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STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

- - - - - X  
IN RE: :  
SUMMIT CARBON SOLUTIONS, : Docket No.  
LLC : HLP-2021-001  
- - - - - X



TRANSCRIPT OF HEARING  
VOLUME 14  
PUBLIC TRANSCRIPT

Cardiff Event Center at  
Fort Frenzy  
3232 First Avenue South  
Fort Dodge, Iowa 50501  
Tuesday, September 19, 2023

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

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

(Pages 3653 to 3865)

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22	(phonetic) indicates a phonetic spelling.		
23	{sic} indicates the text is as stated.		
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1 P R O C E E D I N G S

2 BOARD CHAIR HELLAND: Good morning. It's  
3 Tuesday, September 19, 2023 at 8:00. The Iowa  
4 Utilities Board will go back on the record for  
5 HPL-2021-0001.

6 Sierra Club. You may -- Ms. Ryon, did you  
7 have a comment?

8 MS. RYON: I just had a couple of brief  
9 scheduling requests before we get started, Your Honor.

10 First, because Ms. Hirth was unaware  
11 whether or not the Board was going to allow Jeffrey  
12 Bonar to testify on her behalf, he was unable to make  
13 it to Iowa for the scheduled testimony on Wednesday,  
14 but he is available all day on Thursday.

15 If it's acceptable to the Board to have him  
16 testify Thursday instead, we would appreciate that.

17 BOARD CHAIR HELLAND: The Board still has  
18 not ruled on your motion. So, if that's when he's  
19 available, that's when we'll tentatively schedule.

20 MS. RYON: Thank you, Your Honor. I also  
21 have a scheduling request on behalf of the Republican  
22 Legislative Intervenors for Justice.

23 Representative Charlie Thomson, who is one  
24 of their witnesses and who is scheduled to testify  
25 this week, is unable to attend this week because his



1 father passed away Friday. So I will be continuing to  
2 substitute for him in presentation of their other  
3 witnesses but would also request that his testimony be  
4 postponed until next week so he can attend to family  
5 matters this week.

6 BOARD CHAIR HELLAND: A passing of a family  
7 member certainly qualifies as a qualifying event. I  
8 think next week will likely work.

9 MS. RYON: Thank you, Your Honor.

10 BOARD CHAIR HELLAND: Mr. Dublinske.

11 MR. DUBLINSKE: Your Honor, I certainly  
12 agree. And, if it is helpful, we would be willing to  
13 waive cross of Mr. Thomson and agree to the admission  
14 of his testimony.

15 BOARD CHAIR HELLAND: Thank you.

16 Ms. Ryon.

17 MS. RYON: I'll confer with the other  
18 parties during breaks to look into that option.

19 BOARD CHAIR HELLAND: Thank you.

20 Wonderful.

21 Anything else?

22 (No response.)

23 BOARD CHAIR HELLAND: All right.

24 Mr. Taylor.

25 MR. TAYLOR: Thank you. Sierra Club calls

1 Silvia Sechhi.

2 MR. DUBLINSKE: Your Honor, just for the  
3 record while Ms. Sechhi gets settled in there, our  
4 understanding was that Mr. Schettler was scheduled to  
5 be first up this morning. My understanding from  
6 Mr. Taylor is that there was a misunderstanding that  
7 when Mr. Schettler's testimony was admitted, that that  
8 meant he didn't have to be here.

9 We do not waive cross of Mr. Schettler.  
10 Nor, to my knowledge, did the Board or anybody else.  
11 And he should, in the normal course, have to sit for  
12 cross with respect to that testimony.

13 That said, it is fairly brief and scant  
14 testimony, and we really -- in the interest of not  
15 slowing things down and not making him have to come  
16 back another time, we would waive cross at this time  
17 of Mr. Schettler. And, my understanding, his  
18 testimony was already previously admitted.

19 BOARD CHAIR HELLAND: Thank you.

20 Are there objections?

21 MR. JORDE: No objections, but I also  
22 offered on that basis a lot of -- well, not a lot, but  
23 a handful of our experts' direct testimony.

24 It's in evidence. So, I mean, whatever the  
25 objection is, it's, frankly, meaningless at this

1 point. That testimony is all in evidence just like  
2 any other exhibit is.

3 MR. DUBLINSKE: Your Honor, that does not  
4 necessarily mean that they've been waived for cross.  
5 Those are two separate questions.

6 This was my concern when we started  
7 admitting testimony out of order is that traditionally  
8 the whole point of prefiled, and the way that the  
9 Board processes have worked forever, is that we don't  
10 admit that until the witness actually shows up and  
11 sits for cross.

12 If those witnesses are not going to be made  
13 available to be accountable for that testimony, we can  
14 certainly move to strike evidence that's already been  
15 admitted.

16 Again, unless we waive cross for those  
17 witnesses, they still need to anticipate that they're  
18 going to show up to be questioned on their testimony  
19 whether it's already been admitted or not.

20 BOARD CHAIR HELLAND: Are there objections  
21 to waiving testimony for Mr. Schettler?

22 Am I saying the name correctly?

23 MR. TAYLOR: Schettler, yes.

24 Dr. Schettler.

25 (No response.)

1                   BOARD CHAIR HELLAND: With no objections,  
2 the Board will admit the testimony and exhibits of  
3 Mr. Schettler and waive cross-examination.

4                   For clarification, Mr. Jorde, were you  
5 making a motion to waive cross for a portion of your  
6 expert witnesses?

7                   MR. JORDE: Well, yes, for every expert  
8 that their prefiled testimony is already in evidence,  
9 there's no reason that they would be here. I mean,  
10 again, their testimony is in evidence, it's already  
11 part of the record.

12                  So, I mean, Mr. Dublinske made these  
13 objections the first go around, it was overruled, that  
14 testimony came in over objection. So that ship has  
15 sailed.

16                  MR. DUBLINSKE: I disagree, Your Honor.  
17 Again, it's a separate question whether or not cross  
18 is waived. A lot of testimony has come in, witnesses  
19 are still showing up, they're being cross-examined on  
20 that testimony. Those are unrelated matters.

21                  Just because testimony is in doesn't mean  
22 that we don't have an opportunity to cross-examine  
23 that testimony. I have no idea where Mr. Jorde got  
24 that idea.

25                  MR. JORDE: Tell me the rule on

1 cross-examination and this waiver. I'd like to read  
2 this rule. Because it doesn't exist.

3 MR. DUBLINSKE: It's a long-standing Board  
4 practice and it just makes simple sense. We have a  
5 process -- I'm not -- you know, it's not my problem  
6 that Mr. Jorde didn't bother to familiarize himself  
7 with those processes, but we prefiled the testimony.  
8 The purpose of the hearing is for cross-examination.  
9 And you don't just get out of that without everybody's  
10 agreement to it.

11 MR. JORDE: There's no rule --

12 BOARD CHAIR HELLAND: I don't think we  
13 need --

14 MR. JORDE: Yeah, there's no rule on that.

15 BOARD CHAIR HELLAND: The motion has been  
16 made. We will confer over the lunch hour with the  
17 Board and make a ruling immediately after lunch.

18 Good morning.

19 MS. SECHHI: Good morning.

20 BOARD CHAIR HELLAND: Will you help me  
21 pronounce your last name properly?

22 MS. SECHHI: It's Sechhi. Like "key."

23 BOARD CHAIR HELLAND: Sechhi. Thank you.

24 Go ahead, raise your right hand.

25

1                               SILVIA SECHHI,  
2   called as a witness by Sierra Club Iowa Chapter, being  
3   first duly sworn by Board Chair Helland, was examined  
4   and testified as follows:

5                               BOARD CHAIR HELLAND:  Mr. Taylor.

6                               MR. TAYLOR:  Thank you.

7                               DIRECT EXAMINATION

8   BY MR. TAYLOR:

9               Q.   Are you the same Silvia Sechhi who prepared  
10   written testimony in this matter as well as Sechhi  
11   Direct Exhibit 1?

12              A.   I am.

13              Q.   And are there any changes or corrections  
14   you'd like to make to that testimony?

15              A.   There aren't any.

16              Q.   And if I asked you those same questions  
17   today, would your answers be substantially the same?

18              A.   Yes.

19                              MR. TAYLOR:  We tender the witness for  
20   cross-examination.

21                              BOARD CHAIR HELLAND:  Thank you.

22                              Mr. Whipple.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. WHIPPLE:

3 Q. Good morning, Ms. Sechhi. Have you had a  
4 chance, at this point, to review the rebuttal  
5 testimony of Andrew Phillips filed in this matter on  
6 October 21st?

7 A. I did.

8 Q. And, in that rebuttal testimony,  
9 Mr. Phillips updates the budget and some of the  
10 numbers and figures in the economic research performed  
11 earlier and described in his direct testimony and  
12 sponsored exhibits.

13 Do any of those updates change your  
14 assessment or opinion of the economic impacts of the  
15 project?

16 MR. DUBLINSKE: Objection, Your Honor.

17 BOARD CHAIR HELLAND: State your objection.

18 MR. DUBLINSKE: The way the process works  
19 is that we file testimony, the opponents file  
20 responsive testimony, we file rebuttal, and the  
21 applicant generally gets the last word on that.

22 This is not cross. This is effectively an  
23 oral surrebuttal. Which is not a proper use of  
24 cross-examination. I note that the Board on its own  
25 website now posts for this week that only truly

1     opposed parties will have an opportunity to cross  
2     these witnesses. But using this for oral surrebuttal  
3     is just not an appropriate use of the hearing.

4                 BOARD CHAIR HELLAND: Mr. Whipple, did you  
5     have a comment or --

6                 MR. WHIPPLE: Well, I would note that  
7     perhaps the massive reanalysis engaged in in rebuttal  
8     testimony effectively precludes any attempt for the  
9     other parties to cross-examine or effectively rebut  
10    that evidence. And I think Summit knows that and used  
11    the rebuttal testimony process pretty effectively to  
12    prevent or keep information, and even entire  
13    witnesses, from the other intervening parties.

14                And, if we are not allowed to offer counter  
15    expert witness testimony at any point, the Board will  
16    be deprived of the views of experts like Ms. Sechhi  
17    and what she thinks of the additional evidence entered  
18    into the record by Summit.

19                MR. DUBLINSKE: Your Honor, that is  
20    disingenuous. The Board generously provided an extra  
21    month for discovery after the rebuttal testimony.  
22    They could have formulated these questions for  
23    Mr. Phillips. And the fact that they didn't take  
24    advantage of having him here for cross does not  
25    entitle them to surrebuttal.



1                   The rebuttal is supposed to be the last  
2 round. And, again, this, well, we're going to have  
3 our expert give direct testimony that is surrebutting  
4 the rebuttal testimony is just not proper.

5                   BOARD CHAIR HELLAND: Okay. We did have a  
6 significant change. So, in this instance, we're going  
7 to overrule. However, we will be keeping this  
8 limited.

9                   So go ahead, Mr. Whipple.

10                  MR. WHIPPLE: Thank you, Your Honor.

11 BY MR. WHIPPLE:

12                  Q. So I will repeat the question, Ms. Sechhi.

13                         Does the information contained in the  
14 rebuttal testimony change your assessment or opinion  
15 of the economic impact of the project?

16                  A. Well, first of all, let me say that,  
17 typically, in order to do a proper assessment of these  
18 documents, you would need the full document. Right?

19                         And so there were very, very significant  
20 changes in terms of the job numbers in the rebuttal,  
21 but it wasn't a full report. And, you know, there was  
22 very cursory language as to why those changes  
23 happened. But that was really not enough for me to  
24 say this is a definite massive change.

25                         I think that that testimony actually

1 illustrates the problem here. That the experts are  
2 completely relying on the numbers that Summit is  
3 giving them and these numbers have not been  
4 independently vetted. And we already know, from  
5 previous studies, that these numbers can change on a  
6 whim, and they don't, most of the time, reflect what  
7 actually happens on the ground if the pipelines are  
8 built.

9           So I think what that testimony illustrates  
10 is that these numbers, as Mr. Phillips noted himself,  
11 are not to be used for any planning purposes and  
12 nobody should use them in terms of local government or  
13 the Iowa government because they are not robust  
14 numbers. If they change because of a slight delay to  
15 that extent, I would be very concerned, even more than  
16 I was, about using those numbers for any significant  
17 policymaking exercise.

18           Q. A significant amount of your testimony is  
19 directed at the failure of Mr. Phillips to include  
20 costs in the plan.

21           Did any of the updates to the plan  
22 described in the rebuttal testimony address that part  
23 of your direct testimony?

24           A. No. And I would also add that to argue  
25 that I didn't do a cost-benefit analysis -- I mean,

1 it's not my job to do cost-benefit analysis. But I  
2 would argue that since the 1980s, under President  
3 Reagan, we have used cost-benefit analysis for  
4 projects of this size, particularly projects that are  
5 argued to be in the public good and where you intend  
6 to use eminent domain.

7 And so I would say that basing decisions  
8 that impact the livelihood of many people and commit a  
9 substantial amount of public funds just looking at  
10 benefit numbers that have not been vetted and, you  
11 know, okayed by independent experts and completely  
12 excluding the costs is not good public policy.

13 Q. So the tool used by Mr. Phillips, IMPLAN,  
14 his testimony indicates is a benefits-only tool.

15 Would you recommend -- or is there a better  
16 tool that should have been used?

17 A. So, in the policymaking process, if you  
18 look at the -- you know, the National Environmental  
19 Protection Act, the NEPA Act, and you look at how  
20 regulatory impact analysis is done, you have to really  
21 look at the cost side using a variety of costs. You  
22 know, environmental costs, for example, that are  
23 pertinent to the case.

24 And, also, I would argue that you really  
25 need to be critical of the assumptions of models like

1 IMPLAN. Because a lot of these changes are temporary  
2 shifts. They are not additions. We are not going to  
3 be employing -- you know, making more welders. We are  
4 just going to shift welders from one job to another  
5 for a year or so. Or maybe even six months. Right?

6 So I would say IMPLAN can be used -- and is  
7 very often misused, but could be used for portions of  
8 a proper cost-benefit analysis.

9 On the cost side, you really need to  
10 involve experts who look at things like the reduction  
11 in property values, the loss in yield and associated  
12 land values, things like the opportunity costs.

13 That's the other thing. When you do these  
14 cost-benefit analyses, you typically have to have  
15 meaningful alternatives considered. And I would argue  
16 that my main concerns with this project is that nobody  
17 is discussing whether this is the best use of public  
18 money in order to achieve the goal of reducing  
19 greenhouse gas emissions. Even from ethanol.

20 The Renewable Fuel Association at the  
21 national level had a study that came out last year  
22 that actually put carbon capture and sequestration in  
23 fifth place when it comes to effectiveness. And they  
24 said the best thing we should do is just use more  
25 renewables in ethanol plants. And this doesn't upset

1 landowners, it doesn't have these massive land use  
2 changes.

3 So I would say we need to look at  
4 meaningful alternatives to see whether that's a  
5 warranted use of public funds. And I have not seen  
6 any conversation happening about that and that is  
7 where my concern lies.

8 Q. Through another witness, Mr. Pirolli,  
9 Summit has introduced testimony about the ethanol  
10 benefits.

11 Have you had a chance to review the study  
12 from the Renewable Fuels Association?

13 A. Yes. I have looked at that study and --  
14 where to begin. I don't want to give you guys a  
15 lesson. We don't have an hour to discuss this.

16 There are a lot of very dramatic  
17 assumptions and statements being made. And, again, I  
18 would refer everybody to what the national Renewable  
19 Fuels Association is saying. And the national  
20 Renewable Fuels Association is not saying that  
21 pipelines are do or die. It's not saying that if we  
22 don't build the pipelines, the ethanol industry in  
23 Iowa or the region impacted will collapse.

24 What I would say is we know that California  
25 is going to stop allowing the sale of internal

1 combustion engines in 2035. And we know that we  
2 cannot rely on the low-carbon fuel standard subsidies  
3 for very long. We know that cars, as we know them,  
4 are on their way out, and we need to help farmers  
5 off-ramp from corn and ethanol.

6 What the study is arguing is that, in fact,  
7 we need to ramp it up. So let me give you -- I'm  
8 Italian. So I'm going to use my hands a little bit.

9 So what we need is we need a slow decrease.  
10 And that's where we should be using that money. To  
11 help farmers and the ethanol industry move away from  
12 carbon technologies.

13 What they are arguing is, in fact, we need  
14 to ramp it up. What's going to happen is when the  
15 situation reaches the point where ethanol is really no  
16 longer viable, we've left people without a parachute.  
17 And it's irresponsible, from my professional  
18 perspective, to make the argument that this is  
19 absolutely critical.

20 The benefits for farmers are going to be  
21 very limited. Ethanol is a very capital-intensive  
22 enterprise. You know, the market for corn in Iowa is  
23 not going to disappear. We already have plenty of  
24 evidence that the government would come to the support  
25 of farmers if need be.

1 But it's really, again, not a responsible  
2 approach to be so shrill and dramatic in presenting  
3 the circumstances we're in.

4 MR. WHIPPLE: I believe that's all I have,  
5 Your Honor.

6 BOARD CHAIR HELLAND: Thank you.

7 Mr. Dublinske.

8 CROSS-EXAMINATION

9 BY MR. DUBLINSKE:

10 Q. Good morning, Ms. Sechhi. Just one  
11 question. And I think you touched on this, but just  
12 to clarify.

13 You have not provided a study of your own  
14 into the record of this case; is that correct?

15 A. No, and I don't think I should, because  
16 this is not a matter of, you know, my personal  
17 opinion. It's a matter of following a process that is  
18 transparent and science-based in order to make massive  
19 changes to Iowa's landscape and deploy really a lot of  
20 public money.

21 So I think that this is not a "me"  
22 situation. It's a "how do we make good policy"  
23 situation.

24 Q. So I understand you say it's not a "me"  
25 situation, but, bottom line, you did not provide a

1 study; correct?

2 A. I did not. And I shouldn't have to.

3 MR. DUBLINSKE: No further questions.

4 BOARD CHAIR HELLAND: Mr. Jorde.

5 MR. JORDE: Yes. Thank you.

6 CROSS-EXAMINATION

7 BY MR. JORDE:

8 Q. You're Dr. Sechhi; correct?

9 A. Yes, but, you know, if you're a woman in  
10 academia, very often you are called Ms.

11 MR. DUBLINSKE: Objection, Your Honor.

12 BOARD CHAIR HELLAND: Go ahead,

13 Mr. Dublinske.

14 MR. DUBLINSKE: We went through this last  
15 week. The actual opposing party should get to go  
16 last. Jorde shouldn't be able to just wait me out  
17 and then go behind my --

18 BOARD CHAIR HELLAND: So I would appreciate  
19 that the applicant go last. This one is on me. I did  
20 not see Mr. Jorde's card up. That is how we would  
21 prefer to proceed.

22 In this case, Mr. Jorde, go ahead and  
23 continue with your questions.

24 MR. JORDE: And also, for the record,  
25 another non-existent rule that Mr. Dublinske likes to



1 make up.

2 MR. DUBLINSKE: There's a lot of things --

3 BOARD CHAIR HELLAND: We're done. We're  
4 done. We're done.

5 Mr. Jorde, if you want to proceed with your  
6 question, please do.

7 BY MR. JORDE:

8 Q. Dr. Sechhi, you were asked some questions  
9 if you performed a report or some type of a study.  
10 But that wasn't what you were asked to do; is that  
11 right?

12 A. No. It wasn't. No.

13 Q. And would you agree with me that unreliable  
14 inputs produce unreliable outputs?

15 A. Indeed. And we have plenty of evidence.  
16 The most egregious case for this was the case of the  
17 Keystone XL. Because, in the case of the Keystone XL,  
18 the company produced their own study, but then,  
19 because this required presidential approval, the State  
20 Department produced their own study.

21 And when you compare the job numbers, they  
22 were two-thirds lower in the State Department  
23 independent study.

24 So there is a very long tradition of, you  
25 know, producing -- there is a professor at Texas A & M

1 who calls these studies rhetorical devices. They are  
2 PR exercises.

3 Certainly, as the disclaimer on the Ernst &  
4 Young says itself, and as the testimony of  
5 Mr. Phillips reiterates, you should not use these  
6 studies for any policymaking process.

7 So I'm just repeating what they have said  
8 multiple times.

9 Q. And would you agree not only that they  
10 shouldn't be used for any policymaking process but  
11 that no third party should rely on them. Such as the  
12 Iowa Utility Board.

13 A. That's what they say in the disclaimer.  
14 They make it extremely clear they don't want to be  
15 held liable. The numbers could be high or low.  
16 Higher or lower, if I remember correctly the language  
17 that Mr. Phillips used.

18 Q. Now, since July 24th when you submitted  
19 your prefiled testimony, there's been testimony and  
20 rebuttal in this matter, and Summit continues with the  
21 refrain that these projects are the saviour of  
22 ethanol, that it can't survive without it, and they've  
23 recently gone on to say it's necessary for the future  
24 of agriculture in general.

25 Do you agree or disagree with that?

1           A.    Again, I would not subject everybody here  
2   to a lecture. I would say that, as the landowners who  
3   have testified have made abundantly clear, the land  
4   remains. And the land is the value in Iowa. And we  
5   should use it judiciously and protect it for future  
6   generations. We shouldn't further extractive  
7   processes that rely on public money and are very  
8   shortsighted, and we should really be considerate and  
9   think about whether that money can be put to better  
10  uses.

11                So I would absolutely dispute that -- and I  
12  think it's a really important point to make that Iowa  
13  is not ethanol. Iowa isn't even corn. We can grow  
14  other things. And we will be growing other things as  
15  the climate changes.

16                We are still going to be an amazingly  
17  important agricultural state. We just need to look  
18  forward, not backward.

19           Q.    And the Ernst & Young individual who  
20  testified admitted, again after your deadline for your  
21  prefiled testimony, that certain figures were double  
22  counted in his report. Or his adaptation of Summit's  
23  documents.

24                Does that concern you?

25           A.    I mean, I don't put any faith in those

1 numbers to start with. You know, I would not -- you  
2 know, the only way these numbers should be regarded  
3 differently is if we had independent third parties  
4 verify them and go line by line regarding the  
5 assumptions. Where the parts are coming from, where  
6 the experts, the construction workers, where people  
7 are coming from, how this compares to past projects.

8 The fact that they change is just, you  
9 know, further proof that you shouldn't be using them.

10 Q. And did you see any independent  
11 verification or peer review on either the Iowa  
12 Renewable Fuels Association document or the Ernst &  
13 Young report?

14 A. No, and I think it's because -- I mean, to  
15 be frank, in academia we don't take these things very  
16 seriously.

17 So we know what they're for. And there is  
18 no -- not a lot of scientific value in picking them  
19 apart. It's also very difficult, because we are  
20 not -- you know, these are heavily reliant on numbers  
21 that Summit gave, right, Ernst & Young.

22 And so, if you cannot really access -- you  
23 know, typically what you do in academia these days is  
24 we have replication processes. So you make all the  
25 raw data available, make all the assumptions very

1 clear. There is repositories where people put this  
2 information.

3 And so it's really not a setup that is  
4 conducive to doing an independent, thorough analysis  
5 to the extent where you can pinpoint all the issues.  
6 You know, like why are you assuming that so many  
7 welders are going to be in Iowa when we compare it to  
8 the numbers we have and there are no such welders in  
9 Iowa.

10 It would require much more transparency on  
11 their part to be able to do this properly.

12 Q. Would you agree with the Ernst & Young  
13 witness for Summit who agreed that unless you take  
14 into account the cost of the tax credits to the tune  
15 of perhaps a billion, 1.5 billion per year, you don't  
16 get a true sense of the net benefit, if any, of the  
17 project?

18 A. So this is the big issue here. It's kind  
19 of like the 300-pound gorilla. It's this idea of what  
20 we call opportunity cost. Right?

21 This project would not exist without public  
22 funding. And so who does -- first of all, who does  
23 this public funding benefit if the pipeline is built.  
24 There are about 1,800 ethanol plant workers in Iowa.  
25 That's like 0.14 {sic} percent of our labor force.

1                   Ethanol is a very, very capital-intensive  
2     enterprise. And then we're talking about a privately  
3     held company. And even the construction benefits are  
4     going to largely go to out-of-state entities.

5                   So I would argue that this is really a poor  
6     way to generate multipliers. And it's a really poor  
7     way to put money into the Iowa economy. Okay?

8                   I would say that we need to look at  
9     alternative ways to spend this hundreds of millions of  
10    dollars and really meaningfully also address  
11    greenhouse gas emissions from our agricultural system.

12                  So that would be my answer.

13                  MR. JORDE: Thank you. I don't have  
14    anything further.

15                  BOARD CHAIR HELLAND: Mr. Zieman.

16                               CROSS-EXAMINATION

17    BY MR. ZIEMAN:

18                  Q. Good morning, ma'am. Something you said  
19    caught my attention. You said Iowa isn't corn.

20                               Is that fair?

21                  A. Yes.

22                  Q. How long have you lived in Iowa?

23                  A. I came here from Europe in 1996. I have  
24    two children who were born in Iowa. Some of their  
25    ancestors are buried in Maquoketa Cemetery. I moved

1 away and lived in Illinois for eight years, but,  
2 otherwise, I've lived in Iowa all the time I've been  
3 in the United States.

4 Q. It's a great place to live; right?

5 A. Yes.

6 Q. And you drove over here from Iowa City;  
7 correct?

8 A. Yes.

9 Q. Did you see any cornfields?

10 A. Ready to harvest. A lot of them.

11 Q. Right. I mean, I guess my point is there's  
12 a lot of cornfields and it's vital for our economy;  
13 right?

14 A. Yes.

15 Q. And it likely will be for the long-term  
16 future.

17 A. Absolutely. What I am arguing is that we  
18 need to help farmers diversify and become more  
19 resilient, but also we need to consider what's  
20 happening elsewhere.

21 So it's been in the news a lot what's  
22 happening in California and Arizona. Right? They  
23 have all this alfalfa production that is very water  
24 intensive and it's unsustainable.

25 What is going to happen is that places like

1 Iowa, southern Minnesota, central Illinois, because of  
2 our location, because of our productivity, because we  
3 have rain-fed agriculture, we are really going to  
4 become even more vital to agricultural production.

5 And that's going to require some -- there's  
6 going to be increases in prices. I'm not saying that  
7 this is going to happen by government mandate. The  
8 prices are going to shift. And, ultimately, what's  
9 going to happen is the demand for Iowa-made products  
10 that are associated with Iowa land, I foresee it going  
11 up, not down.

12 So that's going to make -- that's maybe  
13 going to squeeze corn out in some places. And maybe  
14 we're going to grow more food. Maybe we're going to  
15 have more cattle like we used to do.

