer, if you know the answer; otherwise, Mr. Murray,
2 you can restate.

3 A. "Trespass" is a strong word there. The
4 rights that we're seeking involve non-obstruction
5 during construction, so I believe that if the
6 landowner was getting in the way during construction,
7 then that would be violating the rights granted or the
8 agreement that we reached. But in terms of accessing
9 that easement, temporary construction easement outside
10 of the construction to the extent it didn't affect
11 anything, I don't think we would have a huge problem
12 with that.

13 BY MR. MURRAY:

14 Q. I do appreciate how Summit is approaching
15 this issue in contrast to Dakota Access. For purpose
16 of this question, I'm not talking about landowners who
17 attempt to block work or create a safety hazard or
18 disrupt work in any way. I'm more interested in
19 landowners being freely able to inspect the work while
20 not being in the way.

21 So in that context, would you agree that by
22 including the word "nonexclusive," a landowner has a
23 right to go and inspect construction firsthand?

24 A. I would agree with some of the rules that
25 are in place about tile repair inspections, things of

1 that nature. It is complicated on a mass scale to
2 escort landowners into the construction footprint for
3 safety reasons.

4 It puts us on everyone's property longer,
5 so I wouldn't agree that landowners hanging out in the
6 right-of-way during construction is a good idea, but I
7 would commit that we would comply with the rules about
8 certain types of inspection.

9 Q. So in this example I'm going to provide
10 you, crews do work on the property, and those
11 construction crews have got to go home and get some
12 sleep, okay?

13 So they go. They're done for the day.
14 They'll come back tomorrow.

15 In that situation would it be Summit's
16 position that a landowner can go out on their property
17 and take a look?

18 A. That happens often. I don't think we would
19 have a problem with that. The caveat there is that as
20 long as they don't do anything that causes us to be
21 delayed as a result of their actions.

22 You mentioned the word "attempt." They
23 don't necessarily have to attempt to do that. That
24 can just happen by disrupting things.

25 So as long as they didn't do anything of

1 that nature, I don't see us having a problem with it.

2 Q. And there are personnel that address safety
3 issues with Summit and also, of course, with law
4 enforcement; right?

5 A. Yes.

6 Q. And so a landowner that might say to that
7 contact person, be it through Summit or law
8 enforcement, that says, "Hey, I just want to make sure
9 everybody knows, I'm going to go out and check this
10 out," that would be a pretty good measure of how to do
11 this sort of thing, isn't it?

12 A. That would be one of them.

13 Q. Okay. Mr. Rorie, I recall some of your
14 testimony last week, but you're going to have to help
15 me out in characterizing your testimony correctly in
16 this regard.

17 A. Okay.

18 Q. I believe you were asked about whether
19 Summit would agree to -- I'm going to characterize it
20 as preconditions upon the requested permit approval
21 from this Board.

22 Do you recall giving testimony in this
23 regard?

24 A. I'm not sure I understand the question.
25 Can you help me there? I'd appreciate it.

1 Q. Yeah. Well, stated specifically, the State
2 of North Dakota has not granted a permit, so an
3 example of a precondition on this Board granting a
4 permit might be to say, "This Board is not going to
5 grant a permit until North Dakota grants a permit."

6 Would Summit -- Did you provide some
7 testimony in this regard last week?

8 A. I was asked a question last week about
9 whether I thought we ought to get a permit without
10 other state permits in play, which I responded yes, I
11 think we ought to. We ought to seek a permit in Iowa
12 regardless of how things are going in some other
13 states.

14 I think some other witnesses talked about
15 whether or not there would be preconditions of what
16 someone would agree to.

17 Q. Now we're talking the same language about
18 what your testimony was last week.

19 So as I understand it, just very
20 straightforwardly, Summit wants to take the CO2 to
21 North Dakota to store it within underground caverns;
22 correct?

23 A. Yes.

24 Q. And to get to North Dakota, we have to go
25 through South Dakota; correct?

1 A. Yes.

2 Q. Now, we know that not only has North Dakota
3 denied this permit, but now we learned over the
4 weekend or at least yesterday that South Dakota has
5 not granted its permit to Summit; correct?

6 A. Not yet, yes.

7 Q. And you can affirm that that denial
8 occurred yesterday; correct?

9 A. That's my understanding.

10 Q. Is there anywhere else that Summit intends
11 to take this CO2 besides North Dakota?

12 A. Not to my knowledge. I don't really make
13 those decisions, but not to my knowledge.

14 Q. What does Summit know that would guarantee
15 that South Dakota will eventually change its position
16 and approve this pipeline in that state?

17 A. What does Summit know that would guarantee
18 we would get a permit in South Dakota?

19 Q. I think that's a good characterization of
20 my question.

21 A. Well, we know what type of traction we've
22 made in South Dakota. We understand the rules tied to
23 that, and we're confident in our ability to obtain a
24 permit in South Dakota.

25 As far as what we know, I don't know that

1 there's any guarantee.

2 Q. So isn't it possible South Dakota will not
3 grant Summit a permit? Isn't that a possibility?

4 A. I don't like to think that way, but I guess
5 it's a possibility.

6 Q. Lawyers -- I'm sorry. Lawyers have to
7 think that way, and I would suggest perhaps maybe
8 Summit might need to consider these, possibilities,
9 that you may not get that permit in South Dakota.

10 I think you just affirmed that; right?

11 A. I think any pipeline project that needs a
12 permit considers a possibility of not receiving one.

13 Q. So, obviously, if I asked the same question
14 about North Dakota, you would similarly answer;
15 correct? There's no guarantee in North Dakota either;
16 correct?

17 A. I don't think there's any guarantee in
18 anything.

19 Q. So since there's no guarantee and since
20 it's possible that these permits may not be granted in
21 these other states and since the only place to go with
22 the CO2 is North Dakota, isn't it a possibility you're
23 installing a pipeline to nowhere?

24 A. I don't see it that way. I don't think
25 about how things are going in other states as it

1 relates to what we're needing to get done in Iowa.

2 Yes, if we built a pipeline that didn't
3 have a terminus, it would be a pipeline to nowhere.

4 The way I see it, the time we're spending this morning
5 is to seek a permit in Iowa and make sure we
6 accomplish all of the criteria necessary to do so.

7 Q. It's always important to wear someone's
8 shoes when negotiating with them, Mr. Rorie. Would
9 you agree?

10 A. You'll have to elaborate for me on wearing
11 other people's shoes.

12 Q. Well, the golden rule, let's just say.

13 You're trying to build relationships, as
14 you stated in your testimony; right?

15 A. Yes.

16 Q. And you just said "the way I see it."
17 Well, if a landowner sees it that a pipeline is going
18 to be installed after adverse condemnation on their
19 property, they would see it a little differently than
20 you, wouldn't they?

21 A. They could. Landowners see things in many
22 ways. So do we.

23 Q. But it would be fair for them to say a
24 pipeline to nowhere, after having eminent domain
25 taken, that perspective, if you were to put yourself

1 in a landowner's shoes, is kind of an objectionable
2 thing; correct?

3 A. I don't agree with that.

4 MR. MURRAY: If the technical -- the tech
5 expert or party can publish Murray Hearing Exhibit 1,
6 I would appreciate that.

7 (Brief pause.)

8 BY MR. MURRAY:

9 Q. Okay. So on the screen there is Murray
10 Landowners Hearing Exhibit 1.

11 Do you see that there?

12 A. I do.

13 Q. I'm going to represent to you that this is
14 a final decision and order of the Iowa Utilities Board
15 March 10, 2016, concerning Dakota Access. Would you
16 agree this appears to be the caption, at least on the
17 screen; right?

18 A. It appears to be the caption, yes.

19 Q. The Dakota Access pipeline was an oil
20 pipeline from the northwest corner of the state down
21 to the southeast corner of this state; correct?

22 A. Yes, that's right.

23 Q. Coincidentally, it also involved a terminus
24 in North Dakota [sic]; correct?

25 A. It involved a terminus in Illinois.

1 Q. That's a terrible question. You're right.
2 The oil went to Illinois. It came from
3 where?

4 A. From North Dakota.

5 Q. I see. So I'm going to go to page 4 on
6 this exhibit, if I could, and down below the
7 introduction, I'm going to see that number there
8 that's six or seven lines down. And it appears to
9 show that we have an oil pipeline through Iowa as a
10 part of a 1,168-mile project to carry oil from the
11 Bakken area.

12 That would be the number of miles in Iowa
13 that were affected by the Dakota Access pipeline;
14 correct?

15 A. 346, I believe, if I'm reading that right.
16 346 are the miles that related to Iowa.

17 The entire project from North Dakota to
18 Illinois was 1168 miles.

19 Q. Thank you for that clarification. Your COO
20 correctly chastised me for my math, so I better write
21 it down.

22 A. That's okay.

23 Q. Okay. So let's compare.

24 Your pipeline in Iowa is how many miles?

25 A. 686 miles.

1 Q. And total miles for the entire project?

2 A. Just over 2,000.

3 Q. Do you have a specific number?

4 A. 2,060 miles.

5 Q. All right. Last week you had clarified, as
6 a part of your direct testimony, that there were a
7 certain number of holdout parcels at that time
8 concerning Summit.

9 Do you remember that testimony?

10 A. I don't recall calling them "holdout
11 parcels." Are you talking about remaining parcels?

12 Q. I suppose, yeah. Remaining parcels to be
13 signed?

14 A. That's right.

15 Q. Okay. So with respect to the remaining
16 parcels, how many were there last Tuesday [sic]?

17 A. Last Tuesday?

18 Q. I think you testified 892.

19 A. I want to be perfect here. I don't recall
20 exactly on Tuesday. I testified on Friday or
21 Thursday.

22 Q. No. I think it was Friday. I'm going to
23 help you. It was Friday. Let's correct my question.

24 On Friday didn't you say it was 892
25 remaining parcels?

1 A. Remaining parcels. That's right.

2 Q. How many is it today?

3 A. It's going to be right around there.

4 There's a cancellation period in Iowa, so I would
5 still say 892, even though we reached agreements this
6 weekend.

7 Q. Okay. Now, if we go to Exhibit 1, which
8 just came down -- we're going to go back there -- if
9 we go up to page 2 and we just scroll down a little
10 bit there to the bottom of that page, right there, it
11 says, "Individual Eminent Domain Parcels," and in the
12 ruling it shows page 122 of that IUB ruling where it
13 addresses those eminent domain parcels. Okay?

14 A. Okay.

15 Q. And so below there we've got Mr. Burkett,
16 and he's got a parcel number, H-BO-001. That looks
17 kind of like the way you guys in Summit identify
18 parcels; correct?

19 A. It looks similar, yes.

20 Q. Now, if we scroll down in this to page 4,
21 you can just -- I'm not going to ask you to count
22 these, but if we could slowly go through that, let's
23 go up to page 3. We went through quite a few there.

24 We're on page 3 now. Let's scroll down
25 page 3, and then we go on to page 4.

1 This listing of eminent domain parcels
2 appears to end around page 151 or 152. At least
3 that's what the Table of Contents shows; correct?

4 A. That's what the Table of Contents shows,
5 yes.

6 Q. I'm going to hesitate to say that I counted
7 this up over the weekend, and I'm going to say that
8 the number of eminent domain parcels was a little bit
9 below 50 parcels for Dakota Access. Okay?

10 A. I don't know if that was a question, but I
11 know your math is wrong there.

12 Q. What was it?

13 A. Well, there's certainly more than 50
14 parcels that were being discussed as Dakota Access was
15 heading -- Well, I guess by the time they got their
16 permit, maybe it was 50 parcels. Maybe you're right
17 there.

18 Q. I'm just saying that ruling concerns less
19 than 50 parcels in Dakota Access. We can count that,
20 if you'd like, but that's what it says.

21 A. I think you may be right. I'll take your
22 word for it, but I think you may be right. By the
23 time they received an order and headed into
24 construction with final conditions, perhaps it was
25 that low, but I think there were hundreds of tracts.

1 MR. LEONARD: Your Honor, if you may, we'll
2 stipulate this is the Board's final decision and order
3 in the Dakota Access case dated March 10, 2016. I
4 think the Board's aware of its precedence, which if we
5 could ask the witness questions that aren't
6 encapsulated in this document, I think that might
7 speed things up a bit.

8 BOARD CHAIR HELLAND: Okay. Thank you.
9 Go ahead, Mr. Murray.

10 MR. MURRAY: We'll offer Murray Landowners
11 Exhibit 1.

12 (Murray Landowners Exhibit 1 was offered
13 into evidence.)

14 BOARD CHAIR HELLAND: Is there an
15 objection?

16 (No response.)

17 BOARD CHAIR HELLAND: Seeing none, the
18 Board will admit Murray Hearing Exhibit 1.

19 (Murray Landowners Exhibit 1 was admitted
20 into evidence.)

21 BY MR. MURRAY:

22 Q. How many total parcels in Iowa are affected
23 by the Summit pipeline?

24 A. 3,305.

25 Q. And I imagine you're not aware of the total

1 number of parcels that were affected by the Dakota
2 Access pipeline, are you?

3 A. It was in the 1200 range, 1275, something
4 like that.

5 Q. Okay. Did you testify during your --
6 During somebody's questions you threw out a number of
7 1200 landowners who have signed. Can you give some
8 context to that again? What are you talking about
9 there?

10 Did you say that?

11 A. I said 1210 landowners have reached an
12 agreement with us voluntarily in Iowa.

13 Q. Okay. So that I understand this, there are
14 3305 parcels in Iowa and 892 parcels yet to be signed;
15 correct?

16 A. There are 892 parcels yet to be signed
17 roughly. I believe we got a couple this weekend but
18 can't count them yet.

19 Q. Yeah, right. Roughly. So the differential
20 there is, again, challenging me. 2400 or so parcels
21 have been signed?

22 A. 2413.

23 Q. You would be a guy that would know that
24 number?

25 A. Right.

1 Q. So of those 2413 parcels who have signed,
2 it only took 1210 landowners to commit those parcels?

3 A. That's right.

4 Q. How many landowners do you need signatures
5 from concerning the 892-or-so remaining parcels?

6 A. 469.

7 Q. Thank you. I wanted to explore a topic
8 about major versus minor route changes. Okay?

9 A. Okay.

10 Q. Can you define the factors which would
11 characterize a major route change?

12 A. I'm not sure I understand that. The
13 factors that would -- Could you help me there?

14 Q. Well, Summit has used the term "major route
15 change" versus "minor" or "macro route change." I'm
16 trying to understand it, and I'm wondering how Summit
17 distinguishes between the two.

18 So in that sense I'm looking for factors
19 that Summit utilizes to make a distinguishment between
20 these two.

21 A. Well, a major route change would be a
22 variety of things that would cause us to incur a
23 significant amount of additional landowners. Maybe a
24 lot of additional pipe or just maybe a totally
25 different direction.

1 So what we cited were micro changes, which
2 would be the opposite of that, but there are plenty of
3 examples of all types of major route changes. We
4 typically don't do those.

5 Q. I would imagine that if there were a route
6 change which affected, for example, a previously
7 planned valve that caused a change to the valve, that
8 would be a major route change; correct?

9 A. That's a factor.

10 Q. You would say a strong factor, wouldn't
11 you?

12 A. Could be, depending on where we need to put
13 a new valve as a result of that valve adjustment and
14 whether or not that fit all the criteria for our valve
15 spacing and other issues there. It could be a part of
16 a major route change.

17 Q. Other pipeline infrastructure might factor
18 into the distinction between these two
19 characterizations of major versus minor; correct?

20 A. Other pipeline infrastructure could factor
21 into either.

22 Q. Physical characteristics of the land?

23 A. Yes.

24 Q. Your COO, Mr. Powell, had testified -- I
25 want to make sure that I only say I'm paraphrasing his

1 testimony here, but I think he testified that, "I
2 don't intend on amending the application." I think
3 this had to do with route.

4 Today would you affirm Mr. Powell's
5 testimony?

6 A. I'd have to listen to all of his testimony
7 to see how he elaborated on that or if he did. It's
8 hard for me to affirm his testimony, but I can tell
9 you that I report to Mr. Powell, so I'm going to do
10 what he directs me to do.

11 I think his testimony would stand on
12 itself.

13 Q. Very true. I had a five-minute
14 cross-examination to the tee of Mr. Schovanec. Is
15 that pronounced correctly?

16 A. Yes.

17 Q. Amazing. I think I established with him
18 that Summit isn't proposing any alternate routes to
19 the Iowa Utilities Board. Would you affirm that
20 testimony today?

21 MR. LEONARD: Objection, Your Honor.

22 BOARD CHAIR HELLAND: State your objection.

23 MR. LEONARD: Calls for a legal conclusion
24 and misstates the petition in this matter, including
25 an Exhibit F describing alternative routes.

1 BOARD CHAIR HELLAND: Will you reword it?

2 Mr. Rorie, you can answer the legal
3 conclusion component of it, if you know.

4 THE WITNESS: I really don't.

5 BY MR. MURRAY:

6 Q. Are there any other alternate routes that
7 you could identify to the Iowa Utilities Board today?

8 A. Possible alternate routes? I don't know
9 that I can identify any of those today. I think part
10 of that is I don't route the pipeline.

11 Q. Have you seen Navigator's easement
12 documents that it negotiates with landowners?

13 A. I have.

14 Q. And you're aware that Navigator's easement
15 has an option that envelopes their easement; correct?

16 A. Help me understand "envelopes."

17 Q. Well, as I understand it -- correct me if
18 I'm wrong -- there's a document entitled something to
19 the nature of an easement, and then there's a separate
20 document that is entitled option.

21 Could you affirm that there appears to be
22 two different documents there?

23 A. I can't speak for Navigator and everything
24 they're doing on their land acquisition side, so I'm
25 hesitant to do that. I work for Summit.

1 But the brief glance that I've had at
2 documents tied to that project, I've seen some that
3 are tied to options, if that's what you're describing,
4 but it's going to be hard for me to go into details of
5 a pipeline project I don't work for.

6 Q. So you've looked at the Navigator
7 documents, and you have knowledge that there is option
8 language in those documents?

9 A. I've seen some. The entirety of their
10 documents, I don't have a clue.

11 Q. So would you agree with me or at least do
12 you have knowledge as to the general nature of the
13 amount of the option payment?

14 MR. LEONARD: Objection, Your Honor.

15 BOARD CHAIR HELLAND: State your objection.

16 MR. LEONARD: I'm going to object to
17 relevance to the content of another pipeline
18 company's voluntary easements not involved in this
19 docket.

20 BOARD CHAIR HELLAND: Okay.

21 Mr. Murray?

22 MR. MURRAY: It's background information as
23 to the question of Summit's easement and how Summit's
24 easement appears to be locked in rather than including
25 option language.

1 BOARD CHAIR HELLAND: Okay. I appreciate
2 the background. If we can get to the question,
3 please.

4 BY MR. MURRAY:

5 Q. You are aware that there is option language
6 in those Navigator easements; correct?

7 A. The few that I took a look at, yes.

8 Q. By contrast, Summit does not have, employ
9 or use options; correct?

10 A. We employ options. We use options
11 sometimes when it comes to fee purchases.

12 Q. But not with respect to easement purchases
13 from landowners, such as the ones I represent?

14 A. I haven't to date, no.

15 Q. So rather than adopting this absolute
16 stance, wouldn't Summit have made it easier on itself
17 with routing by adopting Navigator's practice of
18 utilizing option language?

19 A. No, not in the least.

20 Q. I'd like to get into factors that go into
21 Summit's determination of whether an alternate route
22 is possible.

23 Do cultural factors factor into that?
24 Indian bones are out there. Is that something that
25 affects alternate-route issues?

1 A. I don't use the term "Indian," but there
2 are a number of factors that play into altering the
3 route of a pipeline. Cultural resources could come
4 into play there, if they were a factor, but there are
5 a number of parameters and criteria you have to look
6 at when you're changing the route.

7 Q. There's other environmental factors that go
8 into play there, too, aren't there?

9 A. Could be.

10 Q. Would the willingness of a landowner to
11 give an easement be a factor as to whether an
12 alternate route is possible?

13 A. Could be.

14 Q. And on the flip side of that, conversely,
15 the unwillingness of a landowner is also a factor that
16 affects the possibility or impossibility of an
17 alternate route; correct?

18 A. Could you frame that differently? I'm not
19 sure I understand.

20 Q. Yeah. I'm just going to withdraw the
21 question.

22 A. Okay.

23 Q. Summit has the authority under Iowa law, as
24 I understand it, to perform surveys by giving a
25 notice, and then they're out there taking a look at

1 the ground.

2 So that's not a question. I'm just going
3 to frame it in a question to you.

4 Are you involved in decisions at Summit to
5 go ahead and perform those surveys?

6 A. I don't direct the survey activity, as far
7 as the decision to perform them. I'm involved in
8 procuring the permissions or the consent of the
9 landowner to survey.

10 Q. Even with an unwilling landowner, Summit
11 has had the opportunity to go out and survey property,
12 even though they're unwilling; is that correct?

13 A. That's true.

14 Q. So if you have the ability to survey
15 property upon an unwilling landowner, the willingness
16 or unwillingness of that landowner really is not an
17 issue, is it?

18 A. It's certainly an issue.

19 I'm not sure I understand your definition
20 of an "issue" --

21 Q. Did -- I'm sorry. I cut you off.

22 A. I'm not sure I understand your definition
23 of an "issue."

24 Q. Well, we're talking about the factors that
25 Summit uses to determine whether an alternate route is

1 possible. So in that context, I'm trying to figure
2 out why the willingness or unwillingness of a
3 landowner has anything to do with Summit's
4 determination of a possible alternate route.

5 A. Well, it has a lot to do with altering a
6 route, especially in the event that neighboring
7 landowners may have been, as you're referring to,
8 willing.

9 So if we're being asked to consider
10 altering a route on a parcel that would transfer
11 impacts onto landowners that have already reached an
12 agreement with us, then what we're being asked to
13 consider is to change the commitments that we made
14 with that particular parcel's neighbors in order to
15 accommodate that parcel. So that is always a factor
16 that we have to look at to decide whether or not that
17 fits because what it does is it invites other people
18 into the conversation that puts us in a position where
19 we need to change our commitments and ask more of the
20 neighbors in order to accommodate that particular
21 parcel.

22 So it's a factor.

23 Q. I was going there next, about adjacent
24 landowners. It's amazing. Our minds think alike.

25 But let's go back to my question, which had

1 nothing to do with adjacent landowners. My question
2 was: Within the context of that parcel, assuming
3 there's no change in the entry or exit point upon that
4 parcel, why would the willingness or unwillingness of
5 a landowner affect the alternate route on that parcel?

6 A. There's just so many factors involved with
7 this, Mr. Murray. I mean, "willingness" and
8 "unwillingness," that's a broad word.

9 Q. Why? "Why" is a broad word. You're right
10 about that.

11 A. Well, "willingness." There's a lot to
12 consider when it comes to changing the route of a
13 pipeline on a particular parcel.

14 One of the things you talked about in the
15 first part of your question was the entry and exit
16 point. It is very rare to change a pipeline route and
17 not alter the point of terminus and point of
18 beginning. That's rare.

19 So that's not the most common outcome, but
20 unwillingness doesn't really create a big incentive
21 for us to go through a number of exercises; to your
22 point, cultural/environmental review, constructability
23 review, potential costs, potential additional impacts
24 on that parcel alone, timing, waterway crossings,
25 reclamation, et cetera.

1 So all of that goes into play in our
2 decision of whether or not it's feasible to change the
3 route, but if a landowner is unwilling, period, to
4 work with us, I don't know that it's reasonable to ask
5 us to make a number of exceptions like those I just
6 cited to end up at the same point.

7 We're not going to be in agreement, which
8 is driven by the landowner in the instance I think
9 you're describing.

10 Q. Let's go back to the last point you just
11 mentioned in your answer. Here's my question, again,
12 as it relates to just that landowner, not adjacent
13 landowners, okay?

14 What if a landowner, who is not willing to
15 sign an easement, but he tells Summit, "Don't put it
16 there. Put it somewhere else on my ground"? Is that
17 a factor that Summit considers?

18 A. That's a part of the overall work view of
19 the scenario, yes.

20 Q. So even though the landowner may not sign
21 an easement, says, "I don't want any of your business,
22 but if you're going to put it somewhere," Summit will
23 have to consider that as a possibility, won't it?

24 A. I don't know "have to," but we certainly
25 would take a look at every request a landowner gives

1 us.

2 Q. Now, let's go to these adjacent landowners.
3 I think you had brought that subject up earlier.

4 What if a landowner is not willing to sign
5 an easement, but there's an adjacent landowner right
6 next to him who says, "Yeah, sure. I want the
7 pipeline on my property"?

8 Is that a factor that Summit considers?

9 A. Does it come up often? I guess it would be
10 part of the conversation.

11 Q. And even extending this question a little
12 further, what if we have a landowner not willing to
13 sign an easement, but there's an adjacent landowner --
14 hang with me here -- who has -- on a different parcel
15 somewhere else, he's actually signed an easement
16 somewhere else in that county. That's a factor that
17 also comes into play.

18 You have a willing landowner who has
19 already given you easement, and he's right next to
20 this unwilling landowner with another parcel. That's
21 a big one, too, isn't it?

22 A. I don't know what you mean by "a big one."
23 It's very rare, and we look at the particular parcel
24 to be impacted, not the -- don't typically look at the
25 idea that someone may have signed an easement

1 elsewhere.

2 We have landowners that own property in
3 multiple states on this project. I wouldn't -- If we
4 were looking at a route change, we would look at where
5 the pipeline is being proposed to go.

6 I think also, perhaps, your definition of
7 "willing" is much different than mine. There's a lot
8 more that goes into it.

9 Q. Thank you.

10 MR. MURRAY: Tech, can we publish Kracht
11 Direct Exhibit 1? Wait a minute. Is it 1? Yeah.
12 Kracht Direct Exhibit 1.

13 (Brief pause.)

14 BY MR. MURRAY:

15 Q. Okay. It appears we have on the screen
16 Kracht Direct Exhibit 1. Do you have it in there in
17 front of you?

18 A. I do.

19 Q. I'm going to represent to you that this is
20 a map of a parcel owned by one of my clients, the
21 Kracht Trust. Kracht is K-r-a-c-h-t.

22 Are you familiar today with this parcel?

23 A. I am.

24 Q. So then as you look at this parcel, would
25 you agree with me that this appears to be a map

1 published by the county assessor in Lyon County?

2 A. It could be.

3 Q. It certainly isn't a map that you publish;
4 right?

5 A. I don't think so. I don't control all of
6 our maps, but I don't think so.

7 Q. "Publish" is the wrong word. Create?

8 A. I don't believe we did. An engineer or
9 somebody created that.

10 Q. Now, there is a white area on that map from
11 the south that comes from what appears to be a road,
12 and it meanders from the central lower part and goes
13 upward to the northeast and exits out the east side of
14 this parcel.

15 Would you agree with my depiction of that
16 white area?

17 A. Yes.

18 Q. That's a water area, isn't it?

19 A. It appears to hold water outside of the
20 thaw, yes.

21 Q. Are you familiar with the topographical
22 features of this parcel as it relates to elevation?

23 A. I don't know the exact elevations. I can
24 see that there's an elevation change, but I couldn't
25 list the margins of topographical elevations there.

1 Q. The Big Sioux River is our west boundary in
2 Iowa as it relates to Lyon County; correct?

3 A. Yes.

4 Q. And how far is the Big Sioux River from
5 this parcel?

6 A. I couldn't tell you. Not terribly far,
7 depending on your definition of "far," but I couldn't
8 tell you the exact distance.

9 MR. MURRAY: I'm going to ask the Tech
10 Chair to publish an Exhibit H that was filed on
11 September 12, 2022, concerning the Kracht parcel.

12 Okay. Before I do that, I'd like to enter
13 Kracht Direct Exhibit 1.

14 (Kracht Direct Exhibit 1 was offered into
15 evidence.)

16 BOARD CHAIR HELLAND: Is there an
17 objection?

18 MR. LEONARD: No, Judge.

19 BOARD CHAIR HELLAND: All right. Kracht
20 Hearing Exhibit 1, does that --

21 MR. MURRAY: You know, it's Direct
22 Exhibit 1. It was attached to Mr. Kracht's testimony.
23 I'm fine with entering that as an exhibit when
24 Mr. Kracht testifies.

25 Is that what the Board's preference is?

1 BOARD CHAIR HELLAND: Yes.

2 MR. MURRAY: Sorry.

3 BOARD CHAIR HELLAND: No worries. Thank
4 you. I appreciate that.

5 So withdrawing that?

6 MR. MURRAY: I'm withdrawing it. We'll get
7 it on there with Mr. Kracht.

8 BOARD CHAIR HELLAND: Thank you.

9 BY MR. MURRAY:

10 Q. Okay. What we have on the screen now
11 appears to be a filing by Summit on September 12,
12 2022, and I'm going to suggest that the ownership
13 information references my client, Mr. and Mrs. Kracht,
14 trustees of their trusts; right?

15 A. Okay, sure.

16 MR. MURRAY: Let's go down to some page
17 that has a map, Tech. Okay. There we go. What page
18 is that? Is that -- I can't see it.

19 MR. FORS: Five.

20 MR. MURRAY: Thank you.

21 BY MR. MURRAY:

22 Q. So on page 5 of this thing, okay? Let's
23 get it on the screen. All right.

24 So you see there the -- This is a map that
25 was produced at the direction of Summit; correct?

1 A. It looks like that's the case, yes.

2 Q. This is a map that was produced by Summit
3 presumably following a survey that Summit conducted on
4 this parcel; correct?

5 A. Yes.

6 Q. This is a map produced after a survey in
7 which Mr. Kracht asked Summit to consider pushing the
8 pipeline to a boundary; correct?

9 A. That looks like that's the case, yes.

10 Q. So that way what we can do is say this is
11 what we would call the "boundary route." If I refer
12 to the "Kracht boundary route," I'm referring to this
13 route right here on the screen, okay?

14 A. Okay.

15 Q. All right. Take a look at how this comes
16 in on the south side, all right? On the south side
17 you see where it's located there?

18 A. Yes.

19 Q. Now, you testified earlier that it's
20 extremely rare that we have a change that does not
21 involve a change of an entry or exit point.

22 Do you remember that testimony?

23 A. It looks like the exit point -- I'm not
24 sure I understand your question. You're talking about
25 the entry point there?

1 Q. Well, when we have route changes on a
2 landowner's parcel, I think you testified that it's
3 extremely rare, when a landowner has a route change in
4 their parcel, where it doesn't also affect an entry or
5 an exit to that parcel; correct?

6 A. I did testify to that, yes.

7 Q. All right. Thank you.

8 MR. MURRAY: Let's now publish another
9 Exhibit H for this individual on April 18, 2023. Go
10 to page 5, I guess. Okay. All right.

11 BY MR. MURRAY:

12 Q. So this is another map dated April 18,
13 2023. At least it was filed on that date concerning
14 this same landowner; correct?

15 A. I'd have to take your word for that. I
16 don't have evidence of the filing dates. It looks
17 like the same route to me.

18 Q. You know, that's a good -- that's what I
19 see. I see that this is the same route on April 18 as
20 it was on September 12th of '22.

21 It looks like it, doesn't it?

22 A. It looks very similar.

23 MR. MURRAY: If the tech person could
24 scroll to the top of this page and look at the filing
25 date, that would help the witness.

1 BY MR. MURRAY:

2 Q. So you see it says "April 18, 2023," there,
3 okay?

4 A. Okay.

5 Q. All right. So Summit filed this on
6 April 18, 2023, not changing the route; correct?

7 A. From what I can glance at, yes. I don't
8 know if there's some technical differences in those
9 two. I didn't draw it, but it looks very similar.

10 Q. Look at that feature there. It says
11 "Pond" right there on the right-hand side;
12 correct?

13 A. Yes.

14 Q. So there's that pond. Let's go to July 14,
15 2023; another Exhibit H.

16 Now, on page -- you see where it says,
17 "July 14, 2023," Mr. Rorie?

18 A. Yes.

19 Q. That's when Summit filed this document;
20 correct?

21 A. It looks like that's the case.

22 Q. Okay.

23 MR. MURRAY: So is this also page 5? I
24 think it is.

25 THE WITNESS: Are you asking me?

1 MR. MURRAY: No, I'm not.

2 BY MR. MURRAY:

3 Q. I'm going to suggest to you this is page 5
4 of this document, Exhibit H. Would you agree with me
5 that this page depicts a much different route?

6 A. Certainly different, yes.

7 Q. Would you agree with me that as it comes
8 upon this property on the south side, it looks pretty
9 much the same, doesn't it?

10 A. The south side looks like a similar point
11 of beginning, yes.

12 Q. Okay. You are aware that Mr. Kracht has
13 advised Summit that this pipeline route is
14 objectionable, aren't you?

15 A. That's my understanding, that he prefers
16 the other route or --

17 Q. Are you -- I'm sorry. I cut you off. What
18 was your answer?

19 A. It's my understanding he prefers the other
20 route or your client does.

21 Q. Mr. Kracht has made it abundantly important
22 to him that this route is on a ridge area. You would
23 affirm that fact, too?

24 A. I haven't stood out there to tell you
25 whether it's on a ridge area. I can tell you that

1 that route has a lot less trees in it and crosses a
2 drain once and still stays out of that pond that you
3 showed.

4 So I'm not a construction expert, but I can
5 speak to it in layman's terms that that's a more
6 practical route constructability-wise, impact-wise, et
7 cetera when it comes to the construction side of
8 things.

9 I'm not sure whether that's a ridge or not.
10 It may be helpful also -- I don't know if I can
11 request this -- if we could pull up the KMZ to
12 juxtapose what things look like on either side of that
13 tract as it relates to this route. I think that would
14 help as a picture for me at least.

15 Q. I'm going to rely on my client's testimony
16 to confirm that's a ridge. I want to push forward in
17 my questions.

18 A. Understand.

19 I may have a little difficulty answering
20 them if I can't see what's happening on the other side
21 of the property line, so I think a KMZ would be
22 helpful. I don't know who I request that from.

23 Q. I'm sure you'll have an opportunity to do
24 that on other questions.

25 A. Okay, okay.

1 Q. I think I can establish it through my
2 witness.

3 Moving away from the topographical issue
4 here presented, as we go back to September 12, 2022,
5 at that time, if you know, was Mr. Kracht represented
6 by counsel?

7 A. I don't know.

8 Q. Okay. Would you agree that in late June or
9 early July of this year I communicated Mr. Kracht's
10 offer to Summit through its counsel? You can confirm
11 that; right?

12 A. That sounds correct.

13 Q. And prior to my involvement, communications
14 were by and large between Mr. Kracht and right-of-way
15 agents; correct?

16 A. It's my understanding, unless he had
17 previous counsel. I'm not sure.

18 Q. And since late June and early July, Summit
19 provided a responsive counteroffer not until
20 September 6th; correct?

21 A. I'm not sure of the exact date.

22 Q. But you can confirm that it was in early
23 September; correct?

24 A. Again, I'm not sure of the date there. I'm
25 not sure a counteroffer was presented.

1 MR. MURRAY: I have a stipulation with
2 counsel, and maybe Mr. Leonard can help and stipulate
3 that, that the counteroffer responsively was given in
4 early September.

5 MR. LEONARD: So stipulated.

6 BOARD CHAIR HELLAND: Thank you.

7 BY MR. MURRAY:

8 Q. So to sum this up, shortly after my
9 involvement in late June and early July when I
10 communicated an offer to Summit, Summit, instead of
11 countering at that time, changed the route from the
12 boundary route to a route that he didn't want.

13 Would that be a fair and accurate
14 representation?

15 A. If you're representing that the route we
16 changed it to was one that he didn't want or the
17 original proposed route on that property prior to the
18 original Exhibit H being filed, I guess it would have
19 been September of last year. I think that's right.

20 Once we received the counteroffer from you,
21 we went back to the more practical route.

22 MR. MURRAY: Okay. We're going to DAPEMA.
23 Let's put up DAPEMA Hearing Exhibit 2. Okay.

24 Can we go to the top of that thing? Let's
25 go to the bottom of that thing. Huh.

1 BY MR. MURRAY:

2 Q. Well, DAPEMA Hearing Exhibit 2, this is an
3 overhead that I'm going to suggest to you is created
4 by the county assessor of Kossuth County.

5 Does this look like what this could be?

6 A. It's possible.

7 Q. For demonstrative purposes, I'm going to
8 suggest that DAPEMA's parcel is depicted on this
9 exhibit. Okay?

10 A. Okay.

11 Q. So are you able to, with firsthand
12 knowledge, confirm that this appears to be what it is?

13 A. I really couldn't confirm whether it
14 appears to be what it is. I've not seen this
15 rendering.

16 It's your map. It's not ours. It's my
17 understanding it isn't ours.

18 Q. Okay. Well, for demonstrative purposes,
19 I'm going to suggest that it is.

20 A. Okay.

21 Q. Now, do you see where the roads lie on this
22 assessor parcel map?

23 A. On the parcel map, yes.

24 Q. There's a road on the south, which appears
25 to be, I'm going to suggest, a quarter-mile away from

1 that 40; correct?

