

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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GREGORY KRACHT, TRUSTEE and	)	
ERICA KRACHT, TRUSTEE,	)	No.
of the Greg & Erica Kracht Living Trust,	)	
dated January 19, 2015,	)	
	)	
and	)	
	)	
DAPEMA, LLC,	)	
	)	
Petitioners,	)	
	)	<b>PETITION FOR JUDICIAL REVIEW</b>
	)	
v.	)	
	)	
IOWA UTILITIES BOARD, A	)	
DIVISION OF THE DEPARTMENT	)	
OF COMMERCE, STATE OF IOWA,	)	
	)	
Respondent.	)	
	)	
and concerning	)	
	)	
SUMMIT CARBON SOLUTIONS, LLC,	)	
	)	
an interested party.	)	
	)	

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**THIS PETITION** is brought this 13<sup>th</sup> day of September 2024, by Gregory Kracht, Trustee, and Erica Kracht, Trustee, under the Greg & Erica Kracht Living Trust, dated January 19, 2015, and by DAPEMA, LLC, against the Iowa Utilities Board, a Division of the Department of Commerce, State of Iowa, and which concerns Summit Carbon Solutions, LLC, an interested and indispensable party in these proceedings.

*“Freedom and property rights are inseparable,  
you cannot have one without the other.”*

George Washington<sup>1</sup>

*“STOP EMINENT DOMAIN ABUSE”*

Phrase prominently displayed upon sides  
of an old semitrailer parked north of  
Highway 30 between Boone and Ames, Iowa.

## INTRODUCTION

The facts of this case are now well-known in Iowa and across the Midwest. Summit Carbon Solutions, LLC, a private entity, wants the power to take land rights by eminent domain for its underground pipeline. Summit proposes to collect CO<sub>2</sub> from various ethanol plants and pressurize the CO<sub>2</sub> such that it can be transported by underground pipeline from Iowa through South Dakota and to underground caverns located in North Dakota.

The pressurized CO<sub>2</sub> is a highly hazardous substance. A potential pipeline leak will reduce oxygen levels which will cause loss of life in such affected leak areas.

The Iowa Utilities Board has issued a ruling on the Petition of the Summit Carbon Pipeline. Generally speaking, the ruling grant's Summit's Petition.

There are several problems with Summit's plan. This lawsuit for judicial review focuses on one of these problems. Summit does not have permit approval in North Dakota. Summit does not have permit approval in South Dakota. Approval in those states is highly in question.

Recognizing this situation, the IUB made the granting of the construction permit to build Summit's pipeline conditional on permit approvals, including those in North Dakota and South Dakota. However, the IUB has allowed Summit to have the power of eminent domain without similar impediments.

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<sup>1</sup> This quote was also referenced in the Trial Ruling issued on May 3, 2023 by Judge John M. Sandy, in Navigator Heartland Greenway, LLC v. Martin Paul Koenig, case number EQCV034863, Iowa District Court for Clay County.

There are hundreds of landowners that have not voluntarily granted easement rights to Summit. Thus, hundreds of holdout landowners are subject to Summit's power of eminent domain. This power would lead to hundreds of condemnation commissions empaneled across the State of Iowa for the purpose of taking land rights away from those holdout landowners. Two of those affected holdout landowners seek redress from this tribunal.

### **PARTIES AND JURISDICTION**

1. Plaintiffs, Gregory Kracht, Trustee and Erica Kracht, Trustee (cumulatively "**Kracht**"), are trustees under the Greg & Erica Kracht Living Trust, dated January 19, 2015, and are co-owners of a parcel in Lyon County, Iowa.

2. Plaintiff, DAPEMA, LLC ("**DAPEMA**") is an Iowa limited liability company and is an owner of a parcel in Kossuth County, Iowa.

3. Summit Carbon Solutions, LLC ("**Summit**") is a privately held, limited liability company.

4. The Iowa Utilities Board ("**IUB**" or "**Board**") is an administrative agency of the State of Iowa, and part of the Iowa Department of Commerce. It is the agency charged with regulation of certain defined utilities in Iowa and is an Agency for purposes of the Iowa Administrative Procedures Act. *See* Iowa Code § 17.2(1). The Board's specific enabling statutes are found at Iowa Code chapters 474, 476, 476A, 477, 477A, 477C, 478, 479, 479A, and 479B.

