

Keystone XL pipeline dealt setback in Nebraska court

Nebraska Judge Stephanie F. Stacy strikes down a law that gave Gov. Dave Heineman authority to approve the pipeline's route.

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February 19, 2014, 10:05 p.m.

A Nebraska court ruling Wednesday left the long-troubled [Keystone XL](#) pipeline with no approved route through the state, dealing the project a legal setback that could delay it at least a year.

Lancaster County District Judge Stephanie F. Stacy struck down a 2012 law that gave Republican Gov. [Dave Heineman](#) authority to approve the pipeline's route, bypassing the state's Public Service Commission. Her decision came in a lawsuit filed by three property owners whose land was in the pipeline's path.

"They thought the governor would be a rubber stamp and he was," said Brian Jorde, the attorney who represented the landowners.

Stacy's ruling further complicates a pending decision by the [Obama](#) administration on whether to approve the project, which would transport oil from Alberta, Canada, to the Gulf Coast. A lengthy [State Department](#) review, required because the pipeline would cross an international border, found last month that the pipeline would not worsen global warming. President Obama has said that his prime concern is the pipeline's effect on climate change.

Without an approved route, however, it is unclear whether the State Department would sign off on the \$5.3-billion project. Neither Obama nor the department commented on Stacy's decision.

The administration is in no hurry to resolve the politically controversial issue, in part because many Obama supporters strongly oppose it. Extended litigation could provide an excuse to delay a decision on whether to grant the federal permit.

Environmentalists contend that blocking the pipeline would impede development of Canadian oil sands, which they consider significantly more damaging to the climate than conventional oil deposits. The pipeline would carry 830,000 barrels a day to Texas Gulf Coast refineries.

Alberta-based [TransCanada](#), which would build the pipeline, said it disagreed with Stacy's decision and was considering its next move. Since it is not a party to the lawsuit, the appeal and other related issues "are in the state's hands, not ours," TransCanada spokesman Shawn Howard said.

The Nebraska attorney general's office said it would appeal the ruling, starting a process that is likely to lead to the state Supreme Court and could take months to resolve, if not a year.

After delays and objections to the pipeline's original route, Nebraska's Legislature enacted a law in 2012 intended to expedite the routing and approval of major pipelines. The law allowed the governor to approve the projects rather than the Public Service Commission. Heineman approved a route in

January 2013 that would traverse 250 miles underground through the state, and forwarded that approval to the Obama administration.

Stacy ruled that the law violated Nebraska's Constitution, which gives authority to approve pipeline routes to the Public Service Commission. In addition, she objected to granting TransCanada authority to use eminent domain to take land for the pipeline, saying the commission should have decided whether to grant that power to TransCanada.

Heineman's actions in approving the Keystone route, she ruled, "were predicated on an unconstitutional statute." She declared his decision "null and void."

Jorde, the landowners' attorney, said the law bypassed the careful review the commission would have given, handing the decision to officials who had "no training, no standards and no background" in such matters.

He said the project could be delayed by a 12-month review by the state Supreme Court, which would uphold Stacy's decision, and then another seven months for a Public Service Commission review — a total of 19 months before TransCanada would even get a decision on the route.

TransCanada was forced to amend its route once before, after environmentalists raised objections to a pipeline beneath the state's sensitive Sandhills area and above the huge Ogallala aquifer. If the company must amend the route again, the project will have to begin an entirely new regulatory approval process.

"This Nebraska court decision adds a new, major hurdle into the Keystone XL pipeline review," said Daniel J. Weiss, director of climate strategy at the Center for American Progress. "President Obama and Secretary [of State [John F. Kerry](#) will probably wait until Nebraska has legally approved the pipeline route before they decide whether to approve its permit. This court decision provides more uncertainty for pipeline proponents, and more time to organize for pipeline opponents."

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