

FREMONT TRIBUNE

Pipeline trial will revisit state's role in Keystone XL review

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Lawyers for the state of Nebraska and for opponents of the proposed Keystone XL pipeline will square off in Lancaster County District Court today on the constitutionality of a 2012 law that created the framework for state approval of the project.

District Judge Stephanie Stacy has rejected two attempts by the Nebraska Attorney General's Office to get the case dismissed before trial.

Today's hearing begins at 3:30 p.m. and will be broadcast on NET-2. That's Channel 17 for Time Warner customers in Southeast Nebraska, and online at netNebraska.org/news.

The leadership of Bold Nebraska, one of the leading organizational opponents of the project, is planning a rally on the courthouse steps at 2:30 p.m.

In a prepared statement released Thursday, landowner plaintiffs Randy Thompson of Martell, Susan Luebbe of Stuart and Susan Dunavan of McCool Junction expressed hope that the case will be decided in their favor.

A key part of the dispute involves the Legislature's decision to use LB1161 to allow the review process for the pipeline to be done by the Nebraska Department of Environmental Quality, part of the executive branch of state government. The Nebraska Constitution gives responsibility for regulating "common carriers" to the Nebraska Public Service Commission and its separately elected members.

"This lawsuit will ensure that our landowners' rights are upheld and our state constitution followed," Dunavan said.

Thompson said the siting process for the Nebraska portion of the pipeline will have to be done again if LB1161 fails to stand up to legal scrutiny.

Keystone XL, which would connect Canadian oil deposits to refineries along the U.S. Gulf Coast, remains under federal review with the U.S. State Department.

Trial briefs filed by Nebraska Attorney General Jon Bruning and Omaha attorney [David Domina](#) show a lot of room for disagreement in interpreting LB1161 and the court challenge.

"The Plaintiffs' argument that LB1161 unlawfully delegates authority to the governor over common carriers is unfounded," said the Bruning brief, "because the pipeline carriers subject to LB1161 are not 'common carriers' under Nebraska law."

The Bruning legal team pointed to a common carrier definition that involves "Nebraska intrastate commerce." The Keystone XL would cross state borders and serve interstate needs.

In their brief, Domina and associate said LB1161 is unacceptable special legislation and fatally flawed.

"By enacting LB1161, the Legislature divested the PSC from reviewing and authorizing any oil pipelines that the governor, by his or her whim, may approve." [Brian Jorde](#)