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Line In The Sand

Nebraskans Fight the Keystone XL Pipeline

By Elliott Woods



Sunrise over the Loup River, one of Nebraska's major waterways that locals believe is threatened by Keystone XL.

Looking out from the highest hillock on Bruce Boettcher's pastureland south of Atkinson, in the Nebraska Sandhills, you see blue-green grasses spread out over a vast plain of rolling dunes. Red-winged blackbirds and sandpipers flit in and out of the prairie's cover. Wildflowers—black-eyed Susans, coneflowers, blazing stars—break up the monopoly of green. Ribbons of cumulus recede across the sky. Birdsong and the rustling of the wind in the grass are the only sounds. Sandy pits called blowouts, where wind has blown away the vegetation, give the place the look of a golf course gone to seed. Hidden behind the undulating hills, Boettcher's cattle are grazing on wheatgrass, bluestem, wildrye, and the occasional flowering yucca. A windmill pumps water into an enormous tire recycled from a Wyoming pit-mine vehicle.

There are rudimentary barbed-wire fences to manage the cattle's grazing patterns, but all the traces of Boettcher's organic cattle operation are invisible from up here, where the effect of so much open space is sublime.

"I never get tired of this view," Boettcher told me one morning in early July as he stooped to pluck a prairie violet, his favorite flower. He handed it to me. A stout fifty-seven-year-old with a round face and heavy eyelids, Boettcher has lived his entire life within a few miles of this hill. "No matter how many times I come up here," he said, "it just never gets old."

East of the Sandhills, the topography of Nebraska is defined by the disk-shaped imprints of center-pivot irrigation systems, which align in a near-perfect grid of 160-acre quarter sections. But the sugar-sand soils of the Sandhills, which cover the north-central third of the state, are too sensitive for crop cultivation. As a result, much of the land here remains covered in native grasses. On ranches like Boettcher's, where there are no center pivots, it doesn't take much effort to imagine a time before modern farmers plowed the prairies into fathomless rows, replacing grass with corn and soy; a time when bison grazed on an unbroken sea of grass a half-million square miles in area, from the high plains of Canada clear down to the Rio Grande.

A massive geological formation called the Ogallala Aquifer lies beneath much of the same range. The Ogallala is the source of life in the dry regions directly east of the Rocky Mountains. It nourished the wild prairie grasses that fed the great bison herds on their annual migration across the Dakotas and Nebraska. In turn, the dependability of the bison migration and the water supply gave rise to the semi-nomadic cultures of Nebraska's Plains Indians. By the 1880s, when Boettcher's great-grandfather staked out his homestead in Holt

County, most of the Ponca and the Pawnee were gone from the land between the Niobrara and Elkhorn Rivers. Gone, too, were the bison. But the vast reserve of water under the surface of the prairie would prove as vital to white homesteaders as it had been to the natives whose land they claimed.

Today, Nebraskan farmers and ranchers are heavily dependent on the Ogallala Aquifer, so it's not surprising that some, Boettcher included, perceive a Canadian company's plans to build a massive oil pipeline across the state as an existential threat. If constructed, TransCanada's proposed Keystone XL Pipeline (KXL) will carry a daily load of about 800,000 barrels of tar-sands crude oil from Hardisty, Alberta, to Steele City, Nebraska, where it will tie into existing infrastructure and complete its journey to refineries on the Gulf Coast of Texas. KXL will primarily transport Canadian oil sands products, though it will pick up American crude from Montana and North Dakota along the way. At thirty-six inches in diameter, KXL will be the largest pipeline ever built in the continental United States, and it will transport oil across some of Nebraska's best farmland at about 1,400 pounds per square inch of pressure, nearly double the pressure of any pipeline currently operating. The pipeline will cross over regions where the water table sits at ground level, and it will cross the Niobrara, Elkhorn, Platte, and Loup Rivers, key sources of irrigation and drinking water. Nebraskan pipeline opponents fear a spill could permanently contaminate large swaths of land and poison the aquifer, destroying the livelihoods of farmers and ranchers near the spill site and beyond.

Because the northern section of the proposed pipeline route crosses an international boundary, TransCanada requires a permit from President Barack Obama in order to begin construction. The national Republican Party and Nebraska's elected officials in Washington—all of whom receive major campaign contributions from Big Oil—are pressing hard for the pipeline. On the other side, a misalignment of interests that seems emblematic of the fractured American Left has pitted important Democratic camps against one another. The president cannot approve the permit without betraying environmentalists, to whom he has promised to take strong action on climate change; nor can he deny the permit without alienating the unions, to whom he has promised investment in infrastructure for the twenty-first century. The administration seems to be avoiding either outcome by delaying the decision as long as possible.



Bruce Boettcher on his Sandhills ranch in July, south of Atkinson, Nebraska.

Until recently, national environmental and climate-change activist groups like the Natural Resources Defense Council, the Sierra Club, and 350.org have been the public face of the KXL opposition. Those groups decry the destruction of Alberta's boreal forests and have urged President Obama to kill the pipeline project in order to prevent millions of tons of carbon from being released into the atmosphere as a result of a KXL-spurred boom in tar-sands extraction. Comparatively little attention has been paid to the growing chorus of protest in Nebraska, where farmers and ranchers have been gaining ground by participating in grassroots organizations focused on hyper-local issues like water and property rights.