16 You know, it's -- these changes make this  
17 state even more important than it has been. Because  
18 we are -- there's plenty of evidence in the literature  
19 that places like the Corn Belt are going to be even  
20 more important for agricultural and food production.

21 Q. And are you an economist?

22 BOARD CHAIR HELLAND: Mr. Zieman, if you  
23 could just move your mic a little closer to you. It's  
24 a little difficult to hear.

25 A. I am an economist. I got my PhD at Iowa



1 State in 2000. So don't talk to me about Cy-Hawk  
2 issues, please.

3 MR. ZIEMAN: Well, that's fair. If you see  
4 my colors, I'm actually a Hawkeye, but I thought they  
5 needed a little love after this week.

6 I have no further questions. Thank you,  
7 ma'am.

8 BOARD CHAIR HELLAND: Thank you.

9 Hayek? Ms. Hayek. Yeah. Thank you. I  
10 had to take a pause.

11 CROSS-EXAMINATION

12 BY MS. HAYEK:

13 Q. Yes. Chris Hayek. I'm a landowner. I  
14 just have a question.

15 Is there anything else you want the Board  
16 to know as it relates to the CO2 pipeline project?

17 A. I would really urge the Board to consider  
18 something that we are thinking about a lot in terms of  
19 big picture in academia. And it's this idea that  
20 pipelines may be necessary to decarbonize some  
21 industries, but they should be used extremely,  
22 extremely sparingly and we should consider  
23 alternatives that are more cost effective and have  
24 more public acceptance.

25 I am not anti-pipelines as a matter of

1 principle. I just think that the process has to be  
2 transparent, we need to consider alternatives, and we  
3 need to use this sparingly. We can't come back to  
4 landowners two years from now and say, "Hey, here's  
5 another one." Because this really demeans and  
6 degrades the social fabric of the state.

7 And so whatever we do should be deliberate,  
8 should be considerate of private property. And I am  
9 particularly concerned that, you know, we are rushing  
10 into this without thinking about whether this is  
11 viable even in the medium term and whether there are  
12 reasonable alternatives to achieve the result.

13 And I would remind everybody that the goal  
14 of 45Q is to help decarbonize the economy. That's the  
15 ultimate goal. If there are better ways to do it that  
16 don't infringe on private property rights, that don't  
17 cause massive environmental costs, we should consider  
18 those before we move ahead.

19 MS. HAYEK: Thank you.

20 BOARD CHAIR HELLAND: Mr. Dublinske. And,  
21 just a quick reminder, your questions are limited to  
22 clarification of Mr. Jorde, Mr. Zieman, and Ms. Hayek.

23 MR. DUBLINSKE: Absolutely.

24

25

1 CROSS-EXAMINATION

2 BY MR. DUBLINSKE:

3 Q. Ms. Sechhi, that last answer you gave  
4 Ms. Hayek about 45Qs, that we ought to look at  
5 alternatives. None of those things you listed are  
6 actually in the rules regarding the use of 45Qs today;  
7 correct?

8 A. Well, you can be literal in your  
9 interpretation of things or you can look at the big  
10 picture --

11 Q. I'm asking are there any rules --

12 A. No, there aren't.

13 MR. DUBLINSKE: No further questions.

14 BOARD CHAIR HELLAND: Thank you.

15 Mr. Taylor. For redirect?

16 Oh. One Board question.

17 BOARD MEMBER BYRNES: Ms. Sechhi, I just  
18 want to clarify a few things that you mentioned. So  
19 one of the things -- and you referenced it multiple  
20 times, but you kept using the phrase "public money."

21 Can you please clarify what you mean by  
22 "public money."

23 THE WITNESS: Well, these pipelines are  
24 heavily -- I mean, they wouldn't exist without funding  
25 that comes from the federal government. Right? The

1 goal of -- the economic feasibility relies on the 45Q  
2 provision in the tax code.

3 So the various estimates I've seen from the  
4 companies themselves are in the range of hundreds of  
5 millions of dollars in the value of captured carbon.

6 There is three main sources of revenue that  
7 the companies are considering.

8 The principal one is these provisions in  
9 the tax code. The 45Q provision.

10 They're also banking on being able to sell  
11 the ethanol at a higher price to places like  
12 California because it will have lower carbon  
13 intensity. That is a -- it's being heavily used by  
14 California now, but it's on its way out. Right?  
15 Because California is really pushing for  
16 decarbonization. And so that demand for that lower  
17 carbon intensity ethanol is going away.

18 And then the third source that companies  
19 are arguing -- the third source of revenue that  
20 companies are arguing they are going to have come in  
21 is -- I think it's very problematic. That would be  
22 the only non-public money source. They are planning  
23 on selling offsets in the voluntary carbon market.

24 I would argue that that is double-dipping.  
25 If we've already paid for that carbon to be

1 sequestered, they can't sell the value of that carbon  
2 in the private market because that's double counting.  
3 But there is nothing now in the books that says they  
4 cannot do it.

5 So these are the three sources of revenue.  
6 And two are coming from public funds essentially.

7 BOARD MEMBER BYRNES: And then one of the  
8 things you talked about was using the public money as  
9 a parachute. And then you made a comment that  
10 government would come to the need or help of farmers.

11 THE WITNESS: Yes.

12 BOARD MEMBER BYRNES: Can you expand? What  
13 do you mean by that?

14 THE WITNESS: Well, just look at what  
15 happened with the emergency payments during the trade  
16 wars. Right? We know that when things reach a pretty  
17 dramatic point, like the loss of an important export  
18 market, the government is very likely to come to the  
19 help of farmers which have been left holding the bag,  
20 if you will, through no fault of their own.

21 And so here it would be -- you know, what  
22 I'm thinking is if there is an emergency, the  
23 government comes to the rescue, but that's not really  
24 a sustainable solution. Right? If the ethanol  
25 market, at some point, becomes non-viable, there are

1 going to be -- you know, there's going to be help for  
2 farmers, but -- you know, we did this already in the  
3 1980s. Right? There was a farm crisis and in the  
4 1985 farm bill -- every time there has been a crisis  
5 there has been help to farmers.

6 What I'm arguing is that that help is not  
7 the best way to plan. Right? Ex post facto emergency  
8 payments are not a substitute for long-term planning  
9 and promoting a vibrant, sustainable economy.

10 So I would say that I'm not worried that,  
11 you know, no government funding will come, but I would  
12 argue that we should be planning for ways to use that  
13 government funding efficiently and effectively.

14 BOARD MEMBER BYRNES: So then -- I'm just  
15 trying to clarify all this. So, in your  
16 interpretation, do you see the 45Q tax credit as a  
17 mechanism to help farmers?

18 THE WITNESS: I think that the 45Q tax  
19 credit is a way to help the ethanol industry. Which  
20 is not a way to necessarily help farmers.

21 It may help maintain things the way they  
22 are for a longer period of time, but it may also make  
23 changes difficult -- more difficult.

24 I would like to remind everybody that  
25 before the 2007 energy bill, right, when we had the

1 ethanol mandate, we were growing less corn in Iowa.  
2 And the energy bill essentially, and the mandate, made  
3 us produce even more corn. We lost Conservation  
4 Reserve Program land. We went from a lot of  
5 corn-soybean rotations to continuous corn.

6 So it was a policy that made us go further  
7 into this. And now I'm arguing that we need policies  
8 that help us bring us back to that corn-soybean  
9 rotation, maybe some small grains, maybe some cattle  
10 in pasture. We don't need policies that further  
11 entrench the system we have. Because we already know  
12 that this system is date-limited. We are going to be  
13 driving electric cars and we are not going to be using  
14 so much ethanol in the future.

15 BOARD MEMBER BYRNES: So, as an economist,  
16 what has been the economic impact of the ethanol  
17 industry to Iowa?

18 THE WITNESS: Well, I think -- you know, if  
19 I had a map -- I'm also a geographer. If I had a map,  
20 I would show you the census changes from 2010 to 2020.  
21 Most Iowa rural counties have lost population.

22 The fact of the matter is that, as I said,  
23 ethanol is a very capital-intensive industry. It  
24 doesn't create lots of local jobs. And so we have  
25 not -- what I would argue is that we need shifts that

1 produce more local jobs in agriculture and  
2 value-added. Right? Things like more small slaughter  
3 houses, smaller food hubs. You know, bringing back  
4 activities that are more labor-intensive and produce  
5 value-added for our economy.

6 I would argue that the impact of ethanol in  
7 the Iowa economy has largely been that our land prices  
8 have gone up. But it really hasn't done much in terms  
9 of rural employment and rural employment  
10 opportunities.

11 And you can see that in the numbers of, you  
12 know, people moving -- still moving away from rural  
13 counties.

14 BOARD MEMBER BYRNES: And just -- I mean,  
15 could -- I mean, have you done any research on this,  
16 that, without that ethanol industry, the decline could  
17 have been faster?

18 THE WITNESS: Well -- okay. So, without  
19 that ethanol industry and the same amount of subsidies  
20 that we have injected into -- you know, until 2012  
21 corn ethanol received subsidies directly. Right? And  
22 then we have all the subsidies that corn brings in  
23 from the farm bill.

24 You know, we're talking about -- this is  
25 pure speculation, but I would argue that there were



1 better ways to put that money to use. That was a lot  
2 of money. Iowa is the biggest recipient of federal  
3 funding from the farm bill. And I would argue that  
4 just putting it into corn and corn ethanol is -- you  
5 know, ethanol -- corn production itself is not very  
6 labor-intensive. Right? You can farm 3,000 acres by  
7 yourself. It's become a very capital-intensive  
8 enterprise.

9 I would argue that if we wanted to have  
10 more job creation, more rural development, we should  
11 have diversified and not put all our eggs in the corn  
12 basket. And that's a big problem we have in the Corn  
13 Belt.

14 BOARD MEMBER BYRNES: And, just to expand  
15 on that, what would have been a better use? Where  
16 would you have put those funds?

17 THE WITNESS: Well, I would say that -- now  
18 we're doing some things in that direction, but still  
19 not enough.

20 So, for example, the crop insurance  
21 program. We don't have whole farm crop insurance very  
22 well developed. So, if we had whole farm crop  
23 insurance, we wouldn't be giving such preferential  
24 treatment to corn and soybeans. Right? So you would  
25 help farmers who want to diversify.

1                   If we had put this money into things like  
2   helping beginning farmers more than we are. Right?  
3   We're starting to do some of these things, but the  
4   bulk of the money still goes to large-scale producers.  
5   I mean, there's analysis of that that most of the  
6   subsidies go to a small portion of producers. Which  
7   are the largest ones. And so there's really no --  
8   there's no spreading that wealth, if you will.

9                   BOARD MEMBER BYRNES: So those two are the  
10   two main --

11                  THE WITNESS: Well, these are policy tools.  
12   If you gave me more latitude, I would say we could  
13   change the way we do school lunches. We -- I believe  
14   it was just proposed to eliminate the local foods  
15   board. Right? We could expand on production of local  
16   foods. We could provide incentives for farms that  
17   diversify much more than we do now. Right? Farms  
18   that pasture animals, farms that produce oats or small  
19   grains.

20                  There's all sorts of things that we could  
21   do that we're not doing.

22                  BOARD MEMBER BYRNES: I think I'll stop  
23   there. Because otherwise we could have a really long  
24   conversation. Thank you.

25                  BOARD MEMBER MARTZ: Hi, Dr. Sechhi. Just

1 a couple more questions.

2 To kind of restate what I think you've  
3 said, and correct me if I'm wrong, in your mind, the  
4 ethanol industry will or should kind of fade away or  
5 go away in the near- or mid-term; is that correct?

6 THE WITNESS: We can have a discussion  
7 about what is the near- or mid-term. I don't think  
8 that the ethanol industry is going away in the  
9 near-term.

10 I would say, in the next 25 years, the  
11 landscape is going to look remarkably different.

12 So, in California this year, one quarter of  
13 the cars they are selling are EVs. Right? And we can  
14 certainly have -- you know, a lot of the speed of  
15 these things depends on who is the president. And I'm  
16 going to stop at that. And so there could be a longer  
17 period where we try to maintain things the way they  
18 are or this could speed up as we take the lead from  
19 California faster.

20 But it's pretty clear that ethanol is a  
21 complement, not a substitute, for internal combustion,  
22 for gasoline. Right? Because we are using a third of  
23 the U.S. corn crop to produce 6 percent, according to  
24 the numbers that I've seen, of our transportation fuel  
25 demand.

1                   So this is not scalable. We can't just use  
2 all our cropland in America to grow ethanol. Right?  
3 So the fate of the ethanol industry is linked to the  
4 fate of internal combustion engine cars. The faster  
5 they --

6                   BOARD MEMBER MARTZ: Specifically  
7 gasoline-powered vehicles?

8                   THE WITNESS: Yes. And so the faster they  
9 go, you know, the faster ethanol will. Diesel has  
10 never been a, you know -- because of just the way the  
11 history happened in America, it's never been as big a  
12 deal as ethanol.

13                  BOARD MEMBER MARTZ: And so that kind of  
14 goes with the assumption that, give or take, depending  
15 on where policy goes and everything, that the U.S., or  
16 the world, will transition to EVs or other type of  
17 fuels; is that correct?

18                  THE WITNESS: Yes. Yes. And maybe I  
19 should have made this point clearer. You know, in  
20 Iowa, we are incredibly well positioned to do well  
21 there. Right? Iowa is the biggest producer of wind  
22 energy percentage-wise in electricity generation in  
23 the country. We have a lot of potential for solar  
24 energy. There is research being done now at Iowa  
25 State on agrivoltaics. So where we can grow crops or

1 graze animals under solar panels.

2 So that's what I'm thinking in terms of  
3 transition in a way that is, you know, not painful and  
4 doesn't come as a cliff for Iowa's agriculture.

5 BOARD MEMBER MARTZ: And so, to you, that  
6 medium-term outlook for the ethanol industry does not  
7 justify this project; is that correct? In your  
8 assessment?

9 THE WITNESS: That's -- you know, as I  
10 said, I have not produced a full-blown study, but, in  
11 my professional opinion, just looking at how things  
12 are moving in California, looking at how things are  
13 moving international, looking at how the car industry  
14 with all its troubles, right, is positioning itself  
15 for the future, that's what I would say.

16 BOARD MEMBER MARTZ: And a hypothetical  
17 here. If you did think that ethanol were kind of a  
18 viable future solution, would you be supportive of a  
19 similar-type project?

20 THE WITNESS: Well, I started writing on  
21 the environmental impacts of ethanol as soon as the  
22 RFS was passed. And I think, for Iowa's environment,  
23 ethanol has not been good. The papers that we wrote  
24 in 2009, 2011, are now being confirmed in terms of the  
25 effects of ethanol.

1 I think ethanol -- as Monte Shaw himself  
2 said in 2005, I think it was, ethanol is a bridge  
3 technology. And it was a bridge technology to get to  
4 cellulosic. Cellulosic didn't happen.

5 We shouldn't be continuing on a road that  
6 has demonstrated not to be viable. We've seen much  
7 higher uptake and much more technological development  
8 when it comes to electric vehicles. This is making  
9 this technology even more obsolete and it wasn't  
10 really a good technology to start with.

11 BOARD MEMBER MARTZ: Thank you. No further  
12 questions.

13 BOARD CHAIR HELLAND: Thank you.

14 Do you have another one?

15 BOARD MEMBER BYRNES: Just for the record,  
16 you mentioned a name. And I believe you said Monte  
17 Shaw.

18 THE WITNESS: Yes.

19 BOARD MEMBER BYRNES: Who is Monte Shaw?

20 THE WITNESS: I believe Mr. Shaw has or had  
21 a leadership position with the Iowa Renewable Fuels  
22 Association. And, before the renewable fuel  
23 standard -- the second renewable fuel standard was  
24 passed, there was an agreement in the industry with  
25 all stakeholders that corn ethanol was the bridge that

1 would take us to cellulosic.

2 I want to remind everybody that the  
3 15 billion gallons in the renewable fuel standard is a  
4 ceiling, not a floor. So we were going to cap the  
5 production of corn ethanol to 15 billion gallons, and  
6 we were going to expand the production of cellulosic  
7 ethanol to 16 billion gallons. That was the goal.  
8 RFS.

9 That never materialized. Every year we've  
10 had a mandate for cellulosic ethanol. We have not met  
11 it. We're supposed to be at 16 billion gallons of  
12 production today and we are below 1 billion gallon.

13 So I would say we shouldn't be rewriting  
14 history. We all agreed that ethanol was going to take  
15 us to a different technology. And now we're arguing  
16 that ethanol is the different technology. And that  
17 was not the contract we made when we passed the energy  
18 bill in 2007.

19 BOARD MEMBER BYRNES: So, in looking back  
20 in my notes, one of the things that did get brought  
21 up -- and, I apologize, I don't remember who or what,  
22 but I know it got brought up a couple times -- was  
23 sustainable aviation fuel as a product of ethanol.

24 So we've talked a lot about electric cars.  
25 And I have no idea if we're getting to electric

1 planes. I think I might be hesitant on that one.

2 But is that something that should enter  
3 into this equation?

4 THE WITNESS: I think -- this is a very  
5 contested space as to whether corn ethanol is really a  
6 sustainable aviation fuel. And you would have a lot  
7 of people tell you that that's not the case. And,  
8 particularly, if we're talking in the international  
9 arena, people would really not take kindly to that  
10 kind of assertion.

11 And we -- I mean, from my perspective, this  
12 is the next cellulosic ethanol, it's the next bridge  
13 that we're not going to cross, but we're going to tell  
14 us that we're going to cross so we can keep using corn  
15 ethanol for the things that we have been using.

16 But I would say, if that's the way the  
17 industry wants to go, we certainly don't need the  
18 mandate anymore. Right? We can get rid of the  
19 mandate.

20 And I don't see the industry arguing for  
21 that at all. I see them arguing that we should keep  
22 it and, in fact, increase from E10 to E15 year-round  
23 and things like that.

24 So, from their actions, I don't think that  
25 they see this as a viable alternative at least in the



1 near to medium future.

2 BOARD MEMBER BYRNES: Thank you.

3 BOARD CHAIR HELLAND: Mr. Taylor for  
4 redirect?

5 MR. TAYLOR: No redirect, but we would, for  
6 the record, offer into evidence Silvia Sechhi's  
7 written direct testimony and Sechhi Direct Exhibit 1.

8 BOARD CHAIR HELLAND: Thank you.

9 Are there objections?

10 MR. DUBLINSKE: No objection.

11 BOARD CHAIR HELLAND: Seeing no objections,  
12 the Board will admit the evidence and give it the  
13 weight due.

14 Thank you. Appreciate it.

15 MR. TAYLOR: And that completes Sierra  
16 Club's evidence.

17 BOARD CHAIR HELLAND: Thank you.

18 Mr. Murray, you may call your first  
19 witness.

20 MR. MURRAY: I'm not sure if the digest  
21 lists David Skilling as our first witness, but I'd  
22 like to call Mr. Skilling to the stand.

23 MR. SKILLING: Good morning.

24 BOARD CHAIR HELLAND: Go ahead. Sit down.  
25 Make yourself comfortable. Position the microphone

1    wherever you'd like it as long as we can hear you.  
2    And speak clearly into it. We're got Mr. Murray in a  
3    more advantageous position now. So that should be  
4    helpful.

5                   Go ahead and raise your right hand.

6                   DAVID SKILLING,  
7    called as a witness by Murray Landowners, being first  
8    duly sworn by Board Chair Helland, was examined and  
9    testified as follows:

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

11                  DIRECT EXAMINATION

12    BY MR. MURRAY:

13                  Q.   Mr. Skilling, can you please state your  
14    name for the record?

15                  A.   David Charles Skilling.

16                  Q.   And in these proceedings on July 14, 2023,  
17    did you cause to be filed written direct testimony?

18                  A.   I did.

19                  Q.   And was that testimony accompanied by  
20    Exhibits 1 and 2?

21                  A.   It was.

22                  Q.   Do you have any corrections or  
23    clarifications?

24                  A.   I do.

25                  Q.   What is your first clarification?

1           A.    My first clarification is discussion about  
2    ingress and egress and roadways.

3           MR. MURRAY:  If I could perhaps have the  
4    tech bring up page 5 of your testimony.

5    BY MR. MURRAY:

6           Q.    Okay.  So going down to the section  
7    beginning on line 63.  That area references a 40-acre  
8    property; correct?

9           A.    Yes, it does.

10          Q.    So does the ingress/egress you're speaking  
11   of reference that, quote, property, end quote?

12          A.    It does.

13          MR. MURRAY:  So to further help you as far  
14   as clarifying the ingress/egress issue, can I have the  
15   tech expert bring up DAPEMA Hearing Exhibit 2.

16   BY MR. MURRAY:

17          Q.    This has been entered into evidence already  
18   as DAPEMA Hearing Exhibit 2, Mr. Skilling.  Is the  
19   shaded parcel the 40-acre property that we're talking  
20   about?

21          A.    That is correct.  Yes, it is.

22          Q.    To your understanding, this is the property  
23   that DAPEMA owns which is affected by this action.

24          A.    That's correct.

25          Q.    What do you want to clarify about the

1 ingress/egress?

2 A. What I'd like to clarify is the fact that  
3 if you look at that property, on the east side you  
4 will note there's a gravel road -- let's see if I can  
5 do this right. There's a gravel road along that  
6 portion.

7 THE WITNESS: And if you could raise that,  
8 if you would, please.

9 A. Down at the bottom, you'll see a blacktop.  
10 And, as you can see, we've got a parcel of property  
11 that is somewhat landlocked.

12 And one of the things that concerns me in  
13 my negotiations with Summit is trying to get an  
14 explanation of where ingress and egress would be in  
15 regards to that property.

16 Like I said, it's an inside 40, and there's  
17 no real entryway into that at this point.

18 I have talked to our county engineer. The  
19 Kossuth County Engineer's Office. And, while there  
20 may be some requests with regard to access ways by  
21 Summit, I understand that none of those have been  
22 issued yet and potentially will not be discussed or  
23 looked at until there has actually been a permit for  
24 them to build the pipeline.

25 So, as we look at that now, we don't know.

1 We don't know where they're going to throw the ingress  
2 and egress. And that's a great concern.

3 BY MR. MURRAY:

4 Q. Mr. Skilling, just as another point of  
5 clarification, or at least recollection, using your  
6 pointer can you identify where the pipeline is  
7 proposed to be located?

8 A. The pipeline --

9 MR. LEONARD: Objection, Your Honor.

10 BOARD CHAIR HELLAND: State your objection.

11 MR. LEONARD: This is not what corrections  
12 to written testimony are utilized for. A correction  
13 or a modification to prefiled written testimony is for  
14 something like a typographical error. This is just a  
15 direct examination on top of what's already admitted  
16 as prefiled direct testimony.

17 So my objection is we're conducting direct  
18 exam here when the purpose of the hearing is for  
19 cross-exam.

20 BOARD CHAIR HELLAND: Mr. Murray.

21 MR. MURRAY: Just clarifying the record,  
22 Your Honor. Not adding to it.

23 MR. LEONARD: Your Honor, if I may briefly  
24 respond.

25 BOARD CHAIR HELLAND: Go ahead.

1                   MR. LEONARD: It would be typical practice  
2 for a correction or a modification to call out the  
3 line and page of the testimony that's being corrected  
4 or modified.

5                   This is just an invitation for a verbal  
6 recitation of what's already in the direct testimony.

7                   BOARD CHAIR HELLAND: Mr. Murray,  
8 corrections are for mistakes or errors in prefiled  
9 testimony. I believe you referenced page 5, line 63.  
10 So if we can get to the correction and move on,  
11 please.

12 BY MR. MURRAY:

13               Q. Mr. Skilling, I think this page 5  
14 references an Exhibit 2, which is the Exhibit H on  
15 your farm; correct?

16               A. Yes, that's correct.

17               Q. Do you have any other clarifications  
18 besides this one?

19               A. The other clarification would be that  
20 there's no showing of ingress and egress.

21               Q. Since the filing of your testimony, has  
22 there been any happenings that have occurred since  
23 that time that have affected you as a landowner?

24               MR. LEONARD: Objection, Your Honor.

25               BOARD CHAIR HELLAND: State the objection.

1                   MR. LEONARD: I'm going to state the same  
2                   objection. That does not call for any correction or  
3                   modification. It, in fact, invites additional direct  
4                   testimony.

5                   BOARD CHAIR HELLAND: Mr. Murray.

6                   MR. MURRAY: By rule, he was required to  
7                   file his written testimony on July 14. The evidence  
8                   that I think he wants to talk about is occurring after  
9                   July 14. This landowner would like the Board to  
10                  understand about the public necessity argument.

11                  BOARD CHAIR HELLAND: So you're saying it  
12                  is additional, not a correction.

13                  MR. MURRAY: A supplement -- it is  
14                  clarification of his public necessity argument. Which  
15                  is in his testimony. On page 11 and 12.

16                  BOARD CHAIR HELLAND: Mr. Murray, we're  
17                  going to sustain that objection. If you wanted  
18                  additional testimony, you would have needed to ask the  
19                  Board for permission. Thank you.

20                  MR. MURRAY: Thank you.

21                  BY MR. MURRAY:

22                  Q. Mr. Skilling, I'm directing you to page 11  
23                  and 12 of your testimony.

24                  MR. MURRAY: And if the tech could publish  
25                  that. If we could go down to the bottom there, I

1 believe.

2 BY MR. MURRAY:

3 Q. Okay. So, on page 197, you have a  
4 criticism of public purpose.

5 BOARD CHAIR HELLAND: Line 197; correct?

6 MR. MURRAY: Line 197.

7 BY MR. MURRAY:

8 Q. Do I reference this part of your testimony  
9 correctly?

10 MR. LEONARD: Objection, Your Honor.

11 BOARD CHAIR HELLAND: State your objection.

12 MR. LEONARD: The same objection that was  
13 just sustained. Now we're asking him to read his  
14 direct testimony. Which has been filed and is in  
15 evidence.

16 MR. MURRAY: I was going to ask him if he  
17 had any corrections as to this area of his direct  
18 testimony.

19 A. Absolutely not.

20 MR. MURRAY: I'm going to -- if the Chair  
21 needs to rule on the objection --

22 BOARD CHAIR HELLAND: I believe he just  
23 said there's no correction.

24 MR. MURRAY: Right. So nothing further  
25 from this witness.



1 BOARD CHAIR HELLAND: Thank you. Do you  
2 have any --

3 MR. MURRAY: We will offer the direct  
4 testimony and the exhibits into the record.

5 BOARD CHAIR HELLAND: Are there objections?

6 MR. LEONARD: No objection.

7 BOARD CHAIR HELLAND: Seeing no objections,  
8 the Board will admit and give it the weight due.

9 Are you tendering the witness?

10 MR. MURRAY: Yes.

11 BOARD CHAIR HELLAND: Thank you.

12 Questions from the parties for the witness.

13 Mr. Jorde.

14 CROSS-EXAMINATION

15 BY MR. JORDE:

16 Q. Sir, were you able to listen in to the  
17 testimony of Mr. Jimmy Powell and Mr. Pirolli that was  
18 publicly available?

