

# My Testimony for the IUB

## **Testimony for the Iowa Utilities Board**

Re: Docket No. HLP-2021-0001

*Summit Carbon Solutions LLC's application for a hazardous liquid pipeline*

The following is a consolidation of my testimony, written and oral, before the Iowa Utilities Board:

My name is Sandy Salmon. I am the Iowa State Senator for Senate District 29. I am a wife, mother, grandmother, veteran, home educator, and family farm owner. I served as an officer in the Marine Corps, spent 18 years home schooling our three sons through high school, and have been a partner with my sister in managing our family farm for over 20 years. I was a state representative for ten years and in 2022 was elected state senator for Bremer, Butler, Chickasaw, and most of Floyd Counties.

As a State Senator, I have been contacted by many landowners and farmers, both in my district and all over the state, concerned and opposed to having to deal with a large company wanting the use of their land and wondering how far they will be allowed to go to be successful. I am participating to represent the concerns of my constituents in this proceeding.

My constituents have expressed numerous practical concerns related to drain tile and land restoration along with outrage at the possible use of eminent domain. I have heard the concerns of my constituents echoed throughout the state, as demonstrated by an Iowa Poll this spring showing that 78% of Iowans oppose the use of eminent domain for carbon dioxide pipelines.

The 5<sup>th</sup> Amendment to the U.S. Constitution states: “nor shall private property be taken for public use, without just compensation.” The same is echoed by the Iowa Constitution Article 1, Section 18: “Private property shall not be taken for public use without just compensation first being made...”

Iowa Code 479B.9 charges the Iowa Utilities Board saying: “A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.”

As a member of the Iowa Utilities Board your responsibility is to ensure that the projects you approve qualify under our constitutions and the law.

I do not believe this carbon pipeline project qualifies under the meaning of these documents. To allow eminent domain to be used in this case, I believe is a violation of our private property rights as expressed in our constitutions and Iowa law.

Eminent domain should not be used for private use projects or economic development, which is also private use. Our constitutions only allow it for public use, such as for highways or public utilities. This carbon capture pipeline is strictly a private use project.

Iowa law says the proposed services must “promote the public convenience and necessity”. It is a huge stretch of the imagination to say that the carbon pipeline project promotes public convenience and necessity because it is needed to fight climate change and therefore it is a public necessity. That is merely an opinion, as man-made climate change is highly debatable and clearly not settled science. Public policy should not be adopted when the underlying science is not fully known or understood. Therefore the consideration of climate change should not be a factor in deciding whether eminent domain should be used.

One could also say that it is a public necessity to help keep the ethanol industry viable, but that is only speculation and an economic interest. Our constitutions were written specifically to keep economic power from being a factor in deciding whether to use the power of eminent domain. Therefore, the ethanol economic issue does not qualify for consideration regarding the use of eminent domain. This is even more true as alternatives for the use of CO<sub>2</sub> that do not require the exercise of eminent domain power are becoming more viable and feasible.

Unfortunately, in 2005 the U.S. Supreme Court in a 5-4 decision in *Kelo vs. City of New London* approved the use of eminent domain for private companies to use for economic development and that it qualified as a “public use” under the 5<sup>th</sup> Amendment. Thus the Kelo decision weakened private property rights. Please do not follow this model as I, as do many others, believe it is incorrect. The dissenting justices warned, “*The beneficiaries (of this decision) are likely to be those citizens with*

*disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more.”* This result is unfair and violates the clear intent and meaning of our federal and state constitutions as well as Iowa law. If you grant eminent domain power in this case, you should know you would be fulfilling the prophetic warning issued by these justices.

However, the court did leave property rights protection in the hands of the state and local governments. And that’s where we come in.

After the Iowa House of Representatives passed a 90% voluntary sign-up threshold bill, I worked with other Senate leaders to get that legislation moving in the Senate. I was very disappointed that the bill did not make it to the Senate floor for a vote. I was concerned that the Senate’s actions did not reflect the interests of my constituents and felt compelled to take every opportunity to ensure that my constituents are represented when it comes to important policy decisions, including whether eminent domain is appropriate for Summit’s proposed carbon dioxide pipeline.

On March 31, 2023, I submitted a letter of objection through the Board’s public comment process. I joined with several legislators to submit a Senate Resolution, SCR 6, calling on the Board to deny the use of the power of eminent domain to carbon dioxide pipeline. Unfortunately, Senators were not allowed to vote on that resolution, either. I have included SCR6 as an exhibit with my letter of objection.

As an elected official, I am also concerned with responsible use of public funds. Granting Summit the right to eminent domain would add insult to injury for Iowa’s landowners because the source of much of Summit’s private profit would come in the form of billions of dollars of taxpayer money. Using the hard-earned tax contributions of Iowans to force landowners to relinquish property rights is unconscionable.

Our federal and state constitutions require a respect for private property rights and provide a defense for landowners against those who are more powerful. The situation landowners are in right now is the exact situation in which our constitutions are intended to provide protection. It must be taken into consideration that the individual farmer and landowner have

plans for their property and they must be protected against the “plans” the private company has for their property.

In this country we take for granted that our private property rights will be respected because for much of our history they have always been. But that is not always the case in other countries. There are countries where if a property owner improves his property some government official can come along and just take it. There is no incentive therefore for property owners to invest in their property and so they do not prosper. A country like that which does not protect private property rights stays in poverty and does not experience prosperity; its people remain poor and do not have freedom. Private property rights are essential and vital to liberty and prosperity. Let's not forget that.

The very fact that Summit Carbon is still pursuing this project in an agricultural state where landowners depend heavily on private property rights being protected to make their investments and is willing to take through the government power of eminent domain a full one third of its route across our whole state, over 900 pieces of land and over 450 landowners, is absolutely breathtaking. This is an outrageous, reprehensible, brazen, and shameless action and Iowans can all see it.

As John Adams said, “Property must be secured or liberty cannot exist. The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”

I am urging you as members of the Iowa Utilities Board to uphold and protect the private property rights of landowners and farmers under the U.S. constitution, the Iowa constitution, and Iowa law as you are charged by the Iowa legislature to do.