Nebraska's pipeline opponents are especially difficult to dismiss because they rarely mention global warming, a bogeyman Big Oil's cheerleaders write off as liberal propaganda. Some of the most ardent anti-KXL Nebraskans are dyed-in-the-wool conservatives, cowboys with scraped-up boots and dirt under their fingernails. It would be a tough sell to label them as "alarmists" or "whacktivists." For now, the odds seem stacked in the favor of TransCanada and the oil companies that stand to benefit from KXL's approval. As I

heard one energy analyst put it, “There’s simply too much money in the ground for this thing to not go through.” Despite the odds, Nebraska’s pipeline opponents remain committed. If they’re successful, they could make Nebraska a roadblock to KXL even if President Obama gives the project his blessing.

Bruce Boettcher’s pastures are dotted with sandpit ponds fed by aquifer springs, and he considers himself lucky to have a free-flowing well where his cattle drink in the scorching summer heat, even in times of drought. “Water is what drives this agricultural economy, and we all know it,” Boettcher told me over a dinner of stewed beef and carrots, served on a table made from a lacquered tree trunk. He and his wife, RoxAnn, recently moved into her grandfather’s home, a few miles down a dirt road from where they raised their three daughters. RoxAnn’s grandfather, Buck Robinson, used to charge townspeople a \$1 “trespassing fine” to fish in the sandpit lake beside the house, which, Bruce assured me, is still loaded with bass and pike. When I visited, they were in the midst of renovating the old ranch house. The floors were bare plywood and the kitchen faucet had a vise grip for a hot-water handle. A stately longhorn head was mounted above the door to the garage. “He became a bit of a nuisance, so we made hamburger out of him,” Boettcher joked.

Every week, Boettcher Organics supplies twenty to forty head of cattle to an organic-meat distributor, who parcels out the cuts to chefs and Whole Foods stores throughout the Rocky Mountains region. At an average of \$1,500 a head, that means weekly revenues of \$30,000–\$60,000. Prosperous Nebraskan landowners such as Boettcher are not in short supply—net income averages about \$92,000 on the state’s 46,800 registered farms and ranches. In 2009, cash receipts from agricultural commodities contributed a whopping \$21.8 billion to Nebraska’s economy. Nebraska alone produces about 6 percent of American agricultural revenues. All of that, Boettcher insisted, would be impossible without the Ogallala Aquifer. “If it wasn’t for the irrigation, a lot of people would have a hell of a struggle making it.”

In flatter parts of the state with clay soils, the aquifer’s importance to the agricultural economy can be seen in the thousands of center-pivot irrigation systems glistening in the fields along Interstate 80. The invention of center-pivot irrigation in 1948 triggered a boom in agricultural productivity in places such as Nebraska, where annual rainfall totals less than twenty-five inches, qualifying much of that state as semi-arid. During the summer heat, each center pivot can draw as much as a million gallons of water per day to cover a single 160-acre quarter section. An average holding of about a thousand acres might have five or more center pivots running simultaneously. Multiplied by tens of thousands of Nebraskan farmers, that means tens of billions of gallons per day.

Jim Tarnick, who raises cattle and grows corn on 1,540 acres near Fullerton, is one of those farmers whose operation would be inconceivable without reliable irrigation. Tarnick, who stands well over six feet tall and looks like he might have played linebacker for the Huskers, is the descendant of ancestors who came to Nance County from Poland in the 1880s, around the same time Boettcher’s forebears arrived in Holt County. One of his uncles still farms the original homestead, about ten miles east of the farm Tarnick’s parents bought in the 1960s. Thirty-eight years old and unmarried, Tarnick now runs his family’s entire operation by himself. His mother lives with him in the farmhouse, but his father died eighteen years ago, and his five siblings chose non-farming lives in Omaha, Lincoln, Wisconsin, and Texas.



Jim Tarnick feeds his cattle corn silage and distiller's grain on his farm in Fullerton, Nebraska.

Tarnick returned to Fullerton as soon as he graduated from the University of Nebraska, where he majored in Diversified Agriculture and minored in Business and Agronomy. In the years since, he's managed to weather droughts and volatile agricultural markets, though he admits his finances are tight. "Another drought's not gonna end my operation, but it's another dent again," he told me one day, after he finished mixing and dumping loads of corn silage and distillers' grain into troughs for his cattle. "There's no cutting the workforce. I'm the workforce here." His outbuildings could use a fresh coat of paint, and he gets by with a pair of antique John Deere tractors. "You've got to love it. Otherwise there's no way you'd ever endure the ups and downs."

TransCanada plans to build the pipeline across 320 acres of Tarnick's land, including a pasture where the water table is so high that broad pools of standing water sit on the surface for much of the year. Tarnick told me he has nightmares about the worst-case scenario—that an oil leak into his groundwater would force him to shut down his irrigation systems, which draw from a cone of depression up to five miles in diameter. "Our dryland is average at best. Some years we've gotten enough rain, but that's rare. Our irrigated ground is what makes us our money. You take that away from us, and we can't get water for our cattle, you'll shut down all these operations. You lose this water, you lose everything."