5. The subject matter of this lawsuit relates to Summit's proposed hazardous liquid pipeline in Iowa, the IUB proceedings in which Summit has petitioned in relation to its hazardous liquid pipeline, and the IUB ruling under IUB docket number HLP-2021-0001.

6. This tribunal has subject matter jurisdiction. This tribunal has venue jurisdiction.<sup>2</sup>

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<sup>2</sup> Iowa Code § 17A.19(2) (2024).

## FACTS

7. Paragraphs 1 through 6 are incorporated herein.
8. Kracht's Lyon County parcel is a beautiful piece of real estate located fairly close to the Big Sioux River. It is a wooded area with a pond and rolling hills. It proves to be ideal for future development.
9. DAPEMA's Kossuth County parcel is flat, highly productive tillable farm ground, located fairly close to Highway 169 and south of Algona.
10. On January 28, 2022, Summit filed its petition to construct, operate and maintain several hundred miles of super-critical CO<sub>2</sub> pipeline<sup>3</sup> in Iowa.
11. Summit's proposed pipeline crosses the Kracht parcel.
12. Summit's proposed pipeline crosses the DAPEMA parcel.
13. Kracht timely and properly intervened in the proceedings before the IUB.
14. DAPEMA timely and properly intervened in the proceedings before the IUB.
15. The IUB hearing was conducted by the IUB from August 22 through November 8, 2023.
16. Summit's proposed pipeline collects CO<sub>2</sub> from various ethanol plants, pressurizes the CO<sub>2</sub>, then transfers it via underground pipeline to a terminus in North Dakota. The pipeline will pass through South Dakota to get to the North Dakota terminus.
17. Summit has not obtained approval from South Dakota for its pipeline.
18. It is highly in doubt as to whether South Dakota will approve the Summit pipeline.
19. Summit has not obtained approval from North Dakota for its proposed pipeline.
20. It is highly in doubt as to whether North Dakota will approve the Summit pipeline.
21. At the IUB hearing, Summit's representative Micah Rorie admitted:

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<sup>3</sup> "Super-critical carbon dioxide is a fluid state of carbon dioxide where it is held at or above its critical temperature and critical pressure. Carbon dioxide usually behaves as a gas in air at standard temperature and pressure (STP), or as a solid called dry ice when frozen." *US Department of Energy*.

*“...Yes, if we built a pipeline that didn’t have a terminus, it would be a pipeline to nowhere...”<sup>4</sup>*

22. On June 25, 2024, the IUB issued its “FINAL DECISION AND ORDER” (herein the “**Final Decision**” or “**Final Ruling**”). The Final Decision is attached as Exhibit “A”, incorporated herein.

23. The IUB’s Final Decision states:

*“As stated in the previous section, the Board found Summit Carbon’s petition to be in the public convenience and necessity, subject to the conditions of this section and other sections throughout the order.”<sup>5</sup>*

24. The IUB’s Final Decision provides that the power to construct a pipeline under a construction permit (herein the “**Construction Power**”) is conditional and contingent on permit approvals from South Dakota and North Dakota. The IUB’s “Order Issuing Permit” confirms that nothing in that Order is to be construed to modify any of the conditions within the IUB’s Final Decision.<sup>6</sup>

24. The IUB’s Final Decision provides that the power to exercise the right of eminent domain (herein the “**Eminent Domain Power**”) is **not** conditional and contingent on permit approvals from South Dakota and North Dakota.

25. The IUB found it is **necessary** to grant the Eminent Domain Power to Summit without making the Eminent Domain Power contingent on permit approvals from South Dakota and North Dakota. (This is in direct contrast to the IUB’s decision to make the Construction Power contingent on permit approvals from South Dakota and North Dakota.)

26. Therefore, the IUB has determined that Summit shall have the power of eminent domain to take land rights against the will of landowners (such as Kracht and DAPEMA) for a pipeline that may never be constructed and that would go nowhere.