19 A. I had a chance to look at that testimony  
20 pursuant to the Board's allowance of the live  
21 streaming.

22 Q. And was there anything particularly in  
23 those two gentlemen's testimony that in any way causes  
24 you to modify any of your opinions or positions from  
25 your prefiled testimony?

1           A.    Yes.

2           Q.    What is that?

3           A.    I'd like to begin with hearing them talk  
4 about the individuals that came before the -- or,  
5 excuse me, the individuals that would come and visit  
6 with us and talk to us about the Summit plans for this  
7 pipeline.

8                   I would like to say that initially one of  
9 the individuals that was responsible for contacting  
10 us, a Mr. Loren Peterson, called an attorney's office  
11 in Algona, Iowa, the Peterson Lipps firm, and wanted  
12 information about us from them. The Peterson Lipps  
13 firm responded that even if they had information, that  
14 would be unethical for them to contact us.

15                   Then we had Wes Patterson come. Wes  
16 Patterson came, talked with my wife. And, in respect  
17 to that visit, he explained to my wife that, "You know  
18 I'm in charge of Hancock County."

19                   And, in regards to Hancock County, he was  
20 about 15 miles into Kossuth.

21                   And then, finally, we had Cody Parkin, and  
22 Cody promised and had told us that we could look at --  
23 ingress and egress would be around the pipeline area.  
24 So what do we see when we get the paperwork file is we  
25 now have Summit and their attorneys seeking easement

1 over an entire 40 acres of property.

2 Q. So how would you characterize your  
3 interactions with Summit and their agents in their  
4 attempts to try to get you to execute an easement?

5 A. Poorly.

6 Q. And do you have any concerns that Summit  
7 has not made publicly available its risk analysis and  
8 the true dangers that this pipeline could pose to you  
9 and your community?

10 MR. LEONARD: Objection, Your Honor.

11 BOARD CHAIR HELLAND: State the objection.

12 MR. LEONARD: Again, he's not being  
13 cross-examined. He's being subjected to additional  
14 direct examination by a party aligned with him.

15 BOARD CHAIR HELLAND: Mr. Jorde?

16 MR. JORDE: Well, 17A.14 in contested cases  
17 deals with "irrelevant, immaterial, or unduly  
18 repetitious evidence." Of which that question is  
19 neither. And it also states that "Witnesses at a  
20 hearing, or persons whose testimony has been submitted  
21 in written form if available, shall be subject to  
22 cross-examination by any party as necessary for a full  
23 and true disclosure of the facts."

24 Now, those are the rules, not how this may  
25 have happened in the past. And this gentleman, like

1 all witnesses, have no opportunity to speak to what  
2 Summit's witnesses come and say here that isn't in  
3 their testimony. And he needs an opportunity to  
4 respond to that.

5 MR. LEONARD: Your Honor, if I may respond  
6 briefly.

7 The rule that Mr. Jorde read permits  
8 cross-examination. This is not cross-examination.  
9 It's further direct examination.

10 MR. JORDE: I'd like a definition of  
11 cross-examination then from Mr. Leonard.

12 BOARD CHAIR HELLAND: I don't think that's  
13 really necessary, Mr. Jorde.

14 MR. JORDE: Well --

15 BOARD CHAIR HELLAND: Hold on. We'll rule  
16 in a moment.

17 (Brief pause.)

18 BOARD CHAIR HELLAND: Okay. So we're going  
19 to take a 15-minute break. We're going to talk with  
20 the rest of the Board and we're going to put this  
21 issue to bed.

22 Mr. Whipple, did you have anything to add,  
23 before we go, on that matter? Or did you just want to  
24 get in the queue?

25 MR. WHIPPLE: I don't want to get in the

1 queue for this witness. I'd like to add one thing on  
2 this point before you go into closed session to  
3 discuss it.

4 There are witnesses that the Counties would  
5 like to examine. And I think Summit attributes to the  
6 other intervening parties a requirement or asserts  
7 that we're all always on the same side of an issue.  
8 But there are facts that the Counties would like to  
9 elicit from some witnesses that fit our theory of this  
10 case that is different from the other parties.

11 We will try to be respect actual of  
12 duplicative information, but we would like that  
13 opportunity, Your Honor.

14 BOARD CHAIR HELLAND: So, just clarifying,  
15 you're stating the point that while, in general, your  
16 position may not be shared, there are times when you  
17 are quote-unquote friendly to the testifying party but  
18 you want to make a point that you may not be in  
19 alignment with that particular party on.

20 MR. WHIPPLE: We may not be opposed and we  
21 may not be friendly. We may be trying to develop our  
22 own evidence for our own briefing and see some  
23 witnesses as useful to elicit those facts.

24 It's not true that there's only Summit's  
25 side and the other side. There are everyone's side

1 and the record we're trying to make for briefing and  
2 later argument.

3 BOARD CHAIR HELLAND: Thank you.

4 Mr. Taylor.

5 MR. TAYLOR: Thank you. I don't want to  
6 belabor this too much, but a couple of things.

7 One is I think that when the Board uses a  
8 vehicle of written direct testimony, all of that puts  
9 the facts in issue and so on. It doesn't really bring  
10 out all the evidence as the statute Mr. Jorde read  
11 envisions. And so I think it is necessary, without  
12 unduly being repetitious or irrelevant, to expand on  
13 the written testimony.

14 And the other point is just to confirm  
15 Mr. Jorde's observation that cross-examination doesn't  
16 necessarily mean cross in the sense of being adverse.  
17 It just means examining someone other than your own  
18 witness.

19 Thank you.

20 BOARD CHAIR HELLAND: Mr. Dublinske, did  
21 you have anything to add there? I see your card up.

22 MR. DUBLINSKE: I do, Your Honor, just  
23 before the Board deliberates on this.

24 I think, to Mr. Whipple's point, that,  
25 "Well, there may be a witness that nominally is on the

1 same side of the case in terms of objectives, but we  
2 want to get additional testimony for our briefing,"  
3 each party had an opportunity to make a direct case.  
4 And, if there were things they thought they needed for  
5 their briefing, they could and should have done that  
6 through their own witnesses.

7 And I disagree with Mr. Taylor. I think  
8 cross does have a meaning. It doesn't just mean  
9 asking questions. It is a different creature from  
10 direct examination.

11 And here I don't think it's that difficult  
12 to figure out that most of the intervenors, if you  
13 read their testimony, if you read their intervention  
14 papers, are looking to have the Board deny the  
15 application.

16 And there may be subtleties within that,  
17 but, to the extent that they have a similar overall  
18 objective, just because there is no "v" in the caption  
19 of this case like there would be in a traditional  
20 two-party, for example, court case, doesn't change the  
21 reality of the fact that there is a "v" here. And  
22 cross is for questioning across that "v." And that's  
23 just simply not how it's being used here.

24 Mr. Jorde's earlier argument -- and, I  
25 apologize, it may have been somebody else. But the

1 earlier argument that, well, you know, there's direct  
2 testimony or there was live witness testimony and  
3 people haven't had a chance to respond to that so they  
4 ought to get to, in any hearing of any kind, in this  
5 Board, in a court, there will always be new testimony  
6 coming out.

7 And, if we always said, "Well, everybody  
8 then gets a response to that," you literally would  
9 have this never-ending back and forth, back and forth,  
10 back and forth. And that clearly is not how hearings  
11 work. There are a limited number of back-and-forth  
12 opportunities.

13 Again, it generally so happens that the  
14 applicant, the movant, the plaintiff, gets the last  
15 word in those, and not everybody is always going to  
16 get a chance to go in behind that. And that will  
17 always be true no matter how many repetitions you  
18 have.

19 So, at some point, those repetitions simply  
20 become, you know, everyone trying to get the last word  
21 on something. Which is just simply not possible.

22 Again, fundamentally, this is just not  
23 cross-examination.

24 BOARD CHAIR HELLAND: Thank you.

25 Did anybody have any other comments or



1 thoughts on the matter?

2 MR. JORDE: Yeah. Any party is allowed to  
3 ask questions of any witness. That's the rule. It's  
4 as simple as that.

5 THE WITNESS: May I speak on my behalf?

6 BOARD CHAIR HELLAND: Unfortunately -- hold  
7 on. Mr. Skilling, you have an attorney.

8 THE WITNESS: I do.

9 BOARD CHAIR HELLAND: This is just a  
10 procedural matter. So we traditionally speak through  
11 our attorneys. I don't want to tell you no, but this  
12 would typically be handled by your attorney.

13 MR. MURRAY: At the risk of upsetting my  
14 client, I think plenty of record has been made on the  
15 procedural point.

16 THE WITNESS: Mine was going to be  
17 something different. And it was not -- well, it is  
18 procedurally but it isn't. I was going to ask if I  
19 could go back and add to some testimony I'd already  
20 provided.

21 BOARD CHAIR HELLAND: Well, we're going to  
22 take a 15-minute break. So that would be a great  
23 opportunity to talk to Mr. Murray and see what your  
24 avenues and options are there.

25 THE WITNESS: All right. Thank you very

1 much.

2 BOARD CHAIR HELLAND: Just to make sure I  
3 didn't miss anybody?

4 Thank you. We'll be back in 15  
5 minutes-ish.

6 (Recess taken at 9:22 a.m.)

7 (Hearing resumed at 9:51 a.m.)

8 BOARD CHAIR HELLAND: Okay. Good morning.  
9 Sorry. That took a little longer than anticipated.

10 As it relates to the second motion of the  
11 day, or the friendly cross, this was foreseeable, and  
12 it is not new ground. This issue has been raised. In  
13 fact, I believe Sierra Club raised this issue in  
14 Dakota Access.

15 The district court clearly and succinctly  
16 affirmed the Board's ability to limit friendly cross  
17 and rely on prefiled testimony heavily.

18 Mr. Whipple's point is well taken. There  
19 are areas of nuance, and I have no doubt the attorneys  
20 in the room will explore that nuance. And the Board  
21 will continue to restrict and run a very tight course.

22 As it relates to Mr. Jorde's initial motion  
23 this morning, we said we'd wait till lunch, but we  
24 were there and decided to deal with it.

25 As previously stated in at least one order,

1 mere admission of testimony does not waive cross of a  
2 witness. Only a motion by the sponsoring party,  
3 acquiescence of the other parties, and permission of  
4 the Board will waive cross.

5 All right. Well, with that, we'll go back  
6 to you.

7 THE WITNESS: Thank you.

8 BOARD CHAIR HELLAND: Ms. Kohles, do you  
9 have a question for the witness?

10 MS. KOHLES: I just have a question for  
11 you, Your Honor. One of the questions before you took  
12 the recess was -- when I received my instructions from  
13 the IUB Board, it said I had the right to  
14 cross-examine all witnesses. So you're saying I still  
15 have that right.

16 BOARD CHAIR HELLAND: You, the parties,  
17 have a right to cross-examine.

18 MS. KOHLES: Whenever I feel necessary.

19 BOARD CHAIR HELLAND: There are  
20 restrictions on friendly cross-examination. If  
21 questions become unduly repetitious, it is subject to  
22 objection and ruling by the party {sic}.

23 We are not saying there is no  
24 cross-examination. Cross-examination is necessary.  
25 We are saying it has become fairly frequent in this

1 hearing that the friendly cross-examination has become  
2 unduly repetitious. And we have clear authority to  
3 limit unduly repetitious testimony.

4 MS. KOHLES: Thank you.

5 BOARD CHAIR HELLAND: Thank you.

6 Okay. Mr. Jorde, I believe it was your  
7 witness.

8 BY MR. JORDE:

9 Q. All right. Well, I think we left off with  
10 the question relative to any concerns you have, if  
11 any, due to the fact that Summit refuses to share its  
12 risk analysis and plume modeling with you, the public.

13 Do you have any concerns about that?

14 A. I do.

15 Q. And what are those?

16 A. The concerns I have is my property, my  
17 wife's property, my son's property that we hold under  
18 DAPEMA is in an area where there are quite a few  
19 houses.

20 In fact, with regard to our property, we  
21 have a renter that lives right across the road about  
22 1,500 feet from where they want to put the pipeline.  
23 And, as I stated earlier, to the north there are other  
24 families as they run the pipeline to the west across  
25 that property that I believe would be impacted by any

1 type of rupture.

2 Q. Would you be able to make an intelligent,  
3 informed decision on whether or not to sign an  
4 easement in this matter without having that safety  
5 information to consider?

6 A. Excuse me? Would you say that again,  
7 please.

8 Q. Do you believe you would be able to make an  
9 intelligent and informed decision on whether or not to  
10 sign Summit's proposed easements if you do not have  
11 and do not know the risk posed to you?

12 A. I would not be able to intelligently sign  
13 an easement without that information. There's other  
14 information I'd like that we just don't seem to get,  
15 but...

16 Q. What's the other information?

17 A. Well, as I said earlier, they're asking for  
18 40 acres of my land. I'd like to know exactly why  
19 they need it when they're only asking roughly three  
20 acres for the pipeline and the temporary construction  
21 easement.

22 I've got a question about why they didn't  
23 go to the proper owner above us. Who is Rothler  
24 Trust. Rothler Trust has already signed an easement  
25 agreement on property that's roughly a mile away from

1 where we are. The property I'm speaking of right now  
2 that affects me is right above my 40 acres. And it  
3 would not take much to go ahead and move that pipeline  
4 up onto that Rothler property.

5 Q. Did you suggest an alternative route? And,  
6 if not, do you have one you can describe?

7 A. We did not ask for one. The one I would  
8 describe is to go that little bit above where our 40  
9 is and move it north up in the Rothler property where  
10 you've already had someone that has gone ahead and  
11 signed an easement.

12 MR. JORDE: All right, sir. Thank you. I  
13 don't have anything further.

14 BOARD CHAIR HELLAND: Mr. Taylor.

15 MR. TAYLOR: Thank you.

16 CROSS-EXAMINATION

17 BY MR. TAYLOR:

18 Q. In your written testimony, you mentioned an  
19 abandoned hog lagoon, and it wasn't clear to me what  
20 the issue was there.

21 Can you clarify that?

22 A. I can. There is a hog lagoon. There had  
23 been a hog setup. It's not being used at the present  
24 time. I believe it was about a year and a half ago,  
25 or possibly two, this lagoon started to stink. And

1 the stench was so bad that you could smell it almost  
2 into the city of Algona, which was about five miles  
3 from this lagoon.

4           There was an effort made by individuals to  
5 dry and drain that lagoon. And, in the process of  
6 trying to drain that lagoon, an individual died from  
7 asphyxiation. The other individual that was there  
8 with him was able to get away and still, I believe,  
9 was hospitalized or at least went to the emergency  
10 room.

11           To my knowledge, that hog lagoon still  
12 exists there and is in discussions with who is  
13 responsible now, it's been abandoned, to see that that  
14 gets drained.

15           And I can't tell you how far, but it's in  
16 the near vicinity of where this pipeline wants to go.

17           Q. So how do you see the pipeline impacting  
18 that or that impacting the pipeline?

19           A. Risk. In a simple word, risk. If there's  
20 any rupture with regard to that pipeline -- we've  
21 already seen a lagoon that has caused a death. It's  
22 highly volatile, and it would just add to the danger,  
23 again, and the risk.

24           Q. And you told Mr. Jorde that there was a  
25 house I think you said to the east that was 1,500 feet

1 from the pipeline.

2 Is that correct?

3 A. The house that we have is south. I'm  
4 sorry. About 1,500 feet from the pipeline.

5 Q. And then you said there were some houses to  
6 the north. How far would those be from the pipeline?

7 A. As it runs west, they're going to be  
8 similarly situated.

9 We took a drive out in that area yesterday  
10 in preparation for today's hearing, and I believe my  
11 wife and I counted at least three family homes. And  
12 then, as you go to the west, there are going to be two  
13 family homes that -- there's a gravel road on the west  
14 side, and one is on the east side of the gravel road.  
15 There's another one on the west side.

16 Q. And the pipeline in Kossuth County goes  
17 from east to west; correct?

18 A. Correct.

19 Q. If there were a pipeline rupture, how close  
20 is the closest emergency management personnel?

21 A. Five miles.

22 Q. Is that a small volunteer?

23 A. That it is.

24 I might mention the one thing that  
25 concerned me, too, is what I've heard in testimony



1 with regard to safety measures. The fact is that  
2 they're going to have someone in Ames, and -- it kind  
3 of reminds me of Chernobyl. That there's going to be  
4 a situation where there's going to be something that  
5 goes off that's going to indicate, "Hey, we got a  
6 problem." And hopefully there's someone in that place  
7 in Ames that's going to be able to make that decision,  
8 "What are we going to do," and make it immediately.

9 The way I understood the testimony -- and I  
10 can't tell you who offered it. Someone from Summit.  
11 But then what they're going to do is relay it to  
12 somebody in the area. And then that somebody, who is  
13 unknown, is going to go check this rupture, whatever  
14 it might be, and what they're going to do is try and  
15 assess it for degree of risk. Is it a major rupture?  
16 Is it minor?

17 Well, then they've got to relay it in to  
18 wherever is the closest party to do that. To come and  
19 respond.

20 There's just too much left unsaid.

21 MR. TAYLOR: That's all the questions I  
22 have. Thank you.

23 BOARD CHAIR HELLAND: Thank you.

24 Ms. Hayek. Go ahead.

25

1 CROSS-EXAMINATION

2 BY MS. HAYEK:

3 Q. Christine Hayek, landowner.

4 Sir, do you know how many land agents

5 you've had? I know you mentioned three of them.

6 Loren Peterson, Wes Patterson, and Cody Parkin. Did

7 you have any more than just those three?

8 A. Those are the three I can think of. I know

9 there was contact early on that we had gotten a call

10 that there was a representative from Summit out on our

11 land surveying it. And we were to have been notified

12 about the survey. We were not. And, again, some

13 neighbors in that area saw it.

14 My wife drove out there and was in contact

15 with that individual. And there was no real

16 explanation of why he was there.

17 Wes Patterson was in contact with my wife

18 and said, no, they had done no surveys yet and they

19 would do a survey, and my wife asked if we would be

20 notified. And there was no notification and

21 supposedly someone went out and surveyed it. So we

22 have no idea who, in fact, surveyed our land.

23 Again, there's just things up in the air.

24 Q. Could you estimate how many hours you've

25 had to spend on matters related to Summit's proposed

1 pipeline since you first learned that they intended to  
2 cross your land?

3 A. Excuse me? Would you repeat that?

4 Q. Certainly. Could you estimate how many  
5 hours you've had to spend on matters related to  
6 Summit's proposed pipeline since you first learned of  
7 their intention to cross your land?

8 A. It's hard to judge. It's taken a  
9 considerable amount of our time. I certainly could  
10 ask my attorney, Mr. Murray. He's kept time. And I  
11 don't know how long beyond that it's been. My wife  
12 and I have done a considerable amount of time on our  
13 own researching, contacting, and doing some other  
14 things.

15 Q. Thank you. Has Summit threatened you with  
16 eminent domain either outright or by insinuation  
17 during this whole process?

18 A. There's no threats, but it's obvious that  
19 that's what they're waiting for. That they're just --  
20 the negotiations -- it started out early on they were  
21 asking for an easement over the entire 80 acres we  
22 had.

23 As I indicated, we have a stacked 40, and  
24 initially they wanted the 40 closest to the road and  
25 the 40 at the top.

1 Well, the interesting thing that came out  
2 in the easement that was first sent to us said -- and  
3 it was hidden in the easement that we also, once you  
4 sign this, have access to all adjacent land that is  
5 between that north piece we're talking about right now  
6 and the roadway. It was hidden in the easement.

7 And that was our initial concern when we  
8 talked to Cody Parkin. And, basically, Mr. Parkin  
9 just told us we were misreading it. And I sorely  
10 disagreed with him. And anything after that was just  
11 downhill. There was no, as far as I can say,  
12 good-faith negotiations.

13 Q. David, did Summit provide you with any  
14 paperwork discussing warnings, risks, or safety  
15 information related to putting in the pipeline on your  
16 property?

17 A. They may have and I just don't recall it.

18 Q. Is there anything else you'd want to  
19 address to the Board to let them know as it relates to  
20 this pipeline project?

21 A. I do. I would like to relate to the Board  
22 that I don't see any reasonable purpose or rational  
23 basis for this pipeline.

24 There's so much that's being left unsaid.  
25 We don't know about the plume. We don't know anything

1 about the emergency reaction. We don't know about the  
2 insurance. All of this is speculation.

3 We go down the line. We don't know about  
4 ingress and egress. We don't know if the counties  
5 will actually allow permits for access off of the  
6 county roads. We hear, and what I have heard, is that  
7 Summit tells us they're going to do that, but I say to  
8 the Board the road to hell is paved with good  
9 intentions.

10 MS. HAYEK: Thank you, David.

11 THE WITNESS: You're welcome.

12 BOARD CHAIR HELLAND: Mr. Murray -- just  
13 double-checking. Hold on.

14 Redirect, Mr. Murray. I don't think  
15 there's any other questions. So it's all yours.

16 MR. MURRAY: If there's no other cross,  
17 then I have one line of redirect.

18 REDIRECT EXAMINATION

19 BY MR. MURRAY:

20 Q. It had to do with Ms. Hayek's reference to  
21 the property adjacent.

22 Okay?

23 A. Yes.

24 Q. I wanted to ask you some clarification and  
25 explanation on that.

1                   MR. MURRAY: If the tech could bring up  
2 Mr. Skilling's direct examination Exhibit 1.

3 BY MR. MURRAY:

4               Q. Now, on the screen is what appears to be  
5 the proposed easement agreement that you identified in  
6 your written direct examination; correct?

7               A. Correct.

8                   MR. MURRAY: Now if I could have the tech  
9 go down to the bottom of page 2.

10 BY MR. MURRAY:

11              Q. On the bottom of page 2, there is the  
12 heading "Access Easement."

13                   Do you see that there?

14              A. I do.

15              Q. To be clear, this was an easement agreement  
16 presented to you that you did not sign; correct?

17              A. That's correct.

18              Q. And it says there under access easement, "A  
19 free and unobstructed non-exclusive easement in, to,  
20 through, on, over, under, and across the landowner's  
21 property and over the property of landowner adjacent  
22 to the easement in line between the public and private  
23 roads and the easement (the 'access easement'). For  
24 the purpose of ingress and egress to the pipeline  
25 easement" -- I'll stop there.

1                   Is that the part that you're referencing  
2   when you refer to the language "property of landowner  
3   adjacent to the easement"?

4           A.    Yes, it is.

5           Q.    That is your concern?

6           A.    Yes. That would be the southwest -- yes.  
7   Southwest quarter of the southwest quarter, I believe.  
8   If that's the correct description.

9                   MR. MURRAY: And if we can go to DAPEMA  
10   Hearing Exhibit 2, tech.

11   BY MR. MURRAY:

12           Q.    To be clear, you understand the highlighted  
13   area here in DAPEMA Hearing Exhibit 2 to be that which  
14   is subject to taking; right?

15           A.    Correct.

16           Q.    But you own the property to the south of  
17   there.

18           A.    Correct.

19           Q.    And the road is south of that.

20           A.    Correct.

21                   MR. MURRAY: Nothing further.

22                   BOARD CHAIR HELLAND: All right. Thank  
23   you. Appreciate it.

24                   THE WITNESS: You're welcome. Thank you  
25   for your time.

1 BOARD CHAIR HELLAND: Mr. Murray. Your  
2 next witness?

3 MR. MURRAY: Gregory Kracht.

4 BOARD CHAIR HELLAND: Did you say Kracht?

5 MR. MURRAY: Kracht.

6 BOARD CHAIR HELLAND: Good morning.

7 MR. KRACHT: Morning.

8 BOARD CHAIR HELLAND: Go ahead and speak  
9 into the microphone. Position that around wherever  
10 the questions are coming from. Just make sure you're  
11 speaking into the microphone so we can hear you.

12 Raise your right hand.

13 GREGORY KRACHT,  
14 called as a witness by Murray Landowners, being first  
15 duly sworn by Board Chair Helland, was examined and  
16 testified as follows:

17 BOARD CHAIR HELLAND: Mr. Murray.

18 DIRECT EXAMINATION

19 BY MR. MURRAY:

20 Q. Mr. Kracht, please state your name for the  
21 record.

22 A. Gregory Kracht.

23 Q. And, in these proceedings, are you the same  
24 person that submitted written prefiled testimony on  
25 July 14, 2023?



1 A. Yes.

2 Q. And that was accompanied by, I believe,  
3 Exhibits 1, 2, and 3?

4 A. Yes.

5 Q. Are there any corrections with respect to  
6 your written prefiled testimony?

7 A. There are -- yes, there is.

8 MR. MURRAY: I'm going to ask the tech  
9 person to bring up page 7.

10 BY MR. MURRAY:

11 Q. And on page 111 -- or excuse me, line 111,  
12 there is a question there that says "How did Summit  
13 respond to your offer." And on line 112 you answered  
14 at that time "I have not received a reply to my offer.  
15 They have ignored me."

16 Today are there any updates or corrections  
17 to that?

18 A. Yes, there is.

19 Q. What are those corrections or updates?

20 A. Well, in the early part of September here,  
21 they got back to -- they responded to me, and their  
22 offer was the same as it was a year prior and they had  
23 the route back where it wouldn't work as -- it seemed  
24 as a punishment to me for not agreeing with them at  
25 the time.

1                   So, yeah, that's where we're at. There was  
2 nothing new as far as an offer goes, and they left the  
3 route where it does not work at all.

4                   MR. MURRAY: Your Honor, I offer the  
5 written testimony along with Exhibits 1, 2, and 3.

6                   BOARD CHAIR HELLAND: Are there objections?

7                   MR. LEONARD: No objection.

8                   BOARD CHAIR HELLAND: Seeing no objections,  
9 the Board will admit the evidence and give it the  
10 weight due.

11                  MR. MURRAY: Tender the witness.

12                  BOARD CHAIR HELLAND: Thank you.

13                  Mr. Taylor, your card is up.

14                  MR. TAYLOR: Thank you.

15                               CROSS-EXAMINATION

16 BY MR. TAYLOR:

17               Q. Mr. Kracht, you said in your written  
18 testimony that you have a wooded, picturesque lot with  
19 a pond and a stream and you're anticipating future  
20 development, but you didn't expand on what that future  
21 development would be, when you plan to do that, if  
22 you've had any actions taken to start that  
23 development.

