

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>WOLF CARBON SOLUTIONS US, LLC,</p> <p><i>Petitioner,</i></p> <p>v.</p> <p>IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA,</p> <p><i>Respondent.</i></p>	<p>CASE NO. EQCE088016</p> <p>PETITIONER'S REPLY TO NON- PARTY, PUTATIVE INTERVENOR SIERRA CLUB OF IOWA'S RESISTANCE TO MOTION STRIKE CERTAIN PORTIONS OF AFFIDAVIT IN SUPPORT OF INTERVENTION</p> <p><i>(EXPEDITED CONSIDERATION REQUESTED)</i></p> <p><i>(ORAL ARGUMENT REQUESTED)</i></p>
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COMES NOW, Petitioner Wolf Carbon Solutions US, LLC ("WCS") with this Reply to putative intervenor Sierra Club of Iowa's ("Sierra") Resistance to WCS' Motion to Strike certain portions of an affidavit filed in support of Sierra's Motion to Intervene in the above-captioned action, stating the following:

1. In this action, WCS has moved to strike certain portions of that certain affidavit filed on behalf of Sierra that contained inaccurate and misleading information. *See* Mot. to Strike, ¶¶ 2-3 (Filed Nov. 15, 2022). *See also* WCS Mot. in Resist. to Sierra Club Intervention, at pp. 17-23 (Filed Nov. 15, 2022).

2. Sierra has filed a resistance to WCS' Motion to Strike, claiming, primarily, that an affidavit that contained provably false information is immune from a motion to strike under Iowa's Rules of Civil Procedure. *See* Sierra Resist. to Mot. to Strike, at p. 1 (Filed Nov. 23, 2022). The theory Sierra puts forth for this argument is that an affidavit supporting a court filing is not a "pleading" under IOWA R. CIV. P. 1.401.

3. While Sierra may be partially correct as far as their textual assertions go, Iowa court precedent interpreting this rule in pattern and practice would disagree. *See, e.g., In re Marriage of Kraabel*, Case No. 17-2052, 2018 WL 3471860, at *1 (Iowa Ct. App. Jul. 18, 2018) (affirming a lower court's determination to strike an affidavit from the docket); *In re Marriage of Fredricksen*, Case No. 13-1781, 2015 WL 2089190, at *2 (Iowa Ct. App. May 6, 2015) (affirming a trial court order on striking an answer and affidavit in support thereof); *In re Baker's Estate*, 285 N.W. 143, 144 (Iowa 1939) (sustaining a motion to strike affidavits in an executor's application); *Brown v. Ill. Cent. Ry. Co.*, 98 N.W. 625, 625 (Iowa 1904) ("The motion to strike the affidavit...is sustained..."); *De Wolf v. Taylor*, 33 N.W. 154, 155 (Iowa 1887) (sustaining a motion to strike an affidavit).

4. Other legal authorities would also disagree with Sierra's position. *See, e.g., 3 Litigating Tort Cases* § 31:15 (2022 Ed.): "***The proper method of challenging an insufficient or inappropriate affidavit is to move to strike the affidavit.*** The motion to strike should be specific and cite specifically to the problem with the affidavit and the grounds for the objection." (emphasis added). That is exactly what WCS did in this case. In other words, Sierra is wrong on the law just as their submitted affidavit is wrong on the facts. *See WCS Resist. to Intervention*, at pp. 17-23 (Filed Nov. 15, 2022).

5. IOWA R. CIV. P. 1.434 authorizes a district court to strike "improper or unnecessary" matters in a pleading. *See also Krausnick v. Haegg Roofing Co.*, 20 N.W.2d 432, 434 (Iowa 1945); *Rixner v. James W. Boyd Revocable Trust*, Case No. 18-0811, 2019 WL 5067143, at *2 (Iowa Ct. App. Oct. 9, 2019).

6. Granting of a motion to strike is proper where any conclusory information is offered yet unsupported by proper and pertinent facts. *See IOWA R. CIV. P. 1.434*, official comment (citing

Hutchinson v. Des Moines Housing Corp., 84 N.W.2d 10, 13 (Iowa 1957)). *Accord In re Primary Road No. Iowa 141*, 114 N.W.2d 290, 292 (Iowa 1962); *Tedrow v. Des Moines Housing Corp.*, 87 N.W.2d 463, 468 (Iowa 1958) (discussing allegations stricken for lack of factual support).

7. As explained in WCS' Resistance to Intervention accompanying its Motion to Strike, certain statements were made in the supporting Affidavit of Jessica Mazour on behalf of Sierra signed under penalty of perjury that are provably false and improperly cast a negative light upon WCS in this action. Namely, that land agents of WCS have, and are continuing to, engage in "harassment, threats, and intimidation" against landowners along the proposed pipeline route in question. *See* Aff. of Jessica Mazour, at ¶ 3. *See also* WCS Resist. to Intervention, at pp. 17-23 (Filed Nov. 15, 2022). This is factually false and misleading. *See* Aff. of Nick Noppinger, at ¶¶ 12-19. Sierra Club has provided zero evidence to the contrary.

8. Other jurisdictions have found it to be proper to strike portions of affidavit filings if they are patently false or misleading. *See, e.g., Boutote v. Deerfield Realty Co.*, Case No. CV106015850S, 2012 WL 5860244, at *3 (Conn. Supr. Ct. Nov. 1, 2012) ("[O]ur Supreme Court has explicitly stated that the court can properly strike a false affidavit from the file..."). This Court should do the same.

WHEREAS, for the foregoing reasons stated herein Sierra's Resistance to WCS' Motion to Strike should be denied in full, and any and all further relief should be awarded to WCS as is just and proper, including, but not limited to, reasonable attorneys' fees and costs.

Respectfully submitted,

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