On the drizzly April evening before a State Department hearing on the Draft Supplemental Environmental Impact Statement (DSEIS)—a detailed analysis of environmental and economic issues related to KXL, and the most important document the Obama administration will consider in deciding the fate of the project—Tarnick hosted a barbecue for Nebraska's motley alliance of pipeline opponents. There were the usual faces from BOLD Nebraska, a Lincoln-based progressive organization, to which Tarnick belongs, that has taken a leading role in the pipeline fight. BOLD's stylish executive director, Jane Kleeb, an erstwhile MTV reporter and former beltway insider, was there, along with the organization's young energy director, Ben Gotschall, who raises organic cattle, makes artisanal cheese, and teaches poetry. Representatives of several tribal organizations were there, wrapped in blankets against the cold, chatting with members of the newly formed Cowboy-Indian Alliance, including Bruce Boettcher. There was a college student from Denver who skipped school to attend the hearing. An aging hippie from Brooklyn sang a song to the accompaniment of a zither. A smattering of activists from the Sierra Club and the Audubon Society rounded out the gathering, looking a little out of place around so many pairs of overalls and mukluks.

Boettcher manned the grill, flipping burgers made from his organic beef, looking unfazed by the chill in a denim jacket and black ball cap. He gave the impression that he was the kind of man you wouldn't want to cross. "We have generations of people that have lived on this land and they've created more jobs and economic growth than this pipeline ever will," he said. "And then you come to the safety part of it. What more can we talk about, other than Arkansas and the Kalamazoo?"



BOLD Nebraska's executive director Jane Kleeb testifies at the York County hearing in July.

In 2010, a tar-sands pipeline operated by Canada's Enbridge Energy leaked more than a million gallons of crude oil into Talmadge Creek, a tributary of Michigan's Kalamazoo River. The spill resulted in the closure of thirty-five miles of the Kalamazoo and an ongoing cleanup effort that now approaches \$1 billion in costs.

Most of the affected sections of the river were reopened for public use in 2012, but in March 2013, the Environmental Protection Agency (EPA) ordered Enbridge to dredge portions of the river where concentrations of diluted bitumen, or dilbit, a mixture of tar-sands crude and the chemical diluents that help it flow through pipelines, still remain stuck to the river

bottom. The same month, a second dilbit disaster struck: An ExxonMobil pipeline carrying dilbit ruptured near Mayflower, Arkansas, spilling some 200,000 to 300,000 gallons into a suburban neighborhood, where it quickly made its way via storm drains into Lake Conway. Several Mayflower residents made the 700-mile drive to Tarnick's barbecue to show solidarity with the Nebraskans and to testify at the State Department hearing the following day. They arrived with stories about how they'd been evacuated from their homes because of the noxious fumes, and about how Exxon hired off-duty sheriff's deputies to keep people from photographing the damage.

Dilbit spills are vexing for cleanup crews because of the unique physical properties of the mixture. Unlike conventional varieties of crude oil, which are pumped from wells in a liquid state, and float on water, bituminous sands—commonly known as tar sands because of their odor and color—are nearly solid at room temperature, and tend to sink. Historically, open-pit mining has been the chief method of tar-sands extraction. Now producers are also using a process called steam-assisted gravity drainage (SAGD) to melt tar sands underground, so that they can be pumped out in liquid form. Even with SAGD extraction, producers must add a cocktail of chemical diluents to the high-viscosity tar-sands crude in order to make it flow. The exact diluent recipe is a carefully guarded secret of tar-sands producers, but studies at spill sites in Michigan and Arkansas revealed significant quantities of the toxic chemicals benzene and toluene. As the Michigan and Arkansas spills have shown, the lighter diluent chemicals separate from the bitumen once they escape a pipeline and disperse into the air and water. Undiluted, the heavy bitumen sinks to the bottom of whatever water-way it finds its way into, making it extremely difficult to recover.

John Stansbury, a civil and environmental engineering professor at the University of Nebraska in Omaha, said fears of widespread contamination of the Ogallala Aquifer are misplaced, and he attributes that to common misunderstandings about how groundwater moves. "In third grade, they told us that groundwater is a big underground lake," he said, "and that's really not the way it is. The better way to think of an aquifer, or groundwater in general, is to think of a sandbox." In the example, if you fill a sandbox half-full of water, the saturated part beneath the surface resembles an aquifer. "It's dirt, sand, gravels, whatever the earth down there is made of, and it happens that all the pore spaces down there are filled with water." Water moves through those porous spaces at a rate of an inch a day or less, Stansbury explained, so it is highly unlikely that a plume of leaked dilbit could spread over a few thousand feet of the aquifer before being forced to the surface and detected, let alone over hundreds of miles.

The “much scarier” scenario, Stansbury said, is a spill into one of the numerous waterways along the pipeline route. “Getting into the ground will ruin somebody’s groundwater, and it will ruin it forever,” he said, “but it’s not going to be a very big area, so there will be alternatives to water sources. If it goes into major river systems, that could affect hundreds of miles. Some of the constituents in the dilbit will sink, will be virtually impossible to clean up without literally destroying the ecology of the river.”

