

2nd lawyer backs state on pipeline

By [Paul Hammel](#)
WORLD-HERALD BUREAU

LINCOLN — A second prominent lawyer employed by a Nebraska environmental group now says that the state has the right to regulate crude-oil pipelines and that it should do so before a federal decision is made on the project.

Omaha attorney [David Domina](#), who was retained by the environmental group Bold Nebraska, issued a legal opinion Wednesday stating that among other powers, the state can require pipeline companies to build within existing easements or rights of way.

That would be music to the ears of some Nebraska elected officials, including Gov. Dave Heineman and U.S. Sens. Mike Johanns and Ben Nelson, who have been urging TransCanada Inc. to reroute its controversial Keystone XL pipeline.

They have said the company should use the existing route of a previous TransCanada crude-oil pipeline across eastern Nebraska instead of the currently proposed route, which crosses the groundwater-rich Sand Hills region in the north-central area of the state.

[Domina](#) said the Legislature has other legal options but must act before the U.S. State Department decides whether to approve the project. That decision could come before the end of the year.

“Nebraska’s siting authority may be more theoretical than real if it delays action,” stated the opinion, written by [Domina](#) and colleague Brian Jorde.

The 30-page legal analysis comes less than a week before the Nebraska Legislature convenes in a special session to debate regulation of pipelines and a day after another well-known Nebraska attorney, Alan Peterson of Lincoln, said that the Legislature has the power to act and that it should do so now.

A spokesman for TransCanada pointed out that the latest legal opinions have come from anti-pipeline groups and that they were issued after the speaker of the Legislature, Sen. Mike Flood, issued an analysis questioning whether the state could pass pipeline siting laws that were legal and constitutional.

Spokesman Shawn Howard said a three-year federal review concluded the current route would have minimal environmental impacts. He said a change in the route is being sought by “anti-oil” activists to delay and ultimately kill the project.

“No route change in Nebraska avoids the Ogallala Aquifer. No route change in Nebraska has lower environmental impacts,” Howard said. “Those who oppose the Keystone XL pipeline, the oil sands or oil can’t escape these important facts.”

Environmentalists and ranchers in Nebraska have opposed the project, maintaining that leaks could contaminate the Ogallala Aquifer, a water source for the much of the Plains that underlies the Sand Hills.

TransCanada officials have said that fears have been blown out of proportion and that pipelines often are routed through shallow groundwater without problems.

Earlier this fall, TransCanada lobbyists distributed a legal analysis saying Nebraska risked a budget-busting lawsuit if it tried to enact pipeline routing laws this late in the process.

Both [Domina](#) and Peterson rejected that threat, saying the state has immunity against large damage awards in most cases. Both attorneys, however, said that if a state law was ruled unconstitutional, a federal judge could bar the law from taking effect.

Jane Kleeb of Bold Nebraska said her organization hired [Domina](#) because an opinion from “a respected lawyer” was needed to counteract the “it’s too late, we’re going to be sued” pronouncements from Heineman and Flood.

Heineman did an about-face Monday, calling the Legislature into special session, and Flood has since said he will have an open mind on the issue.

“It should be crystal clear now,” Kleeb said.

Her organization, she said, is funded by Omaha philanthropist and Democrat Dick Holland and 287 smaller donors, as well as a \$4,000-a-month stipend from the National Wildlife Federation.

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