2 A. Could be.

3 Q. And there's a road to the east that
4 appears to also be a quarter-mile away from this 40,
5 okay?

6 A. Okay.

7 Q. Would you agree that that's what this map
8 appears to show?

9 A. I'd have to measure it out. I can see the
10 roads, to answer your question, but hard to confirm
11 measurements for you.

12 Q. Well, you see, these assessor parcel maps
13 have been a phenomenon in Iowa. People use them all
14 the time.

15 And you, as a land man, would know how many
16 acres are in a section of ground?

17 A. Yes. So the measurement you're talking
18 about, as far as the parcel itself, sounds right.

19 Where the pipeline is on the parcel, I
20 can't tell you exactly the proximity to the roads, so
21 maybe I misunderstood your question.

22 A parcel rendered being one-quarter of a
23 mile or another, yes, seems right to me.

24 Q. These county assessor parcel maps start
25 with usually 40-acre parcels; right?

1 A. Right.

2 Q. We can agree to that?

3 A. Yes.

4 Q. And you can agree if you have one of these
5 sections in Iowa, you're going to see 16 of these
6 blocks in a section; right?

7 A. Sounds right.

8 Q. And each one has a width and a height of a
9 quarter-mile; correct?

10 A. Correct.

11 Q. And where I was coming from was: From that
12 general background, I'm saying this parcel is a
13 quarter-mile away from each road, whether it's south
14 or east. Wouldn't you agree with that?

15 A. That looks right to me.

16 Q. All right.

17 MR. MURRAY: Offer DAPEMA Hearing
18 Exhibit 2.

19 (DAPEMA Hearing Exhibit 2 was offered into
20 evidence.)

21 MR. LEONARD: No objection.

22 BOARD CHAIR HELLAND: Hearing no objection,
23 the Board will admit DAPEMA Hearing Exhibit 2.

24 (DAPEMA Hearing Exhibit 2 was admitted into
25 evidence.)

1 MR. MURRAY: Let's go to DAPEMA Hearing
2 Exhibit 3. Okay.

3 BY MR. MURRAY:

4 Q. Now, this appears to be a similar map
5 that's just another parcel located to the north of the
6 one we previously looked at; correct?

7 A. Looks similar to me, yes.

8 MR. MURRAY: Now, if Tech can put the
9 little hand up in the upper left-hand corner -- no,
10 way up there in the upper left. There it is.

11 BY MR. MURRAY:

12 Q. Read where it says "Owner." Who is the
13 owner here? Go ahead and read it out loud.

14 A. You're suggesting me to read it out loud.

15 Q. Yes.

16 A. I don't know if I can pronounce that last
17 name correctly. I'll butcher it.

18 Q. We've done Schanovec.

19 A. Delores Roethler or Roethler Farm Trust.

20 Q. Roethler is spelled R-o-e-t-h-l-e-r;
21 correct?

22 A. Yes.

23 Q. So this is a county assessor map that
24 appears to depict an owner of Delores Roethler Farm
25 Trust; correct?

1 A. Yes.

2 Q. It appears to be on a 40-acre parcel
3 located directly north of where DAPEMA's parcel was;
4 correct?

5 A. Yes.

6 Q. Okay.

7 MR. MURRAY: Move to enter DAPEMA Hearing
8 Exhibit 3.

9 (DAPEMA Hearing Exhibit 3 was offered into
10 evidence.)

11 BOARD CHAIR HELLAND: Are there objections?

12 MR. LEONARD: No objections.

13 BOARD CHAIR HELLAND: The Board will admit
14 DAPEMA Hearing Exhibit 3.

15 (DAPEMA Hearing Exhibit 3 was admitted into
16 evidence.)

17 MR. MURRAY: I'd like to now go to DAPEMA
18 Hearing Exhibit 4.

19 BY MR. MURRAY:

20 Q. I'm going to represent to you --

21 MR. MURRAY: Is there a marking of this
22 thing, Tech, on the upper left? It doesn't appear to
23 have a marking.

24 Mr. Chair, this exhibit is not marked. I
25 may have submitted an exhibit that was not marked

1 DAPEMA Hearing Exhibit 4. I'm asking the Chair for
2 some guidance on how to handle this.

3 (Brief pause.)

4 BOARD CHAIR HELLAND: Okay. No problem.
5 It appears that it's not labeled, so unless there's
6 objection, we'll get to that in just a moment.

7 We'll have you refile it labeled as DAPEMA
8 Hearing Exhibit 4. We want to make sure we aren't out
9 of sequence.

10 Are you moving to admit it?

11 MR. MURRAY: Well, before we do that, I
12 want to make sure that Summit sees that marked exhibit
13 before I file it, and with their stipulated consent
14 we'll do that. My promise to the Board is when I have
15 the ability to do that, I will do that.

16 BOARD CHAIR HELLAND: Okay. Is there an
17 objection?

18 MR. LEONARD: Candidly, Your Honor, I don't
19 know because I don't know what it is yet.

20 BOARD CHAIR HELLAND: Okay.

21 MR. MURRAY: Let's lay some foundation
22 maybe?

23 BOARD CHAIR HELLAND: Perfect. I
24 appreciate it.

25 BY MR. MURRAY:

1 Q. Well, this document which is before you,
2 Mr. Rorie, I'm going to have the tech --

3 MR. MURRAY: I'm going to suggest to you it
4 appears to be an easement agreement, and I'm going to
5 have Tech page through this slowly so the witness can
6 look at it. Let's go to page 2.

7 (Brief pause.)

8 MR. MURRAY: Let's now go to page 3 and
9 page 4. Let's get to the bottom of that page. Now
10 page 5. And page 6. Okay. Now let's go to page 7.

11 BY MR. MURRAY:

12 Q. This appears to be, Mr. Rorie, on page 7 a
13 signature page. Would you confirm that for the
14 record?

15 A. It looks like a signature page, yes.

16 Q. It looks like a signature page of a person
17 under the title "Delores Roethler Farm Trust";
18 correct?

19 A. That looks like the grantor, yes.

20 Q. Let's go down further to page 8. Now,
21 another signature page of another, perhaps, trustee;
22 is that correct?

23 A. It looks like that's the case.

24 Q. So the Roethler Trust has apparently two
25 trustees, it appears; correct?

1 A. That's the way it looks to me.

2 Q. Okay. Let's go to the next page. Here's
3 an Exhibit A. That's page, I think, 9.

4 Okay. Let's go to the next page. That's
5 page 10, and now page 11. Okay.

6 Now let's go back to the top on page 1. So
7 on the top of page 1 of this document, which appears
8 to have some recording information in the top right,
9 you would agree that appears to be a county recorder's
10 doing; correct?

11 A. Yes.

12 Q. So as you've had a chance to scan this
13 document and without commenting on the specific
14 language -- I know you're not a speed-reader,
15 Mr. Rorie -- can you confirm that this looks like an
16 easement agreement of your company?

17 A. Yes.

18 Q. It was an easement agreement prepared by
19 your company, wasn't it?

20 A. It looks like one of our easement
21 agreements.

22 Q. And, in fact, it looks like an easement
23 agreement that was secured [sic] by the Delores
24 Roethler Farm Trust; correct?

25 A. Secured by them?

1 Q. Excuse me. Given. Thank you. Given by
2 them to Summit?

3 A. Yes.

4 Q. And then Summit thereafter took this
5 easement that they signed, granted to Summit and filed
6 it of record on -- what's the date it was filed,
7 Mr. Rorie?

8 A. May 25th of last year.

9 Q. May 25th of 2022. So there it is.

10 MR. MURRAY: Mr. Chair, I'm going to ask
11 for this exhibit to be entered once it is marked as
12 DAPEMA Hearing Exhibit 4.

13 (DAPEMA Hearing Exhibit 4 was offered into
14 evidence.)

15 BOARD CHAIR HELLAND: Are there any
16 objections?

17 MR. LEONARD: I guess I have a question.

18 Mr. Murray, this easement agreement, which
19 will be marked Exhibit 4, is not for the parcel
20 directly north of the DAPEMA parcel?

21 MR. MURRAY: That is correct. I'm going to
22 concede that point and actually acknowledge that point
23 and stipulate to that point.

24 MR. LEONARD: No objection.

25 BOARD CHAIR HELLAND: Okay. Seeing no

1 objections, the Board will admit DAPEMA Hearing
2 Exhibit 4.

3 (DAPEMA Hearing Exhibit 4 was admitted into
4 evidence.)

5 MR. MURRAY: So now where we have to go,
6 Tech, is with the Exhibit H filed on September 7,
7 2022, concerning DAPEMA. Okay.

8 BY MR. MURRAY:

9 Q. So on the screen there is September 7,
10 2022. We have what appears to be an Exhibit H filed
11 on that date; correct?

12 A. Yes.

13 Q. And it does appear to concern DAPEMA, LLC;
14 correct?

15 A. Yes.

16 Q. DAPEMA being a parcel in Kossuth County,
17 Parcel No. IA-KO-102-0097.000; correct?

18 A. I would have to see the numbers you just
19 listed, but I'll take your word for it.

20 Q. Okay. Page 5, please. I overshot.
21 Page 4. Okay.

22 Now, I'm going to suggest to you that on
23 page 4 of this Exhibit H there appears to be a survey
24 proposing a route on this parcel owner. Does this
25 appear to be a route that has been prepared at the

1 direction of Summit?

2 A. It looks that way.

3 Q. And, of course, it would have been a route
4 prepared at the direction of Summit -- I just lost it.

5 This is a straight east/west route;
6 correct?

7 A. It looks that way, yes.

8 Q. And this straight east/west route appears
9 to be very close to the north boundary of this parcel;
10 correct?

11 A. Yes.

12 Q. And so if you can by recollection -- not by
13 visualization but recollection -- remember that the
14 route -- or rather, the parcel to the north of this
15 parcel is owned by the Delores Roethler Farm Trust,
16 understand what I'm saying?

17 A. I'd have to see something else to confirm
18 that.

19 Q. Okay.

20 A. This isn't going to show me anything about
21 the northern tract, and I don't want to misspeak. I'd
22 have to see who owns what's to the north.

23 And, again, a KMZ would be very helpful for
24 me here so I'm looking at one while talking about
25 another.

1 Q. I'm sure you'll get a chance to answer with
2 respect to your KMZ.

3 My client is going to testify that the
4 Delores Roethler Farm Trust owns that parcel to the
5 north, okay?

6 A. Okay.

7 Q. All right. So, Mr. Rorie, has Summit
8 explored the possibility that this pipeline can be at
9 least moved upon the parcel to the north?

10 A. I don't know.

11 Q. Certainly with DAPEMA being an unwilling
12 landowner, you could have minimized the impact on the
13 DAPEMA property by simply moving the route a little
14 bit to the north, couldn't you have?

15 A. Well, that word "simply" is your word, not
16 mine. I don't know that I fully understand your
17 question, but minimize the impact on a property by
18 getting off of it, obviously, that would minimize the
19 impact of a property, if you weren't on it, but
20 "simply" is a bit of a keyword there.

21 MR. MURRAY: Let's take that one down off
22 the screen, Tech. Let's go back to Kracht, and I want
23 to talk about the filing on September 12, 2022;
24 Exhibit H, page 5.

25 There you are. Well, no. Right there.

1 Let's just stay right there.

2 BY MR. MURRAY:

3 Q. This one here on the screen appears to be
4 the Exhibit H filed on July 14, 2023. Do you see that
5 there?

6 A. I don't see the date. Yep, that looks
7 right.

8 Q. So you would concede this is what we'll
9 call the current route on the Kracht property;
10 correct?

11 A. That's fair.

12 Q. This is part of the route that your COO,
13 Mr. Powell, had said there's only one route? This is
14 part of that one route; correct?

15 A. This is the route we're seeking.

16 Q. And then if Tech can now put on the screen
17 page 5, which was filed by Summit on September 12,
18 2022, this is the boundary route, okay? Do you see
19 that there?

20 A. Yes.

21 Q. Would you not concede that this boundary
22 route, as I've labeled it, was and continues to be a
23 possible alternate route?

24 A. I see it as a very unlikely route, but I
25 suppose anything's possible, given the reasonability

1 of both parties to find a way to reach an agreement.

2 But, again, to answer your question, you
3 conveniently mentioned the entry into the property,
4 but you didn't mention the exit, and so that property
5 to the north has reached an agreement with me to enter
6 their property differently. So it falls back into
7 your term of what is simple and what isn't, but as far
8 as considering a route, I think that proves that we
9 considered this route a while ago.

10 There were factors that I believe we both
11 understand would have caused that to be unworkable,
12 period, so now what this is asking us to do is to go
13 back to the neighbor to the north, impact them
14 differently, change our tune with them in order to
15 accommodate what was not going to be a workable route,
16 given all of the parameters of the discussion, which I
17 think it's best we not disclose those, but that route
18 right there is not workable, given the parameters of
19 the agreement.

20 And now we're in a situation where we're
21 going to be impacting somebody to the north if we
22 agree to this. So we've provided the parties that
23 aren't talking to me right now about this, and to my
24 knowledge, you don't represent them.

25 Q. So you mentioned earlier that at least on

1 Friday there's 892 parcels yet to be signed. Do you
2 remember that testimony?

3 A. I do.

4 Q. Of those 892 parcels yet to be signed, how
5 many have had multiple Exhibit H surveys prepared?

6 A. I don't know. I didn't prepare them, so I
7 really couldn't answer that. I couldn't even guess.

8 Q. How many Exhibit H surveys have -- how many
9 of those holdout parcels have multiple Exhibit H
10 surveys filed with the Iowa Utilities Board?

11 A. Same answer. I have no idea, except for --
12 again, I don't refer to them as "holdout parcels," but
13 I don't know. I don't know the frequency of that.

14 Q. So then Summit cannot identify the total
15 number of possible alternate routes? You don't even
16 know how much of those parcels have even been surveyed
17 multipully?

18 A. Well, you're misrepresenting what I'm
19 saying, Mr. Murray.

20 I'm not saying Summit can't identify that.
21 I'm telling you I can't.

22 I don't issue the Exhibit Hs. I don't draw
23 them. I don't keep a tally of route requests.

24 I can tell you they're frequent across a
25 2,000-mile project, so I don't agree with your

1 statement that Summit can't produce that, and I
2 suppose if they had to, they could, but I can't.

3 I don't draw the Exhibit Hs, and I don't
4 track the reroute requests.

5 MR. MURRAY: Mr. Chair, I've only got one
6 more line of questions, and I suspect it will last
7 about five or ten minutes.

8 May I proceed? I think I'll wrap it up
9 here.

10 BOARD CHAIR HELLAND: Yes, of course.

11 MR. MURRAY: Thank you.

12 I'm going to have the Tech publish DAPEMA
13 Hearing Exhibit 2.

14 BY MR. MURRAY:

15 Q. We're back to this county assessor map for
16 DAPEMA Hearing Exhibit 2. It's on the screen there,
17 okay?

18 A. Okay.

19 Q. So I want to actually get some terminology
20 clarified here, okay? This is not the right exhibit
21 to do it in, but I'm just going to suggest to you that
22 with respect to the Exhibit H filing, what I see are
23 phrases that have these terms in it. "Permanent
24 easement" is one of them.

25 Do you recollect the use of the reference

1 "permanent easement"?

2 A. Yes.

3 Q. And can we agree that the permanent
4 easement is this usually 50-foot-wide area that is
5 more specifically described on Exhibit H; correct?

6 A. That's right.

7 Q. Thank you. With respect to the temporary
8 construction easement, that is another area that's
9 specifically described by metes-and-bounds, just like
10 the permanent easement; correct?

11 A. Sounds right.

12 Q. Thank you. We can go back to an Exhibit H,
13 but I also recollect seeing a term titled "Property"
14 with initial caps "P" for property. I see that term
15 as referencing the overall parcel that the owner
16 totally owns that's affected by this action.

17 Would that be a fair thing to say, or
18 should we put it up on the screen?

19 A. I'd have to look at one, but I think
20 there's a parent parcel description is there and a
21 metes-and-bounds of easements, but I'd have to look at
22 it.

23 Q. All right. Let's go there. I think we've
24 got one up.

25 Lyon County, April 18, 2023. Is it April?

1 Yeah, April 18, 2023, concerning Kracht's parcel.

2 Let's go up to page 1. All right. Let's
3 go down a little bit. All right. There you are on
4 the bottom of page 1.

5 It's entitled "Property Legal Description."
6 "The following property may be referred to as the,
7 quote, Property, end quote."

8 Do you see that?

9 A. Yes.

10 Q. All right. Good. Now let's go to the next
11 page. All right.

12 On the top of the page it does appear to
13 give a legal description of that parcel; correct?

14 A. Yes.

15 Q. Now, unfortunately, our tech chair couldn't
16 read our mind and went to Kracht instead of DAPEMA,
17 but we'll just go ahead and use this as an example.

18 This is an example of how we define a
19 property; correct?

20 A. It's a parent parcel, like we refer to it
21 as.

22 Q. The parent parcel. All right.

23 The parent parcel is what Summit defines
24 as, quote, property?

25 A. Yes.

1 Q. All right. Good. Now, you would agree
2 with me that the property, being the parent property,
3 has greater area than the permanent easement; correct?

4 A. Yes.

5 Q. And it has greater area than the permanent
6 easement and the temporary construction easement;
7 correct?

8 A. Yes.

9 Q. So if I were to refer to the remainder of
10 that property as "the remainder of the property," you
11 would know what I'm talking about?

12 A. I would.

13 Q. Very good. I'm going to suggest to you
14 that DAPEMA's Exhibit H has a similar
15 characterization; it's just a different legal
16 description. Okay?

17 A. That's your suggestion.

18 Q. We're not going to go there. We're just
19 going to go back to that map we had, which is Hearing
20 Exhibit 2. Okay.

21 So here we are.

22 MR. MURRAY: Now, Tech Expert, please go
23 back to the last one. I'm sorry. I'm very sorry.

24 Now, let's go down, and on page 3 under
25 "Easement Rights," let's go down to little number 4

1 and blow that up.

2 BY MR. MURRAY:

3 Q. Okay. Do you see where it says, "The right
4 of unimpeded ingress and egress into, on, over, under
5 and across the easement areas left (and in the event
6 over such other portions of the property as may be
7 reasonably necessary)," and then it goes on? Do you
8 see that?

9 A. I do.

10 Q. Would you agree with me that as it relates
11 to the remainder of the property -- not the property
12 but the remainder of the property. Would you concede
13 with me that the remainder of the property is affected
14 only in the event of an emergency?

15 A. Unless there was an access easement area
16 defined and depicted, that would be the exception to,
17 I believe, what you're pointing at. Does that work?

18 Q. I just want to make sure that with respect
19 to the remainder of the property -- being that's
20 property that's not a permanent easement, not the
21 temporary construction easement. With respect to the
22 remainder of the property, the only use you get here
23 is an ingress/egress for emergent [sic] conditions;
24 correct?

25 A. Emergency conditions.

1 Q. Emergency.

2 A. Unless there's an access easement further
3 defined in there, that would be the only exception, I
4 believe, to what you're asking.

5 Q. And the access easement that you're
6 referring to that could possibly be defined in there,
7 that would be those access easements described by
8 metes-and-bounds; correct?

9 A. Yeah. Typically they're a road.

10 Q. Right. For purposes of my question, I'm
11 not referring to those specifically worded "access
12 easements." I'm talking about this one that's on the
13 screen.

14 A. I understand, but you're talking about the
15 remainder of the property. That's an exception to
16 your question, so if there were no access easements on
17 this property shown on the Exhibit H, if the question
18 is: Would we need reasonable access in the event of
19 an emergency to get access to our pipeline on the
20 remainder of the property?

21 Q. No. My question is simply this: The only
22 right you're seeking here to affect the remainder of
23 the property is this unimpeded ingress/egress in
24 emergency conditions; correct?

25 A. That seems right. I just have to look at

1 the route and see if there's an access easement. I
2 feel like that's maybe the third or more time I've
3 said it.

4 There's an access easement. If it's in
5 play, I don't know. I'm not looking at it.

6 If an access easement was in play, that
7 would be in addition to the remainder of the property.
8 If there isn't one, then we're talking about emergency
9 access only.

10 MR. MURRAY: If we could now, Tech Person,
11 go back to DAPEMA Exhibit 2.

12 BY MR. MURRAY:

13 Q. As it looks here on DAPEMA Hearing
14 Exhibit 2, we have a parcel that I'm going to suggest
15 to you is the parcel that's described in your
16 Exhibit H as a 40-acre parcel. It has no roads
17 connected to it.

18 Do you see it?

19 A. I'm not zoomed in enough to see if there
20 were no access roads connected to it. Are you talking
21 about public roads?

22 Q. Public roads. There's no public roads
23 connected to this parcel; correct?

24 A. I don't see any in this map. It doesn't
25 look like it to me.

1 Q. So your COO had mentioned -- and I asked
2 him what it is that constitutes an emergency, and, of
3 course, he's very fair about it. He said, "Well, you
4 know, if we have things that affect the integrity of
5 the pipeline, we got to get out there."

6 I mean, in an emergency do you think
7 anybody is going to look at a plat map or legal
8 documents to go out and address an issue? Do you
9 really think that's going to happen?

10 A. I don't understand your question. In an
11 emergency are they going to look at a plat map?

12 Q. My question is this: Let's say you have a
13 leak on the north side of this parcel. Do you
14 actually think the Emergency Response Team is going to
15 come to the south road and not go across that parcel
16 to the south to get to the north? Do you actually
17 think that's the case?

18 A. I don't know what they would do. I think
19 they would get to it as fast as they could where they
20 could legally access it.

21 Q. Does Summit know what they would do?

22 A. That's a broad question. What they would
23 do with what?

24 Q. With an emergency.

25 A. That's even broader. I don't know how to

1 answer your question. I'm trying my best, and you're
2 sort of hammering the same broad, global words that I
3 couldn't possibly describe that accurately for you.

4 So if there's an emergency on this
5 property, they're going to try to get to that pipeline
6 as fast as they can. Do they have an idea well ahead
7 of time where there's legal access? Our ops group
8 certainly would.

9 That's the best I can do to answer your
10 question. I don't fully understand how to answer a
11 question much broader than what I just described.
12 I'll do my best, but I don't know how to get better
13 than that.

14 MR. MURRAY: Mr. Rorie, I appreciate the
15 time with you today to discuss these issues. I have
16 no further questions.

17 THE WITNESS: Thank you.

18 BOARD CHAIR HELLAND: Okay. Thank you,
19 Mr. Murray.

20 Mr. Meyer, you're up next; however, we're
21 going to take a very brief 15-minute break and be back
22 at 10:15. So you'll be up at 10:15.

23 We'll go off the record at this time.
24 Thanks.

25 (Recess taken.)

1 BOARD CHAIR HELLAND: Okay. 10:17. We're
2 running a couple minutes late there, so we will go
3 ahead.

4 I'll remind you, Mr. Rorie, you're still
5 under oath, and I believe Mr. Meyer is next.

6 MR. MEYER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MEYER:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. I'm going to ask you some questions
12 starting off with some of your direct testimony. If
13 we could have that on the screen, please.

14 We'll start on page 3 of 6 and the answer
15 portion to the question that began on line 15. Thank
16 you.

17 It appears -- tell me if I'm wrong -- but
18 your answer to the question at line 15 tried to
19 quantify the number of voluntary easements that have
20 been signed or, I guess, the progress that's been
21 made, and you tried to quantify it in terms of the
22 number of tracts or the percentage of parcels in
23 miles; correct?

24 A. Yes.

25 Q. Have the numbers been run on the actual

1 number of landowners? Has there been an expression
2 percentage-wise calculated?

3 What percentage of landowners of this 3,307
4 tracts or 685.5 miles have signed up?

5 A. It's within a percent of the tract
6 percentage. Typically mileage, tracts and landowners
7 are all within a point or two of each other.

8 Q. All right. So you think it's fairly
9 similar, you know, in your answer with 68 percent of
10 the tracts and 69 percent of the miles? You think the
11 number of landowners would essentially be -- give or
12 take, you know, deviate a percent one way or the
13 other?

14 A. That's right.

15 Q. Okay. Now, if I could have page 2 of your
16 direct testimony on the screen, please, in your
17 response to the question posed at line 17, it says,
18 "I'm testifying in support of Summit's proposed
19 pipeline project regarding the permanent and temporary
20 easements that Summit requires for the project";
21 correct?

22 A. Yes.

23 Q. And you've testified in these proceedings
24 regarding some of the language in those easements;
25 correct?

1 A. I have.

2 Q. How did you gain your understanding of what
3 that language meant to Summit?

4 A. How did I gain my understanding of what the
5 easement language meant to Summit?

6 Q. Well, let me ask you a preliminary
7 question. Did you draw up those easements yourself?

8 A. I did not.

9 Q. Do you know who did?

10 A. I believe those easements were generated in
11 collaboration with counsel. They were generated prior
12 to my arrival on the project.

13 Q. Are they essentially a template?

14 A. Yes, there's a template easement. That was
15 part of my testimony there.

16 Q. So, again, you're testifying about what the
17 words mean, and how did you gain your understanding?
18 Are you just kind of winging it here?

19 A. Well, I'm certainly not winging it. I
20 think the driver behind my understanding of easement
21 terms comes from 15 years of land acquisition
22 experience and management along with thousands and
23 thousands of easement documents.

24 So certainly not my -- I'm certainly not
25 interested in winging anything, but my understanding

1 of most of those terms is pretty basic because they're
2 general terms. There are some portions of that
3 easement, as I cited in my testimony, that have --
4 involve a little bit more legalese or legal opinion,
5 such as indemnity or insurance, but in general my
6 understanding of the easement comes with my background
7 and certainly the instructions I've received from the
8 folks that I report to here at Summit.

9 Q. All right. I noticed in your answers in
10 your direct testimony you've got 15 years of
11 experience doing this sort of thing; correct?

12 A. That's correct.

13 Q. And you'd agree that in order for there to
14 be a binding agreement, there needs to be a meeting of
15 the minds; right?

16 A. A meeting of the minds?

17 Q. Between the two parties.

18 A. I think there needs to be an agreement
19 between the two parties, yes.

20 Q. Do they disagree on what the agreement is
21 and still have an agreement?

22 A. They may have preferences and things that
23 are in there that they wish were different, but yes,
24 there's an agreement there.

25 I'm not sure I understand your question,

1 but I think I do.

2 Q. Well, in your answers you've used the
3 pronoun "I," you have used the pronoun "we" in
4 describing the meaning of the language, what these
5 easements mean.

6 So when you say "we," do you mean Summit?

7 A. That's right.

8 Q. When you say "I," do you mean Summit?

9 A. Yes.

10 Q. Okay.

11 MR. MEYER: Can we have Mr. Rorie's Direct
12 Exhibit 1, please? Thank you.

13 BY MR. MEYER:

14 Q. Sir, there's the preparer information. It
15 says Jennifer Hodge Burkett; is that right?

16 A. Yes.

17 Q. Do you know who that person is?

18 A. That's an attorney that works for us.

19 Q. Is that the address there, 111 East Grand
20 Avenue in Des Moines, where the attorney's office is?

21 A. I believe that's the case, yes.

22 Q. Did Ms. Burkett prepare these easement
23 agreements or these easements?

24 A. I believe she did or certainly collaborates
25 with other counsel, and maybe she was the leader of

1 that effort.

2 Again, they were generated prior to my
3 arrival.

4 Q. Do you know of any easement agreement that
5 has been recorded that has some other preparer's
6 information?

7 A. I don't believe there is one.

8 Q. Okay.

9 MR. MEYER: Can we have -- is it pronounced
10 DAPEMA Exhibit 4? Thank you. Can we scroll down to
11 Section 1(a), please? All right. You went a little
12 too far. Right there. Thank you.

13 BY MR. MEYER:

14 Q. So 1(a) where it says "Pipeline Easement,"
15 do you see where I'm at?

16 A. Yes, sir.

17 Q. Okay. Now, just looking at that Section
18 1(a), there's a -- the first sentence begins, "A free
19 and unobstructed permanent nonexclusive pipeline
20 easement 50 feet in width," and then parenthetically
21 in quotation marks "Pipeline Easement."

22 Do you see where I'm at?

23 A. Yes.

24 Q. And if you go down to the end of that
25 Section 1(a), it talks -- well, it closes in a

1 parenthetical and says, "Collectively the, quote,
2 'pipeline facilities,' quote, end parenthetical." Do
3 you see where I'm at?

4 A. Yes.

5 Q. So this Section 1(a), is it fair to say
6 it's describing two things here; one being the
7 pipeline easement, and then the various pipeline
8 facilities that are going to be, I guess, constructed
9 or operated within the easement?

10 A. Yeah. The general pertinences that are
11 cited there in that paragraph, yes, that's what
12 pipeline facilities covers.

13 Q. And would it be fair to say that after the
14 first parenthetical, 50-feet-in-width pipeline
15 easement, anything described after that is basically
16 relating to the pipeline facilities?

17 A. I don't necessarily agree with that. There
18 are references to the pipeline easement in our
19 documents talking about reclamation of the pipeline
20 easement.

21 You wouldn't reclaim the pipeline
22 facilities, so there's a difference there.

23 Q. Well, that's one of my points. Throughout
24 the document there are distinctions, and the document
25 carefully distinguishes between the pipeline easement

1 and the pipeline facilities; is that fair?

2 A. Sometimes it does, yeah.

3 Q. Okay. And in this particular section --
4 that's all I'm concerned about right here -- where in
5 that Section (a) does it start to be -- start to
6 identify what the pipeline facilities are? Can you
7 point that out for us?

8 (Brief pause.)

9 A. It looks like whenever it would be talking
10 about the pipeline including the pertinent facilities.
11 It talks about the pipeline not to exceed a certain
12 diameter and then continues on talking about the
13 product.

14 Q. Okay. Would it be fair -- You see where it
15 says basically right in the middle there "abandoning
16 in place or removing at-will, in whole or in part,"
17 would you agree after that comma and after the word
18 "part," the next parenthetical or the next phrase
19 "(1): Pipeline not to exceed 24-inches," anything
20 after that is referring to the pipeline facilities?

21 Is that what I understand you to say?

22 A. "Abandoning in place," I think, would apply
23 to the pipeline facilities.

24 It may be a better question for counsel,
25 the semantics there. I think the goal here is to

1 define there's a pipeline, and there's related
2 facilities tied to it to encapsulate both of those.

3 Q. Is it your understanding that an easement
4 creates an interest in land?

5 A. Yes.

6 Q. And the land is defined, the pipeline
7 easement in this Section 1(a) is defined as a
8 50-foot-wide piece of land; correct?

9 A. Yes.

10 Q. Okay. If we kind of scroll down a little
11 bit, under "Temporary Easement," the last few words
12 there where it says, "In part the pipeline facilities
13 in the pipeline easement" --

14 A. Yes.

15 Q. "In the pipeline easement," again, is a
16 distinction between the facilities and the easement;
17 correct?

18 A. Yeah. I think it's saying the pipeline
19 facilities are inside the pipeline easement.

20 Q. Right. So there's a distinction being
21 drawn there between those two things; right?

22 A. I suppose.

23 Q. Well, I don't want you to suppose. I mean,
24 it's your document. It's Summit's document.

25 A. I can give you better if you ask the

1 question different, but I suppose, if I understand
2 your question correctly, the pipeline facilities would
3 be within the boundaries of the pipeline easement.
4 That would be the case.

5 Q. The word "in" is kind of critical there,
6 isn't it? There's something within something else?

7 A. Yes.

8 Q. There's facilities within an easement;
9 correct?

10 A. There are.

11 Q. And the easement is the land?

12 A. Yes.

13 Q. Okay. And if you could scroll down to
14 Section C. There you are. You're already there.
15 Good job.

16 Right in the middle there after the
17 parenthetical that has "Access Easement" in
18 parentheses for the purpose of ingress and egress to
19 the pipeline easement.

20 Do you see where I'm at?

21 A. I do.

22 Q. Again, that would tend to connote that the
23 easement is a piece of land, it's real estate;
24 correct?

25 A. It's limited surface rights to ground, yes.

1 MR. MEYER: Okay. If we could scroll down
2 to Section 5(a). I think it's on page -- it starts on
3 the bottom on page 3 of believe. There we go.

4 BY MR. MEYER:

5 Q. In Section 5(a), the last sentence, "the
6 use of the pipeline easement by the landowner shall be
7 regulated by all appropriate ordinances, regulations,
8 resolutions or laws of the governmental entity with
9 authority over the pipeline easement"; is that right?
10 Have I read that correctly?

11 A. I believe you did, yes.

12 Q. Okay. Again, the "pipeline easement" means
13 land?

14 A. Yes.

15 Q. So is it Summit's intent, its meaning, its
16 understanding of this language to mean that the
17 landowner -- that land, the easement, the ground that
18 the landowner owns is still subject to ordinances,
19 regulations, resolutions or laws of the governmental
20 entity with authority over that land?

21 A. I think "appropriate" is in there as well.

22 To the extent they're applicable and
23 enforceable, I think what you're saying is right.

24 Q. Well, those -- that land -- Let's assume
25 that that land, the landowner's land was already,

1 prior to this agreement, subject to county ordinances,
2 various permitting requirements of the county.

3 You're basically saying the landowner is
4 still bound by those things; right?

5 A. I think this is referencing the pipeline
6 easement, not what the landowner was bound to prior to
7 the easement being present. It cites the pipeline
8 easement at the beginning of the sentence.

9 Q. So this -- Are you saying that this
10 agreement relinquishes the landowner of all
11 obligations owed under any local rules or pertinence?

12 MR. LEONARD: Objection. Calls for a legal
13 conclusion.

14 MR. MEYER: Your Honor, it doesn't. I'm
15 asking for his interpretation and his understanding of
16 what Summit's intent is.

17 BOARD CHAIR HELLAND: Can you restate the
18 question?

19 MR. MEYER: Can you have it read back,
20 please?

21 (The requested portion of the record was
22 read.)

23 MR. LEONARD: Same objection.

24 MR. MEYER: I'll rephrase, Your Honor.

25 BOARD CHAIR HELLAND: Thank you.

1 BY MR. MEYER:

2 Q. Sir, is it Summit's intent and meaning by
3 using this language that the landowner is no longer
4 obliged to follow local ordinances or permit
5 requirements for that land?

6 A. No. I think the intent of this sentence is
7 talking about the pipeline easement.

8 Q. And that's the land?

9 A. That's the land with the pipeline easement
10 on it.

11 I'm not speaking to -- I don't think it has
12 anything to do with what the land was subject to prior
13 to the easement being there. There are several
14 examples as to why this is applicable; the One Call,
15 811 requirement per statute in Iowa, but there are
16 other resolutions of law that would apply to the last
17 two words of that sentence, which is the pipeline
18 easement.

19 We're not talking about the landowner's
20 obligation prior to it.

21 Q. Let me ask you about this. In this
22 50-foot-wide strip, when it butts up to a county road,
23 could the landowner put a driveway to the road without
24 getting county permits?

25 A. I couldn't speak for the County. I don't

1 work for them.

2 Q. If there's a requirement that the landowner
3 would have to, is Summit intending to relieve the
4 landowner of that burden?

5 A. To relieve the landowner of the burden of
6 needing to get a right-of-way permit across the
7 easement? Is that your question?

8 Q. On that 50-foot piece of land.

9 A. Is it our intent to relieve them? I don't
10 think so.

11 I think we're talking about ordinances and
12 regulations related to the pipeline easement; not to
13 what the County would require a landowner to do for a
14 road approach.

15 Q. Well, you're obliging the landowner here to
16 still comply with appropriate ordinances and
17 regulations. Would it be Summit's intent and
18 understanding that it's referring to, for example,
19 County ordinances that would require a permit to be
20 obtained to put in a drive-through -- a right-of-way
21 drainage ditch?

22 A. I'm not sure. Was that a question? Help
23 me here.

24 If you could restate that, that would help
25 me.

1 Q. Let's just assume some information here.
2 Let's say there's an ordinance that requires if a
3 landowner wants to build a drive from their field to a
4 county road right-of-way, and the County requires a
5 permit -- we're kind of playing dodge-ahead here.
6 Sorry about that.

7 A. That's for clarifying, sir.

8 Q. If that requirement existed prior to
9 entering this easement, is it Summit's intention that
10 the landowner has to still comply with that or not?

11 A. I think so, that they would -- whatever
12 rules they need to follow to get a road approach, I
13 don't know that we're affecting those or asking them
14 to do anything different.

15 Q. Okay. When you obtain this easement, is it
16 Summit's intention to obtain any more rights than the
17 landowner has to grant?

18 A. Any more rights than the landowner has to
19 grant?

20 Q. Correct.

21 A. I think we're seeking limited surface
22 rights for a nonexclusive pipeline easement and the
23 related facilities' access, when appropriate or
24 accordingly.

25 I don't know that they can grant us

1 anything that they can't grant us, but that may be a
2 legal conclusion there in terms of what may be in
3 play.