TransCanada has tried to placate Nebraskans by guaranteeing that they will apply the highest engineering standards and the most sophisticated leak-detection technology to mitigate the risks posed by KXL. They have highlighted the age of the ruptured Enbridge and ExxonMobil pipelines—both between sixty and seventy years old—as evidence of the need for new, safer pipeline infrastructure. They’ve also relied heavily on the argument that Canada’s tar-sands reserves will be developed with or without KXL. Pipelines, they say, are a safer and greener alternative to the railcars and trucks currently used to transport surplus tar sands. That argument got a tragic boost when a runaway oil train derailed in the Quebec town of Lac-Mégantic on July 6, 2013. The explosion and resulting fire killed forty-seven people and destroyed much of the town. Cleanup costs are currently estimated in excess of \$200 million.

According to Stansbury, every engineer knows that even the most sophisticated technology fails, especially after decades of wear and tear. In the case of KXL, Stansbury said the extraordinary pressure inside the pipeline and the subsequently increased temperatures could accelerate the rate of corrosion and degradation of the steel. TransCanada will put anode-cathodic protective coatings on the exterior of the pipe to minimize corrosion, but “those will certainly work better when it’s a new pipeline than they will twenty years down the road,” Stansbury said. TransCanada’s own calculations predict eleven major spills through the lifetime of the pipeline; Stansbury’s calculations predict ninety-one major spills of fifty barrels or more. “There’s no question that even if they do a great job welding the pipe and a great job monitoring the pipe, there’s gonna be leaks. This idea that it’s not gonna leak is just not true—it’ll leak somewhere sometime.”

TransCanada and its proponents in oil-and-gas lobbying organizations have tended to promote the project’s alleged economic benefits rather than discuss the pipeline’s safety issues. The company claims construction of the northern section of the pipeline will create 9,000 jobs for skilled union laborers. The pro-pipeline Canadian Energy Research Institute goes even further, predicting tar-sands oil development spurred by KXL and other pipeline projects could indirectly create upward of 500,000 American jobs and add \$172 billion to the American GDP by 2035. Pipeline proponents also play on popular anxiety about US dependence on oil imports from the Middle East and Venezuela. As Alex Pourbaix, TransCanada’s president of energy and oil pipelines, puts it: “Does the US want its oil from a friendly neighbor in Canada . . . or does it want to continue to import higher-priced foreign oil from nations that do not support US values—it is that simple.”

Among the mounting opposition to KXL in Nebraska, perhaps the most prominent conservative voice is Randy Thompson, a lifelong Republican cattle buyer from Martell, who filed suit against Governor Dave Heineman in May 2012. A posterized version of the sixty-five-year-old’s likeness—clad in a black Stetson and a blue bandanna—adorns anti-KXL posters, T-shirts, and buttons all over the state, paired with the phrase “Stand With Randy.” Thompson is the face of the “All Risk, No Reward” Coalition and appears regularly on television advertisements and radio programs throughout the state. He has traveled to Washington multiple times with fellow Nebraskans, including Bruce Boettcher, to meet with members of the State Department and Congress, and he’s been a constant presence at KXL-related hearings within the state. Over coffee one morning at his home on the outskirts of Lincoln, Thompson talked with me about the transformation from the quiet life of a semi-retired cattle buyer to activist celebrity, fighting what he calls a “total invasion by a foreign company.”

Thompson's first contact with TransCanada was a phone call from a land agent in the autumn of 2007. "They said, 'We'd like to visit with you guys about a project that might affect some of your land,'" Thompson recalled. "Hell, I had no idea there was any kind of a pipeline being proposed at all." It took three or four calls before Thompson agreed to meet the agent on the family land in Merrick County, along with his brother and sister. "He asked if they could come and survey our property, and so we said, 'Yeah if you want to, but you're gonna waste your time because we don't want the damn pipeline.'" Thompson recalled the initial exchange as amiable enough. TransCanada completed the survey, and Thompson and his siblings more or less forgot about it. Then, in July 2010, Thompson received a disturbing letter at his home in Martell:

Dear Owner,

You by now are aware that TransCanada Keystone Pipeline L.P. ("Keystone") is constructing and will operate a 1,833 mile crude oil pipeline, which will begin in Canada and cross through 1,073 miles of property in the United States, including Nebraska. As you know, the path of the pipeline will cross a portion of your property. In order to construct the pipeline, Keystone must acquire a permanent and temporary easement over your property. It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain to acquire the easement.

The letter offered a one-time fee of \$17,860 for perpetual rights to the property.

At the time, Thompson was acting as power of attorney for his ninety-four-year-old mother, Frances.

TransCanada's offer struck him as a thinly veiled threat. "The land was actually my mom and dad's place, and I guess that's one reason I fought so hard," Thompson told me. "They went through the drought, the Depression, the whole damn thing. When I was a kid, we didn't have nothing. We didn't have electricity, we didn't have a bathroom, and I watched them work their asses off their entire lives." He spoke calmly—this was a story he'd told many times—but there were traces of anger amid the nostalgia. "They finally got some ground bought, and they were so proud of that land. And now these arrogant bastards come out there like they're entitled to that land, they got their \$4,000 suits on, saying, 'We're gonna take this whether you want us to or not.'" He spit into an empty soda can and shook his head in disbelief. "That just frightened my soul."



