

## Landowners' Keystone XL Law Challenge Survives Neb. Attack

By Juan Carlos Rodriguez

Law360, New York (June 12, 2013, 7:06 PM ET) -- A Nebraska state judge on Tuesday rejected the state's second attempt to sink a suit challenging a law that gives the governor power to approve a new route for the Keystone XL pipeline, saying the case isn't moot just because a route has been planned.

A group of Nebraska landowners are the standard bearers in state court for opponents of the controversial pipeline that would bring Canadian to the Gulf Coast. In its motion to dismiss the second amended complaint, the state argued not only that the plaintiffs' claims are moot but that they failed to state claims that could lead to a grant of relief.

But Lancaster County District Judge Stephanie F. Stacy mostly disagreed, pointing out that in its [first motion to dismiss](#), the state had argued that Nebraska Gov. Dave Heineman had not yet approved a pipeline route. Using the power the law gave him, Heineman granted the power of eminent domain to [TransCanada Corp.](#) to implement the route.

"Now that the governor has approved the proposed pipeline, defendants argue plaintiffs' claims for declaratory and injunctive relief should be dismissed as 'moot' because there is no justiciable controversy left to be determined," Judge Stacy said in her order denying the state's motion to dismiss.

The judge said the state conceded that the plaintiffs have sought injunctive relief to stop implementation of the law, L.B. 1161, but because they failed to request a preliminary injunction before the governor approved the route, it's too late for any type of injunctive relief.

"The court finds this argument unpersuasive given the nature of the claims asserted and relief requested," she said. "Plaintiffs challenge the constitutionality of L.B. 1161 on its face, and as such their constitutional claims remain unaffected by the governor's ultimate approval, or disapproval, of any particular pipeline route."

Judge Stacy added that injunctive relief of some kind or another is still possible, although she said she couldn't say what that might be.

The plaintiffs have asserted that L.B. 1161 violates a provision in the Nebraska constitution that prohibits the state from giving or loaning credit to private parties, and the judge said there is a lot of evidence and argument about this question she hasn't heard yet and declined to dismiss the claim for that reason.

"The court concludes the second amended complaint alleges sufficient facts to state a plausible claim that L.B. 1161 represented an unconstitutional pledge of the state's credit to a private enterprise," Judge Stacy said.

One claim in the plaintiff's complaint was dismissed, however. The judge said the claim that the law violates the plaintiffs' equal protection rights under the state constitution must be tossed because the plaintiffs did not

adequately support it in their filings.

“Our clients, as well as hundreds of other Nebraska landowners, are excited the case will go to trial and look forward to a final decision in this matter. On two occasions the district court has told the attorney general’s office this case should move forward. We are ready for this to happen,” said plaintiffs’ attorney [Brian E. Jorde](#) of [Domina Law Group PC LLO](#).

A spokeswoman for Heineman’s office declined to comment Wednesday. A spokeswoman for the state attorney general’s office did not immediately respond to a request for comment.

The Keystone project is also facing a [challenge in federal court](#) from the [Sierra Club](#).

The landowners are represented by [David A. Domina](#), [Brian E. Jorde](#) and Brandon B. Hanson of [Domina Law Group PC LLO](#).

The case is Randy Thompson et al. v. Dave Heineman et al., case number CI12-2060, in the District Court of Lancaster County, Nebraska.

--Additional reporting by Sean McLernon. Editing by Rebecca Flanagan.