4 Q. I mean, I'm just asking if it was Summit's
5 intent that they were going to obtain more than could
6 be granted.

7 A. More than what could be granted via this
8 document? No, not my understanding.

9 Q. Okay. Is it -- did you know that -- Who's
10 Bill Sullivan? Do you know Bill Sullivan?

11 A. It doesn't ring a bell.

12 Q. From Key [sic] Logistics. Do you know
13 those folks?

14 A. Key [sic] Logistics? Yes.

15 Q. TurnKey?

16 A. TurnKey. I recognize that.

17 Q. Okay. But you've never heard of Bill
18 Sullivan or William Sullivan?

19 A. I don't manage Bill. I don't manage
20 TurnKey. It's not a part of my scope.

21 Q. What's your understanding of what TurnKey
22 does?

23 A. My understanding of what TurnKey does is
24 work to procure all of the non-environmental permits
25 on the project, meaning road crossings, encroachments,

1 road approaches, temporary crossing agreements, et
2 cetera, things of that nature, is my understanding.

3 Q. And do you have any knowledge as to whether
4 or not -- well, let me ask you this way. Did you know
5 that TurnKey has submitted various permit applications
6 to Hardin County to, for example, build drives to
7 allow ingress and egress to the land easement? Did
8 you know that?

9 A. I don't know what they've done in Hardin
10 County.

11 I know they've submitted a number of
12 permits, but the specifics of those, I don't know.

13 Q. Did you know that they've also submitted
14 permit applications to cross and enter and cross over
15 the drainage pipelines in the drainage districts
16 affected by the project in Hardin County?

17 A. That sounds right to me. I don't know what
18 they're doing in Hardin County.

19 Again, I don't manage them at all in any
20 aspect, so I don't look at their reports and know what
21 they're up to.

22 Q. I'll ask another question in hopes that
23 maybe it will ring a bell.

24 Do you know that TurnKey has submitted
25 permit applications to build above-ground facilities

1 related to this project?

2 A. I think if that was an applicable part of a
3 permit, I'm sure they would be dealing with that. I
4 just don't know the specifics of whether they've had
5 to or if they've initiated that effort.

6 Q. Okay. Would you agree, though, that if
7 those things had taken place and given your testimony,
8 your understanding of what the language in 5(a) or
9 Section 5 that we've talked about, that would be
10 consistent? Those activities by TurnKey would be
11 consistent with your testimony today; that those
12 permits aren't environmental in nature and, therefore,
13 Summit needs to obtain them?

14 A. It's a function of a pipeline project to
15 obtain non-environmental permits, yes.

16 Q. Okay. I'm not sure where in this
17 particular exhibit the language is about basically
18 decommissioning or removing the pipeline, but there's
19 language in these easements that speak to that;
20 correct?

21 A. There's general mentioning of abandoning,
22 if that's what you're referring to.

23 Q. Yes.

24 A. Decommissioning and abandoning the
25 pipeline.

1 Q. All right. You're aware that the Iowa Code
2 under 479B subsection 32 does require removal?

3 A. I don't have the subsection memorized. My
4 understanding of the rules is that by default the
5 pipeline could be abandoned in-place, as long as it's
6 done under certain regulations, but the landowner has
7 the discretion to request that the pipeline and its
8 related facilities be removed.

9 Q. All right. So do you know, have the
10 numbers been run in the event that 100 percent of the
11 landowners were to seek removal? Do you know if those
12 numbers, the cost of that, has been run within Summit?

13 A. Not to my knowledge.

14 Q. But Summit's obliged to do that and bear
15 that cost or whoever might stand if it's -- The
16 successors of Summit Carbon Solutions would still have
17 that obligation; correct?

18 A. I think it depends on if there was
19 something individually worked out with the landowner.
20 If the landowner said, "Under no circumstances do I
21 ever want it removed," I think that we would have to
22 look at that compared to what the rules say and see
23 which one of those controls, but I think in general
24 if -- as a company if the landowner has elected to
25 have the pipeline removed upon abandonment, then we're

1 typically okay with that.

2 Q. Well, I get that. All the landowners could
3 just say, "We love it. Leave it," but you're saying
4 that Summit hasn't -- you're not aware that they've
5 run the numbers? They don't put this down as a zero
6 cost to them, do they?

7 A. I have no idea. I don't know how
8 applicable those numbers would be, given the cost of
9 what that would be would be completely different at
10 the time when we're running the numbers, but I have
11 nothing to do with forecasting hypotheticals decades
12 or centuries from now. I have no idea.

13 Q. And that's a problem for the landowners,
14 too, isn't it?

15 A. What is a problem?

16 Q. If they want it removed or no one has
17 calculated for the cost, how does it happen?

18 A. The landowners have to pay for the costs.
19 I don't know if the cost --

20 Q. Sir, they want it out and whoever has that
21 burden on your end of the stick doesn't have the money
22 to do it. If there's bankruptcy in the future, what
23 happens to that pipeline? It stays in the ground,
24 doesn't it?

25 A. I don't agree there. I think if the

1 pipeline system were abandoned and we were obligated
2 by law to remove it upon the landowner's request, then
3 we would.

4 Q. How does a bankrupt company do that?

5 A. You're venturing into things I have no
6 experience with. I've never worked for a bankrupt
7 company. I also don't deal with a whole lot of
8 abandoned pipelines.

9 So you're just asking something outside --
10 I'd like to finish if I could. You're asking
11 something outside of my scope.

12 Q. In your experience with these over the 15
13 years that you've been doing this, has -- have all
14 these years been with Summit, or have they been with
15 other outfits?

16 A. Other companies.

17 Q. Okay. And whether it's been Summit or
18 other outfits, has there ever been any kind of a
19 reserve -- are you aware of any reserve that's been
20 held in the event that these need to be removed?

21 A. I don't know how the dollars were held or
22 if "reserve" is the right way to do it or what to call
23 it.

24 In the unlikely event that a portion of a
25 pipeline was abandoned, it was not an issue. We

1 pulled it up, if we needed to pull it up.

2 Again, very rare. Very rare situation,
3 unless for some reason that particular part of a
4 pipeline system was no longer in use or anticipated to
5 be in use. It's not common to abandon them and pull
6 them up.

7 Q. Do you know whether Summit has obtained or
8 attempted to obtain, other than permits from drainage
9 districts, any easements from drainage districts?

10 A. I really don't know.

11 Q. These easement agreements, would they allow
12 Summit to put a well on -- within the easement?

13 A. A well?

14 Q. A well.

15 A. Like, a water well?

16 Q. Yes.

17 A. Not to my knowledge. I can't imagine a
18 scenario in which we would need a water well.

19 Q. That's going to be my next question. For
20 what purpose would you need a well?

21 A. I mean --

22 Q. Is water part of this process, to your
23 knowledge?

24 A. It's not common for a pipeline company to
25 drill a water well, unless it's tied to some water

1 well we're replacing or something like that.

2 Q. At the point where, let's say, like, an
3 ethanol plant, this point of conversion where the --
4 where it's captured before it's sent into the pipe.
5 Is there any water needed for that, their water part
6 of that process?

7 A. You're guess is as good as mine. I don't
8 deal with the inner workings of the carbon-capture
9 process or compression process.

10 I imagine if, tying back to your question
11 the best I can, we needed to drill a water well on the
12 landowner's property for some unforeseen extremely
13 rare reason, we would need to seek additional
14 permission to do that.

15 MR. MEYER: Okay. I don't have any other
16 questions. Thank you.

17 BOARD CHAIR HELLAND: Thank you.

18 Mr. Taylor, I believe you're up.

19 MR. TAYLOR: Thank you.

20 CROSS-EXAMINATION

21 BY MR. TAYLOR:

22 Q. I'm Wally Taylor. I represent the Sierra
23 Club.

24 Are you aware that this whole process
25 started about two years ago with what they called

1 informational meetings?

2 A. I am.

3 Q. Did you attend any of those?

4 A. I did not attend those. I was not present
5 at Summit at the time.

6 Q. Okay. But you understand, though, that at
7 those meetings Summit made a presentation about the
8 project and instilling its virtues and so on and that
9 the Board representative who was there explained the
10 Board's procedure? Is that your understanding?

11 A. That's my cursory understanding of them,
12 yes.

13 Q. Okay. And do you know that during that
14 meeting the landowners who were there were told that
15 at the end of the meeting, immediately at the end of
16 the meeting before they even left the building that
17 there were land agents there to negotiate easements
18 with them?

19 MR. LEONARD: Objection.

20 BOARD CHAIR HELLAND: State your objection.

21 MR. LEONARD: Calls for speculation. The
22 witness testified he was not at any of those meetings
23 and not with Summit at the time.

24 BOARD CHAIR HELLAND: Thank you.

25 Mr. Taylor?

1 MR. TAYLOR: I asked if he understood that
2 or it was his understanding.

3 BOARD CHAIR HELLAND: You can answer, if
4 you can.

5 A. I have no idea.

6 MR. TAYLOR: Can you bring up Sierra Club
7 Hearing Exhibit 11? Can you move that so we can maybe
8 get the whole thing in? There you go.

9 BY MR. TAYLOR:

10 Q. Were you aware that Former Governor Terry
11 Branstad sent this letter attacking Sierra Club to
12 landowners along the Summit pipeline route on
13 December 10, 2021?

14 A. I'm not aware of this letter, and I really
15 am not aware whether or not it's attacking anybody.
16 It's pretty blurry, and I haven't read it, but I
17 certainly am not aware of it.

18 In September of 2021 I was not with the
19 company.

20 Q. Is that the kind of thing that you would
21 anticipate might be sent in order to persuade
22 landowners to sign easements?

23 A. Could you unpack for me what you mean by
24 "type of thing"? I'm not sure I can agree or disagree
25 there.

1 Q. It's kind of hard to read up there, isn't
2 it?

3 A. It's tough.

4 Q. Let me read some portions to you. Second
5 paragraph.

6 "Groups like the Sierra Club don't like
7 ethanol. In fact, they don't like any liquid fuels
8 and would be happy to ban all combustion engines. The
9 Sierra Club is attempting to obstruct the bigger boost
10 to ethanol in decades, the Summit Carbon Pipeline
11 Sequestration Project."

12 Then on down a ways, "In truth, if the
13 Sierra Club gets its way, there will be nothing left
14 of Iowa's ethanol industry. It would be out of
15 business. Imagine what would happen to the price of
16 corn and to the value of your land. It would be
17 devastating.

18 "As a landowner and potential partner of
19 the Summit Carbon Solutions Project, you are now a
20 target of the Sierra Club. In the weeks and months to
21 come, you will likely hear from them making wild
22 claims about the pipeline and encouraging you to
23 oppose it. Please don't be intimidated."

24 So is that the kind of language in a letter
25 that would be sent, do you believe, to persuade

1 landowners to sign easements?

2 A. I have to believe that that's a valid
3 letter signed by Mr. Branstad, which I don't know that
4 to be the case, but it looks like it is. If those are
5 his words and information he wished to share with
6 landowners along the route, it's hard for me to
7 generalize as to whether this is the type of letter
8 that would be sent to landowners and, to put it the
9 way you phrase it, to pressure people into easements.

10 I think this is more of an awareness letter
11 and was, you know, Mr. Branstad's prerogative to send
12 that. He felt it to be necessary, if, in fact, he
13 did, but I don't know how to answer your question
14 about whether Summit would send this type of, as you
15 phrased it, thing to landowners to pressure them into
16 anything.

17 I think we try to keep people informed and
18 give them a heads-up of what type of misinformation
19 may be out there, which there's plenty of it. We try
20 to at least have a seat at the table for a discussion
21 about that misinformation.

22 Mailings may be a way of doing that, but
23 beyond that, it's hard for me to speculate as to what
24 would and wouldn't be sent.

25 Q. For the record I said "persuade," not

1 "pressure."

2 A. Okay. I stand corrected.

3 Q. But from the letterhead, would you agree
4 this was sent on behalf of Summit Carbon Solutions?

5 A. I mean, I have to believe that's our
6 letterhead.

7 Again, Mr. Taylor, I was a long ways away
8 whenever this was written, and so I really don't know.

9 Q. Okay. Thank you.

10 MR. TAYLOR: So we would offer Sierra Club
11 Hearing Exhibit 11.

12 (Sierra Club Hearing Exhibit 11 was offered
13 into evidence.)

14 MR. LEONARD: No objection.

15 BOARD CHAIR HELLAND: Seeing no objection,
16 the Board will admit Sierra Club Hearing Exhibit 11.

17 (Sierra Club Hearing Exhibit 11 was
18 admitted into evidence.)

19 BY MR. TAYLOR:

20 Q. Then about a year ago are you aware that
21 Summit hosted, I think, six meetings around the state
22 in the areas around the pipeline route and served nice
23 lunches and suppers to landowners to try to, again,
24 persuade them into signing easements?

25 A. I don't know if the purpose of those --

1 One, I don't know if there were six of them. I'll
2 take your word for it. I don't know if it was lunch
3 or supper either, but I understand the nature of what
4 you're getting at.

5 I don't think that those were in an effort
6 to solely get people to sign the easements. I think
7 those were informational community outreach types of
8 efforts, but I could be wrong.

9 I certainly didn't organize it, and I run
10 all of our land acquisition. I didn't organize any
11 lunches or suppers specifically in an organized
12 fashion to go around the state and try to get people
13 to sign easements at those lunches. I didn't do that,
14 but I imagine it's probably more of a community
15 outreach effort.

16 Q. So why were the land agents there?

17 A. They are the front and spearhead of our
18 community outreach. We have a few people at the
19 company that deal with some vendors that do community
20 outreach, and then at the height of this effort, I had
21 200-plus people in the field.

22 So we're the ones having the dialogue with
23 landowners and people in those surrounding
24 communities, so it's a symbiotic relationship there.

25 Q. Isn't it the job of the landowners [sic] to

1 get landowners to sign the easement?

2 A. Job of the landowners?

3 Q. Land agents. Sorry.

4 A. It's part of their job, yes.

5 Q. In testimony last week you said if a
6 landowner says they don't want to sign an easement,
7 the land agents or Summit representatives keep
8 contacting the landowner. Why doesn't no mean no?

9 A. Well, as I spoke about last week, sometimes
10 no has some motives behind it or some reasons, and we
11 try to find out those reasons.

12 So perhaps the landowner's heard some wrong
13 information about our project. Perhaps we've been
14 villainized by people that don't have all of the
15 facts. Perhaps they feel like, as some of the
16 scenarios that were presented last week, we could
17 change the product of the pipeline or that it could
18 combust or that it's unsafe. So there's a number of
19 reasons why a landowner would say, "No, I'm not really
20 interested in this."

21 So to answer your question, no meaning no,
22 we look at it as no meaning, "Okay. Do you mind
23 telling us why?" What we offer at the end of that
24 conversation, if the landowner is still opposed or not
25 interested, is to keep them updated on the progress.

1 So much of this, as I stated last week, has to do with
2 the evolution of this project gaining leaps-and-bounds
3 in terms of public acceptance.

4 We've got well over 1,000 landowners, over
5 1200 of them that have reached an agreement with us.
6 We have over 2,400 parcels acquired. That's over 500
7 miles of right-of-way.

8 So as they -- as things progress, that
9 notion changes, but if the landowner is not aware that
10 things have progressed, we try to keep them up to
11 speed on that. So that has been a very fruitful
12 effort on our part.

13 We continue to do that, and I think, by and
14 large, the landowners certainly that are having a
15 dialogue with us at all appreciate being kept abreast
16 of how things are going.

17 Q. Do you think maybe at some point they feel
18 like you just wore them down, and they're going to
19 sign an easement?

20 A. So I understand your question. I find it
21 almost insulting to an Iowa landowner to think that
22 that would happen.

23 This is their ground. No one is disputing
24 that. They're extremely educated about their ground.
25 They're mindful people.

1 We enjoy meeting with all of the folks in
2 Iowa to the extent that we can. I think it discredits
3 the resolve of an Iowa landowner to think that they
4 could be worn down, but I can tell you as far as our
5 approach to this, the concept -- a concept that would
6 even somewhat relate to that question has never come
7 up.

8 We don't approach this as wearing anybody
9 down. We approach this as critical infrastructure to
10 be installed, and we want to talk to folks about an
11 easement on their ground.

12 No, I don't see any scenario in which
13 someone has thrown up their hands and said, "Fine.
14 I'll just let an easement out here."

15 Q. Do you recall during the first couple weeks
16 of testimony when the landowners were testifying there
17 was a Mr. Konz who said that he didn't want the
18 pipeline; he didn't want to sign an easement but felt
19 he had no choice? Do you remember that?

20 A. I don't remember that specific man's name,
21 so I'll take your word for that.

22 I remember that topic being brought up. I
23 also remember that he hasn't signed an easement.

24 Q. That's right, but he was negotiating and
25 didn't want to. Remember?

1 A. Well, that's a part of any type of land
2 acquisition project. I'm not saying that -- I think
3 we're jumping into two things. Wearing somebody's
4 resolve down and overwhelming them until they reach an
5 agreement with us is the way I think you presented it.

6 Working through a negotiation that most
7 people would prefer to not have is different, very
8 different. One involves taking advantage of people
9 and wearing them down. The other involves the
10 necessary uncomfortability of the installation of
11 infrastructure, I think, in almost any case.

12 So I just want to distinguish between the
13 two things there.

14 Q. So if a person, a landowner does not want
15 the pipeline on his or her land, you would keep trying
16 to get them to sign an easement; correct?

17 A. I'd certainly try to keep a dialogue open
18 with them so that they were informed in hopes of
19 having continued conversations with them and
20 eventually reaching an agreement, yes.

21 The fact that someone says, you know,
22 "Really not interested," that's not really an option
23 for me to walk away from in good-faith requirements of
24 trying to acquire that easement.

25 Q. Last week you said that you would expect

1 more easements to be signed after the Board issued a
2 permit. So in other words, at that point when eminent
3 domain is really staring them in the face, you're
4 saying that they would at that point sign the easement
5 because they had no other choice; correct?

6 A. That is not what I'm saying. What I was
7 talking about there -- I don't have the record in
8 front of me, but what I was talking about there is
9 some folks are perfectly fine with the benefits
10 associated with this project.

11 They understand the viability of it. They
12 understand how critical it is. They would simply just
13 prefer that we had a permit, and then they would
14 execute an easement with us.

15 Q. Pardon me. That makes no sense at all.

16 A. I believe it makes perfect sense, but I can
17 unpack it for you. So if you're a farmer and you're
18 selling to an ethanol plant, I'm asking to incumber
19 your ground with an easement. You may not want to go
20 through the process of incumbering your ground just to
21 have to find a way to get that easement released if we
22 don't get a permit or ever build the pipeline.

23 So that makes perfect sense. Why go
24 through it unless it's a viable deal with a permit?

25 So, again, we're talking about a minority

1 of landowners, a subset of the minority of landowners.
2 That's what I was referencing to.

3 The majority of landowners have reached an
4 agreement with us, obviously, prior to a permit, which
5 is unprecedented, by the way. 500 miles of
6 right-of-way in Iowa prior to a permit being received,
7 it borderline screams of the sense of this project.

8 But 26 percent of the mileage remaining, I
9 would say a subset of that, as I cited last week, is
10 simply waiting to see if the permit is viable, and
11 then they'll go through working terms on an easement.
12 So perhaps it doesn't make sense to you or the Sierra
13 Club, but in the world that I live in on a daily
14 basis, it makes perfect sense. It's a very natural
15 thing.

16 Any pipeline that requires a permit,
17 there's a subset of landowners that are simply waiting
18 on that permit to happen. It has nothing to do with
19 their opposition to the project.

20 Q. It has something to do with eminent domain,
21 doesn't it?

22 A. I don't think so. I mean, I think at the
23 end of the day, eminent domain is an unfortunate
24 circumstance but certainly a necessary function for
25 the installation of something this large. We

1 certainly can't have a minority of landowners holding
2 up or stopping or canceling the installation of
3 something this critical and this large.

4 So you have to look at the
5 majority/minority there, but I think, if I'm answering
6 your question correctly, the idea that everyone that
7 hasn't signed at this point is simply going to sign
8 because eminent domain is in play is very much
9 incorrect.

10 Q. Last week Mr. Dublinske mentioned that you
11 were in a mediation. That was with a landowner?

12 A. It was.

13 Q. And who was -- I'll rephrase that. Without
14 mentioning any names, what -- who was involved in
15 that? I mean, you and a landowner, I assume?

16 A. Yes.

17 Q. And a mediator?

18 A. Yes.

19 Q. Anybody else?

20 A. No, no. There's two parties and a
21 mediator.

22 Q. Okay. And is the mediation what the Board
23 suggested that landowners could engage in?

24 A. That's right.

25 Q. And how many of those have you done or has

1 Summit done?

2 A. I need to probably get some advice on how
3 much I can talk about that. The mediator has told me
4 specifically that the progress, the volume, the
5 contents of those mediations are strictly
6 confidential, as instructed by the Board.

7 You're welcome to ask the Board if I can
8 talk about that, but I need to follow the rules I've
9 been told.

10 Q. I wasn't asking the content. I want to
11 know how many mediations you have had.

12 A. How many is content. I would ask you to
13 ask the Board if I can answer that question.

14 If they feel like I should, I absolutely
15 will. I don't want to break rules here.

16 MR. TAYLOR: Mr. Chair, may he answer that
17 question?

18 BOARD CHAIR HELLAND: I think he can speak
19 to the volume, if Mr. Rorie knows.

20 A. Could you restate your question?

21 BY MR. TAYLOR:

22 Q. How many of these mediations have there
23 been?

24 A. Five or six.

25 Q. Okay. Have any resulted in an easement?

1 A. Well, we're right there again, Mr. Taylor.

2 I assume we can't answer that for you.

3 MR. TAYLOR: Mr. Chair, may he answer that?

4 BOARD CHAIR HELLAND: Mr. Taylor, he really
5 can't be speaking about the outcome of the mediations.

6 MR. TAYLOR: Okay.

7 BY MR. TAYLOR:

8 Q. One final question. Last week I think you
9 said if a landowner doesn't want to sign an easement
10 and just says no that they're not making a good faith
11 effort to negotiate.

12 Why does the landowner have an obligation
13 to negotiate?

14 A. I didn't say it that way. If they were
15 not -- I wouldn't say they aren't negotiating in good
16 faith. I would just simply say they're not
17 negotiating.

18 Q. Well, you said "good faith" last week.

19 A. Good faith was my obligation, to continue
20 good-faith efforts to try to reach an agreement. I
21 certainly wasn't talking about the landowners. I was
22 talking about my folks.

23 Q. The record will speak for itself.

24 MR. TAYLOR: That's all the questions I
25 have. Thank you.

1 BOARD CHAIR HELLAND: Thank you,
2 Mr. Taylor.

3 Ms. Ryon, I think you're next, if you still
4 have questions.

5 MS. RYON: I do. Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. RYON:

8 Q. Good morning, Mr. Rorie. I'm going to try
9 not to be repetitive. Friday feels like a long time
10 ago, and so I apologize in advance if I cover
11 territory already covered.

12 As an initial matter, I want to ask you
13 about the easement payments. I think you talked about
14 last week most of them are in a lump sum form to the
15 landowners; is that correct?

16 A. Most of them are, yes.

17 Q. And when landowners agree to a lump sum
18 payment, is that payment paid 100 percent at the time
19 of signing?

20 A. Most of the time. There are some scenarios
21 in which the landowner asks for that to be split up a
22 little bit, but what we would typically do is make a
23 onetime payment all up front.

24 Q. And you may also recall from Friday that we
25 looked at an image of one of the parcels where the

1 pipeline had been re-routed around a house because an
2 owner built some hog confinement facilities.

3 Do you recall that?

4 A. Yeah. It went around -- I guess the hog
5 barn was put in the original proposed route.

6 Q. Right. What would Summit do if -- on any
7 of the, you know, parcels that are still, you know,
8 not under an easement agreement, what would Summit do
9 if the landowners built additional facilities, you
10 know, since the last time you'd looked at that land?

11 A. Built additional facilities in the path of
12 the proposed route?

13 Q. Yes.

14 A. That's probably a question for counsel. I
15 think that we would be in a spot where we probably
16 would need to look at going around those, but that's
17 also very rare. I've not encountered that, actually,
18 in Iowa before, so I don't know exactly what the rules
19 would be then.

20 Certainly wouldn't want to invite everybody
21 to build things there in that proposed route.

22 Q. But they would have the right to do that
23 before signing an --

24 A. You'd have to ask our lawyers about that.
25 I don't know.

1 I mean, we certainly presented for a
2 while -- If they're not signed by now, we've presented
3 for a while a proposed easement. Certainly it's our
4 intention and we filed exhibits with the Board, but I
5 don't know the Iowa rules or Board rules about that,
6 so I'm not equipped to answer that.

7 Q. And I have some additional questions about
8 the contact reports that Summit filed in July. You're
9 familiar with those, I assume?

10 A. Are you referring to, like, the L4, L5, or
11 L3, L4 testimony?

12 Q. I think these are the ones that contain the
13 lists of -- I would probably have to look more closely
14 at that. Give me a second.

15 These were filed on July 27th, and they
16 are -- yeah, per county they list how many contacts --
17 dates of contacts with the landowners and whether they
18 were in phone or in-person.

19 A. I recall that, yes.

20 Q. Okay. I just want to ask some questions
21 about your procedures for maintaining those contact
22 lists.

23 Do you have a process in place to ensure
24 that there are no duplicate listings of contacts on
25 those lists?

1 A. I mean, it's pretty simple. We just don't
2 duplicate.

3 The only way that could happen is if a
4 landowner owned multiple parcels. Maybe those were
5 separated to where some of that content could be
6 duplicated, but we have a team of folks that spend a
7 lot of time making sure that's rare or doesn't happen
8 at all.

9 Q. And do you have a process in place for how
10 something would get recorded if, for example, a
11 landowner had been using a land line, and they decided
12 to disconnect that?

13 A. I'm not sure I understand. If they
14 disconnected their land line and got a cell phone or
15 something, or their land line went away?

16 Q. They disconnected their land line, and the
17 land agent calls, and the line is no longer in
18 service. Do you have a process for notifying that --

19 A. Well, we have a process for an attempted
20 call. We also have a process to make sure we're
21 operating in real-time and figure out alternate
22 numbers, if they existed.

23 I think if we went into a situation where a
24 landowner didn't have phone access at all, that would
25 be very rare, but if we called a land line that was

1 disconnected, it would tell us it's disconnected
2 typically. If it doesn't and we're not getting a
3 response from the landowner or able to engage in them,
4 we're always looking at alternate methods to attempt
5 to get the visit done.

6 Q. If a land agent makes that call and gets
7 the message that the phone line is disconnected, would
8 land agents then stop calling that number?

9 A. If the phone line was disconnected? They
10 should. It's not a good use of their time.

11 Q. What kind of process do you have to ensure
12 that land agents aren't trying to communicate with
13 people who are deceased?

14 A. Can you ask that again? That they aren't
15 trying to communicate with --

16 Q. Correct.

17 A. Help me there. Can you ask me again?

18 Q. Ensuring that the people you are
19 communicating with are actually alive?

20 A. Well, we run lots of updates. They're not
21 every hour. It's a lot of work and records to look
22 through, but we update our title work.

23 We try to keep in contact with landowners.
24 In the unfortunate scenario that someone would pass
25 away, we typically are able to be aware of that within

1 weeks of that happening, if there was an obituary or
2 death record or probate filed or something in the
3 courthouse that would give us notice of that.

4 It's certainly possible that someone would
5 pass away unbeknownst to us, and we would continue to
6 try to contact someone that was actually deceased for
7 a matter of days. I would think that's the case,
8 unless there was something very obvious that we picked
9 up that would lead us to believe otherwise.

10 It's just a function of this many folks in
11 this many situations, unfortunately, folks passing
12 away is a small part of what we have to adjust around.

13 Q. But once your land agents were aware that
14 someone was deceased, then they would stop attempting
15 to contact that person?

16 A. I think that they would certainly stop
17 trying to attempt someone that was -- stop trying to
18 attempt to reach someone that was deceased, assuming
19 that it was proven or there was notice that they were
20 deceased.

21 We would try to talk to the personal
22 representative or what alternate person we would need
23 to visit with.

24 Q. What would be your process if someone
25 requested that you stop contacting, for example, an

1 elderly family member?

2 A. That gets very specific. Here's why. This
3 is a -- not the most fun part of my job, but when it
4 comes to the law, if someone owns a property, we see
5 very often that perhaps their age is higher than what
6 you would typically see in a landowner.

7 There may be children involved, other
8 relatives, other interests involved, but legally that
9 person still owns the property and has a say over it,
10 to the extent that they're not incapacitated. We have
11 to visit with those people because we have come across
12 so many situations -- I certainly have in my career --
13 where relatives and other interests may have differing
14 opinions than the person that controls the property,
15 maybe trying to exacerbate a family situation that we
16 don't want to insert ourselves into.

17 So it's uncomfortable. Certainly not very
18 good optics, but it's part of my requirement to talk
19 to the person that has control of the property unless
20 they direct us to a different representative.

21 In that case we would obey them or we
22 should, but elderly folks that control their family
23 ground control the direction of that easement, and I
24 have to give them the same due respect and treatment
25 and good-faith effort as any of their relatives that

1 may feel otherwise. That is not an uncommon
2 situation, very common, and so we have to err on the
3 side of what the law tells us to do.

4 Q. In that situation if the property were
5 owned by, say, a family trust and there were other
6 members of the family with equal responsibility for
7 the trust, would you reach out to the other family
8 members?

9 A. We should talk to anybody that has interest
10 in the property, but on the flip side of that, we
11 would not exclude one particular trustee because they
12 were elderly either.

13 Q. Do you have a process for how to respond
14 when someone requests that Summit make no further
15 contact with them?

16 A. Could you ask that again? I feel like it's
17 the same question I just answered.

18 Could you ask it again so I make sure I
19 understand it correctly?

20 Q. In this case instead of asking for somebody
21 else if a person says for themselves, "I'm the
22 landowner. I don't want Summit to contact me
23 anymore," what's your process for handling that?

24 A. Well, again, the first step is to figure
25 out what's driving that, and typically folks share

1 that with us. I'm trying to generalize on a wide
2 variety of conversations, but we would try to find out
3 why.

4 And if that wasn't successful or we
5 couldn't visit with the landowner anymore, we commit
6 to try to keep them updated on how things are going
7 with the project to continue to have a seat at the
8 table in terms of dialogue about the project.

9 Q. So you would continue to try to communicate
10 with them, even if they have requested specifically no
11 contact with them?

12 MR. LEONARD: Objection. Asked and
13 answered by several attorneys several times.

14 BOARD CHAIR HELLAND: Ms. Ryon, can you get
15 to your point of your question, please?

16 MS. RYON: Sure.

17 BY MR. RYON:

18 Q. Do you make notes in your communication
19 logs if someone requested no contact?

20 A. Yeah, I think we do, or something
21 synonymous with that, that they're not interested or
22 opposed or something like that.

23 Q. You think, but you're not certain?

24 A. To the extent that I understand your
25 question, I'm certain that we document to the extent

1 that we follow instructions. We document whether or
2 not someone was opposed or preferred not to be visited
3 with at that time.

4 Q. Just to clarify, you would document if
5 someone was opposed, but you're not saying that you
6 would document that they specifically requested no
7 contact?

8 A. I think that we do document that. I don't
9 have a process for it.

10 Perhaps we're just speaking in a couple
11 different synonyms here, but if a landowner said, "I
12 prefer not to be contacted," then we would typically
13 write that down somewhere in our reports.

14 Q. Would you then stop contacting that
15 landowner?

16 A. It depends on why they didn't want to be
17 contacted. We would certainly try to follow up with
18 them and see if their mind had changed after a period
19 of time. In so many instances that's what happens.

20 Q. So is that a no?

21 A. It's a circumstantial -- hard to give you a
22 yes or no there.

23 Q. Do you have a process for noting when a
24 landowner has told you to contact their attorney?

25 A. Yes.

1 MS. RYON: That's all my questions. Thank
2 you.

3 BOARD CHAIR HELLAND: Thank you.

4 Mr. Goodwin?

5 MR. GOODWIN: Thank you.

6 CROSS-EXAMINATION

7 BY MR. GOODWIN:

8 Q. Thank you. My name is Robert Goodwin, I
9 represent Mary, Jamie and Carmen Moser who own, rent
10 and farm ground in Palo Alto County where Summit
11 Carbon intends to have its hazardous liquid pipeline.

12 The land that they farm is actually four
13 four quarter-quarter sections in a row, so it's a
14 total of 160 acres in a row, and the land is in a
15 floodplain. I'll further represent to you that on
16 March 7th of this year, the Palo Alto County Board of
17 Supervisors voted to restrict Summit Carbon from
18 putting in a pipeline in this floodplain.

19 My question to you is: Do you have a
20 concern about proceeding with putting in a pipeline in
21 a floodplain and in an area where the Board of
22 Supervisors has restricted your company from doing
23 that?

24 A. Well, as far as a split concern there, I
25 don't have a concern about the pipeline being in a

1 floodplain. It's not my decision to put it there, but
2 I've certainly operated pipelines or worked on the
3 operation side of pipelines and the installation side
4 of pipelines that went through plenty of floodplains,
5 so that's not a rare instance.

6 To also answer your question, the first
7 concern as the land person, I have no concern about
8 that. It would be up to our engineers to have more
9 concerns than I would, but it's very common in certain
10 parts of this country to be in a floodplain.

11 The second part as it relates to the
12 restrictions of that county, I have very little to do
13 with that. My opinion would be if it was reasonable
14 to install a pipeline subject to certain ordinances
15 and it makes sense, but if it's not reasonable or
16 overly restrictive or doesn't make sense, that's
17 between our company and counsel and the County to
18 figure out, not me.

19 Q. I think you indicated that it is preferable
20 to have the liquid hazardous pipeline not be in the
21 floodplain?

22 A. I did not indicate that. My statement was
23 it makes no difference to me one way or another
24 because it's very common.

25 Q. I think maybe I misunderstood your

1 statement that you thought it would be better not to
2 be in a floodplain.

3 A. No, sir. That's the opposite of what I
4 stated. You asked if I was concerned about it, and
5 I'm not.

6 Q. Okay. In reference to the Board of
7 Supervisors restricting Summit Carbon proceeding in
8 the floodplain, what is your company's procedure to
9 address that issue?

10 A. I'm probably the wrong guy to speak to
11 that. I don't deal with the counties at all.

12 I don't collaborate on plans forward in
13 that arena. I would be probably misspeaking if I
14 answered that at all.

15 Q. I'll also represent to you, then, that on
16 June 6th of this year, I filed on behalf of the Mosers
17 what we entitled "Inquiry re: Rerouting Location of
18 Hazardous Liquid Pipeline." We've had no response to
19 that.

20 I'll represent to you that the Mosers'
21 concern is to move your proposed location of the
22 hazardous pipeline out of the floodplain, which is on
23 the north side of the Des Moines River, to the south
24 side of the Des Moines River, which is not in the
25 floodplain, and actually, one of the landowners is

1 Palo Alto County, which does not oppose the pipeline.

2 Is there a procedure in place where your
3 company considers these requests to, in this
4 situation, move the pipeline out of the floodplain to
5 the south side of the river where it's not in a
6 floodplain?

7 A. Well, to answer your question, there is a
8 procedure of assessing those. I don't design that
9 procedure outside of land impacts as far as surface
10 rights. I don't have any weight in that procedure.

11 It's probably a better question to a
12 decision-maker much higher than me that would decide
13 whether the County's preferences and the route of the
14 pipeline are workable and whether or not that transfer
15 impacts onto neighboring landowners. It sounds like
16 it would, but I'm not looking at it with you.

17 That's something that I would weigh in on
18 to see, "Okay. What people are we affecting by this
19 move?" but the actual decision to move a pipeline is
20 almost never mine.

21 Q. Is there, in effect, a procedure to
22 consider a request to, particularly for the Mosers?

23 A. Sure.

24 Q. What is that procedure?

25 A. Well, it's not a process flow. It's just

1 our engineers and project managers look at the
2 request.

3 If that request would involve different
4 disciplines, whether it be environmental survey or --
5 there's a number of other disciplines that would
6 possibly need to look at that. We all collaborate,
7 and then a decision-maker makes a decision.

8 Q. As I said, we've had no response. Who is
9 the contact person that we should contact in regard to
10 this situation?

11 A. If you're talking about moving the
12 pipeline, I think the best person to talk to would be
13 Erik Schovanec. He testified earlier.

14 Please don't ask me to spell his name. We
15 can get it to you.

16 He's our senior project director and
17 typically spearheads those procedures, and then if it
18 needs to be elevated, it will go to Erik and my
19 superior, which is Jimmy Powell.

20 Q. How do I get in contact with him, or will
21 he get in contact with me?

22 A. We can provide his contact information and
23 hope you guys could talk about it, however you want to
24 schedule that.

25 Q. Okay. Hopefully you can get me the

1 information.