Randy Thompson at the State Department hearing on the Keystone XL Pipeline Project in Grand Island.

Most troubling of all was the discovery that a 1963 state law gave oil-pipeline companies the right of eminent domain to obtain easements from stubborn landowners. Thompson suddenly realized he had virtually no protections under existing Nebraska law. He remembered thinking, "How can a foreign company take land away from us if we don't want them to? We're American citizens for Chrissakes!"

At that time, the proposed KXL route crossed over a sizable chunk of the eastern Sandhills, passing just a few miles from Bruce Boettcher's property. The Sandhills are sacred ground in Nebraska, beloved as much for their unadorned beauty as

for their plentiful wildlife, especially the majestic Sandhill cranes, which, with their nearly seven-foot wingspans, can be seen in flocks of thousands in late spring. Sandhills ranchers know that even small disturbances in the fragile soil, like cattle wearing a path across a hillside, can trigger major erosion that takes years to rehabilitate. So when TransCanada proposed digging a six-foot-deep trench across the Sandhills, even residents of Omaha and Lincoln reacted viscerally.

In August 2011, public outcry over the threat to the Sandhills and high-water-table areas of the Ogallala Aquifer compelled Governor Dave Heineman to write a letter to President Obama and then Secretary of State Hillary Clinton urging them to deny the KXL permit. “Maintaining and protecting Nebraska’s water supply is very important to me and the residents of Nebraska,” Heineman wrote. “This resource is the lifeblood of Nebraska’s agricultural industry. . . . Do not allow TransCanada to build a pipeline over the Ogallala Aquifer and risk the potential damage to Nebraska’s water.” In November, Governor Heineman called a special session of the Nebraska legislature to pass L.B. 1, also known as the Major Oil Pipeline Siting Act, which laid out a standard process for pipeline siting within the state and gave authority over route approval to the Public Service Commission (PSC), a regulatory body consisting of five elected officials. Under L.B. 1, the PSC would solicit input from state agencies, hold public hearings in the counties along the route, and include county governments in the evaluation process.

The passage of L.B. 1 seemed like a positive step toward responsible regulation, so Thompson was crestfallen when he learned that KXL would not be bound by the new law, which would only apply to pipelines proposed after the date the legislation passed. The legislature passed a second bill, L.B. 4, which created an entirely different siting process for pipelines proposed before November 2011. L.B. 4 took the PSC out of the process, subjected pipeline proposals to a toothless review by the Department of Environmental Quality, and gave sole authority over pipeline-route approval—and, consequently, sole authority to grant eminent domain—to the governor. “Special legislation” that serves the specific interest of any individual or company is unconstitutional in Nebraska, but from where Thompson stood, the legislative judo in Lincoln looked to benefit only one interest group: TransCanada.

Congressional Republicans complicated things in December 2011 by passing a bill requiring President Obama to decide on the KXL permit application within sixty days. In response, the president denied the permit in January 2012. In his official statement, the president said the decision was “not a judgment on the merits of the pipeline, but the arbitrary nature of a deadline that prevented the State Department from gathering the information necessary to approve the project and protect the American people.” Despite the president’s weak language, pipeline opponents were quick to claim a victory. BOLD Nebraska’s Jane Kleeb had strong words for Big Oil: “The next time an oil company thinks they can bully their way through towns threatening landowners I am quite certain they will remember one word, Nebraska.”

The celebrations were premature. Rather than reapply immediately and fall under the more restrictive L.B. 1, which requires pipeline companies to demonstrate a project’s public benefit before they can secure eminent domain, TransCanada lobbied the Nebraska legislature to draft yet another law, L.B. 1161, which passed in April 2012 and duplicated L.B. 4’s granting of siting authority to the governor. As Julie Myers wrote in the Lincoln-based progressive magazine *Prairie Fire*, “The only time the PSC might be used is if the governor denies a route and the oil pipeline company wants another bite at the apple. This makes the likelihood future pipelines will have to prove [that] they’re in the public interest pretty much zero.”

To Thompson, the passage of L.B. 1161 on April 17, 2012, looked like a signal to TransCanada that the Nebraska legislature and governor would support a new KXL proposal. Two days after the bill passed,

TransCanada submitted that proposal to the Nebraska Department of Environmental Quality (DEQ). It appeared to address concerns about the Sandhills and the Ogallala Aquifer by re-routing the pipeline about fifteen miles east of the original route in areas of concern, such as Holt County. But the extent to which the re-route actually avoids sensitive areas of the Sandhills and the Ogallala Aquifer remains highly contested. In 2011, after the passage of L.B. 4, which came with Governor Heineman's implicit promise that he would approve a re-route that avoided the Sandhills, the DEQ set to work creating a map of Nebraska for TransCanada to use as a reference. According to spokesman Brian McManus, the DEQ based the resulting map almost entirely on the EPA's "Ecoregions of Nebraska and Kansas" map, produced in 2001. As the EPA explains, "Ecoregions denote areas of general similarity in ecosystems and in the type, quality, and quantity of environmental resources; they are designed to serve as a spatial framework for the research, assessment, management, and monitoring of ecosystems and ecosystem components." However, objections to the pipeline by ranchers in Holt and Antelope counties have less to do with threats to the surface ecosystem, and more to do with subsurface geology, soil erosion vulnerability, the permeability of soils, and depth to water. (These issues were also at the core of Governor Heineman's objection to the original route.)

