

August 24, 2022

VIA PERSONAL SERVICE

Bruce E. Doolittle
1245 68th St. SE
Hazelton, ND 58544

RE: Bruce E. Doolittle – Survey Access

Dear Mr. Malm:

Please find enclosed herewith the following:

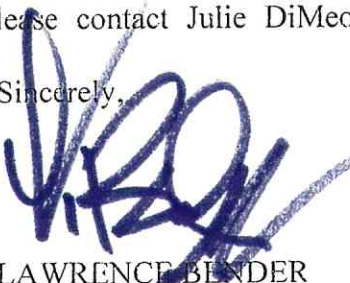
1. Summons in Petition for Entry to Survey;
2. Petition for Entry to Survey (“Petition”); and
3. Voluntary Access Agreement.

The Petition has been filed in Emmons County District Court and seeks authority from the court to access your property for the purpose of conducting certain surveys. After receipt of the Petition, if you desire to allow voluntary access, please sign the Voluntary Access Agreement and return it to the undersigned in the enclosed self-addressed, stamped envelope.

Please be advised that SCS Carbon Transport, LLC intends to request a hearing on its Petition and to proceed with its request for a court order unless it receives a signed Voluntary Access Agreement.

Should you have any questions, please contact Julie DiMEO at (701) 290-4682 or jdimeo@summitcarbon.com.

Sincerely,



LAWRENCE BENDER

LB/mlm
Enclosures
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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF EMMONS

SOUTH CENTRAL JUDICIAL DISTRICT

SCS Carbon Transport LLC,

Petitioner,

v.

Bruce E. Doolittle,

Respondent.

Case No. _____

SUMMONS

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED RESPONDENT:

[¶ 1] A Petition for Entry to Survey (“Petition”) has been filed against you for the purpose of obtaining access to the real property located in Emmons County, North Dakota, more particularly described in the Petition.

[¶ 2] You are hereby summoned and required to appear and defend against the Petition by serving upon the undersigned an answer or other proper response within twenty-one (21) days after the service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Petition.

DATED this 23rd day of August, 2022.

FREDRIKSON & BYRON, P.A.

By: 

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(701) 221-8700
Attorneys for SCS Carbon Transport LLC

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF EMMONS

SOUTH CENTRAL JUDICIAL DISTRICT

SCS Carbon Transport LLC,

Case No. _____

Petitioner,

v.

PETITION FOR ENTRY TO SURVEY

Bruce E. Doolittle,

Respondent.

Petitioner SCS Carbon Transport LLC (“Summit”), by and through its counsel, Fredrikson & Byron P.A., 1133 College Drive, Suite 1000, Bismarck, ND, for its Petition for Entry to Survey lands owned by the above-named Respondent, states and alleges as follows:

PARTIES

1. Summit is a limited liability company organized and in good standing under the laws of the State of Delaware and authorized to do business as a foreign limited liability company in the State of North Dakota. (Affidavit of Micah Rorie (“Rorie Aff.”) ¶ 3).

2. Upon information and belief, Respondent Bruce E. Doolittle (“Doolittle”) is resident of the State of North Dakota.

3. Respondent is the record owner of the lands located in Emmons County, North Dakota more particularly described on **Exhibit A** attached hereto. (Rorie Aff. ¶ 4).

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to Sections 32-15-06 and 27-05-06 of the North Dakota Century Code.

5. Venue is proper in this Court pursuant to Section 28-04-01 of the North Dakota Century Code.

STATEMENT OF CLAIM

I. The Summit Pipeline.

6. Summit is proposing to construct the Midwest Carbon Express pipeline system (the "Pipeline"), an approximately 2,000-mile long carbon dioxide transmission pipeline system ranging from four (4) to twenty-four (24) inches in diameter. The Pipeline will provide capacity to transport as much as twelve (12) million tons of carbon dioxide per year from ethanol plants located in Iowa, Nebraska, Minnesota, South Dakota and North Dakota. The carbon dioxide will ultimately be injected into a secure, underground geologic storage facility located in North Dakota. (Rorie Aff. ¶ 5).

7. The Pipeline is necessary to reduce carbon dioxide emissions and offers ethanol and other industrial plants a viable option to capture and permanently store carbon dioxide emissions because, unlike North Dakota, most states do not have proven subsurface geologic formations capable of economically storing the volume of carbon dioxide produced by such plants. (Rorie Aff. ¶ 6).

8. The Pipeline also represents the safest mode for transporting carbon dioxide. As compared to rail and truck transportation, pipelines are the safest and most efficient means to transport hazardous liquids, according to statistics compiled by the United States Department of Transportation. Pipelines are heavily regulated and are subject to intense scrutiny and oversight. Time and time again, pipelines have proven to be the safest and most reliable form of transporting hazardous liquids. (Rorie Aff. ¶ 7).

II. The Need for Access to Doolittle's Land.

9. Under Section 49-22.1-04 of the North Dakota Century Code, Summit may not begin constructing the Pipeline in North Dakota until it obtains a certificate of corridor

compatibility and route permit from the North Dakota Public Service Commission (“the PSC”). Summit intends to file its application with the PSC in October of 2022, and anticipates receiving a certificate of corridor compatibility and route permit sometime during the first quarter of 2023.