24                       Can you help us out there?

25               A. I have not made any actions, or taken any

1 actions, to do that. But, when I bought the ground in  
2 2011, that was the intent behind it is -- I'm grazing  
3 it now, and there's a housing development just to the  
4 west of it. And that was the idea behind paying too  
5 much for it, in my opinion, was because there was  
6 great potential in developing it because of the  
7 picturesque and just the lay of the land.

8 Q. How far would your land be from a city or  
9 an area where people would want to build?

10 A. How far would it be --

11 Q. Let me ask it a different way. Usually a  
12 residential development like this with big lots is at  
13 least somewhat close to a city or other urban area.

14 What's the status of your property in terms  
15 of nearby cities?

16 A. Well, it would be -- I guess the value in  
17 it is the fact that it's not near a city. And it  
18 would attract somebody who would enjoy the natural,  
19 picturesque, secluded environment.

20 So just like the development that is to the  
21 west of me. There's already three or four homes there  
22 that are -- yeah. So it's the exact opposite of an  
23 urban development.

24 Q. Okay. So there is some history at least of  
25 that area being developed for residences?

1           A.     That's right.

2           Q.     In your clarification this morning, you  
3     said that Summit has now come back with a new easement  
4     agreement that you said put the property back -- or  
5     put the easement back in its original location.

6                     Can you explain what this discussion with  
7     Summit was as far as locations of the route?

8           A.     Yes, I can.  When they first approached me  
9     about it, I told them to go away.  And then they  
10    pressed it and pressed it, and I said, well, if  
11    there's even a chance if -- yeah, if there's even a  
12    chance of crossing the property, it cannot be there,  
13    because that is the only access point to over half of  
14    the property.  Because of the pond and the lay of the  
15    land.

16                    And so they moved it over to the west side.  
17    And we were in agreement that that was doable if all  
18    the other terms were met.

19                    And then when we submitted our proposal to  
20    them, they initially -- or they instantly came back  
21    and said, "Well, we're going to move it back to where  
22    it was then, not where we had moved it to."

23           Q.     So did you have any discussion with the  
24    land agent about that?

25           A.     Yeah, I did, I expressed my -- but that

1 kind of -- well, actually, I haven't had much -- I  
2 haven't had much contact with him since I involved an  
3 attorney. I don't think I've had any contact with  
4 him, actually, since I've involved an attorney.

5 Q. That makes sense.

6 A. Yeah.

7 Q. As the situation exists right now, how far  
8 would the pipeline be from any existing buildings,  
9 including residences?

10 A. I would be guessing, but I would say within  
11 500 to 750 feet.

12 Q. And where is the closest emergency  
13 management personnel?

14 A. I would -- probably seven or eight miles.

15 Q. And where would that be?

16 A. What town?

17 Q. Yes.

18 A. Inwood would be the closest town.

19 Q. Would that impact your development plans?

20 A. Would what?

21 Q. The location regarding safety?

22 A. Yeah, I don't think there would be -- to  
23 me, that's what devalues the property. Is the fact  
24 that I'm going to try to sell a lot with a toxic  
25 chemical flowing through the backyard of someone. I

1 don't know that they're going to want to build their  
2 house there.

3 MR. TAYLOR: Thank you. That's all the  
4 questions I have.

5 BOARD CHAIR HELLAND: Thank you.

6 Mr. Jorde.

7 Oh. I'm sorry. I believe Ms. Kohles was  
8 first.

9 CROSS-EXAMINATION

10 BY MS. KOHLES:

11 Q. Good morning, Mr. Kracht. I'm Jean Kohles  
12 with Kohles Family Farms.

13 And regarding your negotiations. Did  
14 Summit at any time give you any risk or hazard  
15 analysis of the pipeline?

16 A. I guess I don't remember it if they did.

17 Q. You're aware of the various incidents in  
18 Satartia; correct?

19 A. Yes.

20 Q. Which is very concerning. What kind -- do  
21 you have a volunteer emergency response team?

22 A. I think the closest town would be  
23 volunteer, yes.

24 Q. Do you have some concerns about how they  
25 would afford the proper equipment or training to

1 respond to an incident?

2 A. I think anybody would, yeah.

3 Q. Did you watch the testimony from the  
4 individual who handled the response team at the  
5 Satartia incident?

6 A. I have not watched any testimonies.

7 Q. Basically he said he didn't have any plume  
8 modeling or anything. Do you think that's necessary  
9 for people to know? To have that information made  
10 public?

11 A. Say that again.

12 Q. Do you think that the plume modeling should  
13 be made public to the people that are directly  
14 affected or indirectly affected by the pipeline?

15 A. Yes.

16 Q. Do you think that a pipeline should be  
17 built for monetary or private industry versus for the  
18 good of the people?

19 A. I do not think it should be.

20 Q. Do you think that they should have  
21 proceeded with eminent domain because of that?

22 A. I do not think they should proceed with  
23 eminent domain.

24 Q. And I just want -- okay. Also, that one  
25 individual, I can look up his name if I must, who was

1 the supervisor of that incident in Mississippi also  
2 indicated the incident happened in February.

3 But also, in October of the same year, they  
4 had to do maintenance on the line where they  
5 voluntarily released one of the valves to release the  
6 pressure in the valve.

7 And, in the process of relieving that  
8 pressure, the valve froze open and the continuous  
9 plume continued to be expelled for up to 24 hours. It  
10 covered over -- I don't remember exactly how many --  
11 17 miles or something. That was released.

12 So do you have concerns about the  
13 maintenance or the quality of the pipeline when it's  
14 in operation?

15 A. I absolutely have concerns.

16 Q. Is there anything else that you think the  
17 Board should know?

18 A. I guess I just am very frustrated with the  
19 tactics that took place in the negotiations. I mean,  
20 we seemed to be -- I was reluctantly going along, and  
21 then I finally get to where I give a proposal and then  
22 I feel like I get met with a punishment or a threat to  
23 go back to something that absolutely doesn't work for  
24 me.

25 So, yeah, I don't like the negotiation



1 tactics.

2 MS. KOHLES: Thank you very much. No  
3 further questions.

4 BOARD CHAIR HELLAND: Thank you.

5 Mr. Jorde.

6 CROSS-EXAMINATION

7 BY MR. JORDE:

8 Q. I just wanted to follow up on that. In one  
9 of your answers, you mentioned that you initially said  
10 you weren't interested and then "they," meaning  
11 Summit, pressed. Pressed you.

12 The word "pressed," is that your word for  
13 they kept coming at you? I mean, were they  
14 intimidating you where you felt pressured or  
15 threatened? Or what were you describing?

16 A. It would be pressure. I guess I wouldn't  
17 go as far as to say there was intimidation. The only  
18 time I've felt threatened, or whatever, is when they  
19 went -- when we started to actually negotiate, when  
20 they went back to, like, "Take this or this is going  
21 to happen."

22 But the initial -- my initial response was,  
23 "Go away." And it was for the first four to five  
24 times the agent stopped at my place.

25 And finally he said, "Is there a chance

1 that we could just do some surveying to see if" -- you  
2 know, "if everything checks out the way it needs to  
3 be."

4 I said, "I suppose you can," but I said, "I  
5 think you're wasting your time."

6 And they proceeded. And then, once they  
7 had that done, the visits became far more frequent,  
8 and it just kept -- I mean, he'd sit in front of the  
9 shop for as long as it took for me to show up. And  
10 never a -- I mean, I never felt threatened, but it was  
11 very pressuring.

12 Q. You don't seem like a guy that would  
13 threaten easily.

14 But at some point you obviously hired  
15 counsel. You just threw your hands up? Or what led  
16 to that decision?

17 A. Well, I don't think about it a lot, because  
18 I have a lot going on in my business. And so finally  
19 when the pressure was getting ratcheted up and I could  
20 see the move -- or the fear of moving towards eminent  
21 domain, I felt like I needed to reach out to somebody  
22 that could spend some time and knew the law. And  
23 that's when I hired John.

24 Q. So would you say the threat and kind of the  
25 cloud of eminent domain has caused you to incur costs

1 and expense in hiring counsel?

2 A. Absolutely.

3 Q. How many hours would you say, sir, that you  
4 have spent, you or your family, learning, researching,  
5 dealing with Summit, their agents, talking to them,  
6 all of that? Roughly.

7 A. I don't keep track of my time very well. I  
8 don't feel like I probably get paid for it. So that's  
9 probably why. But I -- I mean, he was -- there was a  
10 period of time where I would deal with the agent every  
11 two weeks for, you know, a prolonged time. He'd  
12 propose and talk. Trying to be a good old boy.

13 So I don't -- I don't know if I'd even  
14 venture a guess at the time.

15 Q. And has Summit at any time offered to  
16 compensate you for all of that time spent and lost  
17 from what you would have rather been doing?

18 A. No.

19 MR. JORDE: I don't have anything further.  
20 Thank you.

21 BOARD CHAIR HELLAND: Thank you.

22 Ms. Gruenhagen.

23 MS. GRUENHAGEN: Thank you, Your Honor.

24 Could staff please pull up the KMZ file for  
25 LY-106. I just have some questions about your

1 proposed alternate route.

2 CROSS-EXAMINATION

3 BY MS. GRUENHAGEN:

4 Q. In looking at your exhibits -- I'm just  
5 trying to picture it over top of the terrain here.  
6 The route in the Exhibit H where the current white  
7 line is, that's on top of a hill?

8 A. Correct.

9 Q. And then where you want it moved is farther  
10 to the west?

11 A. Correct.

12 Q. Is there a residence right there on the  
13 adjoining property?

14 A. That's the one I said was 500 to 750 feet.

15 Q. Do you live in that house?

16 A. I do not.

17 Q. That's a neighbor?

18 A. Right.

19 MS. GRUENHAGEN: Thank you.

20 BOARD CHAIR HELLAND: Ms. Kohles, did you  
21 have a follow-up? Just double-checking.

22 Okay. If there are no more questions from  
23 the parties, Mr. Murray, redirect.

24 Oh. Board questions? No.

25 Mr. Murray for redirect.

1 REDIRECT EXAMINATION

2 BY MR. MURRAY:

3 Q. You were asked about the eminent domain  
4 issue. And I wanted to follow up with you on  
5 clarification.

6 Your property is located how close to South  
7 Dakota?

8 A. I think it's -- you could probably see it  
9 on the map, but I think it's within a mile or a mile  
10 and a half. Because the river is the border.

11 Q. So that we're all clear, how far north from  
12 Sioux City are you? Approximately would you say.

13 A. Seventy miles.

14 Q. Seventy? So, if South Dakota did not  
15 approve the pipeline and this eminent domain happened  
16 on your property, apparently Summit would have to take  
17 a left turn and go south into Nebraska 70 miles.

18 Is that basically the sum of it?

19 A. That would be right.

20 MR. MURRAY: Thank you. No further  
21 questions.

22 BOARD CHAIR HELLAND: Mr. Kracht, thank  
23 you.

24 THE WITNESS: Thank you.

25 BOARD CHAIR HELLAND: Appreciate it.

1 Mr. Murray. I believe that's it; correct?

2 MR. MURRAY: Those are my witnesses.

3 BOARD CHAIR HELLAND: Thank you very much.

4 Mr. Goodwin.

5 MR. GOODWIN: I would call Jamie Moser.

6 While he's approaching, I do have an  
7 exhibit that I intend to offer that has not been  
8 previously electronically filed.

9 BOARD CHAIR HELLAND: Can you go ahead and  
10 distribute that? Thanks, Chuck.

11 While staff is distributing that, we can  
12 get you sworn in. Do you want to go ahead and turn  
13 the microphone on. It's the button on the right.  
14 Make sure you're speaking into the microphone. Feel  
15 free to move it around. However you're comfortable.

16 MR. MOSER: Okay.

17 BOARD CHAIR HELLAND: Go ahead and raise  
18 your right hand.

19 JAMIE MOSER,  
20 called as a witness by Mary Moser, Jamie Moser, and  
21 Carmen Moser, being first duly sworn by Board Chair  
22 Helland, was examined and testified as follows:

23 MR. GOODWIN: Thank you, Your Honor.

24

25

1 DIRECT EXAMINATION

2 BY MR. GOODWIN:

3 Q. Mr. Moser, have you previously filed direct  
4 testimony and rebuttal testimony in this matter?

5 A. Yes.

6 Q. Do you have some items that you wish to  
7 clarify?

8 A. I do.

9 MR. GOODWIN: First, if we could draw up  
10 Exhibit 9.

11 BY MR. GOODWIN:

12 Q. Can you identify for us what that picture  
13 shows?

14 A. Yes. That highlighted would be -- I have a  
15 35-acre -- actually, I have one parcel in the middle.  
16 My landlord, they own the parcel to the west and the  
17 two parcels to the east.

18 Q. So how many total acres are in that  
19 rectangular area?

20 A. One hundred sixty. It would be one full  
21 mile of the pipeline.

22 Q. Can you identify for us where the proposed  
23 pipeline would go through that one-mile area?

24 A. I've seen some pictures. I believe it's  
25 about right in there is where they want to cross,

1 510th Avenue that comes across. Right in there  
2 anyways. The last that I seen anyways.

3 Q. And is that all in a floodplain?

4 A. Yes. Yes, it is. It's probably the  
5 subject of some of the worst flooding around. I have  
6 a creek that comes from the northwest and I've got the  
7 river down here. I've had some of the -- '91, '93 --  
8 in '93, there was a bridge right up here. It washed  
9 that out in '91 and '93.

10 BOARD CHAIR HELLAND: Mr. Moser, when  
11 you're making references, can you just try to make  
12 sure you're using words so that later we can pull it  
13 up on the record. So describe that however you would  
14 like.

15 MR. DUBLINSKE: And, Your Honor, since the  
16 flow is already interrupted, I'm going to object. I  
17 was giving this a little leeway to see if we were  
18 actually getting to some sort of clarification or  
19 correction on this exhibit, but what we're eliciting  
20 now is just explanations of the exhibits that could  
21 have been made in direct testimony or may be reflected  
22 in other exhibits. It's simply supplemental direct.  
23 This is not a correction or clarification to the  
24 exhibit or the direct testimony.

25 BOARD CHAIR HELLAND: Mr. Goodwin.



1                   MR. GOODWIN: I will proceed. I'm just  
2                   wanting some clarification.

3                   BY MR. GOODWIN:

4                   Q. If we look at that same exhibit --

5                   BOARD CHAIR HELLAND: So, just for  
6                   clarification, we are limiting the corrections to  
7                   corrections.

8                   Mr. Murray, did you have a comment? No  
9                   worries.

10                  MR. MURRAY: I forgot to take it down.

11                  BOARD CHAIR HELLAND: That's all right.

12                  Sorry. Go ahead, Mr. Goodwin.

13                  BY MR. GOODWIN:

14                  Q. In that exhibit, do we see the Des Moines  
15                  River?

16                  MR. DUBLINSKE: Same objection, Your Honor.

17                  A. Yes, you do.

18                  MR. DUBLINSKE: This sort of explanation of  
19                  the exhibits could have, and should have, been made in  
20                  the prefiled direct testimony. This is not the time  
21                  to elicit new information about the exhibits that were  
22                  prefiled. This is for corrections.

23                  This is not -- clarifications. This is not  
24                  what we mean by that. Eliciting explanations of the  
25                  exhibit. That could have, and should have, been done

1 in the prefiled testimony.

2 BOARD CHAIR HELLAND: Mr. Goodwin, what  
3 kind of correction are you trying to make here?

4 MR. GOODWIN: Just so that we understand  
5 the location of the parcel involved.

6 BOARD CHAIR HELLAND: Okay. So that's --  
7 please move on.

8 MR. GOODWIN: Thank you.

9 BY MR. GOODWIN:

10 Q. Would you also now -- let's look at  
11 Exhibit 17.

12 Can you identify for us what is shown in  
13 Exhibit 17?

14 A. Yes, I can. That is 510th Avenue. This  
15 was blown -- that road blew out.

16 To clarify, the county said it was -- the  
17 road is 60 feet wide. That whole -- it washed out  
18 more of that road than it shows there. It was  
19 200 feet in length and over 15 feet deep. So that  
20 would result in an exposed pipe in my eyes.

21 Q. Now, do you have a video of Exhibit 17?

22 A. I do. I would like them to see it.

23 Q. And what is going to be seen in that video?

24 A. The water rushing through that hole.

25 MR. GOODWIN: Can we play the video,

1 please.

2 (Playing of video.)

3 BY MR. GOODWIN:

4 Q. Is that the extent of the video?

5 A. Yes, it is. Yeah. And you can see that it  
6 basically tried to -- the river tried to cut a new  
7 channel there is what happened.

8 Q. Let's look to page 7 of your direct  
9 examination and line 5 and 6.

10 Do you see where it says "Do you have  
11 concerns in regard to the contacts, or lack of  
12 contacts, you have had with representatives of  
13 Summit"?

14 A. Yes.

15 Q. Do you have some modification and update in  
16 that regard?

17 A. I do. They just were -- we referred them  
18 to talk to our attorney. I think it was probably the  
19 second or third land agent that came around, we  
20 referred him to talk to our attorney. Because  
21 everybody kept saying you need to have an attorney  
22 look over that easement.

23 And they never -- we referred at least two,  
24 if not three, land agents to Mr. Goodwin, and they all  
25 failed to. Nobody talked to him.

1 Q. And have you looked at the Palo Alto County  
2 Survey Contact Report filed July 27, 2023?

3 A. Yes, I sure have.

4 MR. GOODWIN: And we have a proposed  
5 exhibit, which is page 6 of 8. Can we have that  
6 shown.

7 I'm sorry. It's there.

8 BY MR. GOODWIN:

9 Q. Will you tell us what is shown in the  
10 exhibit that's now on the board?

11 A. I sure can. This is pretty frustrating  
12 actually. I'm going to try to keep it professional  
13 here.

14 My dad passed away November 4, 2020, and  
15 Summit is claiming on 11-21 they left him a voicemail.  
16 On 11-11 of '21 they called him by phone. On 12-22 of  
17 '21, they kindly talked to him in person. 4-21 of '12  
18 {sic}, talked to him in person.

19 Boy, I'd like to have been there for that.  
20 I'd give anything to see my dad.

21 On 9-29 of '21, left him another voicemail.  
22 And, 10-5 of '21, they sent him a letter. And they  
23 claim to have talked to my mom a few times, which did  
24 not happen. I could get phone records if I need to.

25 Q. I count eight times they represent that

1     they talked to your father.

2             A.     Correct.

3             Q.     Two times in person.

4             A.     Yep.   Correct.

5             Q.     And he'd been dead for more than a year for  
6 each of those contact times?

7             A.     Yes.   Correct.

8             MR. GOODWIN:   I would offer into evidence  
9 the direct testimony and rebuttal testimony of Jamie  
10 Moser, Exhibits 7, 8, 9, 10, 12, 13, 14, 15, 17, 18,  
11 19, 20, and 21, and the video that we saw and this  
12 exhibit that we have on the monitor right now, which  
13 is an entry of July 27, 2023, page 6 of 8 of Palo Alto  
14 County Survey Contact Report.

15            BOARD CHAIR HELLAND:   Objections?

16            MR. DUBLINSKE:   Just a clarification.   He  
17 said direct and rebuttal.   I believe there's only one  
18 set of testimony for Mr. Moser.   Is that --

19            BOARD CHAIR HELLAND:   We're  
20 double-checking.

21            Mr. Whipple, did you want to weigh in as  
22 well?

23            MR. WHIPPLE:   Just waiting for cross, Your  
24 Honor.

25            MR. GOODWIN:   There had been a

1 clarification. At one time, there were two  
2 Exhibit 20s. And then we corrected that to have  
3 Exhibit 21 in the rebuttal testimony.

4 BOARD CHAIR HELLAND: Rebuttal testimony  
5 was filed on August 25th.

6 Are there objections? Do you need a  
7 minute?

8 MR. DUBLINSKE: Yes. And I apologize. My  
9 binder here does not have the -- oh. August 25th was  
10 just the corrections.

11 No objections. Thank you.

12 BOARD CHAIR HELLAND: Seeing no objections,  
13 the Board will admit the evidence and give it the  
14 weight due.

15 MR. GOODWIN: I have no further questions,  
16 Your Honor.

17 BOARD CHAIR HELLAND: Thank you.

18 Mr. Whipple, you're first.

19 CROSS-EXAMINATION

20 BY MR. WHIPPLE:

21 Q. Just a couple questions, Mr. Moser.

22 With regard to the video we saw of the  
23 flooding, are you in a designated floodplain district  
24 in the county?

25 A. Yes, I am. Yep.

1 Q. Does that district prevent development in  
2 the flood district?

3 A. I would sure think it would. I can't build  
4 a house there, so...

5 Q. Has Palo Alto County granted a permit to  
6 Summit to develop in the floodplain district?

7 A. I don't believe so. They actually put a  
8 restriction on it.

9 Q. Do you know if an application has been made  
10 for such a permit?

11 A. Not that I know of.

12 MR. WHIPPLE: Thank you.

13 That's all I have, Your Honor.

14 BOARD CHAIR HELLAND: Thank you.

15 I'm not sure who had their card up first,  
16 but Representative Isenhardt.

17 MR. ISENHART: Thank you, Mr. Chair.

18 CROSS-EXAMINATION

19 BY MR. ISENHART:

20 Q. Just one question, Mr. Moser.

21 In one of their exhibits, Summit Carbon  
22 Solutions says, quote, The project will play an  
23 important role in reducing greenhouse gas emissions in  
24 the effort to combat climate change, unquote. One  
25 result of climate change being increased flooding.

1                   Did at any point in the time of your  
2   conversations with their agents, did they present that  
3   as one reason you might want to support this project  
4   and win your support for using the land for purposes  
5   of the pipeline?

6                   MR. DUBLINSKE:  Objection.

7                   BOARD CHAIR HELLAND:  State your objection.

8                   MR. DUBLINSKE:  All the same objections on  
9   friendly cross.  Plus, this is beyond the scope of the  
10   witness's initial testimony.

11                  BOARD CHAIR HELLAND:  Representative  
12   Isenhardt?

13                  MR. ISENHART:  I'll withdraw the question.

14                  BOARD CHAIR HELLAND:  Okay.  And that's  
15   your only question?

16                  MR. ISENHART:  That's my only question.

17                  BOARD CHAIR HELLAND:  Thank you.

18                  Mr. Taylor.

19                  MR. TAYLOR:  Thank you.

20                               CROSS-EXAMINATION

21   BY MR. TAYLOR:

22               Q.   Regarding this floodplain area, do you grow  
23   crops there?

24               A.   Yes.  Corn, soybean.  Yep.

25               Q.   Is it tiled?



1           A.    No.   No.

2           Q.    It wouldn't do any good, would it.

3           A.    Tiling wouldn't do any good down there.  It  
4 might hurt you more than it would help you.

5           Q.    Did you discuss with any of the land agents  
6 your concern about them going through a floodplain and  
7 how they would actually construct in a floodplain and  
8 what the ultimate issues might be with constructing  
9 the pipeline in a floodplain?

10          A.    Yes, we definitely did.  We actually met  
11 with them with a couple supervisors.  I don't remember  
12 the date.

13          Q.    Do you mean county supervisors?

14          A.    Yes.  Yeah.  You know, trying to get  
15 them -- we showed them pictures and stuff trying to  
16 tell them, you know, anywhere but right there.  I  
17 mean, this is like the worst place you could put a  
18 pipeline.

19                We told them, you know, they can go south  
20 of the river, which is still -- we have proof it's  
21 still within the corridor.  And they just kind of  
22 acted like, "Well, you're just going to have to live  
23 with it."

24                So -- I mean, it's -- we tried.  We tried  
25 to talk them out of there.  They need to go somewhere

1 else.

2 Q. So, if I heard you right, they could go  
3 south of the river and that would still put them on  
4 their basic route?

5 A. Yeah, in the floodplain -- there is a part  
6 in there that's not actually in the floodplain even on  
7 the south side. It doesn't flood near as bad.

8 510th Avenue, I've never -- in my lifetime,  
9 I've never seen the road washed out south of the  
10 river. I have several, several, several times on the  
11 north side.

12 And actually, in that video, the county  
13 filled that hole with riprap and stuff, and the county  
14 engineer said that they -- and that's roughly where  
15 they want to run their pipeline. The county engineer  
16 said that they will never bore through that. That,  
17 "We tried to tell them that." And they took it with a  
18 grain of salt, I think.

19 I don't think it went -- I should say it  
20 didn't go to higher up. It was TurnKey Logistics is  
21 who come and met with the supervisors. And I don't  
22 think it went any further than that.

23 Q. Did you have any other concerns you  
24 expressed to the land agents other than the floodplain  
25 issue?

1           A.    No, not really. Yeah, it just needs to be  
2 out of that floodplain. And I think it needs to be  
3 the shortest route in and out of that floodplain that  
4 they're taking. And they're not taking the shortest  
5 route.

6           Q.    But they would not consider any alternative  
7 locations?

8           A.    They told us that south of the river was  
9 not in the corridor. Which we've actually got proof  
10 that the county got a letter that it is in the  
11 corridor. And they said it was not. So...

12           MR. TAYLOR: Thank you. That's all the  
13 questions I have.

14           BOARD CHAIR HELLAND: Thank you.

15           Ms. Kohles, your placard was up and now  
16 it's down. I just want to make sure we don't miss  
17 you.

18                           CROSS-EXAMINATION

19           BY MS. KOHLES:

20           Q.    I just had a simple question. Are you  
21 aware, did they do any geohazard survey on that  
22 property?

23           A.    I know they surveyed. I don't know about  
24 geohazard. I do not know about that.

25           Q.    So you don't know the conclusions or

1 anything?

2 A. I do not, no.

3 MS. KOHLES: Thank you.

4 BOARD CHAIR HELLAND: Thank you.

5 Mr. Murray.

6 MR. MURRAY: Yes.

7 CROSS-EXAMINATION

8 BY MR. MURRAY:

9 Q. Mr. Moser, based upon the best information  
10 you have, are you aware of what Summit plans to bury  
11 the pipeline as far as depth goes?

12 A. I was told four feet. It would be a  
13 24-inch pipe and would be buried four feet to the top  
14 of it.

15 Q. Now, that video that was played earlier  
16 referenced a pretty heavy rain event?

17 A. Yes. Yeah, several rains. And, yeah, we  
18 get -- the Des Moines River, it starts clear up in  
19 Minnesota. And we don't even have to get the rain  
20 ourselves. They get it up there and it comes down.

21 And something I might add, too, is that's  
22 Des Moines's drinking water.

23 Q. Interesting.

24 A. Uh-huh.

25 Q. With respect to these heavy rains -- let's

1 just talk about a moderate rain. What kind of cuts  
2 would you see in the property that you observe as a  
3 result of, say, a moderate rain?

