

NEAT Seeks to Unite Landowners in Dealings with TransCanada on Pipeline

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By Harold Reutter



Brian Jorde of the Nebraska Easement Action Team speaks about changes in eminent domain laws during the Nebraska Farmers Union convention Saturday at the Midtown Holiday Inn. (Independent/Matt Dixon)

Brian Jorde of Nebraska Easement Action Team (NEAT) urged members of the Nebraska Farmers Union on Saturday morning to either join or support the organization to help put Nebraska landowners on more equal footing with TransCanada.

TransCanada has proposed placing the Keystone XL pipeline across Nebraska in part of an effort to transport tar sands oil from Canada to a refinery in Texas.

As a multibillion-dollar company, Jorde said TransCanada has an advantage in dealing with individual landowners when it comes to getting easements across their property for the proposed pipeline. He said some people are surprised that any private company — let alone a private corporation based in another country — has the right to use eminent domain to take people’s property away from them.

At one time, eminent domain was understood to be the right to take people’s property for a “public use,” Jorde said.

He said the nation’s interstate highway system, which includes Interstate 80 that runs across Nebraska, is an example of government taking land for a public use. Even if a person does not drive, he or she still benefits from the interstate by receiving goods that have been transported across the interstate system.

However, over time, eminent domain rights have expanded so that they can be used by a private entity so long as there is a “public good” or “public benefit” to the project, Jorde said. Those rights reached a zenith with the U.S. Supreme Court’s decision in “Kelo v. City of New London,” which said it was lawful to use eminent domain to transfer land from one private owner to another private owner to further economic development.

Jorde said Deb Fischer, then a Nebraska state senator, decided that the Kelo decision was overreaching. As a result, Fischer got legislation passed that restricted eminent domain rights, although her political opponents during this year’s U.S. Senate race derided what they called the “Fischer loophole” for pipeline companies. Even though that term was used to try to gain political advantage during an election, Jorde believes that the law does indeed provide a loophole for pipeline companies.

As a result, the Nebraska Legislature went into special session and approved MOPSA or the Major Oil Pipeline Siting Act, which gave the Nebraska Public Service Commission regulatory oversight on pipeline routes and transmission lines.

Another bill passed during that session raised the possibility that the pipeline might be rerouted from the Sandhills and Ogallala Aquifer to a new route across less environmentally sensitive property.

However, MOPSA was weakened when the Nebraska Legislature approved LB1161, which gave the governor sole power to approve the TransCanada pipeline, said Jorde, who criticized the change because it took authority away from five elected officials and gave it to just one. He also said the Nebraska Department of Environmental Quality's role in the pipeline decision was not defined well enough.

He said the constitutionality of LB1161 is being challenged via a lawsuit titled "Thompson v. Heineman," which pits landowner Randy Thompson against Nebraska Gov. Dave Heineman. Actually, the lawsuit involves more landowners than just Thompson and more government officials than just Heineman.

Meanwhile, work and hearings on the Keystone XL pipeline continue, including a hearing this past week, Jorde said. He noted the hearing ostensibly was to gather input from Nebraskans, but he pointed out that the very first speaker was Corey Goulet, TransCanada's president of the Keystone XL pipeline.

Jorde said Goulet argued there was a public "benefit" to the pipeline because of job creation and lower gasoline prices.

But Jorde said an existing Keystone pipeline has resulted in only 50 permanent jobs, which is a minimal benefit. He said a claim of \$2.5 million in tax basis also is minimal because TransCanada is a multibillion-dollar company. He said there was a message about less reliance on foreign oil, but "Canada is a foreign country the last time I looked."

The speaker also derided safety claims, noting that TransCanada has had 14 recent leaks in existing pipelines.

While TransCanada may be correct in saying that any leak would not pollute the entire Ogallala aquifer, which stretches all the way from Nebraska into Texas, Jorde still questioned how severe damage could be to an individual landowner or community where a leak occurred.

He pointed to the BP oil spill in the Gulf of Mexico that carried a \$60 billion cleanup cost and the leak in a pipeline owned by Enbridge, another Canadian company, into the Kalamazoo River in Michigan. He said that latter spill is costing \$750 million.

Jorde said NEAT wants itself and the landowners to be involved in public policy issues, such as whether Nebraska should attempt to establish a single energy pipeline corridor through the state or whether pipelines should be allowed to crisscross the state and landowners' property in an almost haphazard fashion.

NEAT wants to enable landowners to speak with one voice when it comes to TransCanada and the pipeline, he said. Otherwise, it is an unlevel field, tilted in TransCanada's favor.

He said landowners need to understand that when they grant an easement, they are granting property rights to another entity. Oftentimes, easements cannot be renegotiated. As a result, landowners must understand all the fine print in the easement and/or contracts they sign.

Jorde said issues of liability need to be understood. He said the payment needs to be understood. So does right of access to the easement. Landowners should be trying to find out the identity of TransCanada's limited partners.

While TransCanada wants the pipeline now, landowners need to know what might happen if TransCanada ever decides to abandon the pipeline, Jorde said.