2 A. Sure.

3 MR. GOODWIN: I have no further questions.

4 Thank you.

5 THE WITNESS: Thank you.

6 BOARD CHAIR HELLAND: Okay. Before we go
7 to Board questions, did I miss any of the parties?

8 (No response.)

9 BOARD CHAIR HELLAND: Okay. We've crossed
10 a lot of these off, Mr. Rorie, so I'm looking for one
11 that's not crossed out.

12 Is there anything in Summit Carbon's
13 easement which would prohibit development for the
14 person's property as an industrial or commercial
15 property?

16 THE WITNESS: Only to the extent that it
17 would prohibit the permitted structures being placed
18 within the boundaries of the easement and the
19 workspace while it was in effect.

20 BOARD CHAIR HELLAND: On page 7 of your
21 direct testimony, you discuss needing four pump
22 stations in Iowa. Has Summit Carbon obtained all
23 necessary land rights for those, or is it requesting
24 eminent domain over those areas?

25 THE WITNESS: We have one left, so we have

1 three of the four secured.

2 BOARD CHAIR HELLAND: Okay.

3 THE WITNESS: You'd have to ask counsel
4 whether they're seeking anything eminent domain-wise.

5 We feel like we're in the finishing stages
6 right towards the end of getting that last one
7 resolved. I expect that to be done in the next, if I
8 had to guess, three or four weeks.

9 BOARD CHAIR HELLAND: Do you know which
10 Exhibit H?

11 THE WITNESS: I don't have the Hs
12 memorized. It would be the pump station in Clay
13 County. It has a CL prefix there.

14 BOARD CHAIR HELLAND: Okay. I think we can
15 narrow that down.

16 How many acres are the pump sites?

17 THE WITNESS: They vary a little bit. In
18 general in between 4 and 6 acres, 4 or 5 acres.

19 BOARD CHAIR HELLAND: Do the pump sites
20 have different access requirements than the pipeline,
21 and will they each have different driveway access
22 requirements?

23 THE WITNESS: Yes. Typically there's a
24 permit access road that goes directly to the pump
25 station facility, and that's a part of the

1 transaction.

2 BOARD CHAIR HELLAND: You state Summit
3 Carbon will purchase the electricity from local
4 providers. Does Summit Carbon anticipate generating
5 some of its own electricity on-site?

6 THE WITNESS: Not to my knowledge, but I'm
7 probably not the guy to talk about that.

8 BOARD CHAIR HELLAND: Who would be?

9 THE WITNESS: I think Mr. Powell would be
10 the best guy to tell you whether they intend on
11 generating their own electricity. I've not heard of
12 that, but I just don't want to rule it out.

13 BOARD CHAIR HELLAND: No problem. Thank
14 you.

15 Are you familiar with OCA Bents Direct
16 Exhibit 1?

17 THE WITNESS: I would probably need to be
18 refreshed on it.

19 BOARD CHAIR HELLAND: Okay. We can get
20 that pulled up.

21 (Brief pause.)

22 BOARD CHAIR HELLAND: So while they're
23 pulling that up, we're going to be talking about
24 electrical network upgrades, okay? I apologize if
25 Mr. Schovanec already answered this, or if we need to

1 refer to him, let us know.

2 We have it up. Okay. I don't think we
3 have a specific page number here.

4 So OCA Data Response 66 states, "Summit
5 Carbon will pay for the necessary electrical network
6 upgrades."

7 Do you know how many upgrades will need to
8 happen?

9 THE WITNESS: I really have no idea. It's
10 way outside of my scope.

11 BOARD CHAIR HELLAND: So I suppose the
12 locations are outside of the scope, too?

13 THE WITNESS: Well, the locations for the
14 power coming into sites I deal with as far as working
15 together with the utility providers and the landowners
16 to get that worked out.

17 As far as the rights to put the power in,
18 whether an upgrade is tied to that or how many of
19 those locations, I couldn't tell you.

20 BOARD CHAIR HELLAND: Okay. Will any new
21 electric transmission lines need to be constructed or
22 upgraded?

23 THE WITNESS: I'm not sure. There's a
24 couple types of power required here. I don't know if
25 a transmission upgrade would be required.

1 BOARD CHAIR HELLAND: Is that a question
2 for Powell, too?

3 THE WITNESS: I bet it is. This is his
4 response to the data request. Jimmy or Erik speak
5 that language better than me.

6 BOARD CHAIR HELLAND: That says Summit
7 Carbon started the interconnection process discussions
8 with the relevant utilities?

9 THE WITNESS: I'm not sure.

10 BOARD CHAIR HELLAND: Okay. Has Summit
11 Carbon obtained all necessary land rights for the MLVs
12 or requested the right of eminent domain for those
13 remaining as well?

14 THE WITNESS: We're requesting the right
15 for those remaining.

16 BOARD CHAIR HELLAND: Do you know how many?

17 THE WITNESS: There's 23 remaining
18 stand-alone valves and 34 launch receiver sites.

19 BOARD CHAIR HELLAND: Do you know the
20 number of total valves?

21 THE WITNESS: The total valves outside of
22 an ethanol facility, of course, 64 valves. Forty-one
23 have been acquired, 23 we're working on.

24 BOARD CHAIR HELLAND: I might come back to
25 that.

1 We heard from several Exhibit H landowners
2 in their recent testimony that they received a verbal
3 offer from a Summit land agent but then never received
4 the written version of that offer.

5 Can you help us understand that?

6 THE WITNESS: Sure. So I don't want to
7 cite specific people, but there has been an instance
8 where there was a property that was not equitable to
9 some others. The impacts were different. We reached
10 an individual price for that impact.

11 Whenever we consented to that and it was
12 the landowner's price, it wasn't a counteroffer. It
13 was, "Yes, sir, we'll pay that." The comment was then
14 made, "Put it in writing. I'm going to put it in the
15 paper and make sure everybody gets paid what you just
16 offered me."

17 So those are not equal things at all in
18 terms of what we were looking to do. It was a totally
19 different arrangement.

20 So we refrained from putting that offer in
21 writing so that it didn't get advertised and create
22 more problems than good.

23 BOARD CHAIR HELLAND: Can you explain how
24 Summit Carbon has engaged the railroads to obtain
25 crossing agreements?

1 THE WITNESS: I can speak in generalities
2 there. I don't manage that group. That's the TurnKey
3 group, and I believe that falls under Mr. Schovanec's
4 scope.

5 That's technically a non-environmental
6 permit. I have a lot of experience dealing with
7 railroads. I can tell you that they just approach the
8 applicable department at the railroad and start
9 talking about either a license agreement or a crossing
10 agreement.

11 BOARD CHAIR HELLAND: During your testimony
12 you stated Summit Carbon is requesting eminent domain
13 for 892 parcels. Would Summit Carbon be willing to
14 file an updated list containing the parcels still
15 subject to Exhibit H?

16 THE WITNESS: Sure.

17 BOARD CHAIR HELLAND: Okay. Thank you.
18 That's the extent of my questions.

19 Board Member Byrnes.

20 BOARD MEMBER BYRNES: So I know it's been a
21 few days. Remind me, were you on when a picture of a
22 tire was presented?

23 THE WITNESS: I was.

24 BOARD MEMBER BYRNES: Okay. So I had some
25 notes here pertaining back to that moment.

1 So I just want to be clear or clarify for
2 the record, because I just -- there were lots of
3 conversations taking place around this. If a farmer
4 were to be doing normal farming operations -- I think
5 Ms. Gruenhagen talked about normal farming operations
6 based on 352 of Iowa Code. If they're doing normal
7 farming operations and were to hit the pipeline and
8 cause damage, I believe you stated that is not on
9 them; correct?

10 THE WITNESS: Yes.

11 BOARD MEMBER BYRNES: So what if you have a
12 contractor, a landowner does not do a One Call and
13 were to hit the pipeline and cause damage? Who is
14 responsible for the cost of that damage to the
15 pipeline?

16 THE WITNESS: Well, I think it turns into a
17 little bit more of a legal question there, if they
18 violated the One Call requirements, and then I
19 admittedly don't know much about whether comparative
20 fault is in play here, but I'd be speculating as to
21 what direction that would go.

22 We would encourage people to use One Call
23 and hire contractors that do, but I don't know if that
24 would constitute negligence, gross negligence or
25 something willful there. It's just not my scope.

1 It is always encouraged that folks utilize
2 the One Call system for that type of a reason as well.

3 BOARD MEMBER BYRNES: And I believe there
4 was a conversation -- I maybe was the one that asked
5 this -- that normal farming operations do or do not
6 require a One Call?

7 THE WITNESS: I think, depending on your
8 definition of "normal," if installing tile would
9 require excavation or if they have to do a One Call
10 for that, that still might fall under the circle of
11 normal, but if they're not excavating or doing
12 anything prompted under definitions of the One Call
13 requirements, then that's just normal farming.

14 BOARD MEMBER BYRNES: That's all I had for
15 clarification. Thank you.

16 BOARD CHAIR HELLAND: Thank you.

17 Summit, do you have redirect?

18 MR. LEONARD: Very briefly, Your Honor.

19 We actually have a hearing exhibit, and it
20 was uploaded this morning. It's Summit Hearing
21 Exhibit 1, if we could bring that up.

22 If I might have a staff member come down, I
23 have the hard copies to be passed out.

24 BOARD CHAIR HELLAND: Thank you.

25 (Brief pause.)

1 REDIRECT EXAMINATION

2 BY MR. LEONARD:

3 Q. Mr. Rorie, during your testimony over last
4 Friday and today, you've been asked various questions
5 about the voluntary easement template referred to in
6 Exhibit C; is that right?

7 A. Yes.

8 Q. Is this a representative example of what
9 that Exhibit C looks like?

10 A. It is.

11 MR. LEONARD: Nothing further, Your Honor.

12 BOARD CHAIR HELLAND: Thank you.

13 MR. LEONARD: I'm sorry. I move admission
14 of this as Summit Exhibit 1.

15 (Summit Hearing Exhibit 1 was offered into
16 evidence.)

17 BOARD CHAIR HELLAND: Are there objections?
18 (No response.)

19 BOARD CHAIR HELLAND: Seeing none, the
20 Board will admit Summit Hearing Exhibit 1.

21 (Summit Hearing Exhibit 1 was admitted into
22 evidence.)

23 BOARD CHAIR HELLAND: I believe Mr. Jorde
24 has questions.

25 MR. JORDE: Yes. Thank you.

24 Q. That's the whole point. It comes down to
25 which lawyers are better at persuading or convincing

1 what landowner activity that they might have thought
2 was normal could maybe actually arguably fall under to
3 a gross negligence or willful misconduct? Do you
4 agree it comes down to the facts of the situation and
5 analyzing each specific instance?

6 A. I think there are always facts involved,
7 and you could look at further explanations in the 811
8 piece that was brought up last week, I believe, by
9 Farm Bureau talking about farming practices.

10 I believe the Board just mentioned that as
11 well, but to answer your question, are facts involved
12 with cases? Sure.

13 Q. And because they're specific facts involved
14 with each individual case, you are not able to state
15 definitively here which, quote-unquote, normal farming
16 practices may or may not lead to liability because how
17 we define "normal" could vary; correct?

18 A. I can state a lot of them, but it would be
19 incorrect for me to state every hypothetical activity
20 of a landowner that would fall under normal farming
21 practices, but I could state quite a bit certainly,
22 including the picture that the Board just referenced
23 about just farming over an easement.

24 Q. And so you can on behalf of Summit,
25 therefore, bind the company with your testimony and

1 warrant that if any farmer were driving a tractor,
2 combine or piece of heavy equipment across the
3 easement, it sunk and caused damage to the easement
4 and cost your company millions of dollars in shutdown
5 time and lost productivity, that Summit would not in
6 any event sue or seek any type of contribution from
7 the landowner?

8 A. That's a really long question, but I will
9 do my best here.

10 I don't have the authority to bind us as it
11 comes to specifics on the indemnity. I think the law
12 would.

13 What I can say is if someone is conducting
14 their normal activity, I don't see how that would
15 constitute willful misconduct or gross negligence.
16 Perhaps it calls for a legal conclusion, but my
17 statement is also backed with quite a bit of
18 experience talking to landowners about their activity
19 on top of a pipeline, and I can tell you if you're
20 running a combine, just like people run combines
21 across the 300-plus miles of right-of-way that I
22 helped to operate in Iowa, that is normal.

23 Q. And would it also be true, sir, that you on
24 behalf of Summit cannot bind or warrant that your
25 insurer, who may pay out an insured loss of lost

1 productivity, lost profits, whatever the claim might
2 be if a pipeline is damaged, that you can't guarantee
3 that insurer, that insurance company wouldn't
4 independently go after a landowner to seek
5 contribution?

6 A. I've never heard of that. You brought
7 something up last week about that. I've never heard
8 of that.

9 I can't speak for the insurance company.
10 In talking about property damage or crop damage, it
11 would come directly out of Summit. If there was
12 something beyond that and a claim needed to be made, I
13 can't speak to how insurance companies behave.

14 MR. JORDE: Thank you. Nothing further.

15 BOARD CHAIR HELLAND: Thank you.

16 Ms. Gruenhagen?

17 MS. GRUENHAGEN: Thank you, Your Honor.

18 RECROSS-EXAMINATION

19 BY MS. GRUENHAGEN:

20 Q. I have one follow-up question regarding
21 Summit Hearing Exhibit 1 here.

22 This list of six things, is this all that
23 Summit typically negotiates with landowners, or can
24 this be a much longer list of items?

25 A. It can be significantly longer. It's a

1 case-by-case. This is just a generic form.

2 So you see in paragraph 4 there was this
3 insert to approve terms on that. That's where any
4 other specifics that are worked out with the landowner
5 as it relates to their ground are sited.

6 Q. Are there some typical provisions that
7 landowners are requesting that are being included in
8 this exhibit?

9 A. Some people ask a lot about abandonment, as
10 you can tell. So we tend to recite exactly what I've
11 testified to in the last couple of days, that if the
12 pipeline is abandoned for a consecutive period of five
13 years, et cetera, then it would be abandoned under CFR
14 195 and the Board rules -- or the Iowa law. Sorry.
15 So that's one example.

16 Some folks ask specific things about tile,
17 clarifications about rock removal. So many of these
18 are already sited in our mitigation plan, but the
19 landowners are also more comfortable with it being
20 also bound with the easement. And we're great with
21 that, so we put it in there.

22 Q. Would it include things like a trench plug
23 to access other parts of the property, crop loss,
24 pipeline depth, ingress/egress to the property? Are
25 there just a lot of different types of things that

1 might be included?

2 A. There's a lot, but yes, everything you just
3 cited is pretty common.

4 MS. GRUENHAGEN: Okay. Thank you.

5 BOARD CHAIR HELLAND: Thank you. Seeing no
6 other questions, you may step down.

7 Well, Summit, did you have anything to add?

8 MR. LEONARD: No. Thank you, Your
9 Honor.

10 BOARD CHAIR HELLAND: Thank you. Now you
11 may step down, Mr. Rorie.

12 We are going to break, but before we do,
13 let's just go ahead and bring Mr. Schmidt up. We'll
14 get him sworn in, and then we'll hit the ground
15 running right after lunch with questions.

16 MR. DUBLINSKE: Thank you, Your Honor.
17 Summit Carbon Solutions calls for its next witness,
18 Jon Schmidt.

19 BOARD CHAIR HELLAND: Good morning,
20 Mr. Schmidt. Can you hear me okay?

21 THE WITNESS: Yes, sir.

22 BOARD CHAIR HELLAND: There we go. Go
23 ahead and raise your right hand.

24

25

1 JON SCHMIDT,
2 called as a witness by Summit Carbon Solutions, LLC,
3 being first duly sworn by Board Chair Helland, was
4 examined and testified as follows:

5 BOARD CHAIR HELLAND: Okay.
6 Mr. Dublinske.

7 DIRECT EXAMINATION

8 BY MR. DUBLINSKE:

9 Q. Dr. Schmidt, are you the same Jon Schmidt
10 that caused to be filed in this matter direct
11 testimony?

12 A. Yes.

13 Q. And that was the only testimony that you
14 filed in this matter?

15 A. Correct.

16 Q. Did you have any exhibits?

17 A. I don't recall.

18 Q. Do you have any corrections before we begin
19 this morning?

20 A. No, sir.

21 Q. And if I asked you the questions in your
22 testimony on the stand today, would your answers be
23 substantially similar?

24 A. Yes, sir.

25 MR. DUBLINSKE: Your Honor, we would move

1 to admit the testimony of Jon Schmidt.

2 BOARD CHAIR HELLAND: Are there any
3 objections?

4 MR. JORDE: Foundation and relevance. Does
5 he have rebuttal? Yeah. And then my standing
6 objection on rebuttal. Thank you.

7 BOARD CHAIR HELLAND: Okay. Noted. Thank
8 you.

9 What was the name of that exhibit,
10 Mr. Dublinske?

11 MR. DUBLINSKE: We will confirm, but I am
12 only showing direct testimony.

13 BOARD CHAIR HELLAND: Hold on. We're
14 double-checking.

15 (Brief pause.)

16 BOARD CHAIR HELLAND: We don't have
17 rebuttal on this, so just direct. Just so we have it
18 nice and tight and clean, will you state exactly what
19 you like admitted, and we'll note Mr. Jorde's
20 objections to that?

21 MR. DUBLINSKE: Yes. The only thing we're
22 moving is direct testimony of Jon Schmidt.

23 BOARD CHAIR HELLAND: Okay. Thank you.

24 The Board will admit and give it the weight
25 due.

1 We'll break for lunch, but who will be
2 first when we get back from lunch so we have a name to
3 call to start? Mr. Taylor. All right.

4 We will back at 1 o'clock. Mr. Taylor will
5 lead us off.

6 (A lunch recess taken from 11:55 a.m. until
7 1:01 p.m.)

8 BOARD CHAIR HELLAND: Okay. It's 1:01. We
9 will go back on the record.

10 Dr. Schmidt, just a quick reminder. You're
11 under oath. Make sure your green light is on. Make
12 sure and move that mic wherever you're comfortable, as
13 long as we can hear you. Thank you.

14 I believe, Mr. Taylor, you're first.

15 MR. TAYLOR: Thank you.

16 CROSS-EXAMINATION

17 BY MR. TAYLOR:

18 Q. I'm Wally Taylor. I represent the Sierra
19 Club.

20 It's my understanding from your written
21 testimony you work for EXP Energy?

22 A. Correct.

23 Q. And from their website, I gathered that
24 your company works for companies developing energy
25 projects?

1 A. Among other things, yes.

2 Q. Okay. Like, what other things?

3 A. They do hospital design, architecture.

4 They do entertainment centers.

5 There's over 3500 people, so it's a big
6 firm.

7 Q. Okay. But as far as your part of the firm,
8 so to speak, the environmental impacts, you work for
9 energy projects basically?

10 A. Correct.

11 Q. Has your portion of EXP ever worked for an
12 environmental organization or a citizens group wanting
13 to protect the environment?

14 A. In my 36 years I've done some work for The
15 Conservation Fund, Audubon. It just depends on the
16 projects and where they are.

17 Q. Is that a very small part of your work,
18 though?

19 A. Not many.

20 Q. Yeah. On page 3 of your direct
21 testimony --

22 MR. TAYLOR: Can we bring that up, please?

23 BY MR. TAYLOR:

24 Q. -- line 10, you say there that Summit
25 performed desktop and field surveys for a multitude of

1 environmental media. Did Summit do it, or did your
2 firm do it?

3 A. It was a combination of third parties and
4 Summit.

5 Q. Okay. What other third parties were there?

6 A. Oh, a host of firms. Westech
7 Environmental, Emergent, Perennial.

8 I can't remember all of them, but there
9 were different firms or different specialties or
10 requirements.

11 Q. Did you supervise those other firms?

12 BOARD CHAIR HELLAND: Hold on real quick.
13 We have some auditory or technical difficulties.
14 Looks like we're good again.

15 Sorry. Go ahead and repeat your question,
16 Mr. Taylor.

17 BY MR. TAYLOR:

18 Q. Did you supervise those other firms?

19 A. So my role for Summit was environmental
20 project management, so our company helped Summit,
21 particularly in the early stages before they had a lot
22 of staff, to help manage the environmental component
23 of the project.

24 So they may not have been contractually
25 working for me, but we helped organize and schedule.

1 Q. And would you describe what was done in
2 those desktop surveys, first of all?

3 A. Well, initially about two years ago we
4 reached out to the regulators; Fish and Wildlife,
5 Corps of Engineers, IDNR. They provided us with some
6 guidance, so we did some desktop work with aerial
7 photography -- NWIs, NHD, soil surveys -- to try and
8 identify habitats or areas that they asked us to look
9 for.

10 In the field we actually went out and
11 walked and looked for, confirmed.

12 Q. I hadn't gotten to the field surveys yet,
13 but that's okay.

14 When you say you walked out into the areas,
15 how big of a job was it? I mean, this is quite a
16 massive project. Did you walk every inch of the
17 pipeline route?

18 A. Yeah. We created a 300-foot survey
19 corridor, and teams walked the route basically.

20 We did 100 percent cultural resource. So
21 we surveyed for cultural resources over 100 percent
22 where we had access; wetlands, water bodies, listed
23 species.

24 Q. And how long did that take you?

25 A. It's still going on.

1 Q. So we don't have any final survey report
2 yet?

3 A. We've created survey reports by year that
4 we submitted to the agencies. So the 2022 surveys
5 were submitted to IDNR, Fish and Wildlife Service, the
6 Corps.

7 SHPOs received reports, and then 23 survey
8 reports will be completed this fall and submitted.

9 Q. For the record, SHPO is S-H-P-O for State
10 Historical Preservation Office?

11 A. State Historical Preservation Office.

12 Q. And would Summit have those reports?

13 A. Yes.

14 Q. I wonder, because when I asked for
15 environmental reports from Summit, they said they
16 didn't have any.

17 A. You'd have to ask counsel. I don't --

18 Q. I will. You said in your testimony at
19 page 2 at the very bottom, line 22, that you oversaw
20 and participated in the preparation of Exhibit H
21 [sic] -- I'm sorry. Exhibit F to the petition.

22 When you say you oversaw and participated
23 in the preparation of Exhibit F, what do you mean?

24 A. Our company put together Exhibit F, but it
25 was a multi-disciplinary effort. So there were others

1 who wrote sections of it.

2 Q. Well, let's look at Exhibit F, if we can
3 pull that up. At the bottom of the second paragraph
4 on 1.0, it says, "The project is necessary for these
5 ethanol plants because it provides a CO2
6 transportation solution which otherwise would not
7 exist and without which Iowa's ethanol plants would be
8 in a significant, long-term disadvantage to ethanol
9 plants in states like North Dakota and Illinois, which
10 contain proven subsurface geologic storage formation."

11 Was it part of your scope of work to make a
12 sales pitch for Summit?

13 A. No. I didn't write this section. Summit
14 wrote Section 1.

15 Q. But you said you oversaw and were
16 responsible for the preparation of Exhibit F; correct?

17 A. Yeah. We helped make sure everybody stayed
18 on schedule, provided their sections when they were
19 needed. We put the document together and provided it
20 to counsel for filing.

21 Q. Go to Table 1. I don't think there's a
22 page number on it. If you scroll down, that looks
23 like Table 1.

24 It's labeled, I think, "Land Usage by
25 County"; is that correct?

1 A. That's correct.

2 Q. But that doesn't tell us where the
3 environmentally sensitive areas are, does it?

4 A. These are the subsurface areas required for
5 Appendix F, so that was created and included.

6 Q. In Section 2.1 -- so we'll back up -- you
7 state that there will be no significant
8 post-construction impacts to land use.

9 What did you go by to make that conclusion?

10 A. Well, over 95 percent of the route is
11 agricultural production, so either crop or hay or
12 grassland, and with the AMIP, as stated in that
13 paragraph, the measures that the State requires
14 pipelines to use in construction, those best
15 management practices result in no significant impact
16 post-construction.

17 Q. Are you an agronomist?

18 A. No, sir.

19 Q. So is it fair to say you just went by
20 Summit's statement that they would restore the land as
21 it was before?

22 A. Not just Summit's statement on their
23 commitment, but the AMIP is based on best management
24 practices, and those practices have been developed
25 through numerous pipeline projects throughout the U.S.

1 In fact, a lot of the components in there
2 are based on the Federal Energy Regulatory
3 Commission's plans and procedures, which are proven
4 measures to restore and protect land.

5 Q. But the AMIP in here is Iowa-specific?

6 A. Correct.

7 Q. Section 2.4. There's a Table 3, if we can
8 find that. It says, "Public Lands Crossed by the
9 Project Construction Footprint."

10 Are those, indeed, all of the public lands
11 that --

12 A. At the time this was filed, yes.

13 Q. Has that changed?

14 A. I don't recall. I do know that we avoid
15 all IDNR lands and rivers through HDD or some other
16 bore method, and some of these may have been addressed
17 as well.

18 Q. Well, DNR has what they call sovereign
19 lands, don't they?

20 A. Correct.

21 Q. And what specifically are the sovereign
22 lands that this pipeline would cross?

23 A. There's four rivers and two State lands,
24 one of which is a park. I can't remember the name.

25 They're all avoided by HDD -- I know

1 that -- so we worked that out with IDNR. We showed
2 them the crossing plans, and they accepted them.

3 Q. Are you going to horizontally direction
4 drill under the lands that are not rivers or streams?

5 A. I'm not sure of your question.

6 Q. Okay. You said that there were some public
7 lands and, I think you said, four rivers or streams?

8 A. Correct.

9 Q. And then, what, two or three public lands?
10 Are you going to horizontally direction drill under
11 those, the public lands?

12 A. Correct.

13 Q. Do you know what those are off the top
14 of --

15 A. I'd have to look.

16 Q. Would they be on this table, if you can see
17 it?

18 A. Most of those are scenic byways. There is
19 one state park there, Brushy Creek State Park, and
20 that's in HDD. There's another park up there near the
21 top that's also a bore.

22 Q. When you -- not "you" but when a pipeline
23 company puts horizontal directional drills under a
24 land like this or under a river, they have to start
25 the bore quite a ways back, don't they, in order to be

1 able to bore deep enough to go under a river, for
2 example?

3 A. Yes. The distance setback is based on the
4 depth of the drill.

5 Q. And if the -- if it's a river, for example,
6 there's a large, wooded area on either side of the
7 river, which is not uncommon; correct?

8 A. Not as much here as there used to be, but
9 yeah.

10 Q. And so a lot of that -- the forested area
11 would have to be cut down in order to start the
12 directional drill; correct?

13 A. Not necessarily.

14 Q. Why not?

15 A. Just depends on how wide that forested area
16 is and where the drill starts and ends.

17 Q. Well, yes, but if the bore has to start in
18 the wooded area, that's going to take some trees out;
19 correct?

20 A. Only if it's designed that way. We try to
21 avoid wooded areas.

22 IDNR gave us a lot of guidance, and we did
23 a good job at avoiding forested areas. I think out of
24 the thousands of acres, we have about 30 acres of
25 wooded area on the whole project, so it's less than

1 .1 percent.

2 Q. And the final, Section 3.0 of Exhibit F, it
3 talks about alternative routes but doesn't really
4 describe any alternative routes.

5 Did you supervise or have any input in
6 considering those alternative routes?

7 A. No. It was done before my firm was hired,
8 all that work.

9 Q. Do you know who would have been supervising
10 the consideration of the alternative routes in terms
11 of the environmental impacts?

12 A. There was a data request that came after
13 this filing, and a table was provided of all of the
14 GSI lasers that were used in the routing exercises
15 before my time, but that had all the environmental
16 constraints in there.

17 I don't know who would have oversaw that.

18 Q. And the GIS is what you call a desktop
19 survey; correct?

20 A. Correct, based on agency and publicly
21 provided data.

22 Q. So it would not have been a field survey
23 like you've described?

24 A. No. You don't typically survey major
25 alternatives.

1 In 36 years I think I've done two projects
2 where we surveyed one alternative. Agencies don't
3 require you to survey those.

4 Q. Well, they may not require it, but isn't it
5 a good idea?

6 A. Not necessarily. The desktop data is very
7 good to help you with the routing decisions.

8 Q. If you don't do the field surveys, how do
9 you know whether that route is really going to impact
10 environmental resources?

11 A. Well, there's a lot of data layers that
12 exist within environmental resources. Listed species,
13 list of species locations, cultural resource sites,
14 wetlands, water bodies, native prairies.

15 It's come quite a ways since when I first
16 started in this business when it was all paper.

17 Q. So why do you do the field surveys, then,
18 if you have all this other information?

19 A. For permitting.

20 Q. Just because the permit agencies require
21 it?

22 A. We have to do confirmation surveys based on
23 the desktop analysis, yes.

24 Q. Well, if your field surveys would reveal
25 that there's a protected species or some critical

1 wetland or whatever in the chosen route, you don't
2 change the route at that point, do you?

3 A. Yeah, we do. We did quite a few HDDs and
4 bores and route adjustments for cultural sites, tribal
5 sites. We had tribal interests that participated in
6 surveys, and they identified sites important to them.
7 We avoided all those.

8 So yeah, we do. We do make those changes.

9 Q. How significant were some of the route
10 changes?

11 The reason I ask is we've heard testimony
12 from some Summit witnesses that they might do a micro
13 change, I think is what they called it, but they would
14 not really change the route. So how -- what would
15 they do if there really was a cultural resource that
16 required a major reroute?

17 MR. LEONARD: Objection.

18 BOARD CHAIR HELLAND: State your objection.

19 MR. DUBLINSKE: That question
20 mischaracterizes the record. It greatly
21 oversimplifies a breadth of testimony about different
22 changes at different points in the development of the
23 route, and to simply say that Summit witnesses have
24 only said that micro re-routes have been made or are
25 feasible, I think, mischaracterizes the breadth of the

1 testimony.

2 MR. TAYLOR: I think the record speaks for
3 itself that they have said that numerous times, and
4 this witness has said that if there were some
5 environmental or cultural resource that were found,
6 they would re-route it, and I want to know, you know,
7 how significant the reroute would have been because
8 we've heard evidence that a significant reroute
9 wouldn't be done.

10 BOARD CHAIR HELLAND: Can you rephrase your
11 question to get to the point you're trying to make,
12 Mr. Taylor?

13 BY MR. TAYLOR:

14 Q. If a field survey revealed a significant
15 cultural resource or a significant environmental
16 issue, would or has the pipeline route been modified
17 beyond the chosen corridor [sic]? Pardon me. The
18 chosen easement?

19 A. I can't relate it to the easement. We do
20 surveys on a 300-foot corridor, so it doesn't equate
21 to the easement.

22 I can tell you up to this point we've
23 surveyed in the high 90 percentiles for cultural
24 resource and biological resources, and up to this
25 point we've avoided sites. Most of those re-routes

1 are on the same property owner.

2 Q. So there hasn't been a re-route that would
3 require going outside that 300-foot corridor?

4 A. There may have been some early on, but I
5 can't recall.

6 Q. You said you did desktop and field surveys
7 for protected species?

8 A. Correct.

9 Q. Was this in general, or was it pursuant to
10 the Corps of Engineers Nationwide 58 Permit?

11 A. It was for ESA consultation with the U.S.
12 Fish and Wildlife Service and IDNR consultation for
13 state-listed species.

14 Q. I guess my question is: Did you consult
15 with Fish and Wildlife Service generally or just in
16 connection with the Corps of Engineers permitting?

17 A. No. For the whole project.

18 MR. TAYLOR: Could we bring up Sierra Club
19 Hearing Exhibit 1?

20 BY MR. TAYLOR:

21 Q. Is the Western Prairie Fringed Orchid a
22 protected species?

23 A. Yes.

24 Q. And this exhibit purports to show its range
25 in Iowa. Does that look accurate to you, as far as

1 the range?

2 A. That's the historic range, but that's not
3 the data that Fish and Wildlife uses for consultation.

4 Q. By "historic range," what do you mean?

5 A. Well, historically the species was much
6 more widespread than it is today.

7 So when you consult with the Fish and
8 Wildlife Service, you start what's called an IPAC,
9 I-P-A-C, consultation, and you send them the KMZ
10 files, and they'll tell you which species have to be
11 surveyed and where.

12 Q. So are you saying that none of the Summit
13 pipeline was in or through the range of the Western
14 Prairie Fringed Orchid?

15 A. I don't know what those yellow lines are
16 because that's not Summit's system. There's a lot of
17 lines there that don't connect. Some of them don't
18 look familiar.

19 MR. TAYLOR: Can you bring up Sierra Club
20 Hearing Exhibit 2?

21 BY MR. TAYLOR:

22 Q. Is the tri-colored bat a protected species?

23 A. It is now.

24 Q. And do you agree that the area shows the
25 area for the bat?

1 A. Historic range, yeah.

2 Q. By "historic range," exactly what do you
3 mean?

4 A. The species isn't found in every pixel of
5 that purple area. It's found in specific habitat
6 within that range.

7 Q. But certainly it would be something that
8 you'd want to survey for; correct?

9 A. Oh, yeah. We were given a full list of
10 species, yeah.

11 Q. And certainly the tri-colored bat does have
12 habitat within the area of the pipeline route;
13 correct?

14 A. Some.

15 MR. TAYLOR: Let's bring up Sierra Club
16 Hearing Exhibit 3.

17 BY MR. TAYLOR:

18 Q. Is the prairie bush clover a protected
19 species?

20 A. Yes. It was one of the ones we surveyed
21 for.

22 Q. Okay. Again, is their habitat for the
23 clover in the area of the Summit pipeline route?

24 A. The historic range covers the pipeline
25 route. There's very little optimal habitat along the

1 route.

2 MR. TAYLOR: Let's go to Sierra Club
3 Hearing Exhibit 4.

4 BY MR. TAYLOR:

5 Q. A Topeka Shiner is a fish; correct?

6 A. Correct.

7 Q. And this shows the range, and is it your
8 contention that that's a historic range again?

9 A. Yes, that's what it looks like to me. It
10 doesn't match the information Fish and Wildlife gave
11 us on where we had to focus our work.

12 MR. TAYLOR: Let's bring up Sierra Club
13 Hearing Exhibit 8.

14 BY MR. TAYLOR:

15 Q. Again, this is for the Topeka Shiner. Does
16 the purple line indicate a watershed, so to speak?

17 A. Well, it looks like a tracing of a river
18 system, yes.

19 Q. And is that a critical habitat for the
20 Topeka Shiner?

21 A. I can't tell the name of that stream, but
22 we are boring or HDD-ing all of their habitat, and
23 Fish and Wildlife has agreed to that conservation
24 measure.

25 MR. TAYLOR: Let's go to Sierra Club

1 Exhibit 5.

2 BY MR. TAYLOR:

3 Q. Is the northern long-eared bat a protected
4 species?

5 A. Yes.

6 Q. And does it have habitat along the pipeline
7 route?

8 A. Yeah. There's some isolated woodland areas
9 that are found along the route that could be potential
10 habitat.

11 Q. Okay. And what is done to protect that
12 habitat?

13 A. Protect the habitat?

14 Q. Yes.

15 A. Fish and Wildlife allows us to remove the
16 habitat out of pup season. So the conservation
17 measures are to remove the trees during the winter and
18 not during pup season.

19 Q. Okay. And so in other words, the
20 construction would have to occur in the winter?

21 A. The tree removal would have to occur in the
22 winter.

23 Q. Do you control when the construction is
24 done?

25 A. That's not my responsibility.

1 Q. Let's go to Exhibit 7. This is the Indiana
2 bat.

3 Again, did you find habitat for the Indiana
4 bat along the pipeline route?

5 A. So all the bats were done at the same time.

6 Q. And, again, what's required is that the
7 nesting trees are only allowed to be removed during
8 the winter; correct?

9 A. Correct.

10 Q. But doesn't that actually reduce the
11 habitat for both of those kinds of bats because the
12 trees aren't there when they come back to nest again;
13 right?

14 A. Sure, but if you look at the scale of these
15 range maps, the number of trees being removed, as I
16 indicated, it's tens of acres compared to the
17 thousands that have been removed for whatever other
18 purposes in these states.

19 So the Corps and Fish and Wildlife looked
20 at the context of the impact, not just the absolute
21 impact.

22 Q. Well, because a lot of trees have been
23 removed in the past, that doesn't say that that was
24 the right thing to do at that time; correct?

25 A. Probably not. It still occurs today.

1 Q. Let's look at Sierra Club Hearing

2 Exhibit 6. Is the Piping Plover a protected species?

3 A. Yes.

4 Q. And is there any habitat for the Piping
5 Plover that intersects with the pipeline route?

6 A. No.

7 Q. So you're saying this historic habitat, as
8 you call it, is all gone?

9 A. That's what Fish and Wildlife told us.
10 They said the nearest nesting area was 20 miles west
11 of us.

12 Q. And then let's go to Hearing Exhibit 9.
13 This is for the eastern massasauga rattlesnake.

14 Is the habitat for that species impacted by
15 the pipeline?

16 A. No.

17 Q. Why not?

18 A. Fish and Wildlife said there was no
19 suitable habitat.

20 I don't know what those yellow lines are.
21 I don't think they represent the pipeline, but I do
22 have correspondence with Fish and Wildlife saying we
23 don't have to survey for them because it's outside the
24 range.