4 A. Oh, a moderate rain? A moderate rain won't  
5 do that much to my property. It's fairly flat.

6 Q. It is in regard to those heavy rains?

7 A. Yeah, a heavy rain is way worse. Like,  
8 when it flooded there, to clarify, that water probably  
9 sat there for three months. I mean, some of my  
10 pictures I have as exhibits were probably a month old.  
11 I have one on my kayak. It was probably a month after  
12 that water started going down. I mean, that water  
13 sits there forever.

14 Q. And I bet you --

15 MR. MURRAY: I'm having some difficulty  
16 with my mic.

17 Are we ready.

18 BOARD CHAIR HELLAND: It seems to be okay  
19 now. If it gives you any more problems, we'll find  
20 you another one.

21 BY MR. MURRAY:

22 Q. I'm going to take you back to 1993. Were  
23 you farming that ground at that time?

24 A. No, my dad was.

25 Q. Do you have recollection of that time frame

1 as far as rainfall goes?

2 A. Oh, definitely, yeah. That was a bad year.

3 Q. So, from '93 until present, that's a nice  
4 30-year time frame. Can you tell us how many heavy  
5 rains do you suppose there's been that affected that  
6 ground over that 30-year period of time? Including  
7 '93.

8 A. Oh, boy. It's been a lot.

9 Q. Let's just approximate a number.

10 A. Oh, probably half of them. It's a lot. I  
11 left John Deere about ten years ago and I lost  
12 everything down there that year. And I've lost some  
13 crop -- even actually this year, on a dry year, I had  
14 to replant 40 acres way up in there. And some corn.  
15 Probably, oh, 10, 15 acres of corn I had to replant  
16 too.

17 Q. Over those 15 years or so of heavy rains,  
18 can you give the Board an approximation of the cuts in  
19 the ground resulting from those heavy rains?

20 A. Oh, yeah, that last flood, it -- it tried  
21 to cut a whole new channel across my field. I mean,  
22 if there was -- if there was a pipeline in there, if  
23 that pipeline was trenched in, it would have took that  
24 trench out.

25 Me and my dad -- oh, we spent, oh, weeks

1     trying to get that ground farmable again after that  
2     rain. It was the worst one I have seen.

3             And the river is getting in worse shape.  
4     So the flooding is going to be more often.

5             Q.    How deep are those cuts that you've  
6     observed?

7             A.    Oh, boy. They were probably two foot or  
8     so.

9             Q.    Now, you've mentioned this alternate route  
10    south of the river. Same question. Have you observed  
11    similar kinds of cuts there or no?

12            A.    No, nothing like on the north side of the  
13    river.

14            Q.    The risk of these cuts on the south side of  
15    the river is not there.

16            A.    Right. Correct.

17            Q.    And, just so I'm clear and understand, to  
18    the best of your knowledge, after you brought this up  
19    to Dakota Access {sic}, what information do you have  
20    from them that shows that they explored this possible  
21    alternate route?

22            A.    I don't -- I don't know if they ever did  
23    explore an alternate route.

24            Q.    They just put it where it was and that was  
25    it.

1           A.     Right.  Yep.  Yep.  My understanding was  
2     they were required to have an alternate route.  And  
3     we've never seen it.

4           MR. MURRAY:  Thank you.  I have nothing  
5     further.

6           BOARD CHAIR HELLAND:  Thank you.

7           Mr. Jorde.

8                         CROSS-EXAMINATION

9     BY MR. JORDE:

10           Q.    Just a clarification there.  I think  
11   Mr. Murray mentioned Dakota Access.  Were you meaning  
12   Summit or do you also have Dakota Access there?

13           A.    No.  Yeah, I noticed that too.

14           Q.    I just wanted to make sure.

15           A.    I don't have Dakota Access.

16           Q.    So it was Summit who has failed to reroute.

17           A.    Yes.  Yeah.

18           Q.    And how many hours, sir, do you think you  
19   have invested, you and your family, on this topic,  
20   this proposed project, since you first learned about  
21   it?

22           A.    Oh, boy.  It's a lot.  It's a lot.

23           Q.    More than 100 hours?

24           A.    Probably.

25           Q.    Have you ever been offered compensation for



1 that?

2 A. No, I have not.

3 Q. Related to safety and risk and hazard  
4 analysis, has Summit specifically provided you, or  
5 your counsel, any of that data for you?

6 A. No. No.

7 Q. Would that type of information be helpful  
8 to inform you of the risks and plans you would have  
9 with the land and your family?

10 A. Oh, definitely.

11 MR. DUBLINSKE: Objection.

12 BOARD CHAIR HELLAND: State your objection.

13 MR. DUBLINSKE: Same objection as to  
14 Mr. Murray's earlier questioning. It's both friendly  
15 cross, for all the reasons we talked about earlier,  
16 and outside the scope of anything in the direct  
17 testimony or anything that's come up in the prior  
18 examination.

19 BOARD CHAIR HELLAND: Mr. Jorde.

20 MR. JORDE: Well, I don't think outside the  
21 scope is an objection for cross-examination. He's  
22 allowed to update his testimony pursuant to Board  
23 rule. And I'm asking him an update question here.  
24 Based on Summit's testimony.

25 MR. DUBLINSKE: Scope is absolutely

1 relevant to cross. It's meant to be in the scope of  
2 the direct.

3 BOARD CHAIR HELLAND: Mr. Jorde, can you  
4 get to your question that's within the scope, please.

5 BY MR. JORDE:

6 Q. Do you have any concerns relative to the  
7 lack of risk, transparency, that Summit has failed to  
8 share with you?

9 A. Oh, definitely. I'm a firefighter. I  
10 mean, I definitely do.

11 Q. And, as a firefighter -- is that a  
12 volunteer force, I take it?

13 A. Yes, it is. Yep.

14 Q. And how far away -- how long would it take,  
15 do you think, the volunteers from first call to  
16 assembly to get out to your place in the case of an  
17 emergency?

18 A. Oh, yeah, you're looking at 10 minutes.  
19 Maybe 15 minutes. It depends on who's around. We're  
20 a small department. Sometimes you get a holiday  
21 weekend and people are gone. It's hard to say really.  
22 We're about five and a half miles from my farm. Where  
23 the pipe would go.

24 Q. So Summit, both in your role individually  
25 as landowner and in your role as a first responder,

1 has not provided any of the risk data to you; is that  
2 right?

3 A. No. Not to me or our fire department.

4 MR. JORDE: Thank you, sir. Nothing  
5 further.

6 BOARD CHAIR HELLAND: Thank you.

7 Ms. Hayek.

8 CROSS-EXAMINATION

9 BY MS. HAYEK:

10 Q. Yes. Jamie, is there anything else that  
11 you want the Board to know as it relates to this  
12 hazardous CO2 pipeline project?

13 A. Well, I do want to clarify --

14 MR. DUBLINSKE: Objection.

15 BOARD CHAIR HELLAND: State your objection.  
16 Hold on one minute.

17 MR. DUBLINSKE: Again, I've been trying to  
18 let this go because the question is coming from a  
19 layperson landowner, but, "Do you have anything else  
20 you want the Board to know," is just not proper cross.  
21 That's just inviting additional supplemental direct.

22 BOARD CHAIR HELLAND: Ms. Hayek, can you  
23 contain your questions to the testimony or previous  
24 cross, please.

25 Take a moment. Go ahead. Don't feel under

1 the pressure.

2 MS. HAYEK: That's the only question I  
3 have.

4 BOARD CHAIR HELLAND: Okay. Thank you.

5 BOARD MEMBER BYRNES: Mr. Moser, I just  
6 want to make sure that the record is correct. So my  
7 birth name is Joshua, but everybody says Josh.

8 THE WITNESS: Yeah.

9 BOARD MEMBER BYRNES: Your dad's name was  
10 James; correct?

11 THE WITNESS: Yes. Yep.

12 BOARD MEMBER BYRNES: Is your birth  
13 certificate name Jamie?

14 THE WITNESS: No. Jamie?

15 BOARD MEMBER BYRNES: Yes.

16 THE WITNESS: Yes. Yes.

17 BOARD MEMBER BYRNES: So it's not James,  
18 but they call you Jamie or anything. I just wanted to  
19 make sure.

20 THE WITNESS: Yeah, it's -- actually, for  
21 it to be correct, legit, it's Leo James Moser, but I  
22 go by Jamie. So most everything is Jamie.

23 BOARD MEMBER BYRNES: I just wanted to  
24 clarify. Because they were somewhat similar. So just  
25 for the record purposes.

1                   And I would just say to our tech folks  
2     right now we're getting some sort of a weird feedback  
3     coming through these microphones. I don't think it's  
4     just any one of these. I think it's the system. But  
5     just FYI. It's a little disturbing. But thank you.

6                   BOARD CHAIR HELLAND: Ms. Hayek, did you --  
7     no? Just checking.

8                   Mr. Goodwin on redirect.

9                   REDIRECT EXAMINATION

10    BY MR. GOODWIN:

11                  Q.    Mr. Moser, you were asked about rains.  
12    Have you had observations of whether the water stands  
13    on your land and any concern that that would cause for  
14    a hazardous pipeline?

15                  A.    Oh, absolutely. Yeah. When we get a heavy  
16    rain -- I mean, we've had -- anymore you get these  
17    downbursts, you get 10, 12 inches at a time. And, oh,  
18    shoot, that can sit for months. I mean, it can sit  
19    for a month or maybe more. I mean, yes, it definitely  
20    can saturate that ground something terrible. You  
21    won't -- and, once the water goes down, you still have  
22    your water table of the river or whatever. I mean,  
23    the water is barely underneath the dirt.

24                  Q.    Would standing water restrict the access of  
25    Summit Carbon to the pipeline in case there was some

1 issue?

2 A. Oh, absolutely, yeah. You'll never get to  
3 it. If you get a heavy rain, you'll never get out  
4 there to work on it. For probably a month or two. I  
5 mean, it might be three months. Who knows.

6 Q. You were also asked about the land to the  
7 south of the Des Moines River.

8 Do you know who the owners are of some of  
9 the land south of the Des Moines River?

10 A. I do. Yes.

11 Q. And do you know whether or not they have  
12 objection to the pipeline?

13 A. No, they do not.

14 MR. GOODWIN: I have no further questions.

15 BOARD CHAIR HELLAND: Okay. Thank you.

16 Before you step down, just a clarification  
17 for the record. The video will be entered as Moser  
18 Hearing Exhibit 1 and the call records will be  
19 admitted as Moser Hearing Exhibit 2. Just naming them  
20 properly for the record.

21 MR. GOODWIN: Thank you.

22 BOARD CHAIR HELLAND: Thank you.

23 Appreciate it.

24 THE WITNESS: Thank you.

25 BOARD CHAIR HELLAND: We're going to take a

1 quick five-minute break and see if we can figure out  
2 the feedback issue on the mics so we don't have any  
3 more challenges. So we'll be back hopefully in five  
4 minutes.

5 (Recess taken at 11:06 a.m.)

6 (Hearing resumed at 11:15 a.m.)

7 BOARD CHAIR HELLAND: We'll go back on the  
8 record. I think we've got that all ironed out now.

9 MR. GOODWIN: We'll call Carmen Moser.

10 BOARD CHAIR HELLAND: Thank you.

11 Go ahead and turn on the microphone. Move  
12 it around and get yourself comfortable. As long as  
13 you're talking, just make sure you're speaking into  
14 the microphone.

15 THE WITNESS: Okay.

16 BOARD CHAIR HELLAND: Thank you. Go ahead  
17 and raise your right hand.

18 CARMEN MOSER,  
19 called as a witness by Mary Moser, Jamie Moser, and  
20 Carmen Moser, being first duly sworn by Board Chair  
21 Helland, was examined and testified as follows:

22 BOARD CHAIR HELLAND: Mr. Goodwin.

23

24

25

1 DIRECT EXAMINATION

2 BY MR. GOODWIN:

3 Q. Ms. Moser, have you previously filed direct  
4 and rebuttal testimony in this matter?

5 A. Yes, I have.

6 Q. Do you have some items of clarification  
7 that you wish to provide at this time?

8 A. Yes.

9 Q. First, let's look at your direct testimony,  
10 page 4, and starting at line 12. You talk about the  
11 incident in Satartia, Mississippi. I probably didn't  
12 get that pronounced correctly.

13 A. Satartia, Mississippi?

14 Q. Yes.

15 A. Yes. And I just wanted to point out that  
16 our ground is very similar to the accident that  
17 happened there in Satartia. They are proposing to put  
18 a 24-inch pipe in our ground that is in the  
19 floodplain.

20 It's saturated -- our ground is saturated  
21 with rain for over two months, and that's how what  
22 happened in Satartia. The soil around the pipes,  
23 pipeline, slid, and that's what we foresee will happen  
24 on our ground. And that also caused the pipe to  
25 break. The pipe weld.



1                   So I guess I looked at those items from  
2   that catastrophe and it's very similar to our ground.  
3   So I want that for the record.

4           Q.    You are the auditor in Palo Alto County?

5           A.    Yes, I am.

6           Q.    And, as such, you get mailings to,  
7   actually, the county; is that correct?

8           A.    Yes.

9           Q.    I want to draw your attention to your  
10   Exhibit 21, the corrected Exhibit 21.

11          A.    Yes. We met with Summit and asked that the  
12   pipeline be routed off of our ground or change the  
13   alignment. And they always told us they couldn't  
14   because IUB sets these rules that you have to be  
15   within the corridor.

16               And Palo Alto County is within the  
17   corridor. And that is the land on the south side of  
18   the river that is not -- it is still within the  
19   floodplain, but it is not blue on the map. If you  
20   bring the floodplain map up again, I can point that  
21   out to you.

22               But, you know, we were told that it wasn't  
23   in the corridor. But it is. Because I received  
24   notice for the county.

25          Q.    The county land is in the corridor.

1           A.    Yes.

2           Q.    And that's on the south side --

3           A.    That's the letter that proves that right  
4 there.

5           Q.    And the county land is on the south side of  
6 the Des Moines River?

7           A.    Yes.

8           Q.    Are you aware of whether the county and  
9 other landowners in that area oppose the pipeline?

10          A.    I don't believe the county opposes the  
11 pipeline. They oppose eminent domain. And we  
12 actually -- the county supervisors were willing to  
13 meet with landowners in the floodplain and two of the  
14 representatives from Turnkey Logistics and tried to  
15 work through some of these things.

16                   And the other -- the one supervisor reached  
17 out to the other landowner on the south side of the  
18 river and said that he would be willing to sign an  
19 easement.

20                   So that's what the board of supervisors did  
21 to try to help our situation.

22          Q.    And, if we would look at the last page of  
23 Exhibit 20 of your testimony, your direct testimony --  
24 I'm sorry. Exhibit 19. The last page.

25          A.    So this is a copy of the minutes from the

1 board of supervisors meeting that we attended. I  
2 recused myself of my duties as auditor and went to the  
3 board of supervisors with my husband to try to get a  
4 restriction in the floodplain for the carbon pipeline  
5 just because of the safety concerns that we had and  
6 the severe flooding that we have on our ground.

7 And the board of supervisors -- we asked  
8 for a restriction in the entire pipeline -- or not the  
9 entire pipeline. The floodplain. But they did put a  
10 restriction on Sections 24 and 25 of Nevada Township  
11 for the construction of pipelines.

12 Q. And when you say "Sections 24 and 25," does  
13 that include -- or is that the land that you and your  
14 husband own and he farms?

15 A. Yes. That's correct.

16 Q. So what is the effect of the city -- I'm  
17 sorry, of the county restricting Summit Carbon from  
18 putting in a liquid hazardous pipeline in those two  
19 sections?

20 A. What is the what?

21 Q. The effect.

22 A. What is the effect? Well, the effect is to  
23 get it off of our ground. Because they know that we  
24 have the worst flooding. The county had to spend over  
25 \$110,000 to fix that hole that you saw in the video.

1 And so every time it floods on our ground it tries to  
2 cut a new channel.

3 Q. And, when it cuts a channel, would that  
4 then cut the dirt closer to a pipeline if there were a  
5 pipeline there?

6 A. Oh, yes, definitely. Yeah.

7 MR. GOODWIN: I would offer into evidence  
8 the direct and rebuttal testimony of Carmen Moser and  
9 the Exhibits 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19,  
10 20, and 21 into evidence.

11 BOARD CHAIR HELLAND: Are there objections?

12 MR. DUBLINSKE: No objection, Your Honor.

13 BOARD CHAIR HELLAND: The Board will admit  
14 and give it the weight due.

15 MR. GOODWIN: I have no further questions.

16 BOARD CHAIR HELLAND: Thank you.

17 Mr. Whipple, I think you're first.

18 CROSS-EXAMINATION

19 BY MR. WHIPPLE:

20 Q. Good morning, Ms. Moser.

21 A. Morning.

22 Q. So we looked a minute ago at minutes from  
23 the board of supervisors meeting --

24 A. Uh-huh.

25 Q. -- which indicated that Jamie Moser

1 requested restrictions be placed on the floodplain.

2 Was there an ordinance in place for the  
3 floodplain prior to the meeting minutes that we looked  
4 at a moment ago?

5 A. Yes. Palo Alto County updated their  
6 ordinance in 2021. That is also part of my direct  
7 testimony. It starts with Exhibit No. 12.

8 So, yes, our floodplain ordinance has been  
9 in effect. It actually was in effect in, I believe,  
10 1994, and it was updated in 2021.

11 Q. And are we to conclude from the minutes  
12 that additional changes were made subsequent to 2021  
13 to the floodplain district?

14 A. Can you state that again?

15 Q. Were any changes made to the ordinance as a  
16 result of the meeting minutes we discussed or is the  
17 2021 ordinance still in place?

18 A. The 2021 ordinance is still in place.

19 Q. And does the 2021 ordinance prohibit  
20 development in the floodplain?

21 A. I would say yes.

22 Q. Has Summit applied to the county for a  
23 permit for development in the floodplain?

24 A. No, they have not.

25 MR. WHIPPLE: Thank you.

1 That's all I have, Your Honor.

2 BOARD CHAIR HELLAND: Thank you.

3 Mr. Taylor.

4 MR. TAYLOR: Thank you.

5 CROSS-EXAMINATION

6 BY MR. TAYLOR:

7 Q. You said it's a 24-inch pipe? Are you sure  
8 of that? Is that what they told you?

9 A. Well, first they told us 16, then it was  
10 20, and I think the last time it was 24. But I don't  
11 know. I mean, until it's in the ground, I don't know.

12 Q. Did they present you with an easement form?

13 A. Yes.

14 Q. Did that have the size of the pipe in it?

15 A. I believe it did. I think it was 20-inch.

16 Q. Then when did they tell you it might be 24?

17 A. The next time they came to meet with us.

18 Q. How would you describe your experience with  
19 the Summit land agents?

20 A. Well, we've had five different land agents.  
21 And we have asked them to please contact our attorney.  
22 Because all the informational meetings that we went  
23 to, even the hearing that IUB held, they told us to  
24 have an attorney review your easement.

25 So it was very frustrating. The first land

1 agent that we had, he contacted us almost every  
2 holiday weekend. Which was very frustrating. And we  
3 also had some personal things going on. So that --  
4 you know, that was tough.

5 The last three that we had, you know, we  
6 just wanted them to talk to our attorney. I mean,  
7 there's no way we could sign an easement like that.  
8 An easement should be prepared by the landowner, not  
9 the person that's going to come onto your ground.  
10 And, also, we already have an easement with Fisks and  
11 we don't want another easement on our property.

12 Q. You have an easement with whom?

13 A. We have an easement already with the other  
14 landowner that's in the corridor with us. The Fisk  
15 property.

16 Q. So the neighbor has already signed an  
17 easement with Summit? Is that what you mean?

18 A. No. I'm saying we have an easement. The  
19 landowner, us, the Mosers, have an easement with the  
20 Fisks so that they can cross our property.

21 Q. I see. Thank you. I was a little bit  
22 confused there.

23 A. Yeah.

24 Q. You said your ground is similar to that in  
25 Satartia, Mississippi. Aside from the water issue,

1 were there any other similarities that you're aware  
2 of?

3 A. Well, I feel that -- you know, the  
4 mudslides. I mean, that ground, it's rich, dark,  
5 black soil. And, after it floods, my husband has  
6 quite a time to get to farm it again. I mean, it  
7 compacts itself. Almost by itself. That's how heavy  
8 of soil it is. So, yeah, he will have a lot of  
9 problems if he had to try to farm over a pipeline.

10 Q. Can you be more specific as to what those  
11 problems would be?

12 A. The compaction. Fighting the water. Like  
13 Jamie stated, even on a dry year he had to replant.

14 Q. I think you said, and maybe your husband  
15 did, too, that you talked to the land agents about a  
16 reroute to the south?

17 A. Yes.

18 Q. I wasn't clear. Is that land owned by the  
19 county?

20 A. Yes.

21 Q. I see. So what does the county do with it?

22 A. It's a park. It's kind of a recreational  
23 area. It's mostly just timber. There's a pit there.  
24 A small pit. And then there's a boat ramp.

25 Q. And I wasn't clear. Has Summit talked to



1 the county about whether the county would allow the  
2 pipeline on that property?

3 A. No, they have not.

4 Q. They have not talked to the county or the  
5 county hasn't approved it?

6 A. No, they have not talked to the county even  
7 though we requested that several times.

8 Q. Have they said why they haven't talked to  
9 the county?

10 A. They told us because they couldn't go  
11 outside the corridor.

12 Q. And what do you understand "the corridor"  
13 to be?

14 A. The people that got notified of the  
15 informational meeting back two years ago that was held  
16 at the Iowa Lakes Community College in Emmetsburg.

17 Q. As the county auditor, how do you  
18 understand that this updated ordinance in 2021 would  
19 impact the location or the routing of the pipeline?

20 A. Well, all I can refer to is on page 17 of  
21 that ordinance, it's Exhibit 12, and my direct  
22 testimony page 20 of 28, and it talks about "Pipeline,  
23 river, and stream crossings shall be buried in the  
24 streambed and banks or otherwise sufficiently  
25 protected to prevent rupture due to channel

1 degradation and meandering."

2 And it's my understanding that they're  
3 going to try to bore underneath the river. But, when  
4 our ground floods, you know, how are they -- they're  
5 not going to be able to get a pipeline in there. And  
6 they wouldn't be able to pay us enough crop damages  
7 for every time that our ground floods.

8 Q. How often does your ground flood?

9 A. I would say seven out of ten years.

10 MR. TAYLOR: Thank you. That's all the  
11 questions I have.

12 BOARD CHAIR HELLAND: Mr. Jorde.

13 MR. JORDE: Thank you.

14 CROSS-EXAMINATION

15 BY MR. JORDE:

16 Q. This easement between you and your  
17 neighbor, is it your testimony that you're concerned  
18 if Summit has yet another easement, that that could  
19 interfere with your duties and obligations as to the  
20 easement you've granted to your neighbors?

21 A. Yes. That's correct.

22 Q. All right. And that could potentially  
23 cause you economic loss or hardship or a dispute with  
24 your neighbors if the Summit pipeline were to come on  
25 your property?

1           A.    Yes.

2           Q.    How many hours do you think, ma'am, you and  
3 your family have spent outside of your role as the  
4 county auditor on this process?

5           A.    Thousands. And I have spent -- any time  
6 that I have spent on this has not been on county time.  
7 This has been after-hours that I have had to deal with  
8 this as a personal matter.

9           Q.    And Summit hasn't offered any compensation  
10 or recompense for the time investment?

11          A.    No.

12          Q.    And, in terms of how you've been treated  
13 throughout this process, how would you generally  
14 describe that?

15          A.    I would say that it's been very stressful  
16 and -- I wouldn't say that it's been threatening, but  
17 it's definitely been pushy. Jamie and I are contract  
18 buyers, and our mother, Jamie's mother, is the deed  
19 holder. And, from the very beginning back in August  
20 of 2021, they had our names and addresses mixed up.  
21 And they've never corrected it.

22               And then also the fact that Mary received a  
23 letter -- of course it came to our address, because  
24 they've had it wrong the whole time -- is my mic  
25 working? Okay. But she got a letter for a parcel in

1 Kossuth County with the meeting date and time for that  
2 meeting, you know, way back when they had the  
3 informational meetings.

4 So, I mean, we just feel like there's been  
5 so many errors and mistakes and not courtesy to us,  
6 you know, that how can we trust them to put a pipeline  
7 in our ground. And, like I've heard from many other  
8 testimonies, the risk is too big for us.

9 Q. And, on the risk question, is it fair  
10 that -- is it true that Summit hasn't provided you the  
11 risk and hazard distances and educated you on how  
12 dangerous your pipeline is?

13 A. That's correct. We don't have any of that  
14 information.

15 MR. JORDE: Thank you. I don't have  
16 anything further.

17 BOARD CHAIR HELLAND: Thank you.

18 Ms. Hayek.

19 CROSS-EXAMINATION

20 BY MS. HAYEK:

21 Q. Is there anything else you want the Board  
22 to know as it relates to your land?

23 A. I just can't stress enough the flooding.  
24 If you could watch that ten-second video over and  
25 over, I would love for you to do that.

1                   My husband works very hard to farm this  
2 ground. It's third generational, hope to be fourth  
3 generational. And that's his choice that he goes  
4 through the stress to farm that ground on river  
5 bottom.

6                   But to have someone want to put a pipeline  
7 through there and cause us more stress is something  
8 that we definitely do not want. And we do not feel  
9 that the IUB Board should grant eminent domain for our  
10 parcel. And I just really hope that you take our  
11 testimony into consideration.

12                  MS. HAYEK: Thank you, Carmen.

13                  THE WITNESS: You're welcome.

14                  BOARD CHAIR HELLAND: Thank you.

15                  Mr. Goodwin? Redirect?

16                  Oh. I'm sorry. Ms. Kohles.

17                               CROSS-EXAMINATION

18 BY MS. KOHLES:

19                  Q. Hi. Jean Kohles with Kohles Family Farms.  
20 I have a couple of questions.

21                       I don't understand exactly the route, but  
22 there is pipeline on your land after it goes through  
23 the riverbed; correct?

24                  A. They will have to cross the river -- well,  
25 it depends. Are we going east or west. I mean, if

1 we're heading west, they're going to go through our  
2 ground and then they're going to cross the river. So  
3 either way, yes.

4 Q. And, because of the flooding, you're very  
5 concerned about reclamation of that land to get it  
6 back to where it's able to yield crops because of the  
7 compaction?

8 A. Yes. Yeah, it's very heavy, dark -- dark  
9 soil. You know, Jamie has concerns about what's going  
10 to happen if it washes away the dirt from the trench  
11 that was made by the pipeline. Where are we ever  
12 going to get that dirt back.

13 Q. So you're looking toward continuous  
14 year-after-year yield deficiencies.

15 A. Yes.

16 Q. And loss of income.

17 A. Yes. Definitely.

18 MS. KOHLES: No further questions. Thank  
19 you.

20 BOARD CHAIR HELLAND: Thank you.

21 Board Member Byrnes.

22 BOARD MEMBER BYRNES: Could staff please  
23 pull up the KMZ map.

24 We've talked a little bit about the parcel  
25 and whatnot here, and I want the record to be clear as

1 to what we're talking about here.

