

Lawsuit could stop Keystone in its tracks | canada.com

Posted on 25 Jan 2013 by Editors



TransCanada Pipelines has spent almost \$1 million lobbying Nebraska lawmakers who have passed special laws giving the governor almost exclusive power to approve the company's Keystone XL pipeline route through the state, which he did this week.

The laws also give the governor power to expropriate land on behalf of TransCanada along the pipeline route.

But the Nebraska Supreme Court this year will hear a lawsuit that could overturn these laws and stop the \$5.3-billion project in its tracks.

The overturning of state law could have serious repercussions on the expansion of Alberta's oilsands production. This is what the increasingly environmental groups are gunning for because they view the oilsands expansion as a major contributor to climate change. The Keystone XL will bring oilsands from Alberta and conventional oil from the Bakken fields in Montana and North Dakota to Steel City, Nebraska. It will then link up with the \$2.3-billion Gulf pipeline to refineries in Houston and Port Arthur, Texas.

Environmental groups such as the Sierra Club and 350.org are promising civil disobedience to stop the pipeline which they say will serve as a catalyst to the expansion of the oilsands and the growth in its greenhouse gas emissions.

Widely cited here is a recent report by Calgary's Pembina Instituted that states, "if approved, Keystone XL alone would require oilsands production to increase by 36 per cent" creating an additional 22.4 million tonnes of greenhouse gases. This is equivalent to "6.3 new coal-fired power plants or putting 4.6 million cars on the road."

The lawsuit, filed in 2011 by citizens opposed to Keystone XL, claims that the new statutes unlawfully delegate to the governor powers over expropriation – called "eminent domain" in the U.S. – and over pipeline routes that Nebraska's constitution gives to other public bodies.

Lawyer for the citizen plaintiffs, Brian Jorde, said he believes the state supreme court will reach a decision this year. But if it is appealed, the case could take several more years before a final resolution.

Should the citizens win, TransCanada could have to go back to square one.

"If our suit is successful then the route over where they would be acquiring this land would be in question and could potentially end up not being the eventual route and all of that work could be for

naught,” Jorde said.

TransCanada spokesperson Shawn Howard said, “We don’t believe that it’s valid.”

Under U.S. law, a company has to show that its project is beneficial to Nebraska citizens to invoke “eminent domain.”

To this end, TransCanada has made extravagant claims about the economic benefits of the pipeline. Based on a report by the Texas financial analysis firm, The Perryman Group, TransCanada has claimed that Keystone will create 20,000 direct jobs. The Perryman report itself claims the pipeline would lead to 250,000 to 553,000 jobs in the United States and annual economic gains of about \$100 billion at current oil prices. The Perryman study states its estimates are based on information supplied by TransCanada.

The U.S. State Department disagrees. It says the project will create no more than 5,000 to 6,000 jobs, most of which will be “non-local and temporary” – mostly itinerant construction and pipe-laying jobs.

Jorde called the TransCanada job projections “bogus” and “embarrassing.” He said the existing Keystone 1 pipeline in eastern Nevada created very few permanent jobs.

“We’re not benefiting in any real tangible way,” he said. “We are just collateral damage because we are in between Canada and Houston. Yet they are giving a private, for-profit company based in Canada the right to take Nebraskans’ land and that just doesn’t sit very well and it doesn’t sit very well in terms of how easily it was done.”

A non-profit organization called Nebraskans for Jobs and Energy Independence has been promoting the Keystone XL project to the public as a job creator since April 2011. Its website cites some of the figures in the Perryman report as well as presenting lots of laudatory information about TransCanada and Keystone.

The advocacy group’s original treasurer and secretary, Joseph Kohout, is a partner with the lobbying firm of Kissel/E&S Associates, in Omaha, Nebraska. Kissel has been lobbying the Nebraska legislature on behalf of TransCanada and the Keystone project since 2006. Another founder was TransCanada employee and lobbyist Beth Jensen.

Howard denied any connection between TransCanada and Nebraskans for Jobs and added that Kohout and Jensen pulled out when TransCanada learned “it was an advocacy group.”

Nebraska’s lobbying records show that in the fourth quarter of 2011, Kissel and TransCanada vice-president Robert Jones spent \$529,000 lobbying a special session of the state legislature held to debate the Keystone project.

Howard said that \$359,526.27 of this money was spent on legal advice and representation during the special session. Another \$84,906.15 was spent on travel.

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