

Pipeline critics: Heineman lacks authority



By ART HOVEY / Lincoln Journal Star

Opponents of the Keystone XL pipeline argued in Lancaster County District Court on Thursday that Gov. Dave Heineman lacked the authority to approve the proposed route of the project through Nebraska in a Jan. 22 letter to President Barack Obama.

They want Heineman's action voided by Lancaster County District Judge Stephanie Stacy.

Stacy listened to about 20 minutes of arguments from Omaha attorney [David Domina](#) and Assistant Attorney General Katie Spohn before adjourning to her chambers to meet with the two sides to discuss a date for a trial that could happen as soon as June.

Stacy rejected state efforts to get the lawsuit tossed out Dec. 31.

Domina doesn't expect a ruling on his efforts to amend the plaintiff complaint and challenge the legitimacy of Heineman's letter until at least next week.

The main dispute is over the constitutionality of the Major Oil Pipeline Siting Act, the 2012 law that gave the governor the last word on the route choice of pipeline builder TransCanada.

Pipeline opponents contend the Nebraska Constitution assigns siting authority for pipelines to the Public Service Commission.

In a brief interview before the court proceeding, Domina brushed aside suggestions that something the governor has already done could not be undone.

"The fact that it's done doesn't make it constitutional," he said. "It just makes it done."

If delegation of authority to the governor by the Legislature was invalid, Domina said, so are any actions that flow from that decision.

“It’s not his fault,” he said of the governor. “He just didn’t have the authority.”

The scene playing out in court Thursday is the latest development in the four-year battle between TransCanada and opponents over the 1,700-mile, \$7 billion connection the Calgary-based company wants to build from the oil sands of Alberta to refineries along the U.S. Gulf Coast.

Also pending is approval by the Obama Administration of a presidential permit that TransCanada needs to cross an international border.

A supplemental environmental review is expected at the federal level in the first quarter of 2013. But approval or denial of the permit might not come any sooner than late June.

Responding to Nebraska concerns about soil erosion and groundwater contamination, TransCanada volunteered to move the route off the map of the Sandhills last year.

That didn’t satisfy Bold Nebraska, the Nebraska chapter of the Sierra Club or some of the landowners who have fought the project.

In court Thursday, Spohn of the Attorney General's office said Domina was too late in trying to block the effect of the governor’s letter.

At this stage, “no injunctive relief can be afforded here,” she said.

All the steps the state needed to follow in providing route advice to the U.S. State Department have been accomplished, according to Spohn.

Also caught up in the court challenge of the siting act is whether Heineman’s action clears the way for TransCanada to use eminent domain in finalizing a Nebraska route or whether land condemnation is a matter for the Public Service Commission’s attention.

If Stacy sides with his three landowner clients, Domina said, “then Governor Heineman’s letter to the president must be followed by another letter that says, ‘Dear Mr. President, Oops.’”

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