On the EPA ecoregions map and the map that the DEQ supplied to TransCanada, the Sandhills are absent from the ninety-odd miles of Holt and Antelope counties where the re-route will cross (even though the EPA's website explains that those areas have soils that are almost identical to the Sandhills). But on other maps included in the State Department's environmental impact statement, the Sandhills extend over the entirety of Holt County and most of Antelope County, continuing east into Knox, Madison, and Pierce Counties.

One such map, showing depth to groundwater, was produced in 2012 by Nebraska's own Department of Natural Resources (DNR) and shows that virtually all of the re-route through Holt County crosses areas where the water table sits anywhere from ten to fifty feet beneath the surface. Another map, produced by the USDA in 2007, shows shaded areas indicating "highly erodible" soils that align precisely with the DNR's own delineation of the Sandhills. A third map, also produced by the USDA, and detailing subsurface geology, shows that the entire re-route still sits atop the Ogallala formation.

When asked why the DEQ chose to delineate the Sandhills according to an EPA map that deals primarily with surface vegetation and ecosystems, rather than maps that focus on depth-to-groundwater figures and soil vulnerability, McManus responded, "The [DNR] map you refer to was not submitted to or reviewed by the Nebraska Department of Environmental Quality during our evaluation process. Therefore, we can't provide any analysis of the map, because it wasn't a part of our review process."

In January 2013, the DEQ submitted a report to Governor Heineman that expressed the agency's satisfaction that the KXL re-route "avoids the Sand Hills" and "avoids many areas of fragile soils in Northern Nebraska." Although the report does acknowledge that the re-route still crosses the Ogallala Aquifer, Governor Heineman seemed satisfied. On January 22, 2013, he wrote to President Obama to announce his approval.

Randy Thompson's land was not on the new route, but by that point he'd become so disillusioned by the willingness of state politicians—especially Governor Heineman—to disregard the rights and interests of citizens that he decided to continue fighting anyway. "This is eminent domain running amok," he told me. State Republicans "talk the talk, but when it's time to help the big oil companies they could give a damn about our property rights. They throw us under the bus."

In May 2012, Thompson and two co-plaintiffs filed suit against Governor Heineman, seeking to have L.B. 1161 struck down on grounds that it is a piece of special legislation for the benefit of TransCanada, that it gives the governor unconstitutional powers over "common carriers," and that it unlawfully deprives the legislature of the authority to decide when to exercise the power of eminent domain. TransCanada filed two motions to

have the suit dismissed, but presiding Judge Stephanie Stacy denied both. Brian Jorde, of the Omaha-based Domina Law Group, which is representing the plaintiffs, told me that if the suit successfully voids L.B. 1161, TransCanada will have to resubmit their route proposal to the PSC according to the protocols of L.B. 1.

The one-day trial, known as a “constitutional challenge,” took place on September 27. A decision could take six months or more, and Jorde expects the appeals process to add at least another eighteen months to the outcome. Should President Obama approve the permit while the case is still pending, TransCanada would have to weigh the risk of building on ground obtained with dubious rights to eminent domain. “They can start building something, just like I could buy a lot and build a skyscraper not knowing what the zoning laws are,” Jorde said. “And then I get a phone call: ‘Hey, you can only build two stories, take the whole building down.’ Do they want to take that risk?”

In the meantime, Domina Law Group has partnered with the Nebraska Easement Action Team (NEAT) to prevent landowners from signing exploitative contracts with TransCanada. The easement offers TransCanada has pushed on Nebraskans so far are all perpetual easements, meaning they grant rights to the property for all eternity—even after the sale to subsequent owners. Many landowners worry about how the perpetual nature of the easements might depress property values and affect their ability to borrow from banks in order to cover the costs of things like seed, animal feed, and new machinery. Moreover, TransCanada requires landowners to accept a one-time payment for the right-of-way, rather than an annual lease or profit-sharing agreement.

Ken and Karen Prosocki, both around sixty, run a cattle and corn operation adjacent to Jim Tarnick’s land in Fullerton with two of their grown children, Andy and Cheri, and their high-school-aged grandsons, Cole and Tyler. The family only learned about the re-route when Karen saw a map of it in the newspaper a year ago. “I told Ken, I said, ‘Jeez that looks like it’s going right through our property!’ And he says, ‘No it couldn’t be, they’d have let us know about it.’ Well, come to find out, it was a couple days later that Myron Stafford met Ken on the road,” Karen said.

“That preacher from Polk County,” Ken said, laughing. “You heard about him?”

Stafford, a TransCanada land agent, has been the subject of recent controversy because of his attempts to appeal to landowners’ religious sensibilities as a means of getting them to sign easements. Earlier this year, a feedlot operator named Terry Van Housen surreptitiously recorded a conversation at his home in which Stafford bragged about his credentials at a local Baptist church and claimed to have officiated at funerals of Van Housen’s friends, all before making the easement pitch. The affair was the subject of a story for *OnEarth*, the magazine of the Natural Resources Defense Council, and it spread quickly along the route. Stafford has since been relocated to another part of the state.

