

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KIMBERLY JUNKER, CANDICE)	
BRANDAU LARSON, and KATHY)	
CARTER,)	
)	
Petitioners,)	No.
)	
)	
vs.)	
)	
IOWA DEPARTMENT OF NATURAL)	PETITION FOR JUDICIAL REVIEW
RESOURCES,)	
)	
Respondent.)	

Come now the above-named Petitioners and in support of this Petition for Judicial Review, state as follows:

INTRODUCTION

1. This is a Petition for Judicial Review, pursuant to Iowa Code § 17A.19, from a decision by the Iowa Department of Natural Resources (IDNR) for a water withdrawal permit pursuant to Iowa Code § 455B. 265.

2. A permit to withdraw up to 55.9 million gallons of water per year from the groundwater (Devonian Limestone) in Chickasaw County, Iowa, was issued to Lawler SCS Capture LLC, on May 29, 2023.

PARTIES

3. Petitioners Kimberly Junker and Candice Brandau Larson get their drinking water from private wells tapping the Devonian Limestone that is the subject of the water withdrawal permit described above. Petitioner Kathy Carter gets her drinking water from the City of Rockford municipal water source, which draws its water from the Devonian Limestone that is the subject of the water withdrawal permit described above. The

Petitioners are concerned that the permit issued to Lawler SCS Capture LLC will adversely impact the sources of their drinking water.

4. The Respondent, IDNR, is a state agency whose duties and responsibilities include ensuring that the water resources of the state be put to beneficial use to the end that the best interests and welfare of the people are served. These duties and responsibilities include issuing permits to withdraw water from underground sources in compliance with the policy and requirements of Iowa Code §§ 455B.262 and 455B.264-265.

JURISDICTION AND VENUE

5. This Court has jurisdiction of this action, pursuant to Iowa Code § 17A.19(1), because the Petitioners, having exhausted all adequate administrative remedies, are persons aggrieved or adversely affected by IDNR, as more fully set out below.

6. Venue is proper in this Court pursuant to Iowa Code § 17A.19(2).

STATEMENT OF FACTS

7. Summit Carbon Solutions LLC is a company that proposes to construct a pipeline through 29 counties in Iowa to transport carbon dioxide captured from 13 ethanol plants in Iowa to North Dakota to be buried underground there. In order to capture the carbon dioxide, Summit Carbon Solutions, through its affiliate, Lawler SCS Capture LLC, proposes to construct carbon dioxide capture facilities at the Homeland Energy Solutions ethanol plant. The capture equipment would capture carbon dioxide as a byproduct from the fermentation process at the ethanol plant before the carbon dioxide is emitted into the ambient air.

8. Summit Carbon Solutions claims that the process of capturing carbon dioxide from the ethanol plants would provide the benefit of mitigating climate change. In its application for a permit from the Iowa Utilities Board, Summit Carbon Solutions claims that its project would capture approximately 4 million metric tons of carbon dioxide per year from the ethanol plants in Iowa. But that claim does not consider the life cycle net emissions of carbon dioxide. When all factors are considered, Summit's project would be a net emitter of carbon dioxide. Dr. Mark Jacobson of Stanford University submitted written testimony in the Iowa Utilities Board hearing regarding Summit Carbon Solutions, showing why carbon capture does not mitigate climate change. Dr. Jacobson's testimony is hereto attached.

9. Summit Carbon Solutions also claims that its project will support Iowa's ethanol industry, which, according to Summit, would benefit Iowans generally. Summit further claims that if its pipeline is not built, the ethanol industry would leave Iowa and locate in other states that would have a pipeline. But Summit's witness in the Iowa Utilities Board proceeding, James Broghammer, said he had no evidence to support that claim. In addition, Mr. Broghammer said that if the pipeline were built, the ethanol industry would not produce any more ethanol than is being produced now. So the pipeline project would not produce a public benefit from the ethanol industry. It would simply make more money for the ethanol industry. Mr. Broghammer's deposition testimony is hereto attached.

10. Lawler SCS Capture LLC submitted an application for a permit for water withdrawal to IDNR on a form provided by IDNR. However, the application did not include information specifically required by 199 I.A.C. § 50.6(1) to identify the aquifer

from which the water will be withdrawn, predict the effects of pumping with a reasonable degree of confidence, and information to determine any permit conditions for well interference. Thus, IDNR had insufficient information to make a decision to issue the permit.