2 Do you have the pointer?

3 THE WITNESS: I do.

4 BOARD MEMBER BYRNES: You've talked about a  
5 parcel of land in which a landowner said that they  
6 would take the pipeline.

7 Can you please point out what that parcel  
8 of land is?

9 THE WITNESS: Yep. So if they move the map  
10 up just a little bit -- yep. So that would be this  
11 land down through here.

12 BOARD MEMBER BYRNES: So, when you say  
13 "down through here," just for record purposes --

14 THE WITNESS: South of the river.

15 BOARD MEMBER BYRNES: So directly south of  
16 the Des Moines River.

17 THE WITNESS: Uh-huh.

18 BOARD MEMBER BYRNES: And then --

19 THE WITNESS: And if --

20 BOARD MEMBER BYRNES: Go ahead.

21 THE WITNESS: No, you finish.

22 BOARD MEMBER BYRNES: No, no, go ahead.

23 THE WITNESS: Well, I was just going to say  
24 the floodplain map -- I was going to try to go to my  
25 map of the floodplain. You can see that that area is

1 less shaded on the floodplain map. But just continue.

2 BOARD MEMBER BYRNES: Is it possible for  
3 staff to zoom in to a street view?

4 All right. Does this look like your field?

5 THE WITNESS: Yes.

6 BOARD MEMBER BYRNES: And, just as a  
7 description, how would you describe this parcel? Does  
8 it have any steep inclines? Is it primarily flat?

9 THE WITNESS: It's very flat.

10 BOARD MEMBER BYRNES: Very flat.

11 THE WITNESS: Yeah.

12 BOARD MEMBER BYRNES: If we could zoom back  
13 out one last time, please.

14 And, using the pointer and using words for  
15 the record -- since we can't visually see in the  
16 record, can you use your pointer to point out to me  
17 where is the exact location of that washout on the  
18 road of the video.

19 THE WITNESS: So my best guess is somewhere  
20 in here. I don't know if it's right where the  
21 pipeline is going to cross, but the washout is on  
22 510th Avenue. Very close to where the proposed  
23 hazardous liquid pipeline is going to go.

24 BOARD MEMBER BYRNES: So then if we could  
25 zoom back out so we get the Des Moines River to the



1 west.

2 So the flooding occurs -- and I'm assuming  
3 it comes from the west side there.

4 THE WITNESS: Uh-huh.

5 BOARD MEMBER BYRNES: You said it wants to  
6 cut its own channel. If you were to use your pointer  
7 and just describe to us how this channel and where it  
8 comes back into the river at when it exits your field.

9 THE WITNESS: So it comes up this way. And  
10 then all of this water has to drain over to here. But  
11 it's the very last thing that ever drains. Because we  
12 are taking all of the water from Minnesota that's  
13 coming down the Des Moines River, and then we take all  
14 the water from over here, which is the meandering  
15 Cylinder Creek, and comes here. Yes. It keeps on  
16 going. So this entire area floods a lot.

17 BOARD MEMBER BYRNES: So, when you said  
18 that your husband has to repair flood damage, do you  
19 bring in dirt at that time as well or not? Or just  
20 redo it with the dirt --

21 THE WITNESS: We haven't had to until the  
22 2019 flood. And all of that gravel -- the county was  
23 very good to work with us. Jamie and his dad, that  
24 was before his dad passed, worked for many months to  
25 get that ground back to be farmable.

1                   BOARD MEMBER BYRNES: Where your parcel is  
2 at and the parcel we discussed earlier that they would  
3 be open to taking the pipeline, is it a floodplain all  
4 the way over to their parcel as well or does it start  
5 to incline up there? Are they higher up than you, I  
6 guess, is the question.

7                   THE WITNESS: No -- well --

8                   BOARD MEMBER BYRNES: Do they flood? I  
9 guess I would ask that.

10                  THE WITNESS: No. Not as severely as us.  
11 So they are higher up.

12                  BOARD MEMBER BYRNES: That's all I have.  
13 Thank you.

14                  BOARD CHAIR HELLAND: Let's zoom out just a  
15 little bit. I believe a moment ago you said this area  
16 floods. You're speaking about the area on both sides  
17 of the red shaded area in between -- I believe you  
18 said Cylinder Creek and the Des Moines River.

19                  THE WITNESS: Uh-huh. Yes.

20                  BOARD CHAIR HELLAND: We just needed to put  
21 it in words. This area.

22                  THE WITNESS: Yes. That's correct.

23                  BOARD CHAIR HELLAND: Thank you.

24                  Mr. Goodwin.

25

1 REDIRECT EXAMINATION

2 BY MR. GOODWIN:

3 Q. While we're looking at this picture,  
4 Carmen, can you point out to us where the county land  
5 is? And I think -- is that Charlotte Fehr's land that  
6 they indicate they don't have an objection to a  
7 pipeline?

8 A. Yeah. So it's right down here in this  
9 area. So this is the -- Mulroney Park it's called.  
10 But it's amazing how the ground on the south side of  
11 the river is sandy. And so, when it does flood, it's  
12 a different -- it's different than the black soil that  
13 we have on the north side. As far as the compaction.

14 Q. And I wanted to make sure. On cross-exam  
15 you were asked about whether the county land is in the  
16 corridor. And I think your testimony is that, yes, it  
17 is.

18 A. Yes, that's correct.

19 Q. And, again, why do you know that?

20 A. Because the county received the letter for  
21 that county parcel in 2021 at the time of the  
22 informational meetings that the IUB Board held.

23 Q. And the county received the letter because  
24 it was sent to you as the auditor.

25 A. Yes.

1 Q. So that's how you have that knowledge.

2 A. Yes, that's correct.

3 Q. You mentioned Fisk as owning some land that  
4 Jamie rents and farms. That's in the red area.

5 A. Uh-huh.

6 Q. Can you point that out for us?

7 A. Yeah. The Moser parcel is this one right  
8 here. And then Fisk owns this one, which we are the  
9 tenant, this one, and this one.

10 BOARD CHAIR HELLAND: Make sure --

11 Ms. Moser, can you make sure you're using your words?

12 THE WITNESS: Oh. Yes.

13 A. Okay. This is the 40 closest to 510th  
14 Avenue. Which is the northwest of the northwest.  
15 That's the Fisk property. The northeast of the  
16 northeast is owned by Mosers. And then we go into  
17 the -- the next quarter. And the next 40. And I'm  
18 drawing a blank what quarter I'm in. Northeast  
19 quarter. The north half.

20 Q. And, for clarification of the record, is it  
21 Melvin Fisk III and actually Dorothy Ann Stimpson who  
22 own those three other quarter quarters that you  
23 pointed out that your husband farms?

24 A. Yes.

25 And, for reference for the Board, I would

1 indicate that Melvin Fisk III and Dorothy Ann Stimpson  
2 made a filing with the Board June 12th of this year  
3 opposed to the pipeline and suggesting that it be  
4 relocated to the south of the Des Moines River as  
5 we've been discussing.

6 I have nothing further.

7 BOARD CHAIR HELLAND: Thank you.

8 Ms. Kohles. Your card is up -- okay. Just  
9 double-checking. Thank you.

10 I believe that's it. Thank you.

11 Appreciate it.

12 Representative Isenhardt. Will you be your  
13 first witness or will you be calling Mr. Clark first?

14 MR. ISENHART: I can be first if your goal  
15 is to get one in before lunch. But I plan to go  
16 first.

17 BOARD CHAIR HELLAND: Okay. We're planning  
18 to go to lunch in about 12 minutes. Is that enough  
19 time? We don't want to rush you.

20 MR. ISENHART: Enough time for me. It  
21 depends how many unfriendly questions I have.

22 BOARD CHAIR HELLAND: Mr. Taylor says on  
23 the record we're all friendly.

24 We'll just go to lunch ten minutes early  
25 and give you some extra time to prep. So we'll be

1 back at 1:00. We'll be off the record until 1:00.

2 (Recess taken at 11:49 a.m.)

3 (Hearing resumed at 1:00 p.m.)

4 BOARD CHAIR HELLAND: It's 1:00. We can go  
5 back on the record.

6 Representative Isenhardt, come on up.

7 You've seen how we do this. It will be just a little  
8 bit different since you're representing yourself, but  
9 let's begin with swearing you in.

10 Go ahead and raise your right hand.

11 CHARLES ISENHART,

12 called as a witness by Representative Charles  
13 Isenhardt, being first duly sworn by Board Chair  
14 Helland, was examined and testified as follows:

15 BOARD CHAIR HELLAND: Are you the same  
16 Charles Isenhardt who filed prefiled testimony and  
17 exhibits in this matter?

18 THE WITNESS: Yes.

19 BOARD CHAIR HELLAND: Do you have any  
20 corrections to your testimony?

21 THE WITNESS: I do not.

22 BOARD CHAIR HELLAND: If asked the same  
23 questions here today, would you provide substantially  
24 the same answers?

25 THE WITNESS: Yes.

1 BOARD CHAIR HELLAND: The Board will now  
2 allow the parties to conduct their cross-examination.  
3 Once the parties finish, the Board may ask you  
4 questions if it has any.

5 Upon the conclusion of the  
6 cross-examination, you will be allowed to clarify any  
7 answers to questions you were asked on  
8 cross-examination. This is not a time to begin a new  
9 line of questioning or add testimony.

10 Before we take the next step, do you move  
11 admission of testimony and exhibits?

12 THE WITNESS: Yes, I would move the  
13 introduction of my direct testimony and Exhibits 2  
14 through 5.

15 BOARD CHAIR HELLAND: Are there objections?

16 MR. DUBLINSKE: No objection, Your Honor.

17 BOARD CHAIR HELLAND: Seeing no objections,  
18 the Board will admit the evidence and give it the  
19 weight due.

20 Parties?

21 Mr. Taylor.

22 MR. TAYLOR: Thank you.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. TAYLOR:

3 Q. Representative Isenhardt, in your testimony,  
4 you alluded to possibly finding a sequestration site  
5 in Iowa for the CO2 that is proposed to go into  
6 Summit's pipeline. Wouldn't it be better to reduce  
7 the reduction of CO2 in the first place?

8 A. I think to the extent that the goal of  
9 public policy, as I am aware, at the federal level is  
10 to reduce atmospheric carbon, there may be  
11 alternatives that would be more effective to  
12 accomplish that.

13 Q. Such as?

14 A. Personally, I'm a fan of reducing the  
15 consumption of greenhouse gases across the board.  
16 Electric vehicles. Finding new ways for agricultural  
17 production that might be less carbon-intensive.

18 I think the testimony we've heard here is  
19 that basically we have a virtuous cycle where carbon  
20 is taken out of the atmosphere and processed and being  
21 put back into the atmosphere, but this project would  
22 intercept it before it did so for the purpose of  
23 sequestration. I don't oppose the concept of carbon  
24 sequestration.

25 Q. But would you agree there are more



1 effective ways to do it?

2 A. 9.5 million tons? There could be. I can't  
3 testify to what they might be today.

4 Q. In your testimony, you said you don't think  
5 that Summit has supplied sufficient evidence that the  
6 project has significant climate benefit.

7 Can you explain why you feel that way?

8 A. I did ask a number of questions through a  
9 data collection effort through discovery asking if  
10 there had been any comprehensive evaluation or data  
11 showing from a project standpoint A to Z -- which for  
12 me would include not just the pipeline but also the  
13 carbon capture, the sequestration, and all of the  
14 activities involved in creating ethanol, that I had  
15 not seen the kind of data that would show a net  
16 benefit if you include all the relevant aspects of  
17 what that equation might involve.

18 Q. So are you referring to what we might call  
19 a life cycle evaluation?

20 A. Yes.

21 Q. And you didn't see that.

22 A. I have not seen that.

23 Q. You mention asking some questions or data  
24 requests.

25 Are you referring to the questions that you

1 had as part of your direct testimony?

2 A. Yes.

3 Q. And you received no response?

4 A. I did receive a response.

5 Q. Okay. What was the response? I haven't  
6 seen it.

7 THE WITNESS: He's asking me to read from  
8 the exhibit. Is that something you want me to do?

9 BY MR. TAYLOR:

10 Q. Well, I'm just asking what Summit responded  
11 to your questions. Because I don't know that we've  
12 seen those. Maybe they were filed and I missed it.

13 A. I think if you call up my Exhibit 2. And I  
14 don't know exactly what questions -- what numbers  
15 those might be.

16 Q. But you did file the answers then.

17 A. Yes.

18 Q. Okay.

19 A. Mr. Dublinske was very prompt in getting  
20 the initial responses to my questions.

21 Q. Sometimes.

22 A. They were complicated questions, some of  
23 them, so I give him some credit for that.

24 Q. Were there any of those responses that you  
25 felt were insufficient or that perhaps need more

1 expansion or clarification?

2 A. I'm still not convinced, based on what I've  
3 seen either that's been provided directly in this case  
4 or otherwise, that a life cycle benefit from an  
5 atmospheric carbon reduction standpoint has been made.  
6 I think -- similar to the requests for more thorough  
7 external testimony regarding the economics, I think  
8 similar external testimony should be given towards  
9 the -- I guess I would call it the environmental  
10 economics of the proposal.

11 Q. And, by "environmental economics," what do  
12 you mean?

13 A. Basically how and in specific terms the  
14 project will result in what I call net reductions in  
15 atmospheric carbon. Which is, I think, a different  
16 question than how much carbon dioxide is sequestered.

17 Q. How is that different?

18 A. Well, if you look at the life cycle  
19 analysis of any project, there are emissions created  
20 by the project that need to be accounted for.

21 Some people would say that to the extent  
22 this benefits the ethanol industry, and corn farmers  
23 indirectly, it would result in either a continuation  
24 or expansion of corn production. And, by the time you  
25 look at manufacturing fertilizer and all the carbon

1 emissions associated with that corn production, it may  
2 result in a different outcome as far as that  
3 conclusion.

4 MR. TAYLOR: Thank you. That's all the  
5 questions I have.

6 BOARD CHAIR HELLAND: Mr. Whipple.

7 MR. WHIPPLE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WHIPPLE:

10 Q. Representative Isenhardt, you have in your  
11 career in the legislature served on the ways and means  
12 committee; is that right?

13 A. Yes.

14 Q. Do you believe that the tax credit  
15 financing costs of the project should be factored into  
16 the Board's balancing test?

17 A. Could you rephrase that in terms of what  
18 tax credit costs -- what do you mean by that?

19 Q. The 45Q and the 45Z tax credits that the  
20 federal government has created to subsidize the  
21 sequestration of carbon. Which you've said you don't  
22 oppose. But I think a question of more pertinence for  
23 the Board, rather, is how should those credits be  
24 considered as part of the balancing test that it  
25 weighs. What is your opinion on that?

1           A.    Well, I think that would get back a little  
2   bit to what Mr. Taylor asked.  What would be the  
3   alternatives and what would be more effective use of  
4   public monies if those alternatives were pursued.  And  
5   would we consider, on an absolute basis, those credits  
6   to be a good investment based on the net life cycle  
7   atmospheric carbon reduction that would result from  
8   the project.

9           Q.    That might be the case as a question of  
10   public policy, but, in terms of the determination in  
11   this case, should it be a cost or a benefit?  The  
12   federal credits.

13          A.    Well, you're talking to a public  
14   policymaker.  So that's why I'm here to testify.

15                I think personally we always should give  
16   more scrutiny to tax credits as opposed to direct  
17   appropriations to simply pay for activities.  Because  
18   typically those tax credits don't come up for regular  
19   review.  Are they actually achieving the goals that we  
20   intended, and, if not, should we reconsider the use of  
21   those monies.

22          Q.    Cost or benefit, Representative Isenhardt?

23          A.    It's a cost to the taxpayer for sure.

24                MR. WHIPPLE:  Thank you.  That's all I  
25   have.

1 BOARD CHAIR HELLAND: Thank you.

2 Mr. Jorde.

3 CROSS-EXAMINATION

4 BY MR. JORDE:

5 Q. Would any of your opinions given be  
6 different if the state of Iowa went about this project  
7 and it was going to be publicly owned essentially?  
8 That the government of the state was doing it rather  
9 than a private corporation?

10 A. Well, if it were a public project, I'm not  
11 sure it would come before the Utilities Board for  
12 review. I'm not aware that the Utilities Board needs  
13 to approve the use of eminent domain by a public  
14 entity. The courts may end up having that right.  
15 But, by definition, if it's the state doing it, I  
16 think that would be de facto a public convenience and  
17 necessity.

18 Q. Do you believe that the state of Iowa is  
19 missing out on an opportunity or the ability to  
20 perhaps sequester within the state of Iowa rather than  
21 the need for miles of pipeline outside of the state?

22 A. If, in fact, that were feasible, I think it  
23 would be a missed opportunity if it were not explored.

24 Q. Is that one of your criticisms of the  
25 project?

1           A.     It is one of the reasons I introduced an  
2     exhibit by Mr. Schilling of the Iowa Geological Survey  
3     related to how much it would cost, in general terms,  
4     for them to do the exploration and science needed to  
5     determine if it was feasible.

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

8           BOARD CHAIR HELLAND: Are there any further  
9     questions from the parties?

10           (No response.)

11           BOARD CHAIR HELLAND: Seeing none,  
12     Mr. Isenhardt, Representative Isenhardt, you may  
13     redirect yourself as it's related to the questions  
14     that were asked.

15           THE WITNESS: I don't have any redirect,  
16     but I'd hate to not have to answer questions from a  
17     former state representative.

18           BOARD CHAIR HELLAND: I believe that's for  
19     you.

20           Your time is appreciated. Thank you very  
21     much. I'll give you a minute to return to your seat  
22     and call your next witness.

23           MR. ISENHART: Mr. Chair, I call Ryan Clark  
24     as a witness.

25           While he's approaching the stand, I would

1 like to, for the record, make a correction. Mr. Clark  
2 does not have a PhD. So it was erroneous for me to  
3 refer to him as "Dr. Clark" in my offer of a witness.  
4 We neglected to proofread that document. Which is a  
5 cardinal sin for somebody trained as a newspaper  
6 reporter.

7 So, with that correction, I'll offer Ryan  
8 Clark as a witness.

9 BOARD CHAIR HELLAND: Thank you for the  
10 clarification.

11 Go ahead and turn your microphone on. Make  
12 yourself comfortable. Make sure you're speaking into  
13 the microphone no matter where you're turning.

14 Raise your right hand.

15 RYAN CLARK,  
16 called as a witness by Representative Charles  
17 Isenhardt, being first duly sworn by Board Chair  
18 Helland, was examined and testified as follows:

19 BOARD CHAIR HELLAND: Representative  
20 Isenhardt.

21 MR. ISENHART: Thank you, Mr. Chair.

22 DIRECT EXAMINATION

23 BY MR. ISENHART:

24 Q. Mr. Clark, are you the Ryan Clark whose  
25 testimony I solicited and filed on September 11?



1 A. Yes.

2 Q. If I were to ask you the same questions  
3 today, would your answers be the same?

4 A. Yes.

5 Q. Do you have any corrections or additions to  
6 that testimony?

7 A. No, I do not.

8 MR. ISENHART: Would now be the appropriate  
9 time to offer his testimony and exhibits?

10 BOARD CHAIR HELLAND: Are you making that  
11 motion?

12 MR. ISENHART: Yes.

13 BOARD CHAIR HELLAND: Thank you.

14 MR. ISENHART: I believe there are three.  
15 One is his CV and a couple others are PowerPoint  
16 presentations he has made on this subject.

17 BOARD CHAIR HELLAND: Thank you.

18 Do we have objection?

19 MR. WHIPPLE: Your Honor, the Counties have  
20 some concerns about how late this testimony was filed.  
21 It seems to be of the kind of gravity that would  
22 demand the parties have a chance to find other experts  
23 to inform our questioning of this witness and maybe  
24 find rebuttal testimony.

25 This was filed on September 11. And we

1 don't claim that it's not relevant, but I'm struggling  
2 a little bit with the time we've had to prepare for  
3 this witness, Your Honor.

4 BOARD CHAIR HELLAND: Thank you.

5 Mr. Taylor, did you have a comment or are  
6 you lining up first?

7 MR. TAYLOR: I'm lining up first.

8 BOARD CHAIR HELLAND: We got you.

9 Are there any other objections before the  
10 Board makes a decision?

11 MR. DUBLINSKE: Your Honor, I'm at least  
12 partially going to join and partially going to resist  
13 Mr. Whipple's objection.

14 We do have concerns about the timeliness.  
15 Obviously it was well after the deadline, including  
16 the deadline for witnesses and exhibits. I want to  
17 reserve that because there are other examples of  
18 brand-new persons being brought in, brand-new parties  
19 being brought in, that I'm going to want to reserve  
20 for later.

21 On this one, I think that if the Board lets  
22 it in, that is not cause to allow any sort of  
23 additional rebuttal. There normally wouldn't be a  
24 rebuttal round to this testimony anyway. And we're  
25 now eight days past and providing eight days of

1 opportunity for preparation of cross, which certainly  
2 we've done things quicker in this case, but we do have  
3 concerns about the timeliness of the filing. And that  
4 will be a theme that will recur here in the coming  
5 weeks.

6 MR. ISENHART: Would you like me to make an  
7 observation, Mr. Chair?

8 BOARD CHAIR HELLAND: Not yet, but in a  
9 moment you'll have a chance.

10 Mr. Whipple, did you have a response or  
11 clarification?

12 MR. WHIPPLE: One clarification, Your  
13 Honor. I'm not exactly asking for more rounds of  
14 rebuttal, but I would say the Counties would very much  
15 have preferred this testimony to come in much earlier  
16 so that it could have been more fully developed as  
17 part of the record. Both the direct testimony and the  
18 exhibits.

19 So I'm not trying to drag out the  
20 proceedings, but this seems to be important testimony,  
21 Your Honor.

22 BOARD CHAIR HELLAND: Thank you.

23 Representative, did you have --

24 MR. ISENHART: I acknowledge the lack of  
25 timeliness on this and would have not objected had the

1 Board decided not to allow me to offer the witness. I  
2 would just note that in response to previous  
3 testimony, two of the three Board members asked  
4 specifically about the potential for carbon  
5 sequestration in Iowa. Therefore, I thought it  
6 important to make this testimony available.

7 BOARD CHAIR HELLAND: Thank you.

8 Give us just a minute here.

9 (Recess taken at 1:18 p.m.)

10 (Hearing resumed at 1:28 p.m.)

11 BOARD CHAIR HELLAND: We'll go back on the  
12 record. Thank you. Sorry for the pause. I  
13 appreciate that.

14 After much deliberation, the Board will be  
15 admitting the evidence and testimony of the witness  
16 for Representative Isenhardt.

17 However, at this point, we also want to  
18 remind the parties yet again that our rules, our  
19 procedures, have been in the administrative code, they  
20 have been in our orders for months. Attorneys and  
21 parties continue to file late and file improperly.

22 We have rules and we have procedures for a  
23 reason. And it is very frustrating to try to put on a  
24 timely and orderly hearing when so many parties refuse  
25 to follow these rules.

1                   So this evidence appears to be relevant.

2       As such, we will admit it and put the parties on  
3       notice yet again that we encourage you to review the  
4       rules and previous orders and act accordingly.

5                   Representative Isenhardt.

6                   MR. ISENHART: Thank you. Points taken.

7                   I make Mr. Clark available for  
8       cross-examination.

9                   BOARD CHAIR HELLAND: Thank you.

10                  Mr. Taylor, you're first.

11                  MR. TAYLOR: Thank you.

12                               CROSS-EXAMINATION

13       BY MR. TAYLOR:

14               Q.    Mr. Clark, the substance of your testimony  
15       is that your agency, the Geologic Survey, is -- I'm  
16       not sure if "exploring" is the right word in this  
17       context, but considering the idea that maybe there is  
18       a site in Iowa where the carbon dioxide from the  
19       ethanol plants could be sequestered.

20                               Is that a fair statement?

21               A.    Yeah, I think I would suggest maybe using  
22       the word we are -- we believe that it can happen. I  
23       don't know that I would go so far as to say that we  
24       are actively researching it. But, yes, it is our  
25       belief that the potential is there.

1           Q.    I guess you anticipated my next question.  
2   How much do you know and what is the state of your  
3   belief, so to speak, that there could be a  
4   sequestration site in Iowa?

5           A.    That's a tough one to answer, but I'll try.  
6   You know, it comes down to -- you know, the state of  
7   our understanding of the deep subsurface geology of  
8   Iowa is more limited than some states. Part of that  
9   is because we don't have a history of petroleum  
10   production or other extractive industries that would  
11   require more investigation of the deep subsurface.

12                So, based on the limited information that  
13   we do have of the rocks that would be considered  
14   targets, the evidence from those samples looks like  
15   there could be some places in Iowa where we could do  
16   this.

17           Q.    And do you have any sense of whether that  
18   would be sufficient space, underground space, to store  
19   the amount of carbon dioxide that Summit, and the  
20   other pipeline companies for that matter, are  
21   considering?

22           A.    The evidence we have does suggest that  
23   there would be enough storage space, yes.

24           Q.    On into the future?

25           A.    Yes.

1           Q.    I think your testimony indicated that,  
2   aside from the Geologic Survey, there were other  
3   studies that have been or are being conducted on  
4   sequestration in Iowa.

5                   What are those studies and what have they  
6   shown so far?

7           A.    I had made that comment in my written  
8   testimony because I'm aware of some private companies  
9   that have asked the Iowa Geological Survey for certain  
10   information. Some of those companies have actually  
11   just said outright that, "We are looking at the  
12   potential to sequester in Iowa."

13                   And that's as far as it's gotten. That's  
14   all that I know.

15           Q.    Are you at liberty to tell us what those  
16   companies are?

17           A.    I'd rather not.

18           Q.    What level of interest or how serious have  
19   these inquiries been by these other companies?

20           A.    I'm not sure how to gauge the seriousness.  
21   Sorry.

22           Q.    Let me rephrase the question.

23           A.    Thank you.

24           Q.    Have these companies expressed definite  
25   interest in doing that or is it just kind of, "Well,

1 maybe we'd like to do it, we don't know"? Where does  
2 it fall in that spectrum?

3 A. Yeah, the contact that I've had --  
4 typically, I've had more contact with, I guess I would  
5 say, consultants. So other geoscientists. It has  
6 ranged from, "Hey, I've got a client that's kind of  
7 interested, what do you know," and I'll send them the  
8 report that we've got and show them where some of our  
9 database links are and things like that.

10 It's ranged from that level of interest to,  
11 "We've signed a" -- "We've been contracted by a  
12 company within the state of Iowa to look at the  
13 feasibility of carbon sequestration in Iowa."