25 MR. TAYLOR: I will offer Sierra Club

1 Hearing Exhibits 1 through 9.

2 (Sierra Club Hearing Exhibits 1 through 9
3 were offered into evidence.)

4 MR. DUBLINSKE: I have an objection, Your
5 Honor.

6 BOARD CHAIR HELLAND: State your objection.

7 MR. DUBLINSKE: Foundation and relevance,
8 but mainly because it's been brought up so many times,
9 and Mr. Taylor hasn't clarified what all the yellow
10 lines are. Some of those may be this project, but a
11 lot of them are not.

12 For example, the Piping Plover, almost
13 everything that was covered by what was shown was
14 actually in Nebraska and was not jurisdictional to
15 this Board's decision. So without some additional
16 explanation, I just want to lodge the objection to the
17 nature of the material until we can get a little more
18 information.

19 BOARD CHAIR HELLAND: Mr. Taylor, can you
20 explain what the yellow lines are?

21 MR. TAYLOR: I thought they were the
22 pipeline route. You can see it goes across the main
23 line and comes down to Story County and goes up into
24 Minnesota in that one little finger. That's exactly
25 the route, it seems to me.

1 MR. DUBLINSKE: I can guarantee you -- and
2 I think the Board is well aware of this from the maps
3 in its own possession -- no part of this pipeline runs
4 from the Cedar Rapids/Iowa City area up towards
5 Dubuque.

6 There is no portion of this pipeline that
7 starts between Mason City and the endpoint shown to
8 the east and runs in sort of a hook-shaped direction
9 down inside that sort of H-shaped cluster there.
10 Those are not part of this pipeline.

11 BOARD CHAIR HELLAND: Okay. Mr. Taylor, do
12 you have --

13 MR. TAYLOR: Well, this witness has
14 testified about what is or is not in the pipeline
15 route using these maps.

16 BOARD CHAIR HELLAND: Okay. What were the
17 numbers again, Mr. Taylor?

18 MR. TAYLOR: One through 9.

19 BOARD CHAIR HELLAND: Okay. The Board will
20 admit Sierra Club's Hearing Exhibits 1 through 9 and
21 give them the weight due.

22 (Sierra Club Hearing Exhibits 1 through 9
23 were admitted into evidence.)

24 BY MR. TAYLOR:

25 Q. Are you familiar with Iowa's Wildlife

1 Action Plan?

2 A. I'm sorry?

3 Q. Are you familiar with Iowa's Wildlife

4 Action Plan?

5 A. I've heard of it.

6 Q. Okay. And did you consult with DNR about
7 areas that they feel should be preserved for -- at
8 least reviewed for species protection and preservation
9 of natural areas?

10 A. Yes. So our initial consultation was for
11 them to conduct an environmental review, which
12 included all of that, and they have not provided us
13 with any of those areas.

14 Q. What areas?

15 A. On that map that was part of your exhibit
16 that you filed, I think, Friday.

17 Q. Yeah. Do you deny that those are areas
18 that the DNR thinks are at least worth observing and
19 in need of more investigation before there's any
20 development?

21 A. I can't speak for IDNR.

22 Q. Did Fish and Wildlife give you any
23 documents supporting what you've been testifying about
24 as to what they told you about the impact of habitats?

25 A. Well, they gave us correspondence on

1 species lists and approvals of survey protocols and
2 things of that nature, yes.

3 Q. But those weren't filed with your
4 testimony?

5 A. No.

6 Q. Are you familiar with Summit's
7 Environmental Construction Plan?

8 A. Yes.

9 Q. Did you have a hand in preparing that?

10 A. We helped put the document together, but
11 not all the sections are written by us.

12 MR. TAYLOR: Could we bring up Farm Bureau
13 Hearing Exhibit 5?

14 BY MR. TAYLOR:

15 Q. In the exhibit, page 3, in the upper
16 right-hand corner, does that look like the
17 Environmental Construction Plan?

18 A. Yes.

19 Q. Let's go to exhibit page 9 under 1.1. It
20 talks about an environmental inspector.

21 As I understand it, that environmental
22 inspector would be employed by Summit; correct?

23 A. That's for Summit to decide. I don't hire
24 them.

25 Q. Well, it says, "SCS" -- that's Summit --

1 "will employ at least one environmental inspector."

2 A. Yes, but that's not my responsibility.

3 Q. So you have nothing to do with the
4 environmental inspector?

5 A. Not at this time, no. There's no
6 construction plan. There's no hiring of inspectors.
7 We're a ways away from that.

8 Q. At some point, if there is an environmental
9 inspector, would you be overseeing that person or at
10 least be in consultation with that person?

11 A. It's up to Summit to decide.

12 Q. Well, I think you said you were still doing
13 some environmental surveys; is that correct?

14 A. Not at the moment, but we have been up to
15 the summer, yes.

16 Q. So are you done with all the environmental
17 surveys and studies?

18 A. If we have tracts that we are still looking
19 for access, we'll complete those as we get access.

20 Q. Well, if you don't know, you can tell me,
21 but what do you envision the environmental inspector
22 would actually do?

23 A. Well, normally environmental inspectors
24 monitor construction for compliance with permit
25 conditions, environmental permit conditions.

1 Q. Let's go to exhibit page 15, Section 2.12,
2 "Cultural Resources." In the first paragraph it says,
3 "Culturally or historically important areas will be
4 avoided to the extent practical."

5 What does that mean, "to the extent
6 practical," in your mind?

7 A. Well, at the present time we avoid all
8 eligible sites. So this is generic language written,
9 you know, before the surveys were completed.

10 Q. But would you agree there is some, I'll
11 call it, wiggle room there that if Summit were to say,
12 "Well, it's just not practical, so we'll go over the
13 cultural resources anyway"?

14 MR. DUBLINSKE: Objection.

15 BOARD CHAIR HELLAND: State your objection.

16 MR. DUBLINSKE: Asked and answered. The
17 witness already said we have completely avoided those
18 places, so the suggestion of wiggle room after that
19 answer is irrelevant.

20 BOARD CHAIR HELLAND: Mr. Taylor?

21 MR. TAYLOR: He said "at this point," if I
22 recall his answer correctly. So I'm asking what if in
23 the future, as they're doing construction, for
24 example, they come across cultural resources.

25 BOARD CHAIR HELLAND: Okay. Let's try to

1 narrow our questions to new topics. He may answer
2 this question, but let's try to not tread where we've
3 already been.

4 A. We surveyed over 97 percent of the route
5 for cultural resources. We avoid all eligible sites.

6 If during construction a site is found as
7 described there, there's an unanticipated discovery
8 plan. We just can't go through sites. That's not how
9 the law is written.

10 BY MR. TAYLOR:

11 Q. Did you have input in using that language
12 "to the extent practical"?

13 A. I don't recall.

14 Q. The next paragraph talks about an
15 unanticipated discovery plan and then that the
16 construction workers will be trained to, I guess,
17 recognize an unanticipated discovery of a cultural
18 resource.

19 What kind of training is that?

20 A. Typically it's done by an archaeologist,
21 and they have lots of pictures. They create cards for
22 them on what to look for.

23 Q. There's some training. You think the
24 construction workers are really going to be able to
25 recognize something when archaeologists sometimes have

1 trouble?

2 A. I've seen it done before in construction of
3 other projects where this has worked very
4 successfully.

5 Q. Give me some examples where it's worked
6 successfully.

7 A. Missouri on the Keystone main line. There
8 were buried remains found. The UDP was implemented.
9 Construction avoided the area.

10 The first thing is the sheriff is called to
11 make sure it's not a murder scene. Once he clears it,
12 then the archaeologists come in, and the tribal
13 representatives, they do their excavation.

14 In this case there was a tribal ceremony
15 and the graves were relocated into another area with
16 the landowner's consent.

17 Q. In that case were there Native-American
18 burial sites -- First of all, there's a special law on
19 that, isn't there?

20 A. Yes, NAGPRA.

21 Q. And do you call in Indian representatives
22 to examine that and approve of moving the bones?

23 A. That's part of 106 Consultation.

24 Q. But 106 Consultation just means it's
25 consultation. It doesn't really require much, does

1 it?

2 A. Oh, it requires quite a bit.

3 Q. So are you saying the Native-Americans will
4 allow those bones to be moved?

5 A. It's a case-by-case situation. I've seen
6 it happen in Louisiana. I've seen it happen in other
7 states, and I've seen it where they wouldn't allow it,
8 and the pipeline had to be moved.

9 So it depends on the situation.

10 Q. Let's go to page 20 of Exhibit 5 on
11 wetlands, 5.0. It says, "Wetland delineations will
12 occur before construction."

13 What delineation guidance would be used?

14 A. The U.S. Army Corps of Engineers with the
15 Midwest Regional Supplement.

16 Q. Okay. Is that the 1987 guidance?

17 A. Correct.

18 Q. Okay. I wondered because, you know, it's
19 been a bone of contention for the past several years;
20 is that right?

21 A. It's gone -- It's gone back and forth a
22 couple times, but we entered this project assuming all
23 water bodies and wetlands were Corps jurisdiction.

24 We did not make a jurisdictional
25 determination. We mapped them all and let the Corps

1 decide.

2 Q. On page 21, Section 5.3.2, it talks about a
3 dry crossing of a wetland. Can you explain exactly
4 how that's done?

5 A. Depending on the year and the rainfall,
6 there's a lot of what we call upland wetlands,
7 wetlands perched up high on the topography so that the
8 headwaters of some ephemeral streams will be
9 completely dry, the soil will be dry, and the Corps
10 lets us use a modified method to cross those.

11 Q. Is that basically an open trench?

12 A. Correct.

13 Q. Would there be lack of fen, for example?

14 A. No. Fens are special situations. They're
15 not -- they've have some kind of carbonated rock
16 associated with them, so they would be a different
17 story.

18 Q. You've mentioned the Corps of Engineers,
19 and for the record is it correct that the Corps is
20 acting pursuant to Nationwide Permit 58 in this case?

21 A. That's what they've indicated, yes.

22 Q. For the record, can you explain what
23 Nationwide Permit 58 is and what the Corps's process
24 is regarding that?

25 A. Well, the Corps of Engineers regulates

1 waters of the U.S. They issue either an individual
2 permit or nationwide permit, and the nationwide permit
3 program was developed because over the decades of
4 their regulation, they realized there were a lot of
5 activities that were repetitive and also minor in
6 impact.

7 So they created 60-some-odd nationwide
8 permits specific to discreet activities that they deem
9 to be minor in their extent of impact. So 58 is for
10 pipelines that are not oil and gas. Those are
11 Nationwide Permit 12.

12 Q. And what a pipeline company would do is
13 submit what's called a pre-construction notice;
14 correct?

15 A. Correct.

16 Q. And the Corps of Engineers reviews that
17 and, in consultation with other agencies, either
18 issues a verification or not; correct?

19 A. Correct.

20 Q. One of the conditions of Permit 58 involves
21 endangered species; correct?

22 A. Yes.

23 Q. We've talked about that a little bit, but I
24 want to talk about it maybe more in connection with
25 the Corps, I'll call it, committing, but they're not

1 really committing.

2 Do you have any special consultation with
3 Fish and Wildlife Service regarding Nationwide Permit
4 58 or --

5 MR. DUBLINSKE: Objection.

6 BOARD CHAIR HELLAND: State your objection.

7 MR. DUBLINSKE: Relevance, Your Honor.

8 We've let this go quite a bit, and
9 obviously, if the Board wants to hear it, the Board
10 can overrule and hear it.

11 An awful lot of questions of this witness
12 has been about things that are in IDNR jurisdiction.
13 We're in a line of questioning now about the
14 nationwide permit process.

15 Obviously, this Board is not the authority
16 for the federal nationwide permit process. It doesn't
17 have a extensive role with IDNR.

18 A lot of these things are questions
19 specific to the jurisdiction and the ambit an
20 unrelated agency, which is where that particular
21 subject matter lies. Just in the interest of moving
22 things along, I don't know how much time we want to
23 spend before this body talking about what the U.S.
24 Army Corps of Engineers does as part of its
25 decision-making.

1 MR. TAYLOR: They presented the evidence
2 with this witness, and he mentioned the Corps of
3 Engineers. He mentioned DNR, and certainly, given the
4 balancing test that the Supreme Court of Iowa has
5 given to this Board to undertake, I think that it's
6 appropriate to ask about these environmental issues.

7 That's one of the issues that the Board
8 needs to consider, and, in fact, it did in the Dakota
9 Access case.

10 MR. DUBLINSKE: You know, to the extent
11 that there's been a lot of mentions of these, many of
12 those mentions have been either at a general level,
13 "Here's how we complied with something else we were
14 required to comply with," or in response to questions
15 from Mr. Taylor.

16 There is a balancing test, but I don't know
17 that that means that this Board could choose to say
18 that, you know, "We don't think the U.S Corps did
19 their job," or, "We don't think Iowa DNR did their
20 job, and we're going to hold that in some adverse way
21 in the balance."

22 There's a division of labor here, and I
23 think it ought to be observed at least for the most
24 part.

25 BOARD CHAIR HELLAND: Okay. Thank you.

1 We've provided pretty wide latitude and
2 will continue to, but if we can continue to try and
3 narrow our question down and make our points, please.

4 BY MR. TAYLOR:

5 Q. So has the Fish and Wildlife Service issued
6 a biological opinion?

7 A. A biological opinion comes after a
8 biological assessment.

9 Q. Have they done the biological assessment?

10 A. No.

11 Q. Okay. So is it fair to say you have a ways
12 to go yet in getting the verification from the Corps?

13 A. "Ways to go" is a broad term.

14 Q. I understand.

15 A. I don't think so. We assume the end this
16 year, early next year.

17 MR. TAYLOR: Okay. I think those are all
18 the questions I have.

19 BOARD CHAIR HELLAND: Thank you.

20 Mr. Meyer, I have you next.

21 CROSS-EXAMINATION

22 BY MR. MEYER:

23 Q. Good afternoon, sir. How are you?

24 A. Good.

25 Q. Mr. Taylor covered a lot of ground. I'm

1 going to plow a lot of new earth here.

2 Looking at your direct testimony on page 3,
3 your answer at line 4 says, "Summit Pipeline Project
4 is subject to a number of state and federal
5 regulations."

6 Is your testimony to mean that that's at
7 the exclusion of any other sort of statute or code or
8 local regulation?

9 A. I'm not sure of the question. This is just
10 an overview of what's applicable, and then there's a
11 table that lists all the permits required.

12 So I'm not sure of your question. I'm
13 sorry.

14 Q. Well, so is your testimony, then, if --
15 What state permits would be required?

16 A. Well, IDNR. If you look at the table in
17 Exhibit F, there's --

18 Q. So is your testimony, then, that they don't
19 need -- so long as they get those permits, they don't
20 need even a permit from this Board?

21 A. No, no. These are environmental permits
22 above and beyond what the Board has to do.

23 Q. I maybe asked it in an awkward way, but
24 that was the purpose of my question. You're just
25 talking about environmental permitting; right?

1 A. Right. That's what it says there,
2 "environmental permits and reviews."

3 Q. You're not saying Summit is not subject to
4 other code sections of the Iowa Code?

5 A. No.

6 Q. Does any of your work involve addressing
7 the requirements under Chapter 331 of the Iowa Code?

8 A. Not me, no.

9 Q. How about Chapter 335?

10 A. I'm not familiar.

11 Q. 468?

12 A. Not familiar.

13 Q. Okay. Fair enough.

14 On page 7 of your direct testimony at
15 line 12, the question was: "Will the pipeline
16 interfere with water body drainage patterns along the
17 route?" and your answer is "No."

18 Does that include -- When you talk about
19 water body drainage patterns, does that include open
20 drainage ditches and public road used right-of-ways;
21 the ditches you see along the county roads?

22 A. Any conveyance.

23 Q. Okay. Does the DNR regulate that?

24 A. Not for our ditches, but they would
25 regulate in floodplains, so major rivers. They have a

1 permit specific to that, which would talk to them
2 about their reviewing body of the Corps of Engineers
3 permit under 401 Water Quality Certificate, yeah.

4 Q. I'm just trying to get it down to a real
5 granular kind of level here. Do the federal
6 regulations address road right-of-ways on secondary
7 roads in the county, the drainage?

8 A. It would have to be connected to a water of
9 the U.S. to be considered jurisdictional, but no,
10 typically not.

11 Q. Okay. So in order -- when you say "no" in
12 your answer, is that assuming that there will be local
13 county engineers that would make sure that the
14 drainage is going to flow properly in all other -- in
15 areas that aren't maybe under the jurisdiction of
16 state or federal regulatory bodies?

17 A. Correct. There would be what I call
18 non-environmental permits from counties and other
19 municipalities.

20 So whatever requirements they have would be
21 separate from this discussion.

22 Q. In other projects those have been required?

23 A. Absolutely, yeah. Thousands of road
24 crossings and bar ditch crossings and road access,
25 yes. Lots.

1 Q. Okay. On page 9 of your direct testimony
2 at number 17, the question, "What are the expected
3 impacts to wildlife?" and then there's a second part,
4 "And what mitigation measures will be adopted?"

5 Now, I'm just focusing on Hardin County,
6 because I represent Hardin County Supervisors. So
7 it's a very specific target here.

8 A. Okay.

9 Q. This proposed pipeline is going to go under
10 the Iowa River, through the South Fork River watershed
11 area and other streams, creeks. A lot of those are
12 zoned what we call the greenbelt, our conservation
13 zoning, and wondered what -- your answer in your
14 direct testimony doesn't really address the second
15 part of the question, what mitigation measures will be
16 adopted.

17 So I wondered if you could give the Board
18 some idea of what recommendations you would have that
19 those that are interested in Hardin County would
20 understand that there's going to be something done to
21 mitigate the impact.

22 A. Yeah. So a lot of the major rivers and
23 those with either species or cultural resources
24 associated with a stream, a lot of those are bored and
25 drilled, so there wouldn't be a sufficient impact so

1 mitigation is by avoiding the feature itself.

2 Post-construction they would work with
3 NRCS -- besides the landowners, NRCS and other land
4 agencies to make sure the right seed mixtures are
5 used, if it's grassland or pasture land. If it's
6 cropland, the landowner dictates what he's going to do
7 with that property.

8 Obviously, it's going back into production,
9 but any place that's not an active farm production
10 will work with the landowners and NRCS to restore to
11 the pre-construction condition. So that would include
12 monitoring after the seeding is done, weed control.

13 We provided a weed plan so they would be
14 actively managing and making sure they didn't
15 introduce something into the area.

16 Q. So what about deer population? There's a
17 lot of wooded areas that border these waterways.

18 A. Sure.

19 Q. They're a very active hunting community in
20 Hardin County. How will this project -- Have there
21 been studies that will show how that's going to affect
22 deer patterns?

23 If they do it after harvest, it's going to
24 be the rut, the mating season, the season where
25 they're having fawning. Have studies been done for

1 that?

2 A. None on this project, but in most projects
3 I've worked on, they're built usually during the
4 summer, so the restoration is occurring in the fall.

5 So we wouldn't impede or get -- conflict
6 with the use of that land, if it's for hunting. If
7 there's specific restoration a landowner wants along a
8 stream or river, we would entertain that, as long as
9 it didn't impede on the operational monitoring of the
10 project.

11 Q. Has Summit obtained any necessary
12 environmental permits yet?

13 A. We did get clearance from the Corps of
14 Engineers under Section 408, which is their civil
15 works program. They determined we didn't have any at
16 the crossing of Missouri River. That's the only one
17 I'm aware of.

18 Q. So as far as Hardin County, there's not
19 been any permitting?

20 A. No. We submitted applications for -- you
21 know, with IDNR, but nothing has been issued yet.

22 Q. For the studies that are put together to
23 support those applications, is there a shelf life for
24 those studies before they'd have to be renewed or
25 updated?

1 A. Well, listed species surveys, it depends on
2 the species. You usually have to go back every year
3 anyway until construction.

4 So, for instance, raptors. We have to
5 survey for those every year.

6 Q. That would include eagles?

7 A. Eagles and any other type of raptors, but
8 they don't nest in the same spot every year. So you
9 usually go back every year of construction before
10 construction to make sure you know where all the nests
11 are.

12 So in that regard we made commitments to
13 continue those surveys up through construction, but as
14 far as shelf life, I'm not sure. I think usually when
15 you get a permit, they'll have a timestamp before if
16 you don't go to construction, the permit is void, and
17 you have to re-apply.

18 Q. I'm not a raptor specialist, and I don't
19 know that you are. Are you saying that you don't
20 think eagles --

21 A. Eagles do, but there's a lot of other
22 raptors, and even eagles will move.

23 It depends on what's happening in the area.
24 I have seen them move nests.

25 Q. "Happening" could mean man's activity?

1 A. Right.

2 MR. MEYER: I don't have any other
3 questions. Thank you.

4 BOARD CHAIR HELLAND: Thank you.

5 Ms. Gruenhagen?

6 CROSS-EXAMINATION

7 BY MS. GRUENHAGEN:

8 Q. You've been watching.

9 A. I have to turn.

10 Q. Good afternoon, Mr. Schmidt. My name is
11 Chris Gruenhagen. I'm representing the Iowa Farm
12 Bureau Federation in these proceedings. I just have a
13 few additional questions for you.

14 In your direct testimony, on page 4, line
15 15, you describe the characteristics of the Des Moines
16 Landform Region.

17 Do you recall that?

18 A. Yes. It's very high-level summary, yeah.

19 Q. Yes. Can you describe the general location
20 of the Des Moines Lobe as it relates to the route of
21 the pipeline?

22 A. We go through the heart of it. We could
23 show a map, but it's kind of in the center of the
24 state where we go through it.

25 I don't have a map with me.

1 Q. So it would be, like, the main trunk line
2 of the pipeline? That's pretty much the Des Moines
3 Lobe?

4 A. Yep.

5 Q. In your description of the Des Moines Lobe,
6 you use the word "marshes and prairie potholes." Can
7 those also be described as wetlands?

8 A. Yes.

9 Q. And does the Des Moines Lobe generally have
10 a higher incidence of wetlands than other landform
11 regions?

12 A. In the very high-level description, yes.

13 Q. And then on page 12, line 1 of your direct
14 testimony, you reference the number of acres of each
15 type of wetland?

16 A. Yes.

17 Q. Just for clarification, can you identify
18 which type of wetland a marsh would be?

19 A. PEM or emergent wetland.

20 Q. And then what type of wetland would a
21 prairie pothole be?

22 A. Same thing, emergent wetland.

23 Q. And then what type of wetland is a fen?

24 A. It could be a scrub shrub or an emergent
25 wetland, or it could be forested. You know, how long

1 it's been undisturbed.

2 I've seen some with woods around them, but
3 typically it's PEM and PSS scrub shrub.

4 Q. Did you identify any phenomena along the
5 route?

6 A. I don't recall anything specifically called
7 out as fen, but we did find quite a few isolated
8 emergent wetlands, and I'm not sure. I would have to
9 go in and look to see if they are called fens or not.

10 MS. GRUENHAGEN: If we could pull up Iowa
11 Farm Bureau Federation Hearing Exhibit 5 that
12 Mr. Taylor was discussing, and if we could go to
13 page 20 of the hearing exhibit and then "Section 5.0,
14 Wetlands."

15 BY MS. GRUENHAGEN:

16 Q. Can you read the first sentence there?

17 A. "Wetlands delineations" --

18 Q. Yes.

19 A. -- "will occur before construction and
20 captured with GPS for mapping on the construction
21 alignment drawings."

22 Q. Has that already occurred?

23 A. Yes. We've done over 90 percent.

24 Q. Can you please describe the process used
25 for identifying wetlands along the route?

1 A. So we follow, as I indicated earlier, the
2 U.S. Army Corps of Engineers Wetland Delineation
3 Manual, 1987, and then we use the Midwest Regional
4 Update, which is specific to these states. So it
5 covers things like farmed wetlands and atypical
6 situations in farmland.

7 So the field crews have to walk the entire
8 route, and when they come to these situations, they'll
9 do soil tests. They make lists of species, and then
10 they use GPS to actually walk and map the wetlands
11 once they've completed that work.

12 Q. Did you also consult with different
13 agencies to see what had already been delineated?

14 A. So a lot of the CRP and other types of
15 land -- We met with the NRCS and FSA I think it was,
16 like, two years ago, because we go through five
17 states, and the information on any easements or
18 landowner agreed-upon protected wetlands is
19 privileged. We can't get that information.

20 So we had a call with Washington, D.C. with
21 the director of the program. He then convened a call
22 with all five states so that we had, like, 30 people
23 on the call. They picked a point of contact.

24 So we started sending full-year requests.
25 We would send them KMZs on the route, and they would

1 pull their records and see what was there, be it a
2 lien or ownership or any kind of easement, but
3 unfortunately, what they sent us was a name and
4 section township range, which was totally useless to
5 me.

6 So I turned it over to the land department,
7 and then Micah would use that information and his
8 team. When they talked to the landowners, they'd ask
9 them, "Are you in CRP? Are you in this? Are you in
10 that?"

11 So it was kind of an iterative process, and
12 we're still doing those full requests as we send them.
13 We're waiting on the next delivery that's coming this
14 month.

15 Q. So did the FSA and NRCS provide any more
16 specific locations than the named township?

17 A. No. It's protected.

18 Q. Okay. As you did the field survey and
19 discovered wetlands in various locations, was that
20 identification, then -- did Summit inform the
21 landowner?

22 A. I'm not sure what was provided to the
23 landowner after surveys.

24 Q. So once you've located the wetlands, you
25 just told Summit, then?

1 A. Yeah. We write the reports and submit them
2 to the Corps, and they, in turn, consult with the
3 other agencies.

4 Q. And you don't know whether Summit informed
5 the landowner or not?

6 A. I do not know.

7 Q. Okay. Do you know approximately how many
8 parcels along the route are impacted by wetlands?

9 A. No. There's only -- As you can see by the
10 acreage when we had it up there, it's less than 1
11 percent of the route has wetlands in it. So it's
12 pretty small.

13 Q. But can wetlands be of any size, though?

14 A. Oh, absolutely. Yeah.

15 Q. On page 24 and 25 of Hearing Exhibit 5
16 here, I'm just going to do a -- you talked a little
17 bit with Mr. Meyer, I believe, about seed mixes. I
18 just have a follow-up question to that.

19 Do you know what precautions Summit is
20 going to be taking to prevent weed/seed contamination
21 of the seed mixes?

22 A. So I think either in the weed plan or in
23 the AMIP, in one of the documents it says they'll get
24 weed-free sources for both the seed mix or any mulch
25 used or hay or any kind of mulch for that matter.

1 They also committed to monitoring it to
2 make sure that nothing is introduced based on their
3 construction activity.

4 Q. Has Summit -- So switching back to
5 wetlands, let's go to IFBF Hearing Exhibit 3. We'll
6 switch documents here.

7 So as you identified, you did ask FSA for
8 locations of wetlands, and because they're
9 protected --

10 A. Right.

11 Q. But did Summit request any farmland owners
12 to file an AD-26 [sic]?

13 A. That, I wouldn't know.

14 Q. Okay. Let me correct that. AD-1026. I
15 said that wrong.

16 A. Yeah. I think -- I would assume, in the
17 negotiations between the land department and the
18 landowner, these things would come up so that it could
19 be addressed, and then the information could be
20 exchanged.

21 Q. But you're not aware if that occurred or
22 not?

23 A. I wouldn't be involved in that.

24 Q. Okay. On page 3, paragraph (e), I was
25 directed that you might, perhaps, know the answer to

1 my questions here on this page, so we'll see with your
2 involvement with environmental aspects of it. I'll
3 give you a minute there to read paragraph (e).

4 (Brief pause.)

5 A. Yeah. I believe Micah testified -- I know
6 he wrote this paragraph. He would be the one who
7 would take care of that.

8 Q. Okay. I believe he asked me to talk to
9 you.

10 A. Oh, he did? Sorry.

11 Q. That's okay.

12 A. I have nothing to do with compensation.

13 You know, we would provide the shape files
14 of the wetland. They would decide the construction
15 methodology with the landowner and the NRCS or FSA,
16 depending on who is overseeing that property, and then
17 decide on whether or not they'd have to be paid for --
18 because of the impacts or not or whether we bore it.
19 We may change the construction method based on what's
20 there.

21 Q. If the pipeline construction or land
22 restoration drains a wetland, if necessary, is Summit
23 going to be working with you to help restore that
24 wetland --

25 A. I don't know if I'll --

1 Q. -- or with your company?

2 A. I don't know if I'll be around, but Summit
3 will be responsible, yes.

4 Q. Moving to your direct testimony on page 5,
5 line 16, so you were asked a question about effects
6 on -- anticipated on surrounding land, and so I'll
7 give you a minute to read the first few lines of your
8 answer there.

9 (Brief pause.)

10 Q. So when you state that none of these
11 impacts will be significant or long term, are you
12 referencing the previous sentence where you talk about
13 noise, dust, additional traffic?

14 A. Correct.

15 Q. And you're not talking about other impacts
16 there?

17 A. No.

18 Q. Okay. Thank you.

19 And then on page 6 starting on line 7, you
20 make a similar statement. I'll let you go ahead and
21 give you a minute to look at that before I ask my
22 question.

23 (Brief pause.)

24 A. Okay.

25 Q. So where you state, "There will be no

1 long-term impact to the use of land for agricultural
2 purposes," are you only referencing the use of the
3 land for agriculture, or are you trying to make a
4 representation about the productivity of that ag land?

5 A. Just the use.

6 MS. GRUENHAGEN: Okay. That's all the
7 questions I have. Thank you.

8 BOARD CHAIR HELLAND: Thank you.

9 Representative Isenhardt.

10 MR. ISENHART: Thank you.

11 CROSS-EXAMINATION

12 BY MR. ISENHART:

13 Q. I worked on the general assembly and worked
14 on the Environmental National Resources Committee, so
15 hopefully I can ask a couple of intelligent questions
16 on those topics.

17 Earlier in the proceeding, Summit testified
18 about how the overall project is kind of divided up
19 into three parts. You have separate entities dealing
20 with capture, one transportation of the pipeline, and
21 a third being a sequestration site.

22 Did your work involve all three or just the
23 pipeline?

24 A. The pipeline.

25 Q. Thank you. I want to refer to your direct

1 testimony. It could be brought up, if they'd like --
2 on page --- it looks like it's 10, line 10. It talks
3 about impacts and mitigation measures and refers to
4 sensitive threatened endangered species.

5 Mr. Taylor extensively used the word
6 "protected species," and I think EPA refers to those
7 in their various -- not EPA. Fish and Wildlife
8 Service. Is the word "protected" left out there
9 intentionally, or is that part of what you would call
10 "sensitive species"?

11 A. I mean, we typically use these categories
12 to cover state and federal. So "protected," I'm not
13 usually using that term.

14 Q. But you didn't mean to exclude any species
15 with that language?

16 A. No, no.

17 Q. Thank you. Is it in general true that
18 federal regulations related to threatened endangered
19 species focus on the birds or the animals and not
20 necessarily the habitat, protecting the actual
21 species?

22 A. Well, their law is written specific to the
23 species, but their review includes the habitat. So
24 they require us to look for their habitat,
25 characterize the quality of it, because some species

1 you're not going to find.

2 Like, you could go out today and not see a
3 Dakota Skipper, but you can come back next year and
4 find it, if the habitat is suitable.

5 Q. But if the species isn't there, there are
6 not necessarily protections for the habitat, if it's
7 not there?

8 A. Unless it's critical habitat, no.

9 Q. Okay. A little farther up the page,
10 page 9, line 17, "Expected Impacts and Mitigation
11 Measures," you talk about on line 21, "Consequently,
12 the effects of long-term habitat loss on native
13 wildlife populations will be minor."

14 Did you also look at migrating bird
15 populations or just native bird populations?

16 A. Listed species, be they state or federal.

17 Q. So that would include migrating birds not
18 just native to Iowa?

19 A. Correct, yeah.

20 Q. So you mentioned you were -- did some work
21 for the Audubon Society. It just so happens I just
22 joined the board for that group in the county, so
23 we've had some situations related to the Migratory
24 Bird Treaty Act, which basically says and makes it
25 illegal to take migratory birds, as a practical

1 matter; that means you can't interrupt their breeding
2 during nesting season.

3 So have you recommended to Summit that they
4 avoid construction on grasslands, for example, that
5 have nesting species or --

6 A. I -- Sorry.

7 Q. -- would you recommend they get a license
8 to take those species?

9 A. So you can't get a license to take the
10 species. Only researchers can do that.

11 Q. Okay.

12 A. So we identify the habitat for certain
13 migratory birds, what the Fish and Wildlife had us
14 look for, as far as which species to survey for.

15 So the statements in reference to the fact
16 there's very little of that made of habitat, so as far
17 as the window of time, we haven't gotten that window
18 of time from the service yet, but if they tell us
19 that's the window we have to meet, that would be the
20 window we meet.

21 Q. So we talked earlier about emergent
22 situations. If a construction crew is starting to go
23 through an alfalfa field and sees bobolinks lying
24 around, would that precipitate a halt on that until
25 they're through with nesting?

1 A. My understanding, from the Fish and
2 Wildlife Service, is that it's a discretionary
3 enforcement on their part.

4 I'll leave that term out there. I don't
5 know what that means.

6 Q. So they will decide whether or not to
7 punish you if you do. My question is: Have you
8 recommended to Summit that they avoid construction
9 where migratory birds have been found in the moment?

10 A. Not all species of migratory birds. So the
11 Fish and Wildlife Service identifies a class of
12 migratory birds that are worth protection.

13 We don't protect, like, robins and
14 sparrows. You can drive your truck down the road and
15 violate the Migratory Bird Act when you hit a bird in
16 your car in your radiator.

17 Q. That's why I used bobolinks as an example.
18 They pretty clearly are protected.

19 For the mitigation measure, have you
20 recommended that they avoid construction where
21 migratory birds' nests have been found as construction
22 is proceeding?

23 A. So, as I indicated, we did the surveys. We
24 provided the information to the Service. They'll tell
25 us what the conservation measures are.

1 Q. So you provided -- you're not responsible
2 for recommending mitigation measures to Summit from
3 Fish and Wildlife Services?

4 A. Well, it's their jurisdiction, so we can
5 make recommendations, but at the end of the day,
6 they're the ones that will decide what happens.

7 Q. They will decide to make you do more than
8 you recommended, probably not less? That's my
9 testimony.

10 One other general question. You said you
11 were responsible for helping prepare Exhibit F;
12 correct?

13 A. Yes.

14 Q. In that it says, "One of the public
15 conveniences" -- "One of the aspects of public
16 convenience and necessity promoted by the project is
17 reducing greenhouse gas emissions in the effort to
18 combat climate change."

19 Did you do any research around this or make
20 any analysis to support that assertion?

21 A. If that was in Section 1, I didn't write
22 that.

23 Q. I'm not sure what section, but you did not
24 do any research on, you know, emissions and --

25 A. I didn't, but I don't know if Summit did.

1 I can't answer that.

2 MR. ISENHART: Okay. Thank you. That's
3 all I have.

4 BOARD CHAIR HELLAND: Thank you.

5 Mr. Jorde. Hold on. We were going to take
6 a break at 2:45. I don't want to put any --

7 MR. JORDE: I'll be done by then.

8 BOARD CHAIR HELLAND: Go ahead.

9 CROSS-EXAMINATION

10 BY MR. JORDE:

11 Q. I haven't seen you for a while since the
12 Keystone days in Nebraska. Good to see you again.

13 You were asked questions from Mr. Taylor,
14 and you used qualifiers "relative to surveys where we
15 had access."

16 Do you recall that?

17 A. Correct.

18 Q. Obviously, if you didn't have access for
19 whatever reason, you couldn't have been on the ground
20 and have highly reliable data; is that fair?

21 A. Correct.

22 Q. It's true -- Well, is it true that no
23 geohazard phase 2 surveys have been commenced at this
24 time?

25 A. That wasn't under my scope. That would

1 have been Erik under engineering.

2 Q. Okay. So nothing --

3 A. I have no idea.

4 Q. Okay. In terms of what you and your firm
5 were asked to do, was it limited to the actual
6 locating of and potential routing and then
7 construction of the linear infrastructure, or is your
8 firm also tasked with looking at environmental effects
9 of the capture facilities and the construction of
10 those facilities?

11 A. There were other firms working on the
12 capture facility side because it's a different
13 regulatory process. They were already underway when
14 my firm got hired, so they continued to do that work
15 independent.

16 Q. Okay. So to be clear, you don't have any
17 testimony relative to adverse environmental effects
18 relative to any construction of capture facilities?

19 A. Yeah. That's -- Most of the State
20 regulatory processes don't include capture facilities
21 except Minnesota, and there's a firm that's doing all
22 that work separate from everybody else.

