

Pressure builds in Nebraska over TransCanada pipeline

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In this Feb. 28, 2008 file photo, rail cars arrive in Milton, N.D., loaded with pipe for TransCanada's Keystone Pipeline project, which carries crude oil across Saskatchewan and Manitoba, and through North Dakota, South Dakota, Nebraska, Kansas, Missouri and Illinois. (Grand Forks Herald, Eric Hylden THE CANADIAN PRESS / AP)



This map shows the proposed Keystone XL pipeline route, which originates in Hardisty, Alta., then cuts diagonally across the southwest corner of Saskatchewan before entering the U.S. (TransCanada)

Dozens of landowners in rural Nebraska have sought legal protection after they claim they were subjected to bullying and threats of legal action from a Canadian pipeline company that wants to cut across their land.

TransCanada PipeLine Ltd. is planning to push a massive pipeline through the state, and five others, to carry crude from Alberta's oilsands all the way to Texas.

The problem, according to their lawyer [David Domina](#), is that the US\$7 billion, 2,700-kilometre project has yet to receive presidential approval. Therefore, said [Domina](#), the Calgary-based oil giant has no legal grounds to threaten court action against his clients.

"TransCanada has had land agents out talking to these people and telling them they have to make a deal with TransCanada now or they'll be taken to court," [Domina](#) told CTVNews.ca from his Omaha office.

"Lots of people have had somebody wander onto their place and tell them 'Look, give me what I want or you'll be taken to court.' They need a lawyer."

Eminent domain laws in the U.S. require landowners to grant easements across their land, for fair market value, to projects such as railways and pipelines that are considered to benefit the public good.

But unlike some states along the pipeline's route, Nebraska law bans corporations from using eminent domain to secure private land until a project has received official approval. That hasn't happened yet, with the U.S. State Department expected to make a decision by the end of the year.

[Domina](#), whose firm is representing 45 landowners whose farmland is in the path of the pipeline, said TransCanada simply isn't willing to wait until their project is approved.

The proposed pipeline, which is a project of TransCanada's Omaha-based subsidiary Keystone XL, originates in Hardisty, Alta., then cuts diagonally across the southwest corner of Saskatchewan before entering the U.S.

Once across the border the proposed route cuts a diagonal line across Montana, then South Dakota and Nebraska. At the Kansas border the route turns directly south for the final leg across Kansas, Oklahoma and Texas where it will end in Houston.

TransCanada has been arranging leasing agreements with landowners all along the route, in some cases invoking eminent domain laws to do so.

Some landowners vow to fight

Some landowners, like Randy Thompson, a cattle buyer who was bequeathed 400 acres of farmland in Martell, Neb. when his mother passed away, aren't willing to sell at any cost, however.

He told the New York Times the pipeline is seeking 80 acres of his land, but he's not interested regardless of how much money they put on the table.

"I told them, do what you have to do, but go to hell," he told the paper, vowing to fight the company in court.

Thompson is incensed by the notion that a foreign-owned company is pressuring Americans to sell their land, and he disagrees with the chosen route, claiming it will endanger vital freshwater reserves in the Ogallala Aquifer.

His plain-spoken opposition has sparked a movement for which he has literally become the face, with \$25 "I Stand With Randy" T-shirts being sold to finance the cause.

Surprisingly, [Domina](#) said his clients don't actually have a problem with the fact the company is Canadian-owned, or that TransCanada is using eminent domain in states that permit it to do so before a project is approved, such as Texas.

And all of his clients, he said, acknowledge the importance of the pipeline project and the country's need to establish a secure supply of oil from a friendly trading partner. They don't even mind the fact the project is cutting across their land.

But they do have deep concerns about the chosen route and the way TransCanada is going about securing it, he said.

Tactics are 'wrong'

First and foremost, [Domina](#) said, his clients are upset about TransCanada's tactics. Threatening legal action against landowners in a state that protects them until a project has a presidential stamp of approval, is simply wrong, he said.

"The company has told Nebraska property owners and written them letters telling them if you don't give us our easement we'll take you to court within 30 days, when they didn't have and don't have any right to go to court over anything and they don't have the right to build a pipeline," [Domina](#) said.

"They're overstating their case and that has damaged their credibility pretty substantially."

[Domina](#) said he and his clients are also mystified at the route the company has chosen.

TransCanada, which already has an existing pipeline that bisects Nebraska from north to south, should have laid the new line alongside that existing pipeline, rather than cut the new diagonal line which will further fracture the state and divide up parcels of private property, [Domina](#) said.

Fragile ecosystem

That new route also cuts directly across the sensitive Nebraska Sand Hills and Ogallala Aquifer - a unique ecosystem and watershed that supports highly fragile grasses and other plant life that doesn't exist anywhere else on the continent.

A single set of tire tracks across the area, he said, can trigger erosion that can lead to a "blowout" which can wipe out plant life across 50 hectares within a couple of years, if steps aren't taken to stop the process.

As a result of that fragility, [Domina](#) said, local ranchers will drive miles out of their way to avoid cutting across a pasture or field with their pickup truck.

Pushing a pipeline through that region, he said, could be devastating.

"There are special concerns associated with a pipeline company. There is a fear that to service it, to check on it, people who are not local and who don't understand the fragility of the area are likely to be out there following up and doing work."

TransCanada declined to participate in an interview with CTVNews.ca, but media relations officer Terry Cunha did provide a statement on the Nebraska situation and answered some questions via email.

He acknowledged that TransCanada sent letters to landowners and has held meetings to discuss the process that is followed when the pipeline comes through. It was explained to owners, he said, that under that process the landowner would be required to go to court if an agreement couldn't be reached privately.

"This is not a threat to take them through this process, but to let them know the process we have to follow and who they can contact with the appropriate authorities for more information," Cunha said in an email.

Deals reached with 90 per cent of landowners

Cunha also said there are currently no eminent domain proceedings underway in Nebraska.

"Letters were sent out on an earlier occasion but we voluntarily agreed to hold off initiating condemnation as the State Department process has continued," he wrote.

Cunha added that agreements have already been reached with 90 per cent of the landowners along the Keystone XL pipeline route in Nebraska, and throughout the other five states.

The only states where eminent domain hearings are underway, he said, are South Dakota and Texas.

In a separate email, Cunha addressed concerns related to the route of the pipeline and its passage through the Sand Hills and Ogallala Aquifer.

He said the company worked under the U.S. National Environmental Policy Act, the Endangered Species Act and the National Historic Preservation Act over the course of three years to map out the proposed route, and any changes at this point would reset the clock and seriously jeopardize the project.

"We worked in good faith with federal, state and local agencies to put forward a route that had the lowest environmental disturbance," he wrote.

"The preferred route does that. No route change in Nebraska avoids the Ogallala Aquifer. No route change in Nebraska has lower environmental impacts."

Nebraska Gov. Dave Heineman this week called a special legislative session, beginning next week, during which lawmakers will consider mounting a challenge to the planned pipeline route.

The federal State Department is expected to announce whether to approve the project by the end of the year.

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