

A Legal and Political Analysis of the Bakken Oil Pipeline Proposed for Iowa

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1) ***The commonwealth is the basis of the Iowa economy.***

The commons include water, air, wildlife, roads, parks, schools and other things that the people of Iowa share. The commons are what provide value to private property. Farms can't get their grain to market without public roads. Businesses can't function without clean air and water. We get hunting and fishing licenses because wildlife is part of the commons.

2) ***Approving the pipeline would be a violation of Iowa's fiduciary and public trust responsibilities to the people of Iowa because it harms the commons.***

State and local governments' primary responsibility is to take care of the commonwealth and health of the people of Iowa. As described above the commonwealth includes all the things that the people of Iowa share. Government's responsibility is not to make private parties such as corporations rich. It is not to steal from the people with one hand and sell it as private property on the market. Government's responsibility is to protect the things we share.

The State Constitution of Iowa begins by naming the rivers that serve as our boundaries. We are literally defined by rivers.¹ Of all things that the State of Iowa must protect is the water. It is a birthright and a human right to have clean water.

¹ Iowa Constitution Preamble, Boundaries: "Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the state of Missouri-as established by the constitution of that State-adopted June 12, 1820-crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning."

3) *It is the citizen's obligation to withdraw its consent from government actions that threaten the commonwealth and future generations.*

The Iowa Constitution says this in its Bill of Rights: "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it."

Government functions on the basis of the consent of the governed. If government does not have the consent of the people then we either have anarchy or dictatorship. Communities have a right to give their consent or withhold it from activities that threaten their future.

4) *Eminent domain is the unique power of government to move private property into the commons where it serves as a public good. It should not be used to privilege a private corporation that will destroy the commons.*

Using eminent domain to take private property and public land to give to a corporation is an abuse of power by government. A polluting pipeline that enriches its shareholders and damages the commons is not a public good.

5) *When the pipeline leaks, Iowa will be left with the costs of cleanup. This is a violation of the Iowa St. Constitution which says: "Credit not to be loaned. SECTION 1. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the state shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the state.*

Iowa law currently requires pipeline operators to provide a surety bond of only \$250,000, or have property in Iowa worth only \$250,000, to provide financial protection for the state? (Iowa Code section 479B.13) This means that Iowa will have assumed the debts and liabilities of the pipeline company in direct violation of the State Constitution.