23 So they're doing the air permitting, the
24 water permitting. I have nothing to do with that.

25 Q. Do you know the name of that firm?

1 A. I believe it's Mergent.

2 Q. Mergent?

3 A. Uh-huh.

4 Q. Okay. Thank you. So in terms of the
5 environmental effects and other effects of the
6 hundreds of millions of gallons of water that Summit
7 proposes to use to cool the CO2 at each of the capture
8 facilities, have you or your firm been tasked to look
9 into the environmental effects of that?

10 A. No.

11 Q. And then what about the use of triethylene
12 glycol, the chemical to infuse into the capture
13 facilities to try to remove water before the stream
14 gets into the pipeline? Has your company been
15 involved in the environmental effects of that?

16 A. As I indicated, we're not working on the
17 capture facilities.

18 Q. And not even the effects of the capture
19 facilities; nothing about it?

20 A. We're not working on them.

21 Q. Got it.

22 MR. JORDE: I think that's all. Thank you,
23 sir.

24 BOARD CHAIR HELLAND: Okay. Before we go
25 to Board questions, I just want to double-check with

1 the parties before we go to the Board for questions.

2 (No response.)

3 BOARD CHAIR HELLAND: Board Member Byrnes?

4 BOARD MEMBER BYRNES: Thank you.

5 All right. On page 6 of your direct
6 testimony, you discussed the crossings of public land.
7 This kind of goes -- I'm going to piggyback a little
8 bit on what Representative Isenhardt said.

9 Can you describe the difference between
10 Exhibit F and your testimony?

11 THE WITNESS: Exhibit F is part of the
12 petition, so it's just a high-level summary of the
13 environmental impacts.

14 My testimony was -- I don't believe it was
15 updated when we updated Exhibit F. So it would have
16 been out of sync, as far as the numbers.

17 BOARD MEMBER BYRNES: So has Summit
18 received all the necessary permits for crossing public
19 lands?

20 THE WITNESS: No. We filed with IDNR, but
21 we haven't received them.

22 BOARD MEMBER BYRNES: In Exhibit F it
23 stated that there was .18 miles, but your testimony
24 said .07 miles.

25 THE WITNESS: Yeah. There's probably going

1 to be a disconnect because the testimony wasn't
2 updated when we updated Exhibit F.

3 BOARD MEMBER BYRNES: All right. Thank
4 you.

5 Then in your testimony you discussed Litka
6 Creek. Exhibit F does not mention this area. Is that
7 the same --

8 THE WITNESS: I think it's in the table in
9 Exhibit F, if I remember correctly. I'd have to look
10 at it to see, but I think it's in that one table that
11 lists all the public lands.

12 BOARD MEMBER BYRNES: Okay. We'll check on
13 that.

14 THE WITNESS: Okay.

15 BOARD MEMBER BYRNES: On page 6 of your
16 direct testimony, you also discussed tree removal.
17 You stated that trees will be removed, but trees will
18 be kept clear for 15 feet on either side of the
19 pipeline.

20 For clarification, Summit Carbon will allow
21 trees within 15 feet of either side of the pipeline
22 and not require the entire 50-foot easement to be kept
23 clear of trees; is that correct?

24 THE WITNESS: Typically that's what's done,
25 yes. You just have to see it from the air, so 30 feet

1 is about as narrow as you can get from the air.

2 BOARD MEMBER BYRNES: All right. So it's
3 for the flyover inspections?

4 THE WITNESS: Inspection, yes.

5 BOARD MEMBER BYRNES: Thank you.

6 On page 14 of your direct testimony, you
7 discussed lit reviews. Can you explain why a
8 literature review -- what it is and how it relates to
9 Summit Carbon's pipeline?

10 THE WITNESS: So when you do cultural
11 resource investigations, the first step is you look --
12 you have to go into the SHPO records and look at
13 previous studies, so it's considered literature
14 review. You also look at whatever scientific
15 literature is available on encampments and historic
16 use of the area. That gives you the context to design
17 your field surveys and know where potentially sites
18 are found.

19 So you do the literature review first, and
20 then you go on the ground and execute the surveys.

21 BOARD MEMBER BYRNES: These are my last
22 couple questions here for you.

23 The Board asked Mr. Schovanec about
24 proposals by landowners of crossing federal lands
25 instead of their property. What is the permitting

1 process for crossing federal lands, and is Summit
2 crossing federal lands at all in Iowa?

3 THE WITNESS: We're not crossing federal
4 lands in Iowa. The process depends on the federal
5 agency that manages the land.

6 So a National Park, they don't have
7 authority from Congress to issue a right-of-way. So
8 you can't cross them, period.

9 We talked about easements with Farm Service
10 Agency or U.S. Fish and Wildlife for the wetland
11 easement. Those you can cross, but they require
12 certain hurdles you have to go through because once
13 the government spends the money on something, you have
14 to prove you're not going to impede that money that
15 they spent.

16 BOARD MEMBER BYRNES: So we had different
17 landowners up here. If they had suggested a re-route
18 that would have included a re-route through federal
19 land, it's kind of a nonstarter?

20 THE WITNESS: Yeah, particularly ones that
21 don't have the authority to issue an easement.

22 BOARD MEMBER BYRNES: Okay. I believe
23 that's all the questions that I have. Thank you, sir.

24 BOARD CHAIR HELLAND: Thank you.

25 Mr. Dublinske, any redirect?

1 MR. DUBLINSKE: No redirect, Your Honor,
2 but just for Board Member Byrnes's ease, Exhibit F,
3 Table 3, Row 2 discusses Litka Creek Park.

4 BOARD MEMBER BYRNES: Thank you.

5 BOARD CHAIR HELLAND: Okay. Thank you.

6 Dr. Schmidt, you may step down.

7 Summit, go ahead and call your next
8 witness, and then we'll take a break, please.

9 MR. LEONARD: Thank you, Your Honor. We'll
10 call Bryan Louque.

11 BOARD CHAIR HELLAND: Mr. Louque, go ahead
12 and raise your right hand.

13 BRYAN LOUQUE,
14 called as a witness by Summit Carbon Solutions, LLC,
15 being first duly sworn by Board Chair Helland, was
16 examined and testified as follows:

17 BOARD CHAIR HELLAND: You can go ahead and
18 turn your mic on. All right. There you go. Thank
19 you.

20 MR. LEONARD: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. LEONARD:

23 Q. Mr. Louque, are you the same Bryan Louque
24 who caused to be filed prefiled direct testimony and
25 Direct Exhibit 1 as well as prefiled rebuttal

1 testimony in this docket?

2 A. I am.

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

5 A. They would.

6 Q. Do you have any corrections or
7 modifications to make to that prefiled testimony at
8 this time?

9 A. I do not.

10 MR. LEONARD: Your Honor, I would move
11 admission of Bryan Louque direct, Direct Exhibit 1 and
12 rebuttal testimony.

13 (Louque Direct Exhibit 1 was offered into
14 evidence.)

15 BOARD CHAIR HELLAND: Thank you.

16 Are there objections, other than
17 Mr. Jorde's standing objections?

18 MR. JORDE: Can I have clarification?
19 What's his Exhibit 1 to direct?

20 MR. LEONARD: I believe it's a list of
21 inputs used.

22 MR. JORDE: Okay. Then just my standing,
23 and then foundation and speculation.

24 BOARD CHAIR HELLAND: Okay.

25 Mr. Meyer, did you have an objection, too,

1 or just getting in line?

2 MR. MEYER: No. Just ready to cross.

3 BOARD CHAIR HELLAND: Objection is noted.

4 The Board will admit the evidence and give
5 it the weight due.

6 (Louque Direct Exhibit 1 was admitted into
7 evidence.)

8 MR. LEONARD: Would you like to proceed?

9 BOARD CHAIR HELLAND: Yes. You tendered
10 the witness?

11 MR. LEONARD: Yes.

12 BOARD CHAIR HELLAND: Okay. Great. Then
13 we will take a break. We will come back at 5 till.

14 (Recess taken.)

15 BOARD CHAIR HELLAND: Okay. It's 2:58. We
16 will go back on the record.

17 I believe Mr. Jorde is up first.

18 MR. JORDE: Thank you.

19 CROSS-EXAMINATION

20 BY MR. JORDE:

21 Q. Sir, in your prefiled testimony, one of the
22 things you discuss is that your employer, Audubon, was
23 engaged to perform vapor dispersion modeling and
24 analysis for use in developing high-consequence areas,
25 also known as HCAs, and that's part of the work you

1 did; correct?

2 A. Correct.

3 Q. And when was Audubon first hired by Summit
4 relative to any CO2 pipeline work?

5 A. Best guess on my part, it was around the
6 beginning of this year.

7 Q. So beginning of this year, so early 2023?

8 A. Correct.

9 Q. And prior to that time, you're not aware of
10 Audubon being contracted or being asked to do any work
11 or analysis for Summit?

12 A. We were working on other parts of the
13 project with Summit that are -- well, that didn't
14 involve vapor dispersion.

15 Q. Okay. And just briefly, what were those
16 other parts of the project that you were working on
17 prior to the beginning of 2023?

18 A. So, for example, we started on the risk
19 analysis with Summit initially, is how we got
20 involved.

21 Q. And for risk analysis -- Well, okay. Let's
22 back up.

23 When was Audubon first hired to do risk
24 analysis?

25 A. Again, it was probably mid-last year.

1 Q. Okay. The middle of 2022.

2 When you say "risk analysis," is that where
3 you differentiate as being separate from vapor
4 dispersion modeling and analysis?

5 A. It's a separate scope of work, yes.

6 Q. All right. And in terms of HCAs, we've
7 talked about those, but HCAs, high-consequence areas,
8 those are federally defined terms of art. Would you
9 agree?

10 A. Agree.

11 Q. And there are four main categories of HCAs
12 under federal regulation; is that fair?

13 A. Yes.

14 Q. And one of the HCAs includes population
15 areas of greater than 50,000 persons; correct?

16 A. The two that involve population are HPAs
17 and OPAs, so highly populated areas and other
18 populated areas.

19 Q. Okay. And the highly populated areas are
20 considered, by at least federal regulators, as
21 containing 50,000 or more persons?

22 A. I think that's correct. In my mind, the
23 big differentiator around HCA [sic] -- I'm sorry. HPA
24 is it exists in an incorporated boundary.

25 Q. Correct, and that's a good qualifier. So

1 it's a set number of persons within an incorporated or
2 defined boundary; correct?

3 A. Yes.

4 Q. And you would agree that certainly
5 throughout Iowa where this proposed pipeline could be
6 located there are lots of areas where there are people
7 and defined boundaries but that they don't necessarily
8 reach that 50,000 or more threshold?

9 A. There are many more OPAs within Iowa than
10 HCAs. That is a true statement.

11 Q. And for OPAs, what's your understanding of
12 the technical definition of an OPA?

13 A. An OPA is an area that has some population
14 density as defined by the U.S. census.

15 Q. And the U.S. census is, as we know, updated
16 every ten years?

17 A. That's correct.

18 Q. So OPAs, in analyzing them, the data is
19 pretty much stale after each census and then isn't
20 updated or modified until the next census?

21 A. As far as the federal government goes,
22 that's true. Operators have the option and ability to
23 curate their own HCA data at any time.

24 Q. And so is it your understanding that HCA,
25 is that, like, kind of an umbrella or overarching

1 factor of which the OPAs or the HPAs, that those fall
2 under HCA analysis, or those are separate things you
3 look at?

4 A. So each one of the four you referred to are
5 potential HCAs. So if I've got any of these four
6 entities, then it's a high -- that area is defined as
7 a high-consequence area by PHMSA.

8 Q. And PHMSA requires a potential pipeline
9 operator to identify all HCAs, as defined by PHMSA?

10 A. It requires the operator to define all
11 HCAs, including those that are defined or identified
12 by the operator.

13 Q. All right. And so regardless of if someone
14 is living in a populated area of 50,000 persons or
15 more or 500 persons, you understand that the persons
16 in smaller populated areas likely care just as much
17 about their family and their health and well-being as
18 those in larger communities; right?

19 A. I understand.

20 Q. And you discuss the vapor dispersion
21 modeling and what information it provides.

22 Is it your testimony that PHMSA requires a
23 potential pipeline operator to actually perform vapor
24 dispersion modeling?

25 A. So the short answer is yes. That's part of

1 the Integrity Management Rule, which is triggered by
2 the existence of an HCA.

3 Q. And you're aware that federal law or PHMSA
4 is not in charge of siting or locating hazardous
5 pipelines; correct?

6 A. Correct.

7 Q. So we can agree that dispersion analysis
8 may be a tool or data required by PHMSA regulations,
9 but would you agree that that type of data is also
10 important data to know when considering potential
11 routing of a hazardous pipeline?

12 A. If you're asking my -- for my experience,
13 my experience is that vapor dispersion studies or any
14 other thing under the Integrity Management Rule are
15 typically not considered for routing pipelines.

16 Q. And your answer there is based on the
17 premise that I was asking from the operator or
18 pipeline company owner's standpoint; correct?

19 A. That's correct.

20 Q. As we are sitting here today, you
21 understand we're not looking at what any particular
22 party wants but the lens through which the Board may
23 be making decisions as to routing and siting?

24 A. I understand.

25 Q. And you would agree it would be reasonable,

1 when you're thinking about a greenfield project such
2 as this, one that doesn't exist in the state and would
3 be the first ever in the state of Iowa, that it would
4 be reasonable to consider the vapor modeling and
5 analysis in making routing decisions in Iowa; right?

6 A. I think what is much more important to
7 consider, from an engineering standpoint, are the
8 preventative and mitigative measures that would go
9 along with design and operation of the pipeline and
10 its potential impact on the community that surrounds
11 it.

12 Q. So from an engineering perspective, you're
13 focused more on: What can we do to prevent a
14 worst-case scenario or prevent an unintended release
15 as opposed to maybe we shouldn't even locate near that
16 particular community; right?

17 A. Yes.

18 Q. But, again -- I appreciate it from your
19 engineering perspective, but from a regulatory body
20 looking at an intelligent location or, perhaps, no
21 location, you would agree that it would be reasonable
22 to analyze the risk to persons and livestock before
23 making siting decisions?

24 A. I'm not going to speculate on "reasonable."

25 Q. Okay. So you prepared some documents

1 related to your vapor dispersion analysis. When do
2 you first recollect being asked to perform that type
3 of work?

4 A. I think -- Did I state mid-2023, or was it
5 early 2023? We've been working on this project for
6 about six months now, to my recollection.

7 Q. And, again, "this project," meaning the
8 vapor dispersion specifically?

9 A. Correct, yes.

10 Q. Okay. And have you or your firm prepared
11 draft reports that you provided to your client,
12 Summit, at any time?

13 A. Yes.

14 Q. How many drafts have you gone through?

15 A. In the state of Iowa, two drafts for what
16 you'll see in the testimony as -- referred to as a
17 conservative approach, and one draft of what you will
18 see referred to as a mechanical puncture approach.

19 Q. And are those approaches, in fact, combined
20 into one document, or are you saying the way you're --
21 your deliverable to your client was actually two
22 separate drafts analyzing each of those approaches?

23 A. It would be the latter, two separate
24 drafts.

25 Q. Two separate drafts. I'm sorry. One was a

1 puncture approach, and that would essentially be known
2 as the third-party damage approach; correct?

3 A. That's what we attempted to simulate,
4 correct.

5 Q. Understood. And the other approach would
6 be kind of the guillotine or that unintended release,
7 other than caused by a third party?

8 A. It would be intended to be a guillotine
9 release. That's true.

10 Q. Regardless of cause?

11 A. Regardless of cause, correct.

12 Q. All right. And is that work that you
13 continue to do based on Iowa's specific factors, or
14 was the work that you did on those two approaches a
15 project-wide look that didn't take into account any
16 Iowa-specific inputs?

17 A. So the vapor dispersion analysis considers
18 the right-of-way, which includes things like what's on
19 the right-of-way, what the terrain looks like.

20 So based on that assertion, we looked at
21 this -- these routes specifically in the state of Iowa
22 and analyzed the routes specifically in the state of
23 Iowa as we did in the other states.

24 Q. And so when -- Were you tasked with the
25 directive to determine worst-case scenarios based on

1 actual route-specific factors on the proposed Iowa
2 route?

3 A. So the answer -- I'm going to say the
4 answer is yes, okay? But what we did was, is once you
5 see the route in Iowa, whether it's in a cornfield or
6 hayfield or what have you, one of those right-of-way
7 conditions out of the number that exist in the state
8 would produce a worst-case CO2 concentration after a
9 guillotine leak on the ground, and that worst case or
10 the most conservative case was applied to the entire
11 pipeline right-of-way in Iowa.

12 Does that make sense?

13 Q. Let me paraphrase, and correct me if I'm
14 wrong. So in order to choose what you believe the
15 worst-case scenario was for Iowa, you analyzed the
16 entire proposed route and then, all things considered,
17 picked a location that, based on the various factors,
18 when combined together would produce what you believe
19 to be the worst possible case of an unintended
20 release?

21 A. In terms of CO2 concentration on the ground
22 and distance from the pipeline center line, yes.

23 Q. And is that necessarily the same location
24 in terms of the amount of concentrated CO2 on the
25 ground and the distance of travel, or couldn't those

1 be found at different geographic points?

2 A. So the answer is no. We were -- We're only
3 concerned with CO -- distance of travel of CO2
4 concentration on the ground.

5 Q. On the ground?

6 A. Yeah.

7 Q. Okay. All right. And we'll get into the
8 modeling in a little bit.

9 I want to talk a little bit about your
10 testimony where you reference Satartia, Mississippi,
11 and the failure there of a CO2 pipeline. Do you
12 recollect, was that Denbury pipeline in Satartia,
13 Mississippi, a 24-inch pipeline?

14 A. I don't recollect, but it's in the 20-inch
15 range.

16 Q. I think it was 24 inches, but we can look
17 at that to confirm.

18 Your recollection is in the state of Iowa
19 Summit is proposing up to a 24-inch diameter pipeline?

20 A. That's correct.

21 Q. Now, you would agree, and based on your
22 analysis, that CO2 can be toxic by inhalation in
23 humans?

24 A. I'm not an expert on toxicology, and I
25 don't know if "toxic" is the right work. Yes, it

1 poses a hazard for humans in certain concentrations.

2 Q. Correct. And that includes the fact CO2 is
3 an asphyxiant, and it can displace oxygen because it's
4 heavier than oxygen; correct?

5 A. Correct.

6 Q. Are you aware that individuals that could
7 come in contact with CO2 may experience rapid
8 breathing, confusion, increased cardiac output,
9 elevated blood pressure and arrhythmias?

10 A. Yes.

11 Q. And then in extreme concentrations,
12 potentially death by asphyxiation?

13 A. Yes.

14 Q. Relative to the Satartia incident, you're
15 aware that PHMSA put out an incident report or what
16 they call a failure investigation report?

17 A. Yes.

18 Q. And did you review that prior to or after
19 designing or preparing the vapor dispersion analysis?

20 A. Those reports informed our process, so we
21 were aware of the results of PHMSA's investigation
22 prior to producing material, work for this project.

23 Q. And you discuss a little bit about ALOHA,
24 which is a software, a publicly available tool for
25 getting at least a rough estimate of potential

1 distance and width of CO2 dispersion; is that right?

2 A. I am aware of ALOHA, yes.

3 Q. All right. And you're aware also that it
4 is a tool that's publicly available and allows for
5 certain inputs that then produces outputs that may
6 model a CO2 dispersion event?

7 A. I don't believe ALOHA has any
8 CO2-specific -- what's the word I'm looking for?
9 Application.

10 So I think I answered your question.

11 Q. And in your testimony you were asked if you
12 agree that ALOHA is a useful tool. You say, "Yes."
13 You do qualify that for quickly producing reasonable
14 results in a real emergency.

15 Would you agree, sir, that that's a
16 qualifier for, I guess my words, kind of a
17 down-and-dirty and quick analysis, but it isn't the
18 type of software that you would want to use when
19 providing opinions on worst-case vapor dispersion
20 analysis; right?

21 A. That's my position, yes.

22 Q. And, in fact, for first responders that may
23 be able to quickly utilize it, it would give them an
24 idea, but it wouldn't be nearly as reliable as some of
25 the other more robust software available, such as the

1 CANARY or even PHAST or even computational fluid
2 dynamics; correct?

3 A. It would give a conservative estimate for
4 the vapor dispersion for which first responders could
5 use as a starting point.

6 Q. As a starting point?

7 A. Yep.

8 Q. Would you agree with me in order to kind of
9 arm our first responders with the best available data
10 that studies, such that you did informed by CANARY and
11 FLO-2D modeling, would give them a better idea of the
12 potential dispersement range of a CO2 plume?

13 A. That's a good question. I mean, the intent
14 of the -- of Summit's vapor dispersion really is to
15 understand the impact of a release on receptors along
16 the pipeline. That's first and foremost.

17 Whether or not that information would be
18 useful to first responders, you know, I won't
19 speculate on that. I've never been in that
20 first-responder position in terms of preference of
21 understanding the potential consequences or potential
22 areas of a release.

23 Q. Would you concede that in life-or-death
24 situations, an emergency response, that more likely
25 than not it would be more appropriate to have the most

1 specific and best information available for those
2 first responders?

3 A. Yeah. Again, a very good question.

4 Within the model that we produced for
5 Summit, there are inputs about the weather, right? If
6 I'm a first responder, you know, and the weather on a
7 particular day is X and Y, I might want to be able to
8 see how that would affect the vapor plume on that day
9 instead of looking at a worst-case scenario that
10 Audubon produced.

11 So, you know, generally more information is
12 better, but more information could mislead, I guess,
13 in some cases, if that makes any sense.

14 Q. Well, but if the more information, I think
15 how you were parsing that, would be providing a
16 worst-case scenario, you use the word "mislead," but
17 wouldn't you agree if I'm armed on the front end with
18 what a worst-case scenario is, I can back into and
19 prepare better and kind of understand the geographic
20 distance of my emergency response as opposed to
21 getting, for instance, a 911 call and trying to locate
22 ALOHA and quickly type in things; right?

23 A. Yeah. I don't know, again, from the
24 first-responder process how that happens, but, you
25 know, I guess I'll just leave it at more information

1 is better in terms of responding to an emergency.

2 Whether or not first responders' preference
3 would be to look at information that was produced by
4 the pipeline operator or not, I can't speak to their
5 processes.

6 Q. Would you agree along those lines that more
7 information is also better in preparation for a
8 potential emergency; not just an instantaneous
9 response?

10 A. Yes. So there are a number of things that
11 the vapor dispersion will inform in terms of Summit's
12 operating procedures. One of them is a risk model.
13 The other one is a public awareness plan. The other
14 one is the Emergency Response Plan.

15 So yes, the results of the vapor dispersion
16 model will inform and provide guidance to -- in other
17 operating areas of the pipeline.

18 Q. Okay. But also would be helpful for first
19 responders or counties determining what resources they
20 need on the front end to be prepared prior to an
21 emergent event?

22 A. Yeah. I was agreeing with your statement.

23 So, you know, part of Summit's
24 responsibility here is to work with local first
25 responders and make sure that they understand the

1 potential exposure, make sure that they're equipped to
2 deal with that exposure, should worst case happen,
3 right?

4 So in terms of people, training and
5 equipment, yes.

6 Q. Now, related to the Satartia incident,
7 we've covered the 200 folks that were evacuated and
8 the 45 that sought medical attention.

9 Would you agree that part of the, let's
10 say, intensity of that release had to deal with
11 something called -- or a phenomenon known as
12 atmospheric conversion?

13 A. I'm not aware of that. The full details of
14 Satartia and what actually happened with Satartia,
15 outside of what was reported by PHMSA, I'm not aware
16 that that was one of the things that actually PHMSA
17 pointed to or anyone pointed to.

18 Q. So setting Satartia aside, are you, as an
19 engineer, familiar with the concept of atmospheric
20 conversion?

21 A. In detail, no.

22 Q. How about in general?

23 A. In general, no.

24 Q. So how do you go about, then, selecting
25 inputs to inform what would be a worst-case scenario

1 such as temperature? I guess, how do you go about
2 that, or did you accept that, the inputs that Summit
3 told you it wanted modeled?

4 A. So the inputs to the model, whatever model
5 you're choosing, whatever model you're working with or
6 defined by the software manufacturer, you have those
7 listed in one of my exhibits that have been submitted.

8 The answer to your question is, you know,
9 Summit didn't tell us what the inputs were, what
10 inputs to use or what values to use. Basically when
11 you look at the inputs that are required for the vapor
12 dispersion analysis, Audubon ran a sensitivity
13 analysis using one -- a variation of one input at a
14 time, right?

15 So when you look at -- Let me see here.
16 When you look at release angle, that would be an
17 example, right?

18 There's an optimum release angle that will
19 produce a maximum concentration of CO2 some distance
20 away from the pipeline at grade. So that sensitivity
21 analysis defined the worst-case inputs, worst-case
22 parameters for the analysis, for the overall analysis.

23 Q. Well, wouldn't you agree that, depending on
24 the inputs that you analyze, that can skew the
25 ultimate outputs?

1 A. Skew in a conservative direction, which is
2 what we were after, yes.

3 Q. Well, okay. They could skew either way.

4 I mean, I'm not saying you did this, but I
5 could -- if I wanted to get to an intended result,
6 theoretically knowing that information might be
7 publicly available and I don't want it to be as
8 dangerous, certainly a person could select inputs
9 essentially gaming the system to show less concerning
10 outputs; right?

11 A. An unethical person could.

12 Q. Okay. And someone well-intended who didn't
13 do a thorough job also could lead to the same result;
14 correct?

15 A. So when you look at atmospheric vapor
16 dispersion models and you look at the suite of tools
17 that is available, whether it's CANARY, PHAST, CFD,
18 garbage in is garbage out. So the results depend on
19 the ability and the experience of the modeler.

20 Q. In that regard would you agree that cooler
21 temperatures tend to produce a worse scenario in terms
22 of an unintended release, all other factors being
23 equal?

24 A. Are you talking about atmospheric
25 temperature?

1 Q. Atmospheric temperature.

2 A. Yes. So the most conservative cases for --
3 that we identified were winter cases.

4 Q. And in your experience is the colder it is
5 the worst?

6 So if we took it kind of to the ridiculous.
7 We get way into the negative temperatures.

8 Does it get worse, or is there kind of a
9 range of more likely cool temperatures that you model?

10 A. It would be the latter.

11 Q. All right. And then would you also agree
12 that less wind actually creates the potential for the
13 higher level of concentration and the more negative
14 potential health effects?

15 A. So wind was one of the sensitivity factors
16 that we evaluated, and there was an optimum wind speed
17 at which the concentrations at grade reached furthest
18 from the pipeline center line.

19 Q. Okay, and I appreciate that. Obviously,
20 wind clearly can move and is a big factor on which
21 direction a plume would travel.

22 It generally goes with the prevailing wind;
23 is that fair?

24 A. That's my understanding.

25 Q. And if you were modeling to try to show how

1 far a plume would go, you might pick a certain type of
2 wind speed, but would you agree that no wind speed
3 actually can produce at the site of the rupture the
4 worst possible scenario because there's not a wide
5 dispersing of the CO2 molecules?

6 A. So the site of the rupture is worst case
7 irregardless of what the wind is doing, okay? That's
8 where you've got 98 percent CO2 escaping that
9 pipeline.

10 Q. Okay. And in terms of modeling wind, would
11 you agree that modeling higher wind speeds, although
12 maybe counterintuitive, actually more likely then
13 would produce not as bad of scenarios because of the
14 phenomenon of the wind dispersing the CO2 molecules?

15 A. High wind speed leads to turbulence.
16 Turbulence leads to mixing. Mixing leads to reduced
17 CO2 concentrations at grade.

18 Q. You had talked a bit ago about public
19 awareness and emergency response. In your work are
20 you familiar with considering buffers in terms of
21 public awareness, emergency response and initial
22 routing?

23 Is that a concept you're familiar with?

24 A. No.

25 Q. Okay. When you were discussing public

1 awareness, in your experience is public awareness kind
2 of a range? Like, for instance, within X number of
3 feet from the center line of the pipeline, that's
4 where we want the public to be aware that the pipeline
5 even exists, or what's your understanding of public
6 awareness concept and why it's important?

7 A. So my understanding of public awareness is
8 as it's written and defined in 195 in this case and
9 the requirements that are incumbent upon each operator
10 under the 195 pipeline code to create and execute a
11 Public Awareness Program.

12 Q. Okay. So basically compliance with the
13 federal minimum standards relative to public
14 awareness?

15 A. Exactly.

16 Q. And you would agree that aside from just
17 complying with what the federal regs are, if we're
18 talking about real people in a real state like Iowa,
19 you would agree that it's prudent to go above and
20 beyond the federal minimums in your outreach and
21 education relative to the hazards associated with the
22 CO2 pipeline?

23 A. I would agree that whatever the federal and
24 state regulations and laws are that govern the siting,
25 design, construction, operation of the pipeline should

1 be followed.

2 Q. Okay. So I asked a little bit different
3 question.

4 Certainly you want to comply and check all
5 the PHMSA boxes. I don't dispute that.

6 PHMSA doesn't prevent a pipeline company,
7 such as Summit, from sharing its analysis that it
8 contracted you to do to best inform the public of this
9 potential project and the potential risks; right?

10 A. I'm not aware that they do.

11 Q. In regard -- Are you familiar with
12 Integrity Management Programs, IMPs?

13 A. Yes, sir.

14 Q. And do you recollect that in the
15 Denbury/Satartia incident that PHMSA found that
16 Denbury, in fact, did identify geotechnical hazards
17 but essentially didn't go into enough detail of what
18 those hazards are and how they may contribute to a
19 potential rupture?

20 A. Yes.

21 Q. And are you aware in this docket that
22 Summit has not yet commenced, let alone concluded, its
23 phase 2 geotechnical surveys?

24 A. I'm not aware of that information. That's
25 information that would not be applicable to my scope

1 of work.

2 Q. Were you asked to or have you ever reviewed
3 buffer distances, whether you call them setbacks or
4 hazard zones, relative to emergency response or public
5 awareness distances?

6 A. No.

7 Q. And you weren't -- meaning Audubon and your
8 team -- involved in the initial routing? You were
9 called in after the fact; is that fair?

10 A. That's correct.

11 Q. All right. I want to ask you a few
12 specific questions about the tools you utilize, CANARY
13 and the FLO-2D system.

14 A. Yes, sir.

15 Q. So you utilized CANARY, which, again is a
16 tool, a software, and that's sold by a company called
17 Quest Consulting; is that right?

18 A. Yes.

19 Q. And then FLO-2D, is that also provided by
20 Quest or a different provider?

21 A. It is not provided by Quest.

22 Q. Do you know who makes that available?

23 A. Off the top of my head, no, I don't.

24 Q. And you stated that CANARY was validated in
25 a series of tests; correct?

1 A. Correct.

2 Q. And it's true that CANARY is called a
3 Gaussian model?

4 A. Yes.

5 Q. And generally can you describe what that
6 type of a model is?

7 A. A Gaussian model is a model that assumes a
8 core -- when you're looking at a release, it assumes a
9 core CO2 concentration with dissipation at the edges,
10 if that makes any sense, that are nonlinear and follow
11 Gaussian equations or Gaussian diminishing returns, if
12 that makes sense.

13 Q. Well, does the Gaussian model have anything
14 to do particularly with the shape of the dispersion?

15 A. Yes.

16 Q. And what exactly -- how are those related?

17 A. So pictures would be better, but yeah. So
18 the shape of the release plume. So think plume, with
19 a CO2 core with a core of highly concentrated CO2 that
20 mixes, and the concentration of the CO2 diminishes
21 towards the edges of the plume.

22 Q. You in your testimony talked a little bit
23 about CFD modeling, and, again, you understand that to
24 be computational fluid dynamics; is that right?

25 A. Yes.

1 Q. Would you agree that that is a more robust
2 tool whereby more inputs can be utilized to get a more
3 accurate picture of modeling?

4 A. There's no data that I'm aware of that CFD
5 produces any more accurate, and I want to be careful
6 about that word, because you used it. Produces any
7 more accurate results than any of the other tools or
8 models that are on the market.

9 Q. Okay. And so because -- based on your
10 statement that there's no study that states that, what
11 about in your own experience? Have you ever had the
12 occasion to utilize CFD modeling?

13 A. I have not. I have not seen it used in
14 pipeline vapor dispersion modeling.

15 I've been doing this 30 years. Integrity
16 management has been around for 20-plus years, and I've
17 not seen a pipeline project utilize CFD.

18 Q. Again, with all due respect to you and your
19 experience, you are hired by the pipeline companies in
20 this case to do the modeling work; correct?

21 A. Yes.

22 Q. Okay. So someone from the community, a
23 concerned mom with kids nearby the potential route,
24 they're not your clients? It's the industry who wants
25 to get the project sited? That's your client;

1 correct?

2 A. So, you know, the whole purpose of PHMSA
3 and pipeline safety is to protect the public and to
4 protect the environment. I've been doing that, you
5 know, in my career for 30 years now.

6 So yes, Summit Carbon is my client, but
7 I've got an obligation to the public to protect them
8 as well.

9 Q. Well, but your statement that PHMSA's
10 purpose is safety and to protect the public, that only
11 goes so far, because they do not have the power to
12 site, and you would agree the location of the pipeline
13 is what creates the risk?

14 A. No, absolutely not.

15 Q. Okay. So would you agree that a pipeline
16 that doesn't exist is less risky than the one that
17 does?

18 A. No. So --

19 Q. Okay.

20 A. PHMSA -- I'm not answering your question.
21 I'm just continuing along with my previous statement.

22 PHMSA is charged with safety of liquid and
23 gas pipelines. I don't know if you've looked at the
24 code or read the code, right, but there are all sorts
25 of measures that have been developed since the late

1 1960s, all sorts of regulations and requirements that
2 have been identified, developed, implemented to
3 protect you and I.

4 Unfortunately, some of those learnings come
5 through tragedy, right? And the fact that, you know,
6 it very rarely -- I understand pipelines exist, and I
7 understand they're in the ground. But the host and
8 wide variety of incident causes and mitigative
9 measures that directly address those causes, that's
10 what PHMSA is all about, right? They're here to
11 protect us.

12 Q. Okay. We can agree to disagree on that.

13 My question to you was: Am I more or less
14 safe if a hazardous pipeline is located within 100
15 feet of my home or 100,000 feet of my home?

16 A. And I'm going to answer: It depends.

17 Q. Okay. Well, sure. If the one closest
18 never explodes, there's no risk, but understanding
19 that things that humans make tend to leak, spill,
20 rupture somewhere over time, it's pretty obvious that
21 any person who is located in close proximity to
22 hazardous pipelines is inherently more at risk than
23 someone who is much further away?

24 A. I disagree.

25 Q. Okay. So then if you disagree with that,

1 there's really no point to any of the work that you've
2 done in terms of modeling the distance that a plume
3 could travel because it doesn't matter how close you
4 are to a pipeline?

5 A. No, sir. You are making a blanket
6 statement, and I could give you good, real-life
7 examples.

8 Marshall, Michigan, was a good example
9 where the crude oil actually found its way into the
10 Kalamazoo River, and I would have been much safer
11 located uphill 100 feet from the pipeline than I would
12 have been 10 miles downstream of that pipeline.

13 Q. Sure. Of course, we're here on carbon
14 dioxide pipelines.

15 A. Yes, sir.

16 Q. So we don't really need to talk about crude
17 oil. So in terms of carbon dioxide, which is the only
18 thing that's relevant here, a plume at high
19 concentration, based on your answer about seven
20 answers ago, is most intense at the rupture site;
21 correct?

22 A. CO2 concentration is greatest there in the
23 atmosphere.

24 Q. Correct. And if I'm a person living
25 outside in the atmosphere, the closer I am to that

1 rupture site, the more dangerous it is for me;
2 correct?

3 A. For CO2 concentration in the atmosphere,
4 yes.

5 Q. All right. Now, do you routinely utilize
6 CANARY calculations?

7 A. Yes.

8 Q. Are you able to discuss five inputs that
9 you would need in a CFD model that are not needed in a
10 CANARY calculation?

11 A. Potentially.

12 Q. Is it your testimony that CFD modeling
13 needs or it's required to use more inputs than CANARY
14 does?

15 A. Yes.

16 Q. Do you believe that CFD cannot do
17 high-velocity calculations?

18 A. CANARY has been developed with a jet
19 release in mind. It has that -- it was built around
20 that particular problem.

21 I'm not enough of a student or not familiar
22 enough with CFD to understand how it handles jet
23 releases, but I do understand that there are some
24 potential issues with CFD and modeling of a jet
25 release.

1 Q. And when you use the phrase "jet release,"
2 is that the type of release that would be associated
3 with a guillotine rupture?

4 A. Correct.

5 Q. Do you believe that CFD modeling cannot
6 include thermodynamic calculations?

7 A. I have no comment.

8 Q. You don't know either way?

9 A. I do not know.

10 Q. You wrote that using CFD along the entire
11 length of the pipe would not be feasible. Are you
12 aware of anyone that has suggested CFD should be
13 utilized at every foot along a proposed route?

