

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF BROWN)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

SCS CARBON TRANSPORT LLC,)

Civ. 23-_____)

Petitioner,)

06CIV23-000149)

v.)

**VERIFIED PETITION FOR
CONDEMNATION**

JARED BOSSLY, QWEST CORPORATION,)
WEB WATER DEVELOPMENT)
ASSOCIATION, INC., a South Dakota Non-profit)
Corporation, AND FARM CREDIT SERVICES)
OF AMERICA, FCLA,)

Respondents.)
)
)

SCS Carbon Transport LLC, for its Verified Petition pursuant to SDCL Ch. 21-35, states and alleges as follows:

1. Petitioner, SCS Carbon Transport LLC, ("SCS Carbon") is a Delaware limited liability company having its principal place of business in Ames, Iowa.
2. SCS Carbon proposes to construct a common carrier carbon dioxide pipeline and related facilities to provide transportation service from points of origin in Iowa, Minnesota, North Dakota, and South Dakota to a terminus in North Dakota.
3. The pipeline will enter South Dakota at the South Dakota-Iowa border in Lincoln County. It will extend in a northwesterly direction through portions of Lincoln County, Turner County, Minnehaha County, McCook County, Lake County, Miner County, Kingsbury County, Beadle County, Spink County, Brown County, Edmunds County, and McPherson County. Lateral supply pipelines are planned to run to the main line through portions of Lake County, Beadle County, Codington County, Hamlin County, Clark County,

Sully County, Hyde County, Hand County, Brown County, Edmunds County, and McPherson County. The pipeline will leave South Dakota at the South Dakota-North Dakota border in McPherson County.

4. SCS Carbon is holding itself out to the general public as, and is in fact, engaged in the business of transporting commodities for hire by pipeline.

5. SCS Carbon is a common carrier as defined by South Dakota and federal law, and has the privilege of eminent domain pursuant to SDCL §§ 49-2-12 and 49-7-13.

6. Respondent Jared Bossly (Landowner) is the owner of record of that real property (“Landowner’s Property”) located in Brown County, South Dakota, which is legally described as follows:

BROWN COUNTY, SOUTH DAKOTA

Township 121 North, Range 64 West of the 5th P.M.
Section 20: SE1/4

7. Upon information and belief, SCS Carbon states that Respondent WEB Water Development Association, Inc., and Qwest Corporation claim an easement on the property described above. Petitioner, by and through this Verified Petition, does not dispute the validity of such easements and joins the above-referenced Respondent as required under SDCL § 15-6-19(a).

8. Upon information and belief, SCS Carbon states that Respondent Farm Credit Services of America, FCLA, claims a mortgage on the property described above. Petitioner, by and through this Verified Petition, does not dispute the validity of such mortgage and joins the above-referenced Respondent as required under SDCL § 15-6-19(a).

9. SCS Carbon has determined by a duly adopted resolution of necessity, a copy of which is attached as Exhibit 1, that it is necessary to acquire permanent and temporary easements over Landowner's real property for the construction and operation of the pipeline.

10. SCS Carbon has been unable to acquire the necessary easements by agreement with Landowner, and therefore seeks by the Verified Petition to exercise its right of eminent domain.

11. The permanent and temporary easements sought to be acquired by SCS Carbon are described in the Easement Agreement, a copy of which is attached as Exhibit 2.

12. The Easement Agreement has been presented to Landowner, but they have refused to sign it.

13. The easements sought to be acquired over the Landowner's property, as more particularly described in the Easement Agreement in Exhibit 2, are generally described as a fifty foot (50') wide permanent pipeline easement (the "Pipeline Easement"); (ii) a temporary construction easement (the "Temporary Construction Easement," which together with the Pipeline Easement shall be referred to as the "Easements"); and (iii) a free and unobstructed non-exclusive access easement in, to, through, on, over, under, and across the Landowner's Property and over the property of Landowner adjacent to the Easements and lying between public or private roads and the Easements for the purpose of ingress and egress to the Pipeline Easement and, while in effect, the Temporary Construction Easement (the "Access Easement").

14. Under SDCL § 21-35-11, SCS Carbon hereby offers to deposit with the Clerk of this Court the sum stated in its offer pursuant to SDCL § 21-35-11, a copy of which has been served on Landowner, with costs to be paid to Landowner, as compensation for all of the property to be taken or damaged.

15. SCS Carbon hereby agrees to pay separately for all damages to crops, roads, driveways, fences, and livestock caused by the construction or maintenance of the pipeline in the area of the Pipeline Easement either during or after construction, as indicated in Exhibit 2.

WHEREFORE, Petitioner prays for judgment as follows:

- 1) That judgment be entered against Respondents granting and appropriating the easement rights described above to Petitioner;
- 2) That a jury be empanelled under SDCL § 21-35-1 for the purpose of determining the just compensation and damages that Respondents are entitled to receive because of the taking and appropriation;
- 3) That judgment be entered pursuant to SDCL § 21-35-19; and
- 4) For any other relief that the Court deems just and equitable.

Dated this 24th day of April, 2023.

MAY, ADAM, GERDES & THOMPSON LLP

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