14 Q. Have any ethanol plants talked with the  
15 Geologic Survey about sequestering in Iowa rather than  
16 piping the carbon dioxide to some other state?

17 A. Yes, they have.

18 Q. So that seems to be a feasible option for  
19 ethanol plants, do you think?

20 A. Yeah, I think so.

21 Q. Have you talked with Summit Agricultural  
22 Group about carbon sequestration in Iowa?

23 A. Yeah, that was included in my testimony.  
24 My written testimony.

25 Q. Can you tell us more about those



1 discussions? When they were, what resulted from those  
2 discussions.

3 A. In my written testimony, I think I gave the  
4 date of our first contact. Bear with me just a  
5 second, please.

6 It would have been July 9th of 2020 was the  
7 first time I was reached by phone from somebody with  
8 Summit Agricultural Group. And they had requested a  
9 virtual meeting, which we held the next day on  
10 July 10th, and that was myself and my supervisor Keith  
11 Schilling.

12 And we gave them -- it was just one person  
13 actually. It was a Zoom meeting. So we gave a  
14 PowerPoint presentation very similar to the one that  
15 was submitted as -- I don't know which exhibit number  
16 it was. But the same information that we've got here.

17 Q. Is that the same PowerPoint that was or  
18 shown to the Iowa House Environmental Protection  
19 Committee last spring?

20 A. It was very similar, yes.

21 Q. So, when you talked to Summit Ag Group, who  
22 was it that you talked to specifically?

23 A. His name was Jon Probst.

24 Q. And it was Summit Agricultural Group and  
25 not Summit Carbon Solutions; correct?

1 A. Correct.

2 Q. So was there any follow-up to that or any  
3 further interest?

4 A. Yes, there was some follow-up questions  
5 that I answered via email. I think we may have spoken  
6 on the phone also a few more times.

7 Q. Has there been any follow-up more recently  
8 with Summit? Either Summit Ag or Summit Carbon  
9 Solutions?

10 A. Not recently, no.

11 Q. If your agency were given enough funding,  
12 which is always questionable, to do an investigation  
13 of carbon sequestration in Iowa, what would be  
14 involved and how long would that take?

15 A. Of course that depends on how much funding  
16 we're talking about, but let's go with an ideal  
17 scenario.

18 To characterize, let's say, one site that  
19 would -- say the size of a typical ethanol plant. We  
20 would start there and say this is our spot where we  
21 want to focus our activities.

22 I would say it would take, you know, as  
23 quickly as two years, maybe two to four years I would  
24 safely say, to get to the point where we can identify  
25 absolutely, yes, we can store at this location or we

1 cannot. So, yeah, I would say two to four years.

2 And, you know, funding-wise, that would  
3 probably range -- I've given estimates in the past.  
4 There's some that are part of the exhibits. I wish I  
5 could nail it down to exactly that, but it could be on  
6 the order of three to five million dollars, certainly  
7 up from there, depending on what you do.

8 Q. And that would need to come from the  
9 legislature? The funding?

10 A. Are you asking me if that's where I want it  
11 to come from?

12 Q. Well, would it come from the legislature?

13 A. It could.

14 Q. What other source might there be?

15 A. The federal government has grants out there  
16 that are available for this type of research.  
17 Obviously, you know, if an ethanol company wanted to  
18 go on their own and hire us, we could go that route.  
19 There's a number of different routes.

20 Q. Finally, on page 10, line 13, of your  
21 testimony, I wasn't quite clear what you were saying  
22 there.

23 MR. TAYLOR: If we can get that up.

24 A. That's a question.

25

1 BY MR. TAYLOR:

2 Q. Oh. The question mentions "13 sites." How  
3 does the 13 sites fit into what we've just been  
4 talking about as far as exploration for a  
5 sequestration site?

6 A. These questions were provided to me by  
7 Representative Isenhardt. As to where he came up with  
8 the question, I couldn't speak to that.

9 Q. So I should have asked him.

10 A. I suppose so.

11 MR. TAYLOR: That's all the questions I  
12 have. Thank you.

13 BOARD CHAIR HELLAND: I had Mr. Whipple  
14 next. I apologize if I missed Mr. Jorde.

15 MR. WHIPPLE: I'll go.

16 CROSS-EXAMINATION

17 BY MR. WHIPPLE:

18 Q. Mr. Clark, let's go back to -- you  
19 described a meeting with Summit. And it was one  
20 person?

21 A. Yes.

22 Q. Mr. Probst. Do you recall Mr. Probst  
23 identifying his position in the company?

24 A. I don't recall off the top of my head, no.

25 Q. I may not get the title right, but I

1 believe there was testimony in this proceeding that he  
2 was the chief financial officer. I guess my question  
3 is did you have a clear understanding that you weren't  
4 speaking to a scientist or an engineer?

5 A. Yes, I knew that.

6 Q. Okay. And so -- you've provided this  
7 information now to the legislature; right?

8 A. Correct.

9 Q. And to other companies; right? You won't  
10 identify which, but to other companies.

11 A. Yes.

12 Q. And the answer has been the same every time  
13 from you; is that right? That it's possible.

14 A. Correct.

15 Q. Do you have a sense of the capacity of Iowa  
16 for this storage? Is there a limit on the capacity  
17 here?

18 A. I mean, the numbers that we have is, again,  
19 based on very limited data and some very wide-ranging  
20 assumptions. So the end values that we can come up  
21 with are so wide ranging. But they're non-zero.

22 Q. I guess I'd like to zero it -- well, I  
23 guess I'd like to get to a little bit more than  
24 non-zero.

25 Summit is proposing to capture carbon from

1 more than 30 ethanol plants. Is there capacity in  
2 Iowa for that much carbon?

3 A. An average Iowa ethanol plant emits how  
4 many metric tons of CO2 per year? Do we want to say  
5 300,000? 400,000?

6 Q. I'm interested in what you told Summit, I  
7 guess. Did you tell them there was capacity for the  
8 scope of their project?

9 Did they identify the scope of their  
10 project, first of all, I should ask?

11 A. I said that there's -- all right. So let's  
12 look at whatever exhibit is the PowerPoint  
13 presentation. Maybe it's best to go this route.

14 So the total that I had come up with, and  
15 this is just me trying to cobble things together, I  
16 believe was, at the time that I made this  
17 presentation, about 12.8 million metric tons of CO2  
18 per year. And that's from all Iowa ethanol -- or that  
19 was with the figure that we would produce about  
20 4.5 billion gallons of ethanol per year. So round  
21 that up to 13 million metric tons per year.

22 Do I think that we could store that in  
23 Iowa? Based on what I know right now, I think it's  
24 possible.

25 Q. So I guess what I'm really driving at here

1 is Summit's petition and evidence submitted in this  
2 docket identifies North Dakota as the only feasible  
3 site and states that there is not geologic feasibility  
4 in Iowa. And obviously your testimony directly  
5 contradicts that.

6 So I guess I'd like you to explain how you  
7 account for that based on your conversations with them  
8 and the opinions you've now provided to many about the  
9 feasibility of this.

10 How do you account for the difference?

11 A. I really have no idea how Summit came to  
12 that conclusion. So I can't speak to that.

13 But, again, I can just point to the  
14 evidence that we have, which is very well summarized  
15 in our Technical Information Series No. 58 that I  
16 believe was part of the -- I can't remember if that's  
17 been submitted as an exhibit or not.

18 Q. If it's not a geologic reason, would it be  
19 possible for it to be a business reason? Or a  
20 financial reason.

21 A. That's beyond my area of expertise.

22 MR. WHIPPLE: That's all I have, Your  
23 Honor.

24 BOARD CHAIR HELLAND: Thank you.

25 Mr. Jorde.

1 MR. JORDE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. JORDE:

4 Q. Picking up on that question that Mr. Taylor  
5 asked to be displayed up there. The question was "If  
6 Summit Carbon Solutions were interested in  
7 characterizing 13 sites for its contracted carbon  
8 dioxide emitters, the cost could be \$52 million or  
9 possibly more; correct?"

10 And you said "Correct."

11 Now, are you proposing that there would be  
12 individual storage location per site or is there  
13 likely a location in Iowa generally that could capture  
14 all 13? What's the breakdown?

15 A. So, based on my experience in, you know,  
16 working with the Midwest Regional Carbon Initiative,  
17 which is a regional consortium of 22, I think, states,  
18 21 or 22 states, where we -- the point at the MRCI is  
19 to accelerate CCUS throughout our region.

20 And that has to do with both compiling all  
21 the research, the data that we've gotten across the  
22 states that's available. And partnering with that  
23 consortium and attending meetings, and then also  
24 talking to other state surveys like in Kansas and  
25 Illinois and some of these places that have already



1 had active carbon sequestration, I've come up with,  
2 you know, a fairly firm understanding that there's two  
3 ways that we could do this.

4 There's the real large-scale commercial  
5 hub. Which is a term that gets thrown around quite a  
6 bit in the CCS industry. The idea of gathering as  
7 much CO2 as you can from a geographic region and  
8 finding a hub nearby that you can then store it all  
9 in.

10 I don't see that as necessarily the only  
11 way that this should be approached. I feel like you  
12 could do smaller, more distributed carbon  
13 sequestration where perhaps there is just a single  
14 ethanol plant that is able to store its own emissions  
15 and that's it. Four hundred, five hundred thousand  
16 tons a year. So anywhere from there to the  
17 large-scale 10 million metric tons per year.

18 I think, at least in terms of the state of  
19 Iowa, all those options should be investigated.

20 Q. So, based on the geological information you  
21 have, the best information, you believe there's likely  
22 localized solutions as well as potentially formation  
23 in Iowa appropriate to handle more of a large-scale  
24 sequestration project?

25 A. Yes.

1           Q.   And is there a particular county, or  
2   counties, that you believe geologically would best be  
3   suited to handle larger volumes from multiple sources?

4           A.   Again, without knowing for sure that we can  
5   do this in any one particular or multiple formations,  
6   I just don't know. I know where the formations are  
7   that I think are the highest potential.

8           Q.   Yes.

9           A.   I have to use my words here.  
10   Essentially -- there's a feature called the  
11   Midcontinent Rift System. And it comes into the state  
12   from the southwest sort of corner, and then it runs up  
13   through and exits Iowa through the north central part.  
14   This geologic feature continues up into Minnesota  
15   underneath Lake Superior and down around into  
16   Michigan.

17                   So it's a very large feature. It underlies  
18   at least 30, 35 percent of the state of Iowa. And we  
19   know it's there. We don't know in detail what its  
20   carbon sequestration potential is right now, but,  
21   based on the information we do have, it's something  
22   that I think is worth looking at.

23                   And, because it's so vast, it's really hard  
24   for me to pinpoint which area is going to be the best  
25   potential.

1           Q.    In southwestern Iowa where you say this  
2           formation enters the state, are you aware if there's  
3           any significant oil or gas production activities going  
4           on in that region also?

5           A.    There are no petroleum activities in Iowa.  
6           As far as I know.

7           Q.    Okay.  So do you understand that where  
8           Summit is proposing to sequester in North Dakota is  
9           some approximately 40 miles from a large production of  
10          natural gas and crude oil?

11          A.    Yes, I'm aware of that.

12               MR. JORDE:  Thank you.  Nothing further.

13               BOARD CHAIR HELLAND:  Thank you.

14               Board questions?

15               BOARD MEMBER BYRNES:  Just a couple quick  
16          questions.

17               So are you aware of the work that the  
18          National Energy Technology Laboratory does in this  
19          arena?

20               THE WITNESS:  I'm somewhat familiar, yes.

21               BOARD MEMBER BYRNES:  Would that be a  
22          facility you would use to do the testing of the  
23          samples?  The core samples?

24               THE WITNESS:  In my experience in preparing  
25          a proposal to do this type of research using

1 Department of Energy funding, it seems to be customary  
2 or certainly beneficial to partner with the national  
3 lab. NETL is the only national lab operated by the  
4 Department of Energy. So they end up on a lot of  
5 these -- actually, I take that back. I don't think  
6 NETL can be a part of a DOE grant. So let's just  
7 assume that I'm not sure how that affiliation is.

8 But, yes, NETL does do a lot of testing  
9 related to carbon sequestration. But it kind of  
10 depends. I mean, if I'm looking at basaltic  
11 mineralization, then there's another national lab, I  
12 believe it's called Northwest National Labs, that has  
13 been doing quite a bit of research in basaltic  
14 mineralization, so that might be a better lab to  
15 partner with.

16 So it kind of depends.

17 BOARD MEMBER BYRNES: So, from your  
18 professional standpoint, what is it that we need to  
19 have in Iowa and how does the process work. Just kind  
20 of layman's terms, what do we need to have and then  
21 how is it sequestered, how is it kept there?

22 THE WITNESS: So, just to clarify, you're  
23 asking what properties of the formations are needed  
24 to -- okay.

25 So it boils down to porosity and

1 permeability in most cases. So think of a sponge.  
2 Some rocks actually behave like sponges. And a sponge  
3 can absorb water because it has open pore spaces  
4 within it that the water can sit in. And you can  
5 wring the sponge out because those pore spaces are  
6 connected.

7 So how a fluid can move from one pore space  
8 to another is its permeability. The higher your  
9 porosity, the higher your permeability, the more fluid  
10 that rock can hold. So that's one thing that you need  
11 to look for are formations that have high porosity,  
12 high permeability.

13 In the case of carbon sequestration,  
14 typically the CO2 is captured as a gas and then it's  
15 dehydrated and compressed into what's called a  
16 supercritical fluid. This fluid needs to be under a  
17 certain amount of pressure. And that relates to  
18 injecting at least 2,700 feet underground to maintain  
19 it as a liquid so that it doesn't depressurize and  
20 turn back into a gas phase and therefore potentially  
21 leak.

22 So keeping the depth in mind and porosity  
23 and permeability, those are kind of your constraints.

24 To go a step further, when you're talking  
25 about rock formations that are porous and permeable,

1 those tend to be aquifers. They hold groundwater.

2 One of the requirements for evaluating if a  
3 rock formation can be utilized for carbon  
4 sequestration is whether the groundwater that's within  
5 that aquifer could ever be used for drinking. So is  
6 it potable water or not.

7 The EPA has set a limit of 10,000 parts per  
8 million of total dissolved solids. And that's a  
9 standard water quality parameter that essentially  
10 refers to the salinity. How many different minerals  
11 are dissolved in that water. 10,000 parts per million  
12 and higher, that's water that nobody would ever want  
13 to drink. So, once you find a formation that's deep  
14 enough, porous and permeable enough, then it also  
15 cannot have water that's considered potable.

16 So you have to look for those factors.

17 And then the side bar that I touched on  
18 earlier is there's a slightly different formation that  
19 you can look at. Which are igneous rocks. They're  
20 not -- they're rocks that were magma. They may have  
21 been erupted at the land surface. Which would be  
22 known as basalt.

23 Turns out a lot of research has been going  
24 into what happens when you inject supercritical CO2  
25 into basalt formations. When that happens, studies

1 have shown that the supercritical CO2 actually  
2 converts to the mineral calcite. Or ankerite or some  
3 type of mineral. And those minerals have been proven  
4 to be very stable in the rock formation.

5 So this idea of basaltic mineralization is  
6 picking up some attention and some speed. It turns  
7 out that the Midcontinent Rift System that I talked  
8 about earlier has a -- a very large portion of it is  
9 occupied with basalts.

10 BOARD MEMBER BYRNES: So, in reading  
11 through your testimony, one of the things that stuck  
12 out with me is just the cost. The cost per bore.

13 Why? I mean, if you can explain that a  
14 little bit. Why it's so expensive.

15 THE WITNESS: Sure. Drilling to assess  
16 whether you can do sequestration requires, again, a  
17 tremendous depth. Drilling 2,700 feet deep even for a  
18 water well is a pretty big undertaking and fairly  
19 expensive.

20 But this isn't just to make a hole in the  
21 ground. This is we have to retrieve samples, solid  
22 cylindrical core samples, of different rock formations  
23 so that we can subject them to laboratory testing. So  
24 that adds a lot of cost to it when you're drilling  
25 four, five, six thousand feet down and you're trying

1 to retrieve solid cylinders of core that can be tens  
2 of feet long. It takes a specialized drill rig,  
3 different capabilities, things like that. So that's a  
4 pretty big expense.

5 And then what's folded into those costs is  
6 usually the down-hole analyses that are done. So  
7 instruments can be lowered down the hole once it's  
8 been drilled, and these instruments can collect a  
9 myriad of data that's very useful. Such as the  
10 porosity and permeability. It can identify different  
11 changes in lithologies that maybe you didn't see  
12 during the drilling process. It can give you  
13 information about the water chemistry, the water  
14 temperature. It can even look for things like faults  
15 in the area.

16 So the down-hole and analytical part can  
17 add a lot of cost to it as well.

18 BOARD MEMBER BYRNES: As a person who  
19 taught earth science back in the day, I better end it  
20 right now. Otherwise we may continue. So thank you.

21 THE WITNESS: You're welcome.

22 BOARD MEMBER MARTZ: So, Mr. Clark, again,  
23 on the boring and the work to characterize these  
24 sites, you mentioned three to five million dollars in  
25 two to four years, I believe, to characterize a site.



1                   At the end of that two to four years, are  
2   you saying that that site is ready for commercial  
3   injection or is there another step after that?

4                   THE WITNESS: Those figures would probably  
5   get you to the point where you're going to -- I  
6   suppose it's possible that that could get you past the  
7   injection testing part to where you're actually  
8   putting it online as a commercially viable well.

9                   But I think the conservative estimation  
10   would be that would get you to the point where you've  
11   applied for an underground injection permit, a  
12   Class VI permit with the EPA, to do injection testing.  
13   And those costs I'm far less familiar with. But those  
14   would be additional costs, additional time.

15                  BOARD MEMBER MARTZ: And, just to clarify,  
16   do you know of any current characterization going on  
17   right now for any of those sites in Iowa?

18                  THE WITNESS: I am not aware of any active  
19   carbon sequestration characterization projects in  
20   Iowa.

21                  BOARD MEMBER MARTZ: Thank you.

22                  THE WITNESS: Let me qualify that. That  
23   involve drilling.

24                  BOARD CHAIR HELLAND: Thank you.

25                  Representative Isenhardt. Redirect?

1 MR. ISENHART: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. ISENHART:

4 Q. Just three questions to clarify your  
5 responses to others.

6 If I were to tell you the "13" in that one  
7 question is based on the number of ethanol plants that  
8 Summit proposes to serve, would that explain that  
9 number in that question?

10 A. It explains it to me, yes.

11 Q. Okay. And you testified that the cost  
12 would be three to five million or more. I took the  
13 average. Four. Thirteen times four equals 52. So  
14 that's why you responded 52 million or more in that  
15 question?

16 A. Yes.

17 Q. You were asked about the private parties  
18 who have approached you. You said you wouldn't  
19 identify them by name, but is it true your testimony  
20 generally refers to them as biofuels, power  
21 generation, fertilizer, and cement production  
22 industries?

23 A. Well, the question I was responding to, I  
24 thought, was asking me about the consulting companies  
25 that were hired to do work. Unless I misunderstood

1 that.

2 Q. Well, let's say it was asking you about the  
3 identities of the industries wanting to know. That's  
4 in your testimony what those industries are?

5 A. Yes. Yes. It says that in my testimony.

6 Q. Thank you. And the last question is you  
7 were asked about storage fields, where they might be,  
8 how big they might be.

9 Is it true that another factor is not just  
10 the location and size of the storage fields but the  
11 number of wells that might be needed to get carbon  
12 dioxide into that storage facility?

13 A. Correct.

14 Q. And what would that, in general, involve  
15 for an average ethanol plant? Number of specific  
16 wells.

17 A. You know, obviously I don't think that you  
18 would be -- I don't think that you would want to rely  
19 on characterizing a site fully with just one well.  
20 You know, in some of the cases that I've heard that  
21 have worked in other states, you drill your first well  
22 to gather all your data. And then, when it comes time  
23 to do injection testing, you drill a second well and  
24 construct it in such a way that it can eventually be  
25 converted into a permanent injection well. So you'd

1 need at least two.

2 Q. So there may be multiple wells associated  
3 with an individual ethanol plant's storage field?

4 A. Yes.

5 Q. The last question is what do those wells  
6 look like on the surface to the average person? Would  
7 you say that they are significant features of the  
8 landscape or would they be kind of hidden as far as  
9 the public is concerned?

10 A. To qualify my answer before I give it, I  
11 have not seen a carbon sequestration injection well in  
12 person. I've seen photos of them in various  
13 presentations. They don't look like they're large  
14 monstrosities. They look like they have a few feet of  
15 steel coming out of the ground that might elbow off to  
16 the side and there might be a small structure next to  
17 it. From my recollection of seeing photos of it.

18 Q. But is it fair to say there would be some  
19 flexibility where to locate them in a specific area if  
20 it was in a rural area to get to a particular storage  
21 field?

22 A. Yes, I would say that it's reasonable to  
23 say that there is some flexibility with the location  
24 of the wells.

25 MR. ISENHART: Thank you.

1 That's all I have, Mr. Chair.

2 BOARD CHAIR HELLAND: Thank you.

3 Appreciate it.

4 THE WITNESS: Thank you.

5 BOARD CHAIR HELLAND: Ms. Ryon.

6 MS. RYON: Thank you, Your Honor.

7 Republican Legislative Intervenors for Justice would  
8 call Representative Steven Holt.

9 BOARD CHAIR HELLAND: Go ahead and move  
10 that around. The microphone. Put it wherever you  
11 want it as long as you can speak into it. There you  
12 go.

13 Go ahead and raise your right hand.

14 STEVEN HOLT,  
15 called as a witness by Republican Legislative  
16 Intervenors for Justice, being first duly sworn by  
17 Board Chair Helland, was examined and testified as  
18 follows:

19 BOARD CHAIR HELLAND: Ms. Ryon.

20 DIRECT EXAMINATION

21 BY MS. RYON:

22 Q. Good afternoon, Mr. Holt.

23 A. Good afternoon.

24 Q. Are you the same Steven Holt who filed  
25 direct testimony on July 24, 2023, in this docket?

1 A. I am.

2 Q. And, if I asked you the same questions  
3 today, would you give approximately the same answers?

4 A. I would.

5 Q. Do you have any corrections to make to that  
6 testimony?

7 A. No, I do not.

8 MS. RYON: Your Honor, I would move to  
9 admit Mr. Holt's testimony.

10 BOARD CHAIR HELLAND: Are there objections?

11 MR. LEONARD: No objection.

12 BOARD CHAIR HELLAND: Sorry. Was that no  
13 objections? That was very quick.

14 MR. LEONARD: No objection.

15 BOARD CHAIR HELLAND: Thank you.

16 Mr. Whipple.

17 CROSS-EXAMINATION

18 BY MR. WHIPPLE:

19 Q. Good afternoon, Representative Holt.

20 A. Good afternoon.

21 BOARD CHAIR HELLAND: Sorry, we're going to  
22 admit that real quick. Seeing no objections, the  
23 Board will admit the evidence and give it the weight  
24 due.

25 Go ahead, Mr. Whipple.

1 BY MR. WHIPPLE:

2 Q. Representative Holt, during the  
3 cross-examination of Summit's chief operating officer  
4 James Powell, I was inquiring with him about the  
5 denial of the permit in North Dakota, and it was his  
6 testimony that considerations with regard to Bismarck  
7 caused some of that determination in North Dakota.

8 You represent the city of Earling, do you  
9 not?

10 A. I do.

11 Q. Do you agree with Mr. Powell that Earling  
12 isn't entitled to the same consideration as Bismarck?

13 A. I do not. As I said in my testimony, my  
14 objection is not to the pipeline being built. My  
15 objection is to the use of eminent domain to seize the  
16 property of my constituents to build something that I  
17 think is a private economic development project and  
18 does not fit the requirements for the use of eminent  
19 domain.

20 And my constituents and my property owners  
21 in Earling and across my district and across the state  
22 of Iowa deserve every consideration when we're talking  
23 about such a fundamental constitutional question as  
24 the seizing of their land.

25 Q. I'd also like to ask you the same question

1 I asked Representative Isenhardt a moment ago. But how  
2 should the Board consider the federal tax credit  
3 subsidies for these projects? Should it be considered  
4 a cost or a benefit in the weighing of this permit?

5 A. You know, my objection to this, again, I  
6 would say, has never been about the economic  
7 development aspect. I love it when people make money.  
8 I'm a capitalist. I love capitalism. My objection is  
9 to the use of eminent domain.

10 So I think, in that regard, it's a terrible  
11 cost that my constituents and the folks in Iowa are  
12 paying when their land is going to be seized for this  
13 economic development project that, again, does not fit  
14 the Iowa constitutional requirement or the statutory  
15 requirements we have in Iowa Code for the use of  
16 eminent domain.

17 Q. So, subsequent to the filing of your direct  
18 testimony, Summit filed rebuttal testimony that  
19 included a renewable fuels study and an updated  
20 economic impact analysis from Ernst & Young.

21 Do either of those reports change your  
22 opinion of the benefits of this project?

23 A. No, sir. As I've said before, I'm all for  
24 the pipeline being built. I don't understand why it  
25 cannot be built through voluntary easements, because



1 it is, in my judgment, a private economic development  
2 project that does not fit the Iowa constitutional  
3 requirement of public use such as a propane -- a gas  
4 pipeline or an oil pipeline that provides products  
5 that are essential to humanity. That is what public  
6 use means.

7 Further, in the Iowa Code in Section 479B,  
8 it gives very clear direction and limited authority  
9 that the legislature has given to the Iowa Utilities  
10 Board when it says the proposed services will promote  
11 the public convenience and necessity.

12 And this pipeline does not meet the public  
13 use requirement nor does it meet the public  
14 convenience and necessity requirement that are  
15 stipulated in the narrow authority that we give to the  
16 Iowa Utilities Board.

17 So the economic benefits do not change the  
18 fact that I do not believe that the request for  
19 eminent domain is constitutional or statutorily  
20 allowed in this case.

21 MR. WHIPPLE: Thank you. That's all I  
22 have, Your Honor.

23 BOARD CHAIR HELLAND: Mr. Taylor.

24 MR. TAYLOR: Thank you.

25

1 CROSS-EXAMINATION

2 BY MR. TAYLOR:

3 Q. Representative Holt, to pick up on that  
4 last comment on public convenience and necessity,  
5 you've said that that is a narrow concept.

6 What do you mean by that and can you  
7 describe how narrow it is?

8 MR. LEONARD: Objection, Your Honor.

9 BOARD CHAIR HELLAND: State your objection.

10 MR. LEONARD: Calls for a legal conclusion  
11 as to public convenience and necessity.

12 BOARD CHAIR HELLAND: Sorry, Mr. Leonard.  
13 You're speaking just a little too fast. I just can't  
14 quite hear you.