14 A. I am not aware.

15 Q. Would you agree that CANARY doesn't handle
16 terrain and variations in terrain?

17 A. I agree. So FLO-2D was that -- Audubon's
18 kind of fix or work-around to the fact that CANARY
19 doesn't handle variance in terrain. So FLO-2D was
20 Audubon's tool to address CO2 heavy vapor migration
21 over terrain.

22 Q. Okay. Over-land spread model. You know
23 what that is, but just give me the layperson's
24 definition of what "over-land spread model" means.

25 A. So dense phase -- it doesn't have to be

1 dense phase CO2 -- any liquid -- but CO2 heavy vapor
2 can migrate, you know, downhill. It can migrate by
3 gravity from the release point to some other point
4 away from the pipeline center line based upon the
5 elevation of the terrain in the area.

6 So the over-land spray calculation, number
7 one, is an attempt to identify gravity flow pass
8 between the pipeline center line and HCAs, number one.
9 And then number two, if those paths do exist, to
10 simulate the terrain-aided or gravity flow of dense
11 vapor along those paths.

12 Q. Were you aware that FLO-2D solves for waves
13 on surfaces or wave equations?

14 A. FLO-2D is a hydraulic model, yes.

15 Q. You understand that it was initially
16 developed to model mudslides?

17 A. As I said, it's a hydraulic model. It was
18 developed to handle hydraulic flow.

19 Q. Do you think that carbon dioxide travels
20 along the ground like a mudslide or a wave would?

21 A. Does it obey the laws of gravity? Yes.

22 Q. Well, I tell you what. You're doing a
23 great job at asking yourself your own questions, but
24 my question was: Do you think that carbon dioxide
25 travels along the ground like a wave or a mudslide

1 would, yes or no?

2 A. So I answered your question. Obviously, it
3 travels differently, as would water travel along the
4 surface of the ground.

5 Q. In the report you talk about CFD -- or
6 maybe not the report. In your testimony you talk
7 about, "CFD requires an extensive data set that is
8 typically not available at incremental points along a
9 pipeline corridor."

10 Do you stand by that statement?

11 A. Yeah. And so what I'm really getting at
12 there is as the list of -- this doesn't have to apply
13 to CFD, but for any simulation, as the list of input
14 grows, so does the need for making assumptions, right?

15 So every assumption that you make in a
16 model like that takes you a degree of freedom away
17 from reality, in my experience. So when you -- when
18 you're trying to quantify something with such a level
19 of precision, you could be introducing error into the
20 analysis.

21 Again, I'm not speaking directly to CFD,
22 Mr. Jorde. I'm just speaking broadly to simulation
23 and model and the need for data.

24 Q. For the data and input that you utilize to
25 run your modeling that was provided by Summit, did you

1 independently vet or verify that data, or did you
2 simply input it into your software system that you
3 utilized?

4 A. Can you give me an example?

5 Q. Well, I don't know what they gave you. I'm
6 assuming they gave you some inputs relative to, for
7 instance, valve distance, spacing shutoff valves,
8 diameter of pipe, volume, those type of fixed things.

9 A. Yes, sir.

10 Q. Did you independently verify any of those,
11 or did you accept as true the input Summit provided
12 you?

13 A. So our model is based upon the pipeline
14 routing and design drawings as they exist today. So
15 if they told us it was 24 inches, we modeled on 24
16 inches. If they told us the valve spacing is
17 10 miles, the simulation is on 10 miles.

18 What I will say is we spent quite a lot of
19 time modeling and remodeling and remodeling, based
20 upon changes in the pipeline route, pipeline diameter,
21 pipeline pressure, valve spacing, et cetera, et
22 cetera, et cetera.

23 So as the design gets updated, the model
24 changes.

25 Q. Okay. And you said you've done two drafts.

1 Does that include the document that was produced for
2 these proceedings, or is that a third iteration of
3 your modeling?

4 A. No. That includes the documents that have
5 been submitted previously and the documents that are
6 submitted for this hearing.

7 Q. All right. So how often are you updating,
8 based on route changes or modifications?

9 A. I would say over some period of time
10 probably twice a month, right? When I say "updating,"
11 I'm speaking specifically about changing or updating
12 inputs into the CANARY tool.

13 So if the valve spacing changes, the CANARY
14 inputs change, right?

15 Q. For instance, those twice-a-month changes,
16 you're not creating new drafts because we'd have 12
17 drafts or more; correct?

18 A. That's exactly right, yes.

19 Q. Are you familiar with the term "local
20 acceleration" and how that's used in modeling?

21 A. No, sir.

22 Q. What about "diffuse wave"?

23 A. No, sir.

24 Q. What about "convective term," the
25 "convective term"?

1 A. No, sir.

2 Q. Were the calculations you performed steady
3 or unsteady?

4 A. As in terms of --

5 Q. Does that phrase mean anything to you,
6 "steady or unsteady"?

7 A. Steady and unsteady release rates? Steady
8 and unsteady, is what I'm asking.

9 Q. Yes, release rates.

10 A. So the release rates are not -- Well,
11 again, remember, the atmospheric vapor dispersion
12 buffers are based on worst case. Flow rate is one of
13 the inputs, and so the maximum flow rate, which would
14 be at the time of the release, was used to estimate
15 that distance of CO2 concentration at grade.

16 So over time the release rate will
17 decrease, right, and we have every ability to analyze
18 that, but we're looking, remember, at the most
19 conservative case.

20 Q. Do you recollect the release rate pounds
21 per second that --

22 A. I don't. It varies along the pipeline.

23 Q. Would that number or that input be found
24 anywhere in your analysis that you prepared, to your
25 recollection?

1 A. Yes.

2 Q. Okay.

3 MR. JORDE: If I could have staff, please,
4 pull up LO-582, Landowner 582, please.

5 (Brief pause.)

6 MR. JORDE: Thank you.

7 BY MR. JORDE:

8 Q. Sir, we again discussed Quest Consultants,
9 and they have the CANARY program. Are you aware they
10 offer computational fluid dynamic solutions?

11 A. Yes, I am.

12 Q. And would you agree with that first
13 sentence there, the quote, "In some situations the
14 simplifying assumptions made with practical modeling
15 solutions do not apply," end quote?

16 A. Yes. I think it goes on to say -- I think
17 we've already established the fact that Quest is right
18 up front, and they state that CANARY does not handle
19 the effects of terrain as it relates to vapor
20 dispersion modeling for CO2 or other heavy vapors.

21 So they're putting us on notice by that
22 statement that had -- some additional analysis needs
23 to take place here.

24 Q. Would you agree with the statement there,
25 that, quote, "The techniques of computational fluid

1 dynamics, CFD, are required to find solutions to
2 complex problems where other simpler models aren't
3 appropriate," end quote?

4 A. Yeah. And, again, I'll restate what I
5 just -- what I just said. So we recognize the
6 limitations of CANARY, right?

7 It's a hammer. It can deal with a nail.
8 When we get to screws, we need another tool.

9 Q. And your solution, rather than doing a
10 unified computational fluid dynamic analysis, was to
11 utilize two separate softwares by two separate
12 providers; correct?

13 A. So, yes. The over-land flow is a result of
14 a digital elevation model, which is publicly available
15 in Esri, and the FLO-2D model.

16 MR. JORDE: I would offer Exhibit LO-582.

17 (Jorde Landowners Exhibit LO-582 was
18 offered into evidence.)

19 BOARD CHAIR HELLAND: Are there any
20 objections?

21 MR. LEONARD: Objection on foundation
22 grounds, Your Honor.

23 BOARD CHAIR HELLAND: Thank you. The
24 objection is noted.

25 The exhibit will be admitted and provided

1 the weight due.

2 (Jorde Landowners Exhibit LO-582 was
3 admitted into evidence.)

4 MR. JORDE: I would also offer LO-550,
5 which is Mr. Louque's deposition.

6 (Jorde Landowners Exhibit LO-550 was
7 offered into evidence.)

8 BOARD CHAIR HELLAND: Are there objections?

9 MR. LEONARD: No objection.

10 It may already be admitted, but no
11 objection to any of that.

12 BOARD CHAIR HELLAND: Thank you.

13 BY MR. JORDE:

14 Q. Sir, pursuant to --

15 BOARD CHAIR HELLAND: We'll admit it again.
16 Thank you.

17 (Jorde Landowners Exhibit LO-550 was
18 admitted into evidence.)

19 MR. JORDE: Thank you.

20 BY MR. JORDE:

21 Q. Sir, pursuant to your efforts on carbon
22 dioxide modeling, did you utilize or review any
23 studies or any best practices relative specifically to
24 carbon dioxide pipeline modeling techniques as opposed
25 to just hazardous pipelines generally?

1 A. Say that again. I'm sorry.

2 Q. Yes. That's okay.

3 In preparation and throughout the course of
4 your work in performing the functions that Summit
5 hired you to do, did you or anyone on your team
6 review, study or utilize any type of peer-reviewed
7 reports or studies specifically on dispersion modeling
8 techniques related to carbon dioxide?

9 A. So the one report or study that I would
10 offer would be the American Petroleum Institute
11 guidance documents. I'm aware of that document.
12 We've reviewed that document.

13 In addition to those documents, the
14 Satartia -- anything in -- well, what I could find
15 related to Satartia and the causes and shortcomings at
16 Satartia. We reviewed those.

17 We have experience with other CO2 pipeline
18 operators where we have produced vapor dispersion
19 models. We had the benefit of that information.

20 So I think I -- I tried to answer the
21 question.

22 Q. Are you familiar -- Well, certainly you're
23 familiar with the different types of model categories
24 such as integral FD, some of the ones we've been
25 talking about. Those generally are --

1 A. Yes, vaguely.

2 Q. And what about the model names? Are you
3 familiar with SLAB, S-L-A-B?

4 A. Only through the Australian report.

5 Q. And you're there discussing about the
6 Sherpa Consulting result?

7 A. Yes, that's right.

8 Q. All right.

9 MR. JORDE: If we could pull up, please,
10 LO-580.

11 (Brief pause.)

12 MR. JORDE: All right. And then if we
13 could go to page 110, please. If we could just scroll
14 down to the bottom half of the page. Just keep going
15 there a little bit. A little bit further, please.
16 There we go.

17 BY MR. JORDE:

18 Q. So the SLAB model, S-L-A-B, do you agree
19 that the CANARY software package by Quest fits under
20 the SLAB model category?

21 A. That's what it says in this report.

22 MR. JORDE: And then if we could go to
23 page 19, please. Thank you.

24 BY MR. JORDE:

25 Q. Now, in terms of your selection of the

1 potential tools available to perform the worst-case
2 modeling, as you've testified, are you or have you
3 familiarized yourself with a chart like this, and if
4 so, did you utilize it to help select the modeling
5 tools you used?

6 A. So I'm familiar with this chart, and the
7 answer to the second part of your question is no.

8 The date of this report is 2015. It is not
9 state-of-the-art. There have been multiple changes,
10 upgrades, et cetera from CANARY and others to improve
11 their product that is offered in the market.

12 Q. And that may be true, but would you agree
13 with me that the CANARY system also falls under that
14 SLAB category, and the very first row there still has
15 not been updated to provide or account for complex
16 terrain and obstructions; right?

17 A. Yes. I've already stated that.

18 Q. And the answer would be the same? The
19 CANARY model still to this day is not able to account
20 for complex meteorology?

21 A. I can't answer that question. So between
22 today and 2015, I can't answer whether or not CANARY
23 or Quest Consultants has updated their software to
24 handle that particular category.

25 Q. But are you aware that the FD or the fluid

1 dynamic modeling choices for software are, in fact,
2 able to do both of those things; account for complex
3 terrain obstructions and account for complex
4 meteorology?

5 A. That's what it says in their report.

6 Q. Do you have any reason to dispute that,
7 that that's true?

8 A. I do not.

9 MR. JORDE: If we could go to page 108,
10 please.

11 BY MR. JORDE:

12 Q. Do you see there, sir, on Table 8.1 that
13 both PHAST and SLAB are listed in the integral model
14 category?

15 A. Yes.

16 Q. Okay. And does "integral" mean anything
17 specific to you?

18 A. It does not.

19 Q. All right. Do you understand that both
20 PHAST and CANARY assume the Gaussian distribution and
21 that they both suffer from the same weaknesses that
22 we've discussed for inability to deal with complex
23 terrain and then complex meteorology?

24 A. As far as the effects of complex terrain, I
25 understand. Meteorology, I couldn't comment.

1 MR. JORDE: I would offer LO-580, please.

2 (Jorde Landowners Exhibit LO-580 was
3 offered into evidence.)

4 BOARD CHAIR HELLAND: Is there an
5 objection?

6 MR. LEONARD: Yes. Objection on
7 foundation, Your Honor.

8 BOARD CHAIR HELLAND: Okay. The Board will
9 admit Jorde Landowners Exhibit LO-580 and give it the
10 weight due.

11 (Jorde Landowners Exhibit LO-580 was
12 admitted into evidence.)

13 MR. JORDE: This is contained in this
14 report, and I'd also offer LO-581, which is that chart
15 that we discussed previously, a one-pager.

16 (Jorde Landowners Exhibit LO-581 was
17 offered into evidence.)

18 BOARD CHAIR HELLAND: Objections?

19 MR. LEONARD: Same objection.

20 BOARD CHAIR HELLAND: Okay. Thank you.

21 Mr. Jorde, what was the label on it again?
22 Jorde Landowners Exhibit what?

23 MR. JORDE: LO-581.

24 BOARD CHAIR HELLAND: Jorde Landowners
25 Hearing Exhibit 581 will be admitted and given the

1 weight due.

2 (Jorde Landowners Exhibit LO-581 was
3 admitted into evidence.)

4 MR. JORDE: Thank you. If I could have you
5 pull up Exhibit LO-506, please. Thank you.

6 BY MR. JORDE:

7 Q. Sir, have you ever seen Exhibit 506 before
8 or become aware of its existence?

9 A. I've seen this.

10 Q. And have you been made aware that in the
11 South Dakota Public Utility Commission hearings that
12 Navigator, another proposed CO2 pipeline company,
13 decided to release this particular exhibit and make it
14 public?

15 A. Not specifically, but I assume since I've
16 seen it, yes, it's public.

17 Q. All right. And given that Summit has
18 varying sizes in terms of diameter of pipeline,
19 hazardous pipeline proposed for Iowa, did your company
20 do any modeling on 8-inch diameter pipeline?

21 A. Yes, we did.

22 Q. And do you have any disagreement with the
23 hazard distances or the potential release from an
24 8-inch diameter pipeline as shown here to go -- or to
25 travel at least as far as 1,855 feet from the rupture

1 site?

2 MR. LEONARD: Objection, Your Honor.

3 BOARD CHAIR HELLAND: State your objection.

4 MR. LEONARD: Objection based on that's a
5 back-door way of asking what Summit's modeling maps
6 look like, which should be reserved for the
7 confidential section to the Board's order.

8 BOARD CHAIR HELLAND: That's sustained, so
9 let's move your questions to the confidential session.

10 MR. JORDE: All right. Give me a moment
11 here.

12 BY MR. JORDE:

13 Q. Forget the actual distances. Let's not go
14 there right now.

15 Can you tell me, without telling me the
16 quantity or the actual numbers of the inputs, did you
17 model varying rates of wind speed on a guillotine
18 rupture?

19 A. Yes.

20 Q. And did you model varying release rates on
21 a guillotine rupture?

22 A. Yes.

23 Q. And what about release calculation method?
24 Can you just describe what that is?

25 A. What do you mean?

1 Q. Well, when you input data in the model, in
2 the FLO-2D model or CANARY, did it have an ability to
3 have an input of the release calculation, meaning the
4 time of the release of the volume?

5 A. So the release duration is what you're
6 asking?

7 Q. We'll start with that.

8 A. Okay. Yes.

9 Q. And the release direction you also modeled?

10 A. Yes. It was modeled as a guillotine break
11 in the most conservative condition.

12 Q. And did you say that was 5 degrees most
13 conservative, or did we not cover that?

14 MR. LEONARD: Objection. It goes to the
15 content of the confidential material.

16 MR. JORDE: Well, I think he actually gave
17 that answer already, but if you didn't --

18 BY MR. JORDE:

19 Q. Do you recall if we discussed that?

20 A. I've given the answer previously, yes.

21 Q. Because we've already discussed that, I
22 don't need to go further.

23 You did say "5 degrees," correct,
24 previously?

25 A. Yes.

1 Q. All right. And is that release
2 direction -- when you used the word "conservative,"
3 again, it might be a little confusing, or at least
4 I'll speak for myself. When you're saying
5 "conservative," you mean that word to describe actual
6 worst case?

7 A. That's correct, worst case being it defines
8 CO2 concentration maximum distance from center line at
9 grade.

10 Q. What makes you believe that a 5-degree
11 release is worse or more capable of producing a more
12 dangerous event than a vertical release?

13 A. So when we -- So when we're looking at
14 those buffers and we're looking at the extent of
15 potentially impacted receptors, the optimized angle
16 produces the largest distance there for the
17 concentration, whatever that might be; wherever we
18 decide to draw a line or lines on the concentration at
19 grade.

20 Q. And is that true using that 5-degree input?
21 Is that true even if we change the other variables?

22 Are you able to testify that all things
23 being equal, the 5-degree release will across the
24 board generate the worst case?

25 A. In terms of the limits of those buffers,

1 yes.

2 Q. And atmospheric temperature, I think we've
3 talked about that. You modeled that variable; right?

4 A. Yes.

5 Q. And temperature of the CO2 molecules
6 themselves inside the pipe, is that something that you
7 modeled, and if not, why not?

8 A. Yes.

9 Q. Okay. And did you model that across
10 varying temperatures, understanding that the
11 temperature can fluctuate throughout the length of the
12 pipeline?

13 A. I understand the latter, yes.

14 Q. Atmospheric stability class. You're
15 familiar that that is on a gradient of Class A to
16 Class F; correct?

17 A. Yes.

18 Q. With F being described as the most unstable
19 weather conditions?

20 A. I don't think that's right. I think F
21 is -- if I had the chart in front of me, I could
22 state. I just don't want to make sure you got it
23 backwards.

24 Q. Okay. I think you're right. I think A is
25 the most unstable and volatile, and F would be the

1 most calm.

2 A. Most stable.

3 Q. Most stable. And so relative to our
4 discussion on wind speed, would you agree that we
5 would want to model an F-class stability to get to a
6 worst case most likely?

7 A. Yes.

8 Q. All right. And, again, not a trick
9 question, but just because there's less turbulence,
10 there's less wind and less dispersion, right,
11 generally?

12 A. Yes. I'm just -- You know, I'm not trying
13 to be -- I'm not trying to give you a trick answer. I
14 just want to make sure I'm -- you know, I should be
15 disclosing results.

16 Q. Well, I appreciate that. I'm not getting
17 to results. I'm just trying to understand the inputs
18 without even asking you too much detail, but I
19 appreciate that. And then your modeling was focused
20 on a 40,000-parts-per-million concentration; correct?

21 MR. LEONARD: Objection. That does go to
22 content of the confidential documents.

23 MR. JORDE: Okay.

24 BY MR. JORDE:

25 Q. Do you believe that Navigator, in its

1 exhibit that we were looking at earlier, 506, was
2 prudent in selecting 40,000 parts per million in its
3 worst-case analysis?

4 A. So I think there are any number of ways to
5 display the results graphically with the modeling. As
6 I said previously, you have to draw some lines
7 somewhere.

8 The lines all mean different things for
9 different folks, but the 4 percent CO2 concentration
10 is one of the boundaries that I think, you know, most
11 pipeline operators would consider drawing, if that
12 makes any sense.

13 Q. And would you agree that that's because at
14 lower levels, perhaps, we're not as concerned, and
15 that that 4 percent, which equates to 40,000 parts per
16 million, is a level where we're concerned about hazard
17 and risk, and that's why we model that?

18 A. So I will say that that particular value
19 was one that Summit was interested in drawing or
20 displaying.

21 I will say it's not arbitrary, but for me,
22 you know, that wasn't -- like I said, if you want to
23 see a concentration plume versus distance, that's
24 fine. We can do that, but that may not be easy to
25 understand or interpret.

1 Q. And in terms of, you know, a layperson
2 might think, "Well, a 24-inch pipeline, say, in a
3 10-mile span, if we just shut off the valves and just
4 accepted that it was at full capacity as 10 miles by
5 8 inches, that that would be one-third the volume of a
6 24-inch pipeline over the same span."

7 Is it, in fact, true, sir, that the volume
8 in a given pipeline length is not a linear
9 progression? Is that true?

10 A. That is true.

11 Q. And, in fact, in the 24-inch pipeline,
12 which is, obviously, three times 8, there is more than
13 three times the amount of volume and CO2 capacity?

14 A. The volume of any cylinder is proportional
15 to the radius squared times the length.

16 Q. Okay. That's why we've got you here.

17 And so what, then, would be the factor, the
18 multiplier if I wanted to understand the difference in
19 volume between a 24-inch segment and an 8-inch segment
20 with the length being the same?

21 A. In terms of models, that would be your
22 release rate.

23 Q. Okay. But can you just tell me, like, for
24 instance, is it -- you say, "Mr. Jorde, if you had a
25 10-mile 24-inch, you could actually have five times

1 the volume in an 8-inch," I'm curious how to calculate
2 that.

3 A. I'd be speculating if I said anything. I'm
4 thinking about examples, and it's not linear. So --

5 Q. You just told me about the radius-squared.

6 A. It's not linear, but it's not factored of
7 some power. It's somewhere in between.

8 Q. Okay. And I'm a lawyer because I'm not a
9 math guy, so I need your help. I mean, is there --
10 Certainly there's a calculation that should be pretty
11 straightforward. Do you know what that is?

12 MR. LEONARD: Objection.

13 BOARD CHAIR HELLAND: State your objection.

14 MR. LEONARD: Calls for speculation.

15 BOARD CHAIR HELLAND: We're asking the
16 witness to do some fairly complex math in his head on
17 the stand. So if you know the answer, you may answer
18 it, but you don't have to.

19 A. The answer is that's what the modeling
20 tools are working out, okay? So instead of using
21 rules of thumb like we're trying to do here, CANARY is
22 actually telling us, based on the thermodynamics and
23 hydraulics, where those calculations are going to be.

24 BY MR. JORDE:

25 Q. I'll take your word for that. I have a

1 calculator here. I want to know a rule of thumb
2 without getting precise.

3 Is it just the radius-squared? Obviously,
4 we're calculating volumes. This isn't --

5 A. Yeah, but you're trying to infer something
6 about concentration at grade based on volume alone,
7 and that doesn't make any sense.

8 Q. Well, that can be said about me a lot of
9 times, but I'm asking the questions. So forget
10 dispersion. Forget a leak. Forget there's a rupture.

11 I just want to know: How do we figure out
12 the volume in a cylinder between 8-inch to 24-inch?
13 If we know it's greater than three times, how do we
14 figure that out?

15 A. I just -- We just talked about how to
16 calculate the volume of a cylinder. It's a
17 straightforward mathematical that's not directly
18 related to vapor dispersion modeling.

19 Q. I understand that. I'm just at the first
20 part.

21 Radius is half the diameter; right? So we
22 take 4-squared. Does that get us there? Help me out,
23 and then I'll move on.

24 A. This would be pure speculation on my point.
25 There's no reason -- I mean, like I said, the software

1 is working that out. That's the whole purpose of the
2 software, based upon all of the inputs that we've
3 talked about, is to tell us where the CO2 vapor
4 concentration is on the ground.

5 Q. Right, and I'm sorry if you're getting
6 confused. I'm not talking about concentration on the
7 ground. This hasn't even left the pipeline.

8 My question is within the pipeline, just
9 within the cylinder.

10 A. Yep.

11 Q. That's all I want to do.

12 A. Okay.

13 Q. Okay. So remember, 8-inch cylinder, pick
14 the distance -- doesn't matter to me -- and then a
15 24-inch cylinder, same distance as 8-inch. How do we
16 figure out that multiplier?

17 A. The multiplier for when? The ratio of
18 volumes?

19 Q. Yes, sir.

20 A. Well, we've talked about it. So the
21 equation for volume of a cylinder is $\pi R^2 L$.
22 Get your calculator out and do it for the different
23 diameters.

24 Q. Okay. So once we do that, and then we just
25 can figure out, obviously, divide the two, and then we

1 get the ratio; right?

2 A. Of volume, yes, in the pipeline.

3 Q. All right. Very good. See, that wasn't so
4 hard.

5 A. It was not.

6 Q. Okay. Let's see.

7 MR. JORDE: I'm trying to see if I have
8 anything else, Your Honor, before I'm getting too
9 close to the confidential items here. Give me one
10 moment.

11 (Brief pause.)

12 BY MR. JORDE:

13 Q. I think you mentioned that you performed
14 analysis -- dispersion analysis per state on the
15 footprint. Was that true, or was it just a handful of
16 the states?

17 A. We've done the analysis for every mile of
18 this pipeline, to my knowledge.

19 Q. Across the footprint?

20 A. Correct.

21 Q. All right. And would you have, then,
22 utilized specific geographic areas in each state
23 that's specific to a worst-case event per state?

24 A. Per state.

25 Q. Per state. Okay.

1 A. Yes.

2 MR. JORDE: All right. I think I'll pass
3 and reserve the balance for confidential session.

4 BOARD CHAIR HELLAND: Okay.

5 Mr. Meyer?

6 CROSS-EXAMINATION

7 BY MR. MEYER:

8 Q. Good afternoon, sir.

9 A. Good afternoon, Mr. Meyer.

10 Q. I don't have nearly as many questions, and
11 I hope I can ask them in a way that we can stay here
12 and stay on the record here as we are.

13 A. Okay.

14 Q. Looking at your rebuttal testimony on
15 page 7, you were addressing some of, I guess,
16 Mr. Craighton's testimony, and I wanted to ask about
17 some of the pressure that you mentioned in your answer
18 on page 7.

19 A. Okay.

20 Q. You say the maximum operating pressure
21 is -- you say in Hardin County is 2,183 PSIG. I know
22 what PSI is, pounds per square inch. What's the G
23 for? Gas?

24 A. Gauge.

25 Q. What's that?

1 A. Gauge. It subtracts atmospheric pressure
2 from the pressure in the line.

3 Q. Do you know if that maximum pressure for
4 that figure, that 2,183, is the maximum structural
5 integrity of the proposed pipeline?

6 A. It is not.

7 Q. I would assume it's less?

8 A. It is less.

9 Q. Is the -- Just generally speaking, because
10 I don't know if they would consider the structural
11 integrity as confidential information, but does that
12 structural integrity increase or decrease when you go
13 from a 6- to 8- to 24-inch pipe, or is it the same?

14 A. So when you look at allowable stress in any
15 cylinder, the outside diameter is part of the
16 equation, and it's in the denominator. So as the
17 diameter increases, the maximum pressure that that
18 cylinder will supply decreases or cylinder will hold
19 decreases for a given -- all else being the same in
20 that equation, all right?

21 So for a given wall thickness, for a given
22 grade, et cetera, et cetera.

23 Q. So the structural integrity of a 6-inch
24 pipe is going to be less than the structural integrity
25 of a 24-inch pipe?

1 A. No, that's not the case. So when you're
2 calculating the maximum -- the design pressure or the
3 maximum pressure or the burst pressure, which all tend
4 to kind of line up, it's a function of the allowable
5 stress of the material. It's a function of the wall
6 thickness, and it's a function of the OD.

7 So I can manipulate. So if I know I've got
8 larger pipe and I want to be able to operate at a
9 certain pressure, I can use materials that exhibit
10 higher allowable stresses. I can increase wall
11 thickness to get to that pressure.

12 Does that make sense?

13 Q. So far. So for your model, did you use
14 what Summit is claiming for an operating pressure?

15 A. Yes.

16 Q. Or the structural integrity pressure?

17 A. The MOP. So the MOP, it's not an arbitrary
18 number. Think of it as the speed limit in terms of
19 pressure.

20 So every pipeline in this country, whether
21 it's gas or liquid, has an MAOP or MOP. Pipeline
22 operators are obligated not to exceed that pressure.
23 They can never operate above that MOP.

24 Q. On my car it will go higher than 55, even
25 though I'm not supposed to.

1 A. Right, right.

2 Q. So what we're asking about is: What
3 happens when I go over 55 by human error or structural
4 error or some failure?

5 I'm wondering, would you be able to run a
6 model using the structural maximum tolerance? Because
7 when it blows, it isn't going to be 55 that causes the
8 problem. It's going to be when I'm going 90.

9 A. Yeah. So there are measures -- I'm going
10 to try and answer your question. Anything's possible,
11 all right?

12 But there are measures and provisions on
13 this pipeline and any pipeline that protect that MOP
14 over pressure protection, right? So you might be able
15 to go higher than 55, but the UPS truck next to you
16 has a governor on it that limits it to 55 no matter
17 how hard you press the accelerator.

18 Q. I get it. We're trying to avoid speeding,
19 but if the folks in Hardin County want to be prepared
20 for the worst possible scenario, shouldn't we expect
21 the pipe to blow at its structural failure?

22 A. No.

23 Q. Why not?

24 A. So, I mean -- so remember, the MOP, it
25 includes some safety factor, which is based upon -- so

1 some design factor; right? And that MOP is based --
2 also based upon I put a half-inch-thick wall in the
3 pipe and wall thickness in the ground, and I got a
4 half-inch wall thickness pipe in the ground, right?
5 That's not always the case.

6 So the whole purpose of the MOP is to
7 provide some margin of safety between the operating
8 pressure and the burst pressure between which the
9 operator is obligated to protect that number. That's
10 why we can't exceed it, right?

11 And also to assess at the same time to make
12 sure that on Day 365 that that pipeline is in the same
13 condition as it was on day one, right? So MOP, it's
14 something -- it's your speed limit.

15 There's a safety factor between there and
16 burst pressure. We never want to get to burst
17 pressure regardless.

18 So if we're doing a laboratory experiment,
19 then I think the answer to your question is yes, this
20 is actually taking steel out and putting it in the
21 ground and operating.

22 Does that make sense?

23 Q. I understand you want to pick and choose
24 the numbers you input, but let's input the worst-case
25 scenario, because you haven't done that yet, have you?

1 A. We haven't used the burst pressure.

2 Theoretically, again, you would never --

3 Q. You could; right?

4 A. You would never exceed the MOP. That's why
5 it's there.

6 Q. But you could run that model?

7 A. Sure. We can input any pressure.

8 Q. Why don't you use the rupture pressure?
9 Take out the word "why."

10 Would you please run the rupture pressure
11 for Hardin County so we can prepare for that --

12 A. So I've stated several times that we've
13 used the most -- you know, this is a conservative
14 approach. The most conservative pressure number to
15 input into this model is the MOP.

16 Not all parts or segments or feet of this
17 pipeline will see 2183, all right, a less
18 conservative.

19 Q. Do you think --

20 A. Go ahead.

21 Q. Would it be your -- Drawing by analysis
22 here, should the Transportation Department create
23 safety seat belts that will succeed up to 55 miles per
24 hour, but beyond that, they're just going to fall
25 apart?

1 A. Yeah. I'm not going to follow that.

2 Q. That's what you're expecting --

3 BOARD CHAIR HELLAND: Mr. Meyer, make sure
4 we're not speaking over each other. We have to make
5 sure the record is clean. Make sure we're finishing
6 our sentences.

7 THE WITNESS: Okay.

8 A. So the worst-case pressure that this
9 pipeline will ever see under the 195 rules, laws is
10 2183, and that's the number that we're using for the
11 vapor dispersion model.

12 BY MR. MEYER:

13 Q. You can't guarantee it's going to operate
14 within the law, can you?

15 A. It's an engineered piece of equipment,
16 right, that's designed to operate at that pressure.

17 Q. And there's a saying for equipment. If you
18 use it, it will break.

19 A. Yeah. I'm not sure where you're going with
20 this, but, you know, the safety factor that's built
21 into this for the design margin is there to protect
22 against some of the things that you're talking about.

23 Q. On paper it works perfectly?

24 A. I've got no comment to that.

25 Q. In your 30 years of experience with

1 pipeline integrity, would you agree that fail points
2 are at joints or elbows in the line?

3 A. No, I would not agree.

4 Q. So the number of -- So asking Summit to
5 turn more here or there isn't going to create more
6 safety concerns, in your opinion?

7 A. That's correct.

8 MR. MEYER: I have no other questions.

9 BOARD CHAIR HELLAND: Thank you.

10 Mr. Whipple?

11 CROSS-EXAMINATION

12 BY MR. WHIPPLE:

13 Q. Just one question for the open session for
14 you, Mr. Louque.

15 Do you happen to know what the actual
16 pressure was in the Satartia incident when it
17 ruptured?

18 A. I do not. I do know that it was a dense
19 phase CO2 pipeline, and it was probably Class 900,
20 which would have given them the option to operate at
21 pressures similar to this pipeline, but in terms of
22 what they were operating at, I have no idea.

23 Q. But just to refer to the question a moment
24 ago from Mr. Meyer, can you be certain that they were
25 operating within the maximum operating pressure --

1 A. Yes.

2 Q. You can be certain of that?

3 A. Yes. If they had exceeded MOP, that would
4 have been in the accident report. They would have
5 paid fines. It would have been really, really not
6 good for them.

7 MR. WHIPPLE: Okay. That's all I have for
8 the non-closed session, Your Honor.

9 BOARD CHAIR HELLAND: Thank you.

10 Ms. Gruenhagen?

11 MS. GRUENHAGEN: I believe Mr. Taylor's
12 tent was up first.

13 BOARD CHAIR HELLAND: Oh. He was on my
14 list first. Sorry.

15 Mr. Taylor?

16 MR. TAYLOR: I didn't know I was on your
17 list.

18 CROSS-EXAMINATION

19 BY MR. TAYLOR:

20 Q. You've mentioned guillotine ruptures or
21 guillotine cuts. If a pipe wears out or it's corroded
22 or there's some pressure put on it that's more than it
23 can handle, would it always be a guillotine rupture,
24 or is there some other type of rupture it might be?

25 A. There are other failure modes to your

1 point, sir.

2 Q. So why do you just talk about a guillotine
3 rupture?

4 A. Because we're talking about conservative --
5 we're talking about a conservative approach here.
6 We're talking about impacting the largest number of
7 receptors.

8 Q. Okay. So a guillotine rupture would give
9 you the worst-case scenario?

10 A. Yes, sir.

11 Q. Okay. Got it.

12 A. Okay.

13 Q. I have seen videos of a CO2 rupture, and it
14 looks like there's a big, white plume that comes out
15 first, and then it goes down to the ground. Then as
16 it gets farther out, it becomes less colorful, shall
17 we say.

18 Is that how you envision it?

19 A. No, sir. I think some of those videos that
20 are out there that you're referring to are actually
21 water or water vapor. So I -- I hesitate to
22 speculate, but what -- so I'll leave it at that.

23 Q. Okay. Well, the one I saw was from DNV,
24 which is a reputable firm.

25 A. Yeah. I think I would reserve that

1 question for John Godfrey and let John answer that
2 question.

3 Q. All right. So what do you envision a CO2
4 plume and dispersion would look like?

5 A. So what it would look like? It would be
6 really loud, right? Jet release. It would be really
7 loud. It would be really disruptive.

8 You've got the cooling effect going on
9 there, so any water vapor that was in the air in the
10 vicinity. So water vapor would be what you see coming
11 out of the stacks of power plants, right? You would
12 start to see water vapor form in and around the area.

13 And then you would -- there would be some
14 presence or visual presence of dense phase or dense
15 vapor -- sorry -- CO2 component. You would probably
16 also -- Well, there would also be some solid particle
17 fallout, right, from the cooling effect on the CO2
18 itself.

19 Beyond that, I'm guessing.

20 Q. Okay. One final topic here.

21 Depending on where the rupture is on the
22 pipe, would the angle of the release be different? In
23 other words, it might come straight up, or it might
24 come out at an angle.

25 Does that affect the dispersion modeling?

1 A. Yes, sir. The angle of the leak does
2 impact the CO2 dispersion.

3 Q. Okay. And then that's something you take
4 into consideration in your modeling?

5 A. Yes, sir.

6 MR. TAYLOR: Okay. Thank you. That's all
7 the questions I have.

8 BOARD CHAIR HELLAND: Thank you.

9 Ms. Gruenhagen?

10 MS GRUENHAGEN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. GRUENHAGEN:

13 Q. I just have two quick questions.

14 A. Sure.

15 Q. First, I assume the answer is yes to this,
16 but will Summit's Integrity Management Plan include
17 high-consequence areas?

18 A. Yes. All pipeline operators' plans will
19 include high-consequence area identification.

20 Q. Will their Integrity Management Plan
21 include any non-high-consequence areas along the
22 route?

23 A. I'm going to split hairs here. When you
24 look at the 195 Code, high-consequence areas and
25 integrity management are synonymous. You can't

1 separate them, okay?

2 There are other -- I hate to even say this.

3 There are other assessments or other integrity-type

4 assessments that do have to be performed outside of

5 high-consequence areas. Those assessments are

6 brand-new as a result of the Mega Rule, so within the

7 last year that became part of a law.