Prosocki was skeptical of Stafford’s pitch, enough so that he only agreed to meet him on the road that runs through his property. According to Prosocki, Stafford told him, “It’s gonna happen, and if you don’t let us on your property now to do the survey, we’ll use eminent domain. It’s a done deal.” Prosocki was offended by what he perceived as Stafford’s condescension, so he told Stafford they had nothing more to talk about and turned to leave. Stafford tried to hand Prosocki a paper detailing the fees TransCanada would pay for temporary rights to survey his land. “I said, ‘You can take that paper and wipe your ass with it because I got work to do.’ And I just got on my tractor and went back to chopping stalks,” Prosocki told me.

Eventually, TransCanada sent the Prosockis a letter offering about \$137,000 for rights to a mile-long tract of their pastureland along the Loup River. “If you got paid every year by two cents a barrel or five cents a barrel, it wouldn’t be so damn bad,” Ken Prosocki said. “It’s a lot of money, but it’s not worth the risk. You get a leak on your land, you’re gonna lose a lot more than that.”

The fight against TransCanada has been transformative for virtually all of the landowners involved. “It’s made me question a lot of things I believed in for a long time,” says Randy Thompson. “Hell, I never attended a hearing in my life till five years ago, never even been up to the state capitol building. And the first time I went up there to testify I was shaking in my boots.” In February 2013, Thompson zip-tied himself to the White House fence on Pennsylvania Avenue and was arrested along with forty-seven other protestors, including 350.org founder Bill McKibben, Sierra Club president Allison Chin, civil-rights leader Julian Bond, and Robert Kennedy Jr. “I wanted people to realize there’s more people that are involved in this than just environmentalists,” he said. “[TransCanada spokesman] Shawn Howard made the comment, ‘These farmers and ranchers have just been misled by the environmentalists and radicals’ . . . He doesn’t think we’re smart enough to realize when we’re getting screwed, but I’ve got news for him: We’re a hell of a lot smarter than he thinks.”



Ken and Karen Prosocki on the site where KXL will cross their Loup River pastureland if President Obama approves the permit.

In 2010, Boettcher helped organize a group of Holt County pipeline opponents who came to call themselves the “Posse,” harkening back to the vigilante groups their ancestors formed to bring horse thieves and cattle rustlers to justice when the local lawman wasn’t up to the task. Posse members showed their political ingenuity early on by crowd-funding a slate of radio ads about protecting the purity of the Ogallala Aquifer. Boettcher was swathing hay on a scorching summer day, feeling bombarded by TransCanada ads on the radio, when he and his sister Connie came up with the idea. “The very first ad we put on the radio, it was just like if you was drinking a glass of water, and I says, ‘Ah, what a cool glass of water out of the Ogallala Aquifer. It’s worth more than all the tar-sands oil in the world.’” The

Posse members helped get the ads distributed to five radio stations throughout the state, which agreed to solicit donations from listeners to keep the ads running. “People just started getting onboard like crazy,” Boettcher said. “It was costing ten bucks a spot, and you’d have quite a few people that’d pay a hundred bucks for a whole day’s spots.”

In 2013, the Posse urged the Holt County Board to pass a resolution opposing construction of any oil pipelines across county land, which they did on April 30. The county-level resolution carries no legal weight, since pipeline siting falls under state and federal jurisdiction, but Posse members and pipeline opponents throughout Nebraska considered the resolution an important civic victory—Holt County’s official opposition to KXL is now a matter of historical record. Other counties have tried and failed to follow suit, deflating broader hopes of creating a corridor of anti-KXL counties along the Nebraska route.

BOLD Nebraska is the most media savvy of the groups involved in the Nebraska pipeline opposition. The group has more than 11,000 followers on Facebook and maintains a website with regular blog posts by group members. Founder and Executive Director Jane Kleeb is a relentless presence in local and national media, and is the organization’s de facto Twitterer-in-Chief. Some pipeline opponents find Kleeb’s far-left politics grating, but they would be hard-pressed to deny BOLD Nebraska’s influence in the pipeline fight. According to Randy

Thompson, Kleeb—a Florida native—has done more to help Nebraska than anyone else in the state. “Without her organizational skills and her bull-doggedness, or whatever you want to call it, we wouldn’t be here. We would just be a bunch of mad farmers out here talking to ourselves,” he said. “She knows enough about politics and the media and how to access that kind of stuff. It’s given us tremendous opportunities that we would never have had without her.”