15 MR. LEONARD: It calls for a legal  
16 conclusion as to the meaning of public convenience and  
17 necessity in the statute.

18 BOARD CHAIR HELLAND: Mr. Taylor.

19 MR. TAYLOR: He's the one that brought it  
20 up and he put it in his testimony, and I'm just asking  
21 him to clarify his testimony. What he meant by public  
22 convenience and necessity being a narrow concept.

23 BOARD CHAIR HELLAND: The witness may  
24 answer if he knows.

25 A. I would say, as a policymaker chair of the

1     judiciary committee, I have the responsibility every  
2     day that I serve the people of Iowa and my  
3     constituents to make decisions on constitutional  
4     meanings and on the meanings of laws that we pass.

5             I have consulted attorneys on both sides of  
6     the aisle. Both sides of the political spectrum. And  
7     I think we've all believed for a long time that the  
8     definition of public use -- I think we understood that  
9     for a long time until perhaps the Kelo v. New London  
10    decision. Which the Iowa Supreme Court has made clear  
11    that they sided with the dissent in that case.

12            Public use is different from public  
13    benefit. As I said before, public use is those  
14    things, I think, that are essential for humanity.  
15    Public use. Pipelines that move oil and natural gas  
16    are different from a pipeline that's going to ship CO2  
17    and bury it in the ground in another state.

18            I don't see how any amount of mental  
19    gymnastics can conclude that that fits the public use  
20    definition under the Iowa Constitution --

21            BOARD CHAIR HELLAND: Representative Holt.  
22    We need you to slow down just a little bit. We need  
23    to make sure that the court reporter catches all this  
24    for the record so that we can make the decision.

25            THE WITNESS: I apologize. So I'll slow

1 down. You can see that I care about this issue a lot.  
2 So I'll slow down and try again.

3 A. I don't see how anyone when you look at the  
4 public use requirement in the Iowa Constitution -- and  
5 we know, as I talked about, propane or oil or  
6 highways, those things that are essential for  
7 humanity, is what was put in the United States  
8 Constitution and the Iowa Constitution when we talk  
9 about public use.

10 And, as I said, I don't think shipping CO2  
11 in a pipe and burying it in the ground in another  
12 state in any way, shape, form, or fashion fits the  
13 definition or fits the requirement for public use.

14 When it comes to the convenience and  
15 necessity, the Iowa legislature has gone a step  
16 further in granting the authority to the Iowa  
17 Utilities Board in saying that, in addition to public  
18 use, it must also fit all of the above. Convenience,  
19 necessity, public use in the constitution and then  
20 convenience and necessity. And not convenience and  
21 necessity for Summit Carbon Solutions, but convenience  
22 and necessity and public use for the citizens of Iowa.

23 And, again, in no way, shape, form, or  
24 fashion do I believe that this project fits that high  
25 standard for which the government can come in and

1 seize the private property of landowners in Iowa.

2 BY MR. TAYLOR:

3 Q. Summit has made the claim that its project  
4 will support the ethanol industry in Iowa.

5 How do you see that in terms of public  
6 convenience and necessity?

7 A. Again, I think that is great if that turns  
8 out to be the case. I will say, again, I do not  
9 believe that fits the standard of public convenience  
10 and necessity.

11 If we're going to go that far and draw that  
12 conclusion, then I would say that we have no private  
13 property rights protections in the state of Iowa if we  
14 go there. Because you can say that about building a  
15 high-rise hotel. Let's take the private property of  
16 citizens and let's build a high-rise hotel. Because  
17 the tax money we get from that we can build child care  
18 centers or whatever.

19 So I think if you go down that road, just  
20 as Justice O'Connor said in her dissent in Kelo v. New  
21 London, you have destroyed the protections in the  
22 takings clause of the Fifth Amendment and you will  
23 have destroyed the protections in the Iowa  
24 Constitution for public use if you go down that road.

25 Q. On page 10 of your testimony, my notes

1 reflect at least that you asked the Board here to not  
2 rush headlong into approving a permit. I had page 10  
3 in my notes.

4 Do you remember asking the Board not to  
5 rush headlong into approving a permit?

6 A. Yes, sir, I do.

7 Q. And why did you put that in your testimony?

8 A. Because -- especially now with what has  
9 gone on in several other states where they've put a  
10 stop to or initially disapproved some of the  
11 permitting.

12 This is a fundamental constitutional  
13 question here. For my constituents, and for folks all  
14 across Iowa, we're talking about the taking of their  
15 land. Which I will go back to what George Washington  
16 said, which we all should remember these words:  
17 "Freedom and property rights are inseparable. You  
18 can't have one without the other. Freedom and  
19 property rights are inseparable. You can't have one  
20 without the other."

21 We don't need to rush this. There's no  
22 reason whatsoever to rush this. I think we need to  
23 get all the facts on the table, we need to be  
24 respectful of the landowners whose fundamental rights  
25 are at stake here. And particularly when you look at

1 what has happened over the course of the last few  
2 weeks with some of the things that have gone on in  
3 other states.

4 I don't understand why we don't, and I hope  
5 that we will, very carefully take our time in  
6 considering what is at stake here for the property  
7 owners when we're talking about such a fundamental  
8 constitutional right as private property. Or the  
9 seizing of it.

10 Q. Do you think this process has been rushed?

11 A. I have heard from a number of landowners  
12 and constituents in my district who are very concerned  
13 about the modified schedule. And I've also heard from  
14 the other side on why they were doing what they were  
15 doing. I will give respect to that as well.

16 But I don't understand why we need to have  
17 a deadline. Because, at this point in time, the  
18 deadline is all about what is in the best interest of  
19 Summit. It is certainly not about what is in the best  
20 interest of landowners whose fundamental  
21 constitutional rights are at stake.

22 MR. TAYLOR: Thank you. That's all the  
23 questions I have.

24 BOARD CHAIR HELLAND: Thank you.

25 Mr. Jorde, we have you next.

1                   Representative Holt, I understand your  
2   passion, but we need you to slow down and lean back  
3   just a little bit. It's difficult to hear you.

4                   THE WITNESS: I'm sorry. I'll lean back.

5                   BOARD CHAIR HELLAND: Mr. Jorde.

6                   CROSS-EXAMINATION

7   BY MR. JORDE:

8                   Q.   Just for the record, what area of the state  
9   do you cover when you mention your "constituents"?

10                  A.   My current district is District 12, which I  
11   represent all of Crawford County, about half of Shelby  
12   County, and all of Ida County. Over in western Iowa.

13                  Q.   Very good. And so you have constituents in  
14   those counties that are potentially affected by this  
15   project?

16                  A.   Absolutely. Most particularly in Shelby  
17   County.

18                  Q.   You had mentioned the phrase about, in your  
19   mind, it's the question of if the proposed services  
20   will promote public convenience and necessity. In  
21   your mind, "proposed services," is that Summit's  
22   offering to ethanol plants to transport carbon  
23   dioxide? Is that the service you believe that's at  
24   issue?

25                  A.   I don't know of any proposed services in



1 this proposal that promote public convenience and  
2 necessity. I don't see them.

3 Q. So, if their proposal is the act of  
4 transporting CO2 molecules somewhere in North Dakota  
5 for permanent storage, that's the service that you  
6 don't believe fits the public convenience and  
7 necessity standard.

8 A. Based upon how we've always understood  
9 public use. And I think we all know how important  
10 that is and that that was supposed to be a very, very  
11 high bar before land could be seized.

12 So public use, again, as I said before,  
13 meaning natural gas pipelines, oil pipelines,  
14 highways, those things that are essential for human  
15 survival and that we understand to be public use.

16 Again, if we stretch that definition in a  
17 way that it is becoming more like public benefit,  
18 which is what I would suggest is happening here, then  
19 we are destroying the private property rights  
20 protections that we have in the constitution and that  
21 we have statutorily in Iowa Code. In my judgment.

22 Q. But what do you say to the argument that if  
23 the transportation services to transport CO2 are  
24 there, then maybe those ethanol plants can make a  
25 little more money and maybe they'll pay a little more

1 for corn for a period of time and maybe the local  
2 farmers will make a little more money? Are you saying  
3 that's too tangential and speculative?

4 A. I think that's outstanding, and I hope that  
5 that happens for our corn growers, but that does not  
6 rise to the level of public use and it does not rise  
7 to the level, in my judgment, that meets the  
8 requirements in the constitution and in our statute  
9 for which eminent domain can be used.

10 So, as I've said several times, let the  
11 pipelines be built using voluntary easements but not  
12 using the heavy hand of government to take the land of  
13 others for what is a private economic development  
14 project that does not, in my judgment, fit the  
15 constitutional or statutory requirements.

16 Q. So in summary, sir, are you saying that as  
17 long as the people, the landowners, can choose whether  
18 or not they want to host a hazardous pipeline and we  
19 remove eminent domain, then that would kind of remove  
20 your disagreement or opposition to the way the project  
21 is currently proposed?

22 A. I think that's correct. My issue is the  
23 use of eminent domain.

24 Q. And so if, for whatever reason, the project  
25 was approved, it would be your position that if you're

1 going to approve the project, fine, but don't approve  
2 the Exhibit H request for eminent domain for each of  
3 the parcels; right?

4 A. And I would also add that I'm not here to  
5 argue the science back and forth about the  
6 sequestration of CO2. I have my own opinions about  
7 those things, but that's not why I'm here today and  
8 that's not what my testimony was about. My testimony  
9 was about the use of eminent domain.

10 MR. JORDE: Okay. That's fine. I think I  
11 got it, sir. Appreciate it. Thank you.

12 BOARD CHAIR HELLAND: Representative  
13 Isenhart.

14 And a quick reminder. We are in a hearing,  
15 gentlemen, it's not the House floor. So you have to  
16 play by our rules today.

17 Go ahead.

18 MR. ISENHART: Thank you, Mr. Chair. I  
19 remember the rules from long ago.

20 CROSS-EXAMINATION

21 BY MR. ISENHART:

22 Q. One question. This project proposes to  
23 reduce atmospheric carbon dioxide to fight climate  
24 change. Prevent carbon dioxide from getting into the  
25 atmosphere.

1                   Would you consider that a public necessity?

2           A.    If you buy into that argument, then  
3 perhaps. Again, I think that is far from proven. And  
4 I'm talking about public convenience and necessity for  
5 the citizens of Iowa as the way public convenience,  
6 necessity, and public use has been understood. And I  
7 do not think it rises -- I don't think it meets that,  
8 no, sir.

9           MR. ISENHART: Thank you.

10          BOARD CHAIR HELLAND: Thank you.

11          Are there questions from the Board?

12          BOARD MEMBER BYRNES: Just one quick  
13 question here.

14          Good to see you, Representative Holt.

15          THE WITNESS: Yes, sir. Good to see you.

16          BOARD MEMBER BYRNES: And I believe you  
17 were first elected what year?

18          THE WITNESS: 2015 is when I took office.

19          BOARD MEMBER BYRNES: I knew we overlapped  
20 by at least a term.

21          THE WITNESS: Right.

22          BOARD MEMBER BYRNES: Since Dakota Access  
23 was built in 2016, has the Iowa legislature made any  
24 changes to 479B?

25          THE WITNESS: There have been some changes

1     made -- well, you and I were together, I think, when  
2     there were some changes made by Representative  
3     Kaufmann regarding the use of eminent domain. We were  
4     in some of those, I think, together. I think you were  
5     still in the House at that time.

6                   BOARD MEMBER BYRNES: That's all I have.  
7     Thank you.

8                   BOARD CHAIR HELLAND: Thank you.  
9                   Representative Isenhardt, your placard is  
10    still up.

11                   Ms. Ryon for redirect?

12                   REDIRECT EXAMINATION

13    BY MS. RYON:

14           Q.     Just one quick follow-up question after  
15    Mr. Byrnes' question.

16                   With respect to legislation that would  
17    change 479B, has the House of Representatives taken  
18    any action that could change it?

19           A.     Well, we did floor manage and sponsored a  
20    bill that would have created some additional  
21    protections for landowners that would have created a  
22    90 percent threshold before eminent domain could be  
23    requested. It also had some additional protections  
24    for landowners related to damage to crop yields and  
25    all those sorts of things.

1                   That passed with strong bipartisan support  
2   in the House, went over to the Senate where action was  
3   not taken, and I think that would have fit well into  
4   what we currently have in Iowa Code. I don't think  
5   had that passed and become law it would have changed  
6   the requirements that are still there for public use  
7   in the constitution and for convenience and necessity  
8   that are currently in code. But, yes, we did.

9                   MS. RYON: Thank you. That's all my  
10 questions.

11                  BOARD CHAIR HELLAND: Thank you. We  
12 appreciate it.

13                  THE WITNESS: Thank you, all.

14                  BOARD CHAIR HELLAND: Ms. Ryon.

15                  MS. RYON: Republican Legislative  
16 Intervenors for Justice call State Senator Sandy  
17 Salmon.

18                  BOARD CHAIR HELLAND: Move it around  
19 wherever you need it. You've already got your green  
20 light on.

21                  Go ahead and raise your right hand.

22

23

24

25

1                               SANDY SALMON,  
2   called as a witness by Republican Legislative  
3   Intervenors for Justice, being first duly sworn by  
4   Board Chair Helland, was examined and testified as  
5   follows:

6                               BOARD CHAIR HELLAND:   Ms. Ryon.

7                               DIRECT EXAMINATION

8   BY MS. RYON:

9               Q.   Good afternoon, Ms. Salmon.  Are you the  
10   same Sandy Salmon who filed direct testimony in this  
11   docket on July 24, 2023?

12              A.   Yes, I did.

13              Q.   If I asked you those same questions today,  
14   would you have approximately the same answers?

15              A.   Yes, I would.

16              Q.   Do you have any corrections to make to that  
17   testimony?

18              A.   No, I don't.

19                       MS. RYON:  Your Honor, I move to admit the  
20   prefiled direct testimony and exhibits of Senator  
21   Sandy Salmon.

22                       BOARD CHAIR HELLAND:  Are there objections?  
23                       (No response.)

24                       BOARD CHAIR HELLAND:  Seeing no objections,  
25   the Board will admit the evidence and give it the

1 weight due.

2 MS. RYON: And I would tender the witness  
3 for cross-examination.

4 BOARD CHAIR HELLAND: Mr. Whipple.

5 MR. WHIPPLE: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WHIPPLE:

8 Q. Senator Salmon, just one question for you.  
9 And it's the same question I asked the last couple  
10 legislators.

11 How do you think the Board should weigh the  
12 significant federal tax subsidies available for  
13 sequestration in terms of this permit-granting  
14 process?

15 A. I believe that the Board should consider --  
16 their primary job is to consider whether this project  
17 meets the requirement in our U.S. Constitution and the  
18 Iowa Constitution of public use and whether it meets  
19 the state requirement of convenience and necessity.

20 And so the issue of the tax credits is  
21 really, in my mind, an extraneous issue to the  
22 questions that would be before the Board.

23 Q. Are the tax credits to be considered a cost  
24 or a benefit?

25 A. Well, I'm in the legislature. And we



1 appropriate funding. And tax credits are always  
2 considered a cost.

3 MR. WHIPPLE: Thank you.

4 That's all I have, Your Honor.

5 BOARD CHAIR HELLAND: Mr. Taylor.

6 MR. TAYLOR: Thank you.

7 CROSS-EXAMINATION

8 BY MR. TAYLOR:

9 Q. Senator Salmon, what counties are in your  
10 senate district?

11 A. I represent Bremer County, Butler County,  
12 Chickasaw County, and all of Floyd except for two  
13 townships.

14 Q. So does that mean the Summit pipeline goes  
15 through two of the counties, Floyd and Chickasaw?

16 A. Yes.

17 Q. You said that you've heard from your  
18 constituents.

19 Is that one of the reasons that you've  
20 chosen to intervene here?

21 A. Yes, it is.

22 Q. What are you hearing from your  
23 constituents?

24 A. Well, I'm hearing that constituents are  
25 very upset about the taking of their land, of

1 easements on their farmland and land, for what they  
2 consider not to be a public use, not for convenience  
3 and necessity. That's basically the most important  
4 objections I've heard from people is the feeling that  
5 they are losing control of their land that they've  
6 invested in, and they're wondering how far that a  
7 large company will be allowed to go, will be allowed  
8 to be successful to take control over their land.  
9 It's as simple as that.

10 They've invested in their land. And, when  
11 you've invested in something, you don't want to lose  
12 what you have.

13 Q. When you talk to your constituents, do you  
14 get the feeling that they feel like they have no  
15 choice but to sign easements or give in to Summit?

16 A. There has been a number of constituents  
17 that I have talked to that feel that way. They feel  
18 like they've been badgered, hounded, harassed, phoned  
19 repeatedly to urge them to sign and some, under  
20 threat, that if they do not sign, that their land will  
21 be taken by eminent domain. Not everyone has had that  
22 experience, but I've heard it from enough of them that  
23 they're concerned.

24 Q. Representative Holt talked about the  
25 eminent domain bill that passed the House this past

1 session but didn't get considered by the Senate.

2 Do you know why the Senate didn't take it  
3 up?

4 A. Well, I could speculate, but I don't want  
5 to -- I don't want to, you know, give a speculation  
6 that I don't know is really true. I know that -- I  
7 know from some senators that there was concern about  
8 the ethanol industry. They were wanting to support  
9 the ethanol industry, and they felt like this would do  
10 that. I know that was a concern.

11 And there could be other concerns, but they  
12 were not voiced to me.

13 I know that myself and a number of other  
14 senators spoke with Senate leaders and did not get  
15 anywhere with our efforts to get legislation  
16 considered. For example, legislation that Senator  
17 Jeff Taylor brought forward to be considered. It  
18 appeared that the door was solidly shut and locked on  
19 that and that efforts to have it be considered in the  
20 Senate were like talking to a brick wall.

21 Q. Under legislative procedure, is that still  
22 a live bill in this next session?

23 A. Yes. They're all still live rounds for  
24 this next session.

25 MR. TAYLOR: Thank you. That's all the

1 questions I have.

2 BOARD CHAIR HELLAND: Mr. Jorde.

3 CROSS-EXAMINATION

4 BY MR. JORDE:

5 Q. In your experiences in the last legislative  
6 session, would you say that Summit Carbon Solutions  
7 and its lobbyist were opposed to the landowner  
8 protection legislation that was proposed?

9 A. Yes.

10 Q. And, ma'am, as between looking at the  
11 profitability of 13 ethanol plants and whether or not  
12 they make a little more money each year or not versus  
13 hundreds of concerned landowners, where do you fall on  
14 that balancing test as between who we should give more  
15 weight to?

16 A. Well, when I signed up to be a legislator  
17 and decided to run for office and I was elected, I  
18 swore an oath to uphold and defend the constitution.  
19 Both constitutions. The U.S. Constitution and the  
20 Iowa Constitution.

21 And it's very clear in those constitutions  
22 that private land is not to be taken but for public  
23 use and fair compensation be given.

24 And so I consider that my first duty as a  
25 state senator. To defend the rights of my

1 constituents that are outlined in those documents. So  
2 it didn't seem to be a big balancing question for me.

3 I think we are so used to having our  
4 property rights protected in this country that we take  
5 it for granted. We don't know what it's like to live  
6 in a country where if you fix up your business or you  
7 make improvements on your land, why, you'd have a  
8 government official come along and say, "That looks  
9 great, I think I'll take that." So there's no  
10 incentive for investing in your property. And so the  
11 owners of the property, they lose their freedom and  
12 the country loses its prosperity.

13 Property rights are essential to both  
14 liberty and prosperity. You have to protect them.  
15 It's a really serious issue that we're faced with  
16 here. And especially that the Board is faced with  
17 having to determine here.

18 Q. Would you agree that the narrative that  
19 you're either, you know, for ethanol or you're against  
20 it in terms of landowners versus ethanol plants is  
21 really a false choice? Or where do you weigh in on  
22 that?

23 A. Absolutely it's a false choice. My record  
24 in the legislature has been one of supporting the  
25 ethanol industry. I supported the move to the 15E

1 standard. The 15 percent standard. I've supported  
2 the tax credits and the various funding for renewable  
3 fuel infrastructure that we've had through the years  
4 through my many years in the legislature.

5 So I'm very supportive of the ethanol  
6 industry. I'm an investor in an ethanol plant. So  
7 that is -- it is not a question of that.

8 The provisions of the constitution were put  
9 in place just to make sure that a more powerful  
10 economic interest would not overpower a smaller  
11 economic interest, would not overpower a property  
12 owner. That's the primary issue here as I see it.  
13 And the economic issues are secondary.

14 Q. Would you agree that you could be  
15 supportive of the ethanol industry in Iowa and  
16 landowner rights, and frankly this project, if you  
17 simply removed the path of eminent domain for Summit  
18 Carbon Solutions?

19 A. Yes. I'm a supporter of the ethanol  
20 industry and I'm a supporter of property rights both.  
21 There's no reason that you can't be a supporter of  
22 both.

23 Q. So, as long as the landowner would have the  
24 option to say, "No, thank you," and not have a path to  
25 be forced to give up their property rights, then you

1 would be okay with that?

2 A. Yes. There's -- as far as that issue is  
3 concerned. There are other issues related to this  
4 project that are of a concern that I think would need  
5 to be addressed.

6 But the question of whether or not to  
7 approve the use of eminent domain for this project  
8 hinges on whether it's a public use or for the  
9 convenience and necessity. That's the thing to  
10 decide. That's what's got to be decided.

11 And then once that's decided -- or if --  
12 okay. Besides that question, there are other  
13 questions and concerns. I'm not saying that's the  
14 only concern. There are other things to think about  
15 with this project.

16 But the decision of whether or not to grant  
17 the power of eminent domain hinges on whether it's  
18 determined that it's a public use and meets the  
19 convenience and necessity specified in the Iowa law.  
20 And I don't believe it meets those requirements.

21 MR. JORDE: Thank you, Senator.

22 Nothing further.

23 BOARD CHAIR HELLAND: Thank you.

24 Representative Isenhardt.

25 MR. ISENHART: Thank you. Two, maybe

1 three, quick questions.

2 CROSS-EXAMINATION

3 BY MR. ISENHART:

4 Q. Senator Salmon, is it a fair summary of  
5 your view, your testimony, that you do not believe a  
6 private company, in this case, should be granted  
7 eminent domain because the project is not for a public  
8 use?

9 A. That's true.

10 Q. Does that fairly summarize your testimony?

11 A. Yes.

12 Q. If the applicant -- if the person who  
13 wanted to build this pipeline were the state of Iowa,  
14 would that be a public use in your mind?

15 A. That would encompass other -- many other  
16 questions. And among them is questions concerning the  
17 man-made climate change issues and carbon dioxide  
18 issues and so forth and so on.

19 That is not -- I'm not going to get into  
20 all those issues because I'm trying to focus on what  
21 we need to talk about here.

22 And I've got to say some other things that  
23 I think are important --

24 Q. Well, perhaps, on redirect, you can get  
25 that from your own attorney.



1                   Basically, you said that -- you did not say  
2   yes or no it would be on its face a public use or not  
3   a public use because the state was building the  
4   pipeline. There would be other factors that would  
5   need to be considered? Is that basically what you  
6   said?

7           A.    Yes.

8           Q.    And you said you didn't want to address  
9   climate change, but one of the things that Summit  
10   Carbon Solutions is proposing to do is to remove and  
11   prevent carbon dioxide from getting into the  
12   atmosphere. And I asked a previous witness could that  
13   be a public necessity.

14                   If the state were to build a pipeline to  
15   protect its citizens from the destructions caused by  
16   climate change, could that be a public use?

17           A.    Well, I disagree with the premise of your  
18   question. I think it's beyond the scope of this --  
19   the question that's before the Board.

20           Q.    I agree, but I'm trying to --

21           A.    But I would not think -- to answer your  
22   question, I wouldn't consider that a public use.

23                   MR. ISENHART: Thank you.

24                   BOARD CHAIR HELLAND: Ms. Ryon? Redirect?

25                   I didn't miss anybody, did I?

1 MS. RYON: Only if the Board members have  
2 questions.

3 BOARD CHAIR HELLAND: Looks like it's your  
4 turn for redirect.

5 REDIRECT EXAMINATION

6 BY MS. RYON:

7 Q. Just one question. You were trying to say  
8 something additional when Representative Isenhardt  
9 suggested that you could finish that sentence on  
10 redirect.

11 So what were you trying to say at that  
12 point in time?

13 THE WITNESS: And, I'm sorry, I didn't know  
14 I would have another chance to say something and I was  
15 trying to get it in, but I didn't mean to not answer  
16 your question.

17 A. I guess, as I thought about this more, the  
18 very fact that Summit Carbon is still pursuing this  
19 project in an agricultural state where landowners  
20 depend heavily on private property rights being  
21 protected to make their investments and the fact that  
22 Summit Carbon is still willing to take, through the  
23 government power of eminent domain, a full one-third  
24 of its route across the entirety of our whole state,  
25 over 900 pieces of land, over 450 landowners, is to me

1 just absolutely breathtaking. It's breathtaking.

2 I am almost 70 years old and I've never  
3 seen anything like this. To me, this is outrageous,  
4 reprehensible, brazen, and shameless action. And all  
5 Iowans can see it.

6 That's all.

7 MS. RYON: That's all the questions I have.  
8 Thank you, Your Honor.

9 BOARD CHAIR HELLAND: Thank you. You may  
10 step down. Appreciate it.

11 (Applause.)

12 BOARD CHAIR HELLAND: Well, for once, we  
13 seem to be ahead of schedule. By chance, do any of  
14 the parties have any witnesses here today?

15 Go ahead, Ms. Ryon.

16 MS. RYON: I was just going to update the  
17 Board.

18 It does appear that other parties will have  
19 questions for Representative Charlie Thomson. He is  
20 available next week, and I have been talking with  
21 Board staff about scheduling a time for him to appear.

22 BOARD CHAIR HELLAND: Thank you. We look  
23 forward to it.

24 Okay. Well, with no other witnesses to get  
25 to today, we will gavel in tomorrow at 8 a.m.

IN RE: SUMMIT CARBON SOLUTIONS  
HEARING 09/19/2023

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1                                (Hearing recessed at 2:45 p.m.,  
2       September 19, 2023.)

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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  
5 proceedings in the above-entitled matter at the time  
6 and place indicated; that I took in shorthand all of  
7 the proceedings had at the said time and place and  
8 that said shorthand notes were reduced to typewriting  
9 under my direction and supervision, and that the  
10 foregoing typewritten pages are a full and complete  
11 transcript of the shorthand notes so taken.

12 Dated this 7th day of October, 2023.

13

14

15

*Melissa A. Burns*

16

CERTIFIED SHORTHAND REPORTER  
Melissa A. Burns, Iowa CSR #527

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