8 Q. So as far as the integrity management -- Go
9 ahead.

10 A. The last thing I'll say -- and this is
11 where I'm splitting hairs -- all of that is covered.
12 So non-ACA is covered under operations and
13 maintenance. HCAs is under the integrity management
14 section.

15 MS. GRUENHAGEN: Thank you.

16 BOARD CHAIR HELLAND: Thank you.

17 Ms. Ryon, I'm sorry. I didn't see your
18 name tag behind Mr. Whipple. Go ahead.

19 MS. RYON: That's okay.

20 CROSS-EXAMINATION

21 BY MS. RYON:

22 Q. I just have a couple quick questions
23 Mr. Taylor asked about. He had asked about other
24 types of ruptures, and I was interested in finding out
25 specifically if you had run any drafts using a running

1 ductile fracture.

2 A. So that was not part of our scope of work.
3 The worst case that we've identified would be the
4 guillotine break.

5 Q. So it would be your contention that a
6 guillotine break would create a worst-case scenario;
7 it would be worse than a running ductile fracture?

8 A. Yes, ma'am.

9 MS. RYON: Thank you.

10 BOARD CHAIR HELLAND: Any other questions
11 from the parties before we go into confidential
12 session?

13 MR. JORDE: Yes. I have a couple I forgot.
14 I'm sorry. It will be quick.

15 BOARD CHAIR HELLAND: Hold on. Go ahead.

16 MR. JORDE: Okay.

17 RECROSS-EXAMINATION

18 BY MR. JORDE:

19 Q. Sir, do you agree that if it's reasonable
20 for a landowner, who is being asked to sign an
21 easement that would host this hazardous pipeline, that
22 they have in hand, in order to make an informed
23 decision, your worst-case analysis that you prepared
24 for your client?

25 A. I'm not going to speculate there.

1 Q. You don't have an opinion either way?

2 A. No, I don't.

3 Q. Okay. We touched a little bit on risk
4 avoidance. Are you generally familiar with these
5 concepts: Risk avoidance, risk management, event
6 response?

7 A. So the first two absolutely. "Event
8 response" could mean multiple things to me.

9 Q. And would you agree that risk -- in looking
10 at risk avoidance, one could utilize air dispersion
11 and plume programs to minimize the collective impact
12 and utilize that in routing as to avoid many of the
13 at-risk areas?

14 A. In my -- What I consider "risk avoidance"
15 would not encapsulate what you're talking about. So
16 risk avoidance are the physical barriers that we can
17 put in place to prevent an event from even happening.

18 Q. So to be clear, you don't believe that
19 selecting a location of a hazardous pipeline is a
20 variable in risk avoidance?

21 A. I'm trying to be -- I'm trying to answer
22 your question.

23 You know, so risk avoidance would be if I
24 want to put barriers in place to make sure this never
25 happens; like, increasing wall thickness. That's a

1 risk avoidance strategy, okay?

2 Q. I totally get that. I just want to pin you
3 down here.

4 The way you look at the concept of avoiding
5 risk or risk avoidance does not include where to or
6 where not to locate a pipeline; you're talking about
7 after-the-fact variables?

8 A. No. It's not -- It wouldn't include where
9 to locate a pipeline. Risk avoidance are those things
10 that we can do to make sure or to lower the
11 possibility of anything ever -- any event ever
12 happening.

13 Does that make sense?

14 Q. But those factors, such as wall thickness
15 or valve spacing, those are all after a pipeline,
16 obviously, is located and exists?

17 A. There are several -- There are several risk
18 avoidance strategies that are available, and there are
19 several risk management strategies that are also
20 available.

21 I think the risk, in my -- If you want my
22 opinion, risk avoidance has everything to do with the
23 pipeline itself in the design phase. You may be
24 getting into risk management with some of the things
25 that you're talking about.

1 Q. Well, what I'm talking about is the
2 existence and the decision on where or where not to
3 locate a hazardous pipeline. From your perspective,
4 you don't put that in the risk avoidance category?

5 A. That's a good question for Kent Muhlbauer.

6 Q. Since you're here, is it true that you
7 don't put that in the risk assessment category?

8 A. I agree with you.

9 Q. All right. Thank you.

10 MR. JORDE: Thank you, Chair. That's all.

11 BOARD CHAIR HELLAND: Okay. So a couple --
12 I'm sorry. A couple quick things before we break.
13 We're going to start at 8:30 tomorrow.

14 For planning purposes, I need to get an
15 idea from the parties of how long we'll be in
16 confidential session, and obviously, we don't need to
17 be rigid about it. I need to get an idea of how long
18 we need for confidential.

19 MR. JORDE: Your Honor, I think I have at
20 least one hour, which probably means more, but that's
21 the best I can give you right now.

22 MR. WHIPPLE: Your Honor, I would
23 anticipate 10, 15 minutes.

24 BOARD CHAIR HELLAND: So about par for
25 where we've been on most questions.

1 (Brief pause.)

2 BOARD CHAIR HELLAND: I guess for Summit,
3 would it make more sense to send Mr. Louque home --
4 relieve him for the day and move on to the next
5 witness and then come back into confidential session
6 tomorrow?

7 MR. DUBLINSKE: Mr. Leonard and I
8 haven't had a chance to talk about it or think about
9 that.

10 BOARD CHAIR HELLAND: Do you want 15
11 minutes to think about that? We can be back here in
12 15 minutes.

13 We're going to take a 15-minute break right
14 now anyway, so let's just come back in 15 minutes.
15 We'll be here shortly before 5 o'clock.

16 (Recess taken.)

17 (Discussion was held off the record.)

18 BOARD CHAIR HELLAND: With that, we'll go
19 back on the record at 5 o'clock.

20 MR. LEONARD: Thank you, Your Honor.
21 Summit calls Dr. Michael Lumpkin.

22 BOARD CHAIR HELLAND: Good afternoon,
23 Dr. Lumpkin. Go ahead and raise your right hand.

24

25

1 MICHAEL LUMPKIN,
2 called as a witness by Summit Carbon Solutions, LLC,
3 being first duly sworn by Board Chair Helland, was
4 examined and testified as follows:

5 BOARD CHAIR HELLAND: Thank you. Make sure
6 you are speaking into the microphone. Move the mic
7 wherever you need it. Don't be shy with it.

8 MR. LEONARD: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. LEONARD:

11 Q. Are you the same Michael Lumpkin that
12 caused to be filed rebuttal testimony in this docket?

13 A. I am.

14 Q. If I asked you those same questions in your
15 testimony today, would your answers be substantially
16 the same?

17 A. They would.

18 Q. Do you have any modifications or
19 corrections to make to your prefiled testimony?

20 A. I have one.

21 Q. Can you tell us what that correction is,
22 please?

23 A. On page 7 of my prefiled testimony, I have
24 a typo that needed to be corrected. It is in regard
25 to the definition of the IDLH.

1 There's a typo that says "60 minutes." It
2 should be "30 minutes."

3 MR. LEONARD: For the benefit of Board
4 staff, look at line 18, I believe.

5 BOARD CHAIR HELLAND: Lines 18 and 19?
6 What was that correction?

7 THE WITNESS: On line 19 the correction
8 should be 30 minutes from 60 minutes.

9 BOARD CHAIR HELLAND: Okay. Thank you.

10 MR. LEONARD: Your Honor, I move the
11 admission of the Lumpkin rebuttal testimony.

12 BOARD CHAIR HELLAND: Are there any
13 objections, other than Mr. Jorde's standing
14 objections?

15 (No response.)

16 BOARD CHAIR HELLAND: Okay. It will be
17 admitted and given the weight due.

18 MR. LEONARD: We tender the witness for
19 cross.

20 BOARD CHAIR HELLAND: Mr. Taylor.

21 MR. TAYLOR: Thank you.

22 CROSS-EXAMINATION

23 BY MR. TAYLOR:

24 Q. I'm Wally Taylor, and I represent the
25 Sierra Club. At least part of your rebuttal takes

1 issue with our witness, Dr. Ted Schettler; is that
2 correct?

3 A. That is correct.

4 Q. First of all, looking at your testimony on
5 page 4 starting at line 11, you indicate that
6 high-level CO2 can be toxic to humans; is that
7 correct?

8 A. That is correct.

9 Q. And it's also an asphyxiant, is it not?

10 A. I'm sorry. What was that again?

11 Q. It's also an asphyxiant, is it not?

12 A. At sufficiently high concentrations, yes.

13 Q. And if I read your testimony correctly,
14 your only criticism of Dr. Schettler revolves around
15 your assertion that he's relying on outdated studies
16 or information; is that correct?

17 A. Partially.

18 Q. And your basis for saying that he's relying
19 on outdated information is based on a 2022 study that
20 you cite by Rutger van der Schrier and others;
21 correct?

22 A. That's the primary study on which I rely,
23 yes.

24 Q. That's the only one you mentioned. That's
25 why I said "the only one."

1 That's the only one you mention in your
2 testimony, isn't it?

3 A. That is correct.

4 MR. TAYLOR: Can we bring up Sierra Club
5 Exhibit 12?

6 BY MR. TAYLOR:

7 Q. Okay. Is that the van der Schrier study?

8 A. Yes, that's it.

9 Q. Okay. And it's my understanding that this
10 study was sponsored or commissioned by Shell Global
11 Solutions; is that correct?

12 A. That's my understanding as well.

13 Q. Okay. And, in fact, one of the authors of
14 the study -- I'm not sure I can pronounce the man's
15 name, but he is a Shell Global Solutions employee?

16 A. Looking at the study that's on the screen,
17 I see that there's an affiliation. One of the authors
18 does have an affiliation with Shell Global Solutions.
19 I can't remember who it is off the top of my head.

20 Q. Okay. And this study was basically using
21 some humans and some rats; correct?

22 A. That's correct.

23 Q. And they were exposed to increasing levels
24 of CO2 concentration?

25 A. That's correct.

1 Q. Let's go to page 2 of Exhibit 12, and at
2 the bottom of the page on the right-hand column, 2.2.
3 In talking about the participants, it says, "Healthy
4 male volunteers were recruited to participate in the
5 study. Inclusion criteria were age 18 to 25 years,
6 body mass index in the range of 18 to 25 kilograms per
7 square meter with body weight between 50 and 100
8 kilograms."

9 Are you able to translate that into English
10 numbers?

11 A. Well, the study design was intended to look
12 at a large group of individuals as test subjects. I
13 think they were trying to get the group to be as
14 homogeneous as possible for making comparisons.

15 Q. Well, my question was: The body mass
16 index, does this indicate that these participants were
17 not overweight? They were of average build?

18 A. That's correct.

19 Q. And they had an absence of any significant
20 medical, neurological or psychiatric illness; correct?

21 A. Correct.

22 Q. The next page on the top left. "Exclusion
23 criteria were: A history of panic disorder; a history
24 of hypertension; present or a history of any illicit
25 drug use; present or a history of alcohol abuse;

1 smoking of more than ten cigarettes per day;
2 participation in a drug trial in the last three months
3 prior to screening; any physical abnormalities as
4 determined by an independent physician; or any other
5 issue/condition that in the opinion of the
6 investigator would complicate or compromise the study
7 on the well-being of the subject."

8 So boiling all of this down, these were
9 young, healthy individuals with no medical history
10 particularly, didn't smoke more than ten cigarettes a
11 day, and had no other physical abnormality.

12 So it was a very focused type of
13 participant, wasn't it?

14 A. Yes, it was.

15 Q. And the type of participant that would
16 probably withstand CO2 exposure in higher levels than,
17 perhaps, what we would call the ordinary person?

18 A. Well, not necessarily.

19 Q. But if an elderly person were exposed, that
20 would be a different situation than these young
21 participants; correct?

22 A. If an elderly person were part of the
23 study, it would be -- they would biologically be
24 different from this group.

25 Whether or not that would play out into a

1 different result is -- that's not necessarily true.

2 Q. But we don't know, do we?

3 A. We don't, no.

4 Q. And on the lower right-hand part of that
5 same page, it says, "The CO2 exposure ended when the
6 intended duration of the experiment was reached, in
7 case stopping rules were met, upon request of the
8 subject, or upon judgment of the attending physician."

9 So there was some variance in when the
10 exposure ended, depending on various participants;
11 correct?

12 A. That is correct, yes.

13 Q. And on page 4 at the top left, after the
14 CO2 exposure, the participants were given what's
15 called a p-deletion test; correct?

16 A. I'm sorry. Could you repeat the question?

17 Q. Sure. This is Section 2.2.6. It says that
18 after the CO2 exposure the participants were given
19 what was a modified p-deletion test?

20 A. Yes, that's correct.

21 Q. Okay. And a p-deletion test means that the
22 subject is shown a line of letters with the letter P
23 randomly interspersed; correct?

24 A. Correct.

25 Q. And the test is how accurately they can

1 determine the Ps and delete them; correct?

2 A. That's correct.

3 Q. And this test does not test the ability to
4 think or to analyze or to make decisions; correct?

5 It's used to measure how fast and how accurately you
6 can take those Ps out of there, but it doesn't measure
7 reasoning ability; correct?

8 A. Well, indirectly it does. It is -- It's
9 designed to determine whether or not visual acuity and
10 mental recognition of patterns has been compromised.

11 Q. But that doesn't take any reasoning or any
12 thinking or any decision-making, does it?

13 A. It's no complex decision-making, no.

14 Q. Not the kind of decision-making you would
15 need, if you were actually exposed to CO2 in the real
16 world and had to make a decision on what to do;
17 correct?

18 A. I'm not sure I'm following the question.

19 Q. The p-deletion test doesn't measure the
20 kind of reasoning or decision-making ability a person
21 would need if they were exposed to CO2 in the real
22 world and had to make a decision on, you know, whether
23 to run, whether to shelter in place, whether to call
24 somebody? You know. Those kinds of reasoning
25 decisions? It doesn't measure that, does it?

1 A. Yeah. I'm not familiar with it being
2 associated with that type of decision-making.

3 Q. Right. And as far as the rats are
4 concerned -- this is on page 4, bottom left -- it
5 says, "Animals that appeared in discomfort or moribund
6 (for example, gasping) prior to the end of the CO2
7 exposure were taken out of the inhalation box and
8 euthanized."

9 So that doesn't really measure the impact
10 on humans, does it, if they're taking the rats out as
11 soon as they appear in discomfort or are moribund?

12 A. Well, the purpose of stopping the
13 individual rat trials early was to try and minimize
14 inhumane testing on the animals. The data had been
15 collected at that point, and then there would be
16 postmortem exams done on the rat tissues.

17 Q. And then I'm looking at page 4 in the lower
18 right under 2.4. We have it up there already.

19 It says, "No formal data comparisons were
20 performed as this was an exploratory study.
21 Additionally, group numbers were small, comparisons
22 were hampered by data loss from a discontinuations
23 (human study) or premature death (animal study) and
24 concentration-effect relationships were evident,
25 making a post hoc comparison less relevant."

1 So that sounds like there was a lot of
2 uncertainty in the test and that the data wasn't
3 particularly valuable.

4 A. I would disagree with that. The
5 description there of not performing post hoc analysis
6 refers to statistical comparisons between the groups.

7 So the purpose of the study, as I
8 understand it and in my opinion, was to look at the
9 grade of various physiological effects on both humans
10 and rats with escalated CO2 exposures. So they
11 weren't looking at, for example, the difference
12 between exposure and non-exposure in which a
13 statistical comparison would have been more useful.

14 Q. And then on page 12 -- is that page 12? Go
15 back up to the top again. Yes. Okay.

16 On the left-hand column there it says,
17 "When individuals are exposed to an excess of CO2 in
18 ambient air, an important question is at what levels
19 of CO2 inhalation does the human body maintain its
20 ability to adequately function to, for example, escape
21 from the incident scene or to perform a cognitively
22 challenging task. An answer to this question is not
23 only dependent on the results of our current study in
24 healthy young volunteers but is certainly also
25 dependent on the age and more importantly the physical

1 condition of the exposed individual as well as
2 presence of underlying cardiac or pulmonary disease."

3 So there's a lot of factors that are
4 written in there, aren't there?

5 A. The study authors point out that the data,
6 while very comprehensive with the data study group
7 both in humans and the rats, there are -- in their
8 discussion they mention there are uncertainties of how
9 some of this data can be extrapolated to other
10 individuals of various age or various health
11 conditions.

12 Q. The van der Schrier study refers, among
13 others, to a 2014 study by Gill and others. Are you
14 familiar with that study?

15 MR. TAYLOR: Let's call up Exhibit 13.

16 A. Is this the question still asked, am I
17 familiar with this study?

18 BY MR. TAYLOR:

19 Q. Yes.

20 A. Yes.

21 Q. And if we go to page 2, it says this study
22 involves 16 male volunteers from among local certified
23 scuba divers or people who had previous
24 hypo/hyperbaric chamber experience at the laboratory.

25 So, again, this was some fairly healthy

1 individuals; correct?

2 A. That's correct.

3 Q. And they use a cognitive function test
4 called the auditory n-back test, which measures the
5 response to long and short sounds. Is that a fair
6 statement of that test?

7 A. Yeah, conceptually that's what that test
8 looks for.

9 Q. And the result was farther down where it
10 says, "Determination of the highest tolerable inspired
11 CO2 limit." It says, "There was wide variability of
12 CO2 tolerance among the subjects."

13 So we don't really get a very firm
14 response, do we, or a firm result?

15 A. Well, it depends on what you mean by "firm
16 result."

17 Q. That different individuals had different
18 responses to the CO2.

19 A. That's correct, yes.

20 Q. In fact, on page -- Well, it's page 409.
21 This came out of another journal, I guess. It would
22 be at the top of the page, the page number. There it
23 is.

24 Down at the bottom right-hand column, it
25 says, "Individual tolerance for" -- is that -- "PI-CO2

1 varied widely among our subjects, suggesting that CO2
2 exposure safety cannot be characterized by a single
3 value"; is that correct?

4 A. That is what this study says, yes.

5 Q. And then pull up Exhibit 14. This is from
6 the National Academy of Sciences.

7 Is that a document you're familiar with?

8 A. It is, yes.

9 Q. It looks like it's from 2007, if you look
10 at the title?

11 A. Yes.

12 Q. On page 48, which is actually page 4 of the
13 document, it talks about some studies showing that CO2
14 causes a variety of effects ranging from non-specific
15 signs and symptoms such as tremor, dyspnea,
16 intercostal pain and headache to cardiovascular and
17 CNS defects. What are "CNS effects"?

18 A. Effects on the central nervous system.

19 Q. Thank you. It says, "Tremor was noted at a
20 CO2 concentration of 60,000 parts per million," and,
21 "It was also noted in 10 of 12 subjects exposed at
22 7,000 to 14,000 parts per million for 10 to 20
23 minutes."

24 So based on your testimony, 7,000 to 14,000
25 parts per million would be a fairly low concentration,

1 wouldn't it?

2 A. It would be a fairly low concentration
3 relative to the exposures that have been tested in
4 other studies, yes.

5 Q. And it says that dyspnea is a commonly
6 recorded endpoint and can be induced by acute
7 exposures of CO2 at greater than 30,000 parts per
8 million.

9 First of all, what is "dyspnea"?

10 A. The for -- I want to make sure we're
11 looking at the right text.

12 Q. Let's go to the next page. There you go.

13 A. So dyspnea is an umbrella term for
14 subjective breathing difficulties, and it can range
15 from something as mild as rapid breathing up to chest
16 pain, breathlessness, things like that and anywhere in
17 between.

18 It's typically subjective, so there's not a
19 specific clinical measure of it.

20 Q. Is it fair to say that it's subjective in
21 terms of its degree, but you can tell objectively if
22 somebody has dyspnea at some level?

23 A. Not necessarily. It's subjective in terms
24 of how the patient or the participant describes it.

25 If I describe myself as feeling having

1 dyspnea, that may be very different from how you or
2 someone else would describe it.

3 Q. Okay. And I had Exhibit 15, but your
4 correction that you made in your testimony took care
5 of that.

6 It's 30 minutes rather than 60 minutes?

7 A. That's correct.

8 Q. And so you are basing your rebuttal
9 testimony on Dr. Schettler's direct testimony;
10 correct?

11 A. That is correct. More to my rebuttal than
12 just Dr. Schettler's testimony, but yes, I do address
13 his direct testimony.

14 Q. I understand there was more to your
15 rebuttal testimony than that, but I'm just focusing on
16 Dr. Schettler. And Dr. Schettler was using the
17 accepted National Institutes of Health level, was he
18 not?

19 A. He used several values, one of which was
20 the NIOSH IDLH.

21 Q. Right. Okay. And NIOSH is a government
22 agency?

23 A. It's a government-funded research group.
24 It's the research arm of OSHA.

25 Q. Okay.

1 MR. TAYLOR: I think that's all I have. I
2 would offer into evidence Dr. Ted Schettler's
3 testimony and Exhibit 1.

4 BOARD CHAIR HELLAND: We'll do the
5 testimony when it comes to the stand, but do you want
6 to do the exhibit [sic] now? Direct Exhibit. Sorry.

7 MR. TAYLOR: I guess my basis for offering
8 his testimony in at this time is that Dr. Lumpkin has
9 relied on it. He's testified about it. It seems like
10 it should come in on that basis.

11 (Schettler Direct Exhibit 1 was offered
12 into evidence.)

13 BOARD CHAIR HELLAND: Are there objections?

14 MR. LEONARD: No objection, Your Honor.

15 BOARD CHAIR HELLAND: So we will admit the
16 testimony and the exhibit and give it the weight due.

17 (Schettler Direct Exhibit 1 was admitted
18 into evidence.)

19 MR. TAYLOR: Okay. Thank you.

20 BOARD CHAIR HELLAND: Okay.

21 MR. TAYLOR: That's all the questions I
22 have.

23 BOARD CHAIR HELLAND: Okay. Very good.

24 Mr. Taylor, just to clarify that's not the
25 hearing exhibits. Did you want the hearing exhibits

1 admitted, too?

2 MR. TAYLOR: Yes, I'm sorry. Thank you.

3 (Sierra Club Hearing Exhibits 12 through 15
4 were offered into evidence.)

5 BOARD CHAIR HELLAND: No problem. Is there
6 objection?

7 MR. LEONARD: No objection, Your Honor.

8 BOARD CHAIR HELLAND: The Board will admit
9 the hearing exhibits and give it the weight due.

10 (Sierra Club Hearing Exhibits 12 through 15
11 were admitted into evidence.)

12 BOARD CHAIR HELLAND: We've still got a
13 half hour, if anybody wants to use it.

14 MR. JORDE: Five minutes. One minute
15 maybe, honestly.

16 BOARD CHAIR HELLAND: Go ahead, Mr. Jorde.

17 MR. JORDE: Thank you.

18 Along the same lines Jorde Landowners will
19 offer Exhibit LO-479, 480, 481. Those are the Sheri
20 Deal-Tyne exhibits that this witness relied upon,
21 rebutted and discussed; and then the same with 483 and
22 484. Those are the Carolyn Raffensperger exhibits for
23 the same arguments.

24 BOARD CHAIR HELLAND: Will you run through
25 those numbers again?

1 MR. JORDE: Yes. 479, 480, 481, 483 and
2 484.

3 (Jorde Landowners Hearing Exhibits 479,
4 480, 481, 483 and 484 were offered into evidence.)

5 BOARD CHAIR HELLAND: Okay. Any objection?

6 MR. LEONARD: We will object to foundation,
7 Your Honor. My understanding is we were going to
8 admit those as the witness testified.

9 MR. JORDE: And my response is they can't
10 possibly call a rebuttal witness to rebut testimony
11 without the testimony even being in. So this was
12 their strategy. This was what they wanted to do.

13 He's talked all about it and that their
14 testimony should be in. They're documents he relied
15 upon, and so foundation was waived.

16 He's an expert and relied on it, so it
17 comes in.

18 BOARD CHAIR HELLAND: Okay. The Board will
19 admit Jorde Landowners Hearing Exhibits 479, 480, 481,
20 483 and 484, and they will be given the weight due.

21 (Jorde Landowners Hearing Exhibits 479,
22 480, 481, 483 and 484 were admitted into evidence.)

23 CROSS-EXAMINATION

24 BY MR. JORDE:

25 Q. Sir, how were you hired? Who reached out

1 to you?

2 A. Someone within my employer, CTEH, had a
3 contact with Summit Carbon Solutions, and they asked
4 me to join a call as a toxicologist.

5 Q. About how long ago was that?

6 A. It was just over a year ago.

7 Q. And other than your prepared testimony here
8 for Summit, did you prepare any reports, studies or
9 any other data of any kind for them?

10 A. Not for this hearing, no.

11 Q. Well, okay, but I didn't limit it to that.
12 I mean, in order to get to this final version here, I
13 assume they put the question to you, "Hey, can you
14 testify and try to down-play the risks of CO2
15 exposure?" Was that kind of the gist of it?

16 A. No, no.

17 Q. All right. Did they just say, "Whatever
18 the results, just put together a report and tell us
19 what CO2 risks look like to humans, and we'll accept
20 whatever you say"? Was that part of the conversation?

21 A. Well, the conversation of risk never came
22 up, since that's a question of likelihood. I was
23 asked to help them understand the continuum of effects
24 and being able to distinguish, based on the data, the
25 difference between physiological responses and actual

1 toxicity.

2 Q. And to Mr. Taylor's point, it seems like
3 the study you rely upon was with the subjects were
4 healthy males and not members of maybe an at-risk
5 persons with COPD, with breathing, the elderly or any
6 other disease process; correct?

7 A. Well, it's difficult to know with the older
8 studies whether or not those subjects were in good
9 health or a mix because the methodology wasn't
10 described very well.

11 Q. I agree. That's right where I was headed.
12 Given that the methodology was not
13 described very well, it's hard to, with a high degree
14 of certainty and confidence, apply that to, say, a
15 given person in a given community in Iowa; correct?

16 A. Well, the point of the studies are not to
17 try to identify the likelihood of an effect of a given
18 individual. They were trying to look at continuum
19 effects in humans in general.

20 Q. Well, sure, but what if the study -- if the
21 control in the study are healthy, young, vibrant
22 males? That doesn't translate very well necessarily
23 to an 80-year-old person on a farm in Iowa that has
24 breathing problems and a walker and all sorts of other
25 ailments; right?

1 A. For CO2 that may not be necessarily the
2 case, because the physiology, biology behind CO2
3 production escalation is so common even between
4 healthy and unhealthy individuals, the extent to which
5 an unhealthy individual compared to a healthy
6 individual would uptake and eliminate CO2 is not fully
7 understood.

8 Q. Well, you certainly would agree that if a
9 healthy person was sitting still and not expending
10 energy and didn't have rapid breathing that they could
11 sustain their current physical state longer in an
12 environment exposed to CO2 than if they were running
13 up and down stairs or engaged in vigorous activity?

14 A. Well, there are a lot of factors that would
15 have to be known to answer that question.

16 Q. Well, but if I am expending energy such
17 that I'm requiring more oxygen in to keep up with the
18 vigorous nature of what I'm expending, I am more
19 susceptible to the effects of CO2; correct?

20 A. Only after -- if there was a sufficient
21 concentration of CO2. It depends on the
22 concentration.

23 Q. Well, obviously, you've got to have a
24 concentration of CO2, or these examples don't make any
25 sense. But you wouldn't dispute the fact and the

1 reports from Satartia of individuals foaming at the
2 mouth, unconscious on the ground, cars still in park
3 with the people passed out, based on their exposure to
4 CO2? You don't dispute those reports, do you?

5 A. I don't dispute some details of those
6 reports. There are other details that I don't have
7 any knowledge of.

8 Q. And if you don't have any knowledge, you,
9 obviously, couldn't dispute them?

10 A. That's correct, yes.

11 MR. JORDE: All right. I don't have
12 anything further. Thanks.

13 BOARD CHAIR HELLAND: Okay. Thank you.

14 Ms. Ryon?

15 MS. RYON: Thank you.

16 CROSS-EXAMINATION

17 BY MS. RYON:

18 Q. Just a quick question to make sure I
19 understand something about these studies.

20 From what I've been hearing, it sounds like
21 they included healthy men. Did any of them include
22 any women?

23 A. The early studies -- when I say "early,"
24 I'm talking about prior to 1950. Some of them just
25 weren't described. We don't know anything about those

1 subjects.

2 Q. But the recent ones you relied on the most
3 didn't include any women?

4 A. That's correct.

5 Q. Not even healthy ones?

6 A. That's correct.

7 MS. RYON: Thanks. That's all.

8 BOARD CHAIR HELLAND: Mr. Meyer?

9 MR. MEYER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MEYER:

12 Q. Sir, I'm Bill Meyer from Hardin County.
13 Just a couple quick questions.

14 I gather your testimony is basically to be
15 a scientific -- some scientific testimony about health
16 risks; right?

17 A. Not the risks. "Risk" is a very particular
18 term.

19 The testimony is about the change from CO2
20 physiology effects to toxicity as CO2 levels go up.

21 Q. All right. Thanks for clarifying that.
22 Essentially it's the science of toxicity;
23 right?

24 A. Partially, yes.

25 Q. Okay. Well, is your testimony -- was it

1 intended to delve into public policy?

2 A. No. My understanding was that in the
3 discussion of the CO2 exposure from pipelines or any
4 other source, there's often a conflation between
5 toxicity and normal compensation by the human body for
6 higher CO2 levels.

7 So my intention was to explain that
8 difference.

9 Q. On page 13 of your rebuttal testimony, you
10 kind of took a little turn and went down the public
11 policy road, the way I look at your answers here. The
12 two gentlemen [sic], Raffensperger and Deal-Tyne, you
13 dismissed their opinions on page 13 as being
14 policy-focused, didn't you?

15 A. That was the wording, but the dismissal --
16 it was a particular statement, statements made. I
17 believe one that said CO2 would kill anything in its
18 path. Scientifically that's just inaccurate.

19 Q. Okay. Well, all right. If you believe
20 that those opinions or that statement was
21 policy-driven or focused, I mean, wouldn't you agree
22 that the genesis and nourishment of this project is
23 tax policy-focused?

24 A. When you say "the project," what are you
25 talking about particularly?

1 Q. The pipeline.

2 A. The pipeline?

3 Q. Yes.

4 A. I don't know the genesis of the pipeline
5 business.

6 Q. Well, if it's about the tax credits and the
7 CO2 and that being a dangerous thing, would you also
8 say it's hyperbole to say that the world is going to
9 end in ten years unless we get all this CO2 put in the
10 ground?

11 A. Could you repeat the question? It didn't
12 seem like the first part was connected with the second
13 part. I'm not following.

14 MR. MEYER: Could you read it back, please?
15 (The requested portion of the record was
16 read.)

17 A. The question mentioned tax credits, CO2
18 being dangerous and the world ending. I don't see how
19 any of those are connected in that question.

20 BY MR. MEYER:

21 Q. So you think it would be hyperbole to make
22 those claims that we need to -- we need to address
23 climate change in such a way, or the world will end in
24 ten years? Would those be hyperbole?

25 A. I don't have an opinion on that.

1 Q. Okay. You talked in the next answer to the
2 next question on the same page 13 that you're fine
3 because you consider this to be -- there's no undue
4 risk; correct?

5 A. Is that -- Where is the text? I want to
6 make sure that I'm addressing it correctly.

7 Q. On page 13, line 19. "There's no undue
8 risk"?

9 A. That's correct.

10 Q. So from -- again, I'm taking it that on
11 page 13 you're kind of going into public-policy
12 judgments, and so in your judgment the risk posed by
13 the project is the acceptable sacrifice to be laid on
14 the altar of climate change?

15 A. No, none of my opinions have anything to do
16 with climate change. All of my opinions have to do
17 with human health.

18 MR. MEYER: Okay. I don't have any other
19 questions.

20 BOARD CHAIR HELLAND: Okay. Thank you.
21 Any other questions from the parties?

22 (No response.)

23 BOARD CHAIR HELLAND: Okay. None from the
24 Board.

25 Summit?

1 MR. LEONARD: I don't have any redirect,
2 Your Honor. Just as a matter of clarification, I
3 assume when the parties say they don't have any other
4 questions, they don't have closed session questions
5 for this witness?

6 BOARD CHAIR HELLAND: Good question.

7 (No response.)

8 BOARD CHAIR HELLAND: It looks like a no.

9 You can step down, Dr. Lumpkin.

10 THE WITNESS: Thank you.

11 BOARD CHAIR HELLAND: Okay. I don't think
12 there's any other witnesses in the building we can get
13 on the stand and wrapped up in 20 minutes.

14 So John is making a really strong lobby
15 effort for Mr. Bents. We're not entirely opposed,
16 Mr. Long. It just seems really unlikely we can get
17 your witness up and down in 20 minutes.

18 Does anyone disagree with that? Hold on.

19 MR. ISENHART: I do have questions that
20 will probably take longer than that.

21 BOARD CHAIR HELLAND: There we go. We've
22 got our answer. Thank you.

23 So we'll plan on being back here tomorrow
24 morning at 8:30. We're going to start right off the
25 bat in confidential session with Summit Witness

1 Louque, and then as soon as we're done with Louque, we
2 will proceed back into Summit's witness list.

3 So we'll get here at 8:30. We'll get
4 started.

5 So it will be for Summit to determine in
6 confidential session who can stay. So we will work
7 through that first thing in the morning at 8:30.

8 Mr. Whipple and Mr. Jorde?

9 MR. WHIPPLE: If you're finished, Your
10 Honor, I have an additional update for you.

11 BOARD CHAIR HELLAND: Sure.

12 MR. WHIPPLE: The Counties have Counties
13 Witness Willingham arriving from Mississippi tomorrow
14 on a 10:30 flight. He'll be here starting about noon
15 and departing on Friday. So we would dearly like not
16 to have to send him back to Mississippi and bring him
17 back again.

18 So I'm letting you know that that's his --
19 those are his arrangements, and he's the only
20 non-local witness for the Counties.

21 BOARD CHAIR HELLAND: Thank you.

22 Mr. Jorde?

23 MR. JORDE: We don't have an objection to
24 work with any party to get the people on and off.

25 I was wondering if Mr. Dublinske could just

1 confirm the order after Louque in confidential, who he
2 thought he'd be calling.

3 MR. DUBLINSKE: Yes. So after Louque
4 confidential will be Muhlbauer and then Dillon.
5 McCown is not available until Thursday. I think the
6 only one we would have left at this point would be
7 Godfrey.

8 If we get there and need to do that, he
9 will be available tomorrow.

10 BOARD CHAIR HELLAND: Okay. Can the
11 parties give us an idea of who we'll need for
12 confidential session? Will we need any of those for
13 confidential session?

14 MR. JORDE: Louque only for the landowners,
15 Your Honor.

16 I'm sorry. Muhlbauer. We think we might
17 need Muhlbauer possibly, I guess, but since he's
18 second, that would work out.

19 MR. WHIPPLE: I believe we mentioned maybe
20 re-calling Mr. Powell and doing some closed session on
21 that, perhaps.

22 MR. DUBLINSKE: Unless Mr. Powell reaches
23 over and tells me otherwise, he would be available
24 tomorrow as well.

25 BOARD CHAIR HELLAND: I assume there will

1 be multiple parties for Mr. Powell in confidential or
2 not? Maybe not. Okay.

3 Well, all right. Representative Isenhardt,
4 you have your name tag up.

5 MR. ISENHART: Just on the conversation you
6 have, it might be useful for those of us not in a
7 confidential session to know when we should arrive
8 tomorrow or maybe a ballpark figure?

9 BOARD CHAIR HELLAND: Yes. Hopefully noon.
10 We can tell you theoretically 10 o'clock. It's
11 possible that it's 9:45. It's possible that it's
12 noon.

13 You're familiar with the legislature.
14 We're not indifferent in how often the debate will
15 last.

16 MR. ISENHART: I don't even control the
17 time.

18 One other issue. The Board sent out
19 information this morning on how it would like
20 intervenors to prepare and submit hearing exhibits and
21 formatting and that type of thing. To the extent that
22 was sent out due to my filings, I plead guilty. If I
23 need to refile any of those correctly, if you'd have a
24 staff member reach out to me and make sure I get it
25 right the second time, that would be helpful. Thank

1 you.

2 BOARD CHAIR HELLAND: Appreciate it. We
3 always appreciate correct filings. Thank you.

4 Okay. We will see everyone at 8:30 in the
5 morning.

6 (Hearing recessed at 5:52 p.m. to be
7 reconvened the following day at 8:30 a.m.)

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1 C E R T I F I C A T E

2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that
4 I acted as the official court reporter at the hearing
5 in the above-entitled matter at the time and place
6 indicated.

7 That I took in shorthand all of the
8 proceedings had at the said time and place and that
9 said shorthand notes were reduced to typewriting under
10 my direction and supervision, and that the foregoing
11 typewritten pages are a full and complete transcript
12 of the shorthand notes so taken.

13 Dated this 25th day of September, 2023.

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Darcy K. Kriens

CERTIFIED SHORTHAND REPORTER
Darcy Kriens, Iowa CSR #988

IN RE: SUMMIT CARBON SOLUTIONS
IUB HEARING 09/12/2023

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