Nebraska was the only state to secure a public hearing on the latest Draft Supplemental Environmental Impact Statement, which took place on April 18. Snow was falling early that morning when scores of pipeline opponents lined up outside the Heartland Events Center in Grand Island, Nebraska, bundled in scarves and mittens, occasionally turning their faces to the brick wall to escape the biting wind. They were joined by union workers, who came to Nebraska on buses from St. Louis, Chicago, and Tulsa, among other cities. Both the pro-KXL laborers and anti-KXL farmers favored heavy beige Carhartt coats and insulated overalls. When the doors opened at eleven, all those warm layers came off, and the camps were easy to distinguish. The oil-industry lobby-ists wore suits. The union members wore T-shirts in lime green and safety orange. The farmers wore white baseball T-shirts with bright-red three-quarter sleeves supplied by BOLD Nebraska, bearing the words pipeline fighter #nokxl on the front. Judging by the distribution of T-shirt colors in the registration line—which wrapped all the way around the convention center’s entry hall, maybe a thousand people in all—the numbers in each camp looked about even.

At noon, when it came time to speak, senior administrators from Laborers International and the United Association—two major national unions that represent pipefitters, welders, and plumbers, among other trades—were among the first pipeline proponents to testify. They spoke of the need for jobs and new infrastructure, and they said that quality union labor would be the best guarantee against a pipeline leak. “UA workers are trained for this kind of work, and we are as committed to protecting the environment as many of you are here today,” said UA’s Tom Gross. “Our industry is hurt hardest when the economy takes a downturn,” he said. “We had unemployment rates up to 40 percent in [some] areas during the recent recession. That’s why this project is about more than jobs for us in the industry. It’s about American families and it’s about strengthening this country we all love.” TransCanada vice president Corey Goulet, who is in charge of the KXL project, spoke about the need for North American energy security and argued that “pipelines are the safest and most environmental [sic] sound mode transporting oil and gas.” He drew a murmur of boos from the audience when he said that the DSEIS “specifically found that the project would have no significant environmental impact.”

Lobbyists from oil-industry-funded groups like the American Petroleum Institute and the Consumer Energy Alliance echoed Goulet’s comments. The rank-and-file union members, who were the only pro-KXL contingent with any numbers, stayed away from the microphone. They sat quietly in the bleachers, cheering whenever a pro-KXL speaker wrapped up his or her comments. By the first scheduled break at 3:30 p.m., most of them had filed back onto their buses. The union chiefs were gone, too.

For the remainder of the afternoon and well into the evening, one anti-KXL speaker after another took the microphone. For the most part, the opposition testimonies were as scripted as the pro-pipeline testimonies, but they were significantly different in tone—they were shot through with emotion. Bruce Boettcher’s voice was shaking when he shouted, “Do we live in a democracy?” Jim Tarnick, normally shy and reserved, struck a note of defiance: “I find it hypocritical of this government agency, the Department of State of the United States, to comment on the human rights of other nations while you support and let a foreign country trample my own human rights and the rights of my neighbors for their own economic gain.” The last comments did not conclude until after 11 p.m. At final tally, fewer than thirty people had spoken in support of the pipeline, and most of them were affiliated with the oil-and-gas industry. More than two hundred had spoken in opposition.

Randy Thompson—the second speaker of the day—cut an impressive figure when he strode to the microphone in a black turtleneck and white Stetson. He spoke calmly with practiced pauses. He did not refer to a printout or notecards. “This has basically turned into a heavyweight bout between the ordinary citizens of this country and a foreign corporation, and in some cases our own political figures,” he said. “We’re about to the final bell of this bout. President Obama has to make a decision. He’s going to have to declare a victor. The question is: Is he going to raise the heavy hand of Big Oil, or is he going to raise the hand and the spirits of the American people?”



Sunrise, the Sandhills, 2013.

By noon on that July day at Bruce Boettcher’s ranch, the sun was hot enough to burn a hole in your shirt and the wind had picked up to thirty miles per hour. After Boettcher finished helping RoxAnn and her brother Roger rake and bale a field of hay, we pulled his truck under a stand of cottonwood trees and dug into a couple of homemade beef salami sandwiches.

I remembered how Boettcher once told me that he felt like he was staring “down the barrel of the biggest assault rifle in the world,” by which he meant KXL. That same feeling had brought hundreds of people from several states and political faiths to a rallying point here in Nebraska,

where they were making their voices heard at local and national hearings, in truck stops and hardware stores, and on the posters they nailed to their fences. Those voices are not always the most eloquent or sophisticated. Boettcher, being one of them, has often found himself tongue-tied as he’s tried to explain the fragile ecology of the Sandhills or the machinations of Nebraska politicians. And yet, like many of Nebraska’s rural pipeline fighters, he often strikes notes of earnestness that are as unexpected as his new allegiances, like when I asked him about how his fellow Republicans dismiss Nebraska’s environmental concerns when it comes to KXL.

“Well,” he said with a shrug, “they can call me an environmentalist, because I guess that’s what the hell I am.”

About The Writer: [Elliott D. Woods](#)

Elliott D. Woods is a contributing editor to VQR. His VQR-sponsored website *Assignment Afghanistan* received the 2011 Digital National Magazine Award for Multimedia Package. His essay, “Digging Out,” from the Fall 2010 issue, was nominated for a 2011 National Magazine Award in Reporting and received the Staige D. Blackford Prize for Nonfiction. His essay, “Hope’s Coffin,” from the Summer 2009 issue, received a citation for the Madeline Dane Ross Award from the Overseas Press Club. His other essays and photographs have appeared in or are forthcoming in *GQ*, *Granta*, *Mother Jones*, and *Time*.