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<sup>4</sup> IUB Transcript 2766:2-3.

<sup>5</sup> Final Decision, pg. 248.

<sup>6</sup> Order Issuing Permit, pg 8.

27. Kracht and DAPEMA (the so-called “Murray Landowners”) specifically requested that if the IUB were to grant Summit’s petition, the granting of the power of eminent domain should be conditioned upon the states of North Dakota and South Dakota granting permits to Summit for their pipeline.

28. The IUB’s Final Decision appears to have generally recognized Kracht and DAPEMA’s request:

*“Murray Landowners assert the Board must place conditions and restrictions on Summit Carbon to ensure eminent domain is not granted unnecessarily.”<sup>7</sup>*

29. However, the IUB’s Final Decision rejected the request, stating as follows:

*“The Board has reviewed the evidence and applicable law and will grant Summit Carbon the right of eminent domain over the parcels as described below. The Board also finds there is sufficient evidence to grant Summit Carbon greater easement areas.”<sup>8</sup>*

...

*“With regard to all the other arguments surrounding eminent domain related to Summit Carbon’s proposed hazardous liquid pipeline, the Board is unpersuaded by the arguments and will not discuss them further in this order. However, the Board finds it is important to correct a figure cited by Murray Landowners in their initial brief and copied in Jorde Landowners’ reply brief.”<sup>9</sup>*

30. Kracht and DAPEMA filed a Motion to Reconsider with the IUB again asking the IUB to reconsider its Final Decision in this regard.<sup>10</sup>

31. The Supervisors of Shelby County, Kossuth County, Floyd County, Emmet County, Dickinson County, Wright County, and Woodbury County have also specifically

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<sup>7</sup> Final Decision, p.g. 279.

<sup>8</sup> Final Decision, p.g. 287.

<sup>9</sup> Final Decision, Pg. 296.

<sup>10</sup> Joinder to Counties’ Motion to Reconsider Final Decision and Order by Kracht and DAPEMA, LLC filed 7/15/23.

requested this condition in their Motion to Reconsider.<sup>11</sup>

32. The IUB did not issue a ruling on the Motions to Reconsider.<sup>12</sup>

33. The impact of the IUB's Final Decision has significant consequence to hundreds of holdout landowners.

34. The IUB's Final Decision found that the total number of holdout landowners was unimportant:

*"The Board did not use the number of outstanding easements as a factor to determine whether Summit Carbon should be vested with the right of eminent domain and includes this discussion to correct the factual record."*<sup>13</sup>

35. In spite of making this statement, the IUB devoted a portion of its opinion to correct the Murray Landowners and Jorde Landowners as to the total number of outstanding easements. The IUB found that there were 414 outstanding easements.<sup>14</sup>

36. For each holdout landowner, the impact of the IUB's Final Decision has serious consequences.

37. For the various counties affected, the impact of the IUB's Final Decision has serious consequences.

38. The condemnation process is a legal process which not only takes land rights away from landowners, but also imposes significant burdens on those landowners, as well as upon the various counties which are left to carry out these proceedings.

39. Condemnation proceedings are instituted by written application to the chief judge of the judicial district in which the county lies. The applicant (in this case, Summit) shall serve a copy of the application to the affected owner by certified mail or service by original notice (by

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<sup>11</sup> Motion to Reconsider Final Decision and Order by Kossuth, Floyd, Emmet, Dickinson, Wright and Woodbury Counties filed 7/12/23.

<sup>12</sup> Notice of Denial of Rehearing by Operation of Law dated August 15, 2024 by Jon Tak, General Counsel for the IUB.

<sup>13</sup> Final Decision, Pg. 296-97.