11. The Water Use Summary Report prepared by IDNR in support of the issuance of the water withdrawal permit to Lawler SCS Capture LLC states, “The ability and intent of the applicant to devote a reasonable amount of water to a beneficial use seem evident.” But there is no indication in the document what the alleged beneficial use is. Nor is there any evidence in the record to support the conclusion that the beneficial use is “evident.” IDNR’s decision must be based on evidence. To do otherwise, is clearly arbitrary, capricious and unreasonable.

12. Iowa Code § 455B.262 states:

The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people.

There is no evidence in the record that IDNR considered any of this in issuing the water withdrawal permit to Lawler SCS Capture LLC.

13. In fact, IDNR internal e-mails show just the opposite. On August 22, 2023, some three months after the Lawler permit was issued, Chad Fields, a geologist in IDNR’s Water Supply Engineering Section, responded to Lori McDaniel, Bureau Chief of IDNR’s Water Quality Bureau, as follows:

Thanks Lori. From the article, it looks as though these withdrawals are for heat exchange/cooling of pipes carrying pressurized carbon dioxide ... though I guess the use of the water withdrawal isn’t really specified, which is not ideal for permitting.

Mr. Fields had not yet realized that such a permit, also without specifications about the water withdrawal, had already been approved in Iowa. He continued:

Ideally, an agency would use a predictive numerical model to directly show the estimated impacts from the pumping wells on the area's water levels.

Again, Mr. Fields did not realize that IDNR had also failed to "directly show the estimated impacts" when it evaluated Lawler's application. Significantly, he concluded that:

As far as I know, we haven't seen any similar permits being requested in Iowa. This would be a new "beneficial use" (like Pattison) that we would need to consider.

Not twenty minutes later, Michael Anderson, Senior Environmental Engineer in IDNR's Water Supply Engineering Section, answered Mr. Fields:

I don't have a lot to add to what Chad said. He put it quite well

But....

We have ONE permit related to carbon capture

We have issued one permit to Lawler SCS Capture LLC by Lawler/New Hampton. They are affiliated with the Homeland Energy Solutions (ethanol plant there). They are going to be withdrawing from the Devonian Limestone with a pump at 100 gpm and using 55.9 million gallons of water per year. The stated water usage is "water used in carbon capture process and ancillary to ethanol production."

In order to cover himself, Mr. Anderson then added:

I don't think that they have constructed the well yet . . ."

Then Mr. Fields replied:

I didn't realize that we had a permit already. Things are moving fast. So. If I'm understanding correctly, there's about 56 million gallons per year needed to capture the carbon at just one ethanol facility? After they use the water to capture carbon, does the water then get discharged to a stream, or is it steam?

I guess there's a lot I don't know about this technology. The need for 21 million gallons of water per year to pipe CO2 is also something I'm not quite grokking.

Mr. Anderson then replied:

good questions – the one answer I know is a lot of it turns to steam. However – none of the numbers have been field-tested yet. My understanding is the well is planned to be drilled in “fall.” Since the Iowa Utility Board hearing only just started today, I imagine we see them surrender the permit if the pipeline is disapproved or otherwise altered/modified.

14. Mr. Fields’ reference to Pattison Sand Company in the foregoing e-mail exchange is important. IDNR has established that some uses are beneficial uses, e.g., municipal water systems, livestock facilities, or crop irrigation. But as Mr. Fields noted, carbon capture facilities are new and are not an established beneficial use. In 2020, Pattison Sand Company requested a water withdrawal permit for a new category of beneficial use – withdrawing 2 billion gallons of water annually from the Jordan Aquifer to send the water to drought-stricken areas in the West. In that case, IDNR determined that the project would have a “negative impact on the long-term availability of Iowa’s water resources.” IDNR further stated, “This scheme does not meet the legal standard that Iowa’s public water ‘be put to beneficial use . . . in the interest of the people.” IDNR continued, Iowa’s water must be “conserved and protected in the name of public health and welfare.” These same observations apply to Lawler SCS Capture’s permit application.

GROUNDNS FOR RELIEF

15. Based upon the foregoing, the actions of IDNR in issuing a water withdrawal permit to Lawler SCS Capture LLC were:

- a. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law;
- b. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency;

- c. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process;
- d. Action other than a rule that is inconsistent with a rule of the agency;
- e. Action other than a rule that is inconsistent with the agency's prior practice or precedents;
- f. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

RELIEF REQUESTED

16. The Petitioners request that the Court reverse the action of IDNR in issuing the water withdrawal permit to Lawler SCS Capture LLC, vacate the permit, and grant other and further relief that is just and equitable.

/s/ *Wallace L. Taylor*
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