10. In order to obtain the certificate of corridor compatibility and route permit for the Pipeline, Summit must demonstrate to the PSC that the route is appropriate. The PSC’s decision with respect to the appropriateness of the route is guided by a nonexclusive list of statutorily enumerated factors, including, among others:

- Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
- The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
- The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.

N.D.C.C. § 49-22.1-09.

11. In order to gather the information that both Summit and the PSC need to evaluate the suitability of the proposed route, Summit must conduct various field surveys, investigations, and examinations of the proposed route to gather necessary information. Specifically, Summit needs to conduct centerline route surveys; archeological surveys; environmental (e.g., wetlands, wildlife, plants) surveys; geotechnical surveys; and any other surveys necessary to assess the suitability of the route and present information to the PSC. (Rorie Aff. ¶ 8).

12. For the past several months, Summit, by and through its affiliate Summit Carbon Solutions, LLC, has been meeting with landowners whose property will be crossed by the Pipeline to explain the project, answer their questions, and request access to their property for surveys and examinations. The vast majority of landowners whose property will be impacted by

the Pipeline have voluntarily permitted Summit to enter onto their property for the purpose of completing the necessary surveys. (Rorie Aff. ¶ 9).

13. Doolittle's lands, described in Paragraph 3, above, are expected to be crossed by the Project. Despite Summit's good faith efforts to negotiate entry, Doolittle has refused to permit entry onto the lands for the purpose of conducting the surveys. Summit needs to enter onto the lands as soon as possible in order to complete the field surveys and obtain a certificate of corridor compatibility and route permit in the first quarter of 2023, as anticipated. If the surveys are delayed, issuance of the certificate and route permit will be delayed, and the remainder of the project will be delayed as well. (Rorie Aff. ¶ 10).

III. The Right to Enter and Survey.

14. As operator of the Pipeline, Summit is a common carrier. In addition, Summit has filed its Acceptance of the Provisions of North Dakota's Energy Conversion and Transmission Facility Siting Act, N.D.C.C. ch. 49-19, with the PSC, which is attached as **Exhibit B** to this Petition. As a result, Summit "has, subject to chapter 32-15, the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline." N.D.C.C. § 49-19-12.

15. In addition, Chapter 32-15 of the North Dakota Century Code expressly permits the exercise of the right of eminent domain "in behalf of . . . public uses," including "[o]il, gas, coal, and carbon dioxide pipelines . . . together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of

generating, refining, regulating, compressing, transmitting, or distributing the same”
N.D.C.C. § 32-15-02(10).

16. Because Summit has the statutory right and power of eminent domain to acquire property for the Pipeline, it also has the right to enter upon Doolittle’s land to conduct necessary examinations and surveys. Section 32-15-06 of the North Dakota Century Code authorizes those in the “category of persons entitled to seek eminent domain” to conduct pre-condemnation surveys and testing to determine whether the land is suitable for the proposed project. See *Alliance Pipeline L.P. v. Smith*, 2013 ND 17, ¶ 15, 833 N.W.2d 464; *Square Butte Elec. Coop. v. Dohn*, 219 N.W.2d 877, 883 (N.D. 1974).

17. Specifically, Section 32-15-06 provides such persons the right to “make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.” N.D.C.C. § 32-15-06. In situations where a property owner refuses to permit entry for pre-condemnation surveys and testing, the person or entity in charge of the proposed project is entitled to an order from a district court confirming its right to enter the property to conduct such surveys. *Alliance Pipeline L.P.*, 2013 ND 17, ¶ 19, 833 N.W.2d 464; *Square Butte Elec. Coop.*, 219 N.W.2d at 883.

18. Under North Dakota Century Code Section 32-15-06 and the Supreme Court’s decisions in *Alliance Pipeline* and *Square Butte*, because Summit is in the category of persons authorized by law to seek eminent domain, it is entitled to an Order of the Court confirming its right to enter onto Doolittle’s property to “make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries

resulting from negligence, wantonness, or malice.” N.D.C.C. § 32-15-06; *Alliance Pipeline L.P.*, 2013 ND 17, ¶ 19, 833 N.W.2d 464.

19. The surveys and examinations to be conducted by Summit will have little, if any, impact on Doolittle’s property. However, Summit will proceed with the surveys in a manner that is compatible with the greatest public benefit and the least private injury, compensate landowners or tenants for damages caused by survey activities, and comply with other reasonable restrictions imposed by the Court. (Rorie Aff. ¶ 11).

WHEREFORE, Summit requests an order of this Court confirming its right to enter upon the land described in Paragraph 3, above, for the purpose of completing necessary surveys and examinations, including:

- a. centerline route surveys;
- b. archeological surveys;
- c. environmental (wetlands, wildlife, plants, etc.) surveys;
- d. geotechnical surveys; and
- e. any other surveys necessary for evaluating the suitability of the route and compiling the information required by the PSC for issuance of a certificate of site compatibility and route permit.

DATED this 19th day of August, 2022.

FREDRIKSON & BYRON, P.A.

By: 

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