<sup>14</sup> Final Decision, pg. 296.

sheriff.) The application will then encumber the property affected, as it must be recorded with the county recorder. A county compensation commission, composed of six individuals, is selected. This commission is composed of (a) two owner-operators of agricultural property, (b) two licensed real estate sales persons or brokers, and (c) two persons having knowledge of property values, such as bankers, auctioneers, property managers, property appraisers and persons responsible for making loans. (Each holdout parcel is entitled to a different configuration of commission members; each parcel is entitled to a uniquely appointed set of commission members by lot.) The Sheriff is to coordinate the meeting of the commissions. Formal notice of the meeting is given to the owner. That notice shall be served via sheriff. That notice shall also be published in the newspaper for all to see. At the commissioners' meeting, the land is viewed and damages are assessed. Evidence is received in sessions open to the public. Voting of each member is a public matter. The report of the commissioners shall be filed with the Sheriff. Upon the filing of the commissioners' report, the applicant (Summit) may deposit the amount of the award with the Sheriff, which will allow the applicant (Summit) to immediately take possession and proceed with "the improvement". The owner may appeal within thirty days, however title to the property or the interests in property passes to the applicant when damages have been finally determined and paid.<sup>15</sup>

40. There is a common conception that Summit's use of eminent domain power will not impact landowners because the pipeline is underground. This is conception is incorrect and misplaced. It overlooks various easement rights taken from the landowner which have real, immediate consequences. One such consequence is the following taking language authorized by the IUB:

*"...the right to prohibit any of the following activities on the Easement Areas without the written permission of Summit, which permission shall not be unreasonably withheld: (1) construct or permit the construction or installation of any temporary or permanent building or site improvements; (2) drill or operate any well or any equipment for the production or development of minerals; (3) remove soil or change the grade or slope; (4) impound surface water; (5) plant trees or landscaping; or (6) construct or permit the construction, placement, installation or existence of any above or below ground obstruction, whether*

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<sup>15</sup> Iowa Code sections 6B.3, 6B.4, 6B.6, 6B.8, 6B.9, 6B.11, 6B.14 and 6B.24.



*temporary or permanent, man-made or natural, that, in the sole discretion of Summit, may endanger or interfere with the efficiency, safety, or convenient operation of the pipeline and other Pipeline Facilities or use of the Easements by Summit;”<sup>16</sup>*

41. Gregory Kracht gave testimony that the Kracht property is beautiful with a nearby pond. The area has started to become residential with country-style living. There is a nearby residential subdivision. Kracht purchased the property for future development. Kracht further testified that Summit located its pipeline upon highly desirous development real estate upon the Kracht parcel. As Mr. Kracht put it:

*“Then the pipeline proceeds north on the high ground, which is exactly where all of my future development will go. That pretty much screws up any development plans.”<sup>17</sup>*

42. Therefore, the IUB’s ruling has real, present-day consequences on Kracht, and anyone other landowner in his position. You cannot build on that property.

43. The IUB’s Final Ruling forcibly takes land rights away from hundreds of Iowa landowners and gives those rights to a privately-held, for profit company who cannot even guarantee it will be able to complete its pipeline.

44. The IUB’s Final Decision is an abuse of the eminent domain law in Iowa.

### **CLAIMS FOR JUDICIAL REVIEW**

45. Paragraphs 1 through 44 are incorporated herein.

46. The IUB’s Final Decision is illogical.

47. The IUB’s Final Decision is wholly irrational.

48. The IUB’s Final Decision is unconstitutional on its face or as applied or is based

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<sup>16</sup> Exhibit H-LY-016 (IA-LY-104-0142.000)-Revised, filed by Summit on August 5, 2024 against the Kracht parcel. (Similar language is contained in “Exhibit H” documents are filed by Summit against all holdout landowners.)

<sup>17</sup> Direct Testimony of Gregory Kracht filed July 21, 2023, pg. 3-5.

upon a provision of law that is unconstitutional on its face or as applied.

49. Accordingly, Iowa Code section 17A.19 (2024) allows relief to Kracht and DAPEMA.

### REQUEST FOR RELIEF

WHEREFORE, Kracht and DAPEMA respectfully request and pray that the Court reverse and/or modify the Final Decision of the IUB in HLP-2021-0001, and to further grant prior intermediate orders for injunctive relief to prevent Summit from pursuing the power of eminent domain against Kracht and DAPEMA, and that the Court enter such other relief as it finds proper on the facts and law before it.

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