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NewsWatch



DIGGING ACROSS NEBRASKA: A trencher does its work during construction of the first Keystone pipeline in Nebraska a couple of years ago.

Those in pipeline path organize

By DON McCABE

TO about 200 landowners along the Nebraska route of the Keystone XL pipeline in Nebraska, there is little they would call “neat” about the TransCanada pipeline or its easement agreement. The pipeline route in Nebraska extends about 250 miles from Keya Paha County to Steele City in Jefferson County near the Kansas border.

To ensure their property rights and interests are protected in negotiations with the Canadian company, the vast majority of those landowners decided to form NEAT, the Nebraska Easement Action Team. It is a landowner rights organization, according to their attorney, Brian Jorde, who is with the Domina Law Group in Omaha. “NEAT was formed by those landowners with our assistance to develop a standard Nebraska Easement Agreement and to negotiate our terms and not TransCanada’s,” Jorde says. “We want our folks to be treated fairly in the easement agreement terms sought by TransCanada.”

Jorde says the majority of NEAT members have not signed the TransCanada easement. “We do have a few folks who signed easements early on based on some misunderstandings of the agreement terms. We are looking into rescission lawsuits to get them out of the agreements.” He estimates TransCanada has easements signed for about 40% of the new

At a glance

- A landowner rights organization has been formed by many in pipeline’s path.
- They want a “Nebraska easement,” not the one by TransCanada.
- A major worry concerns a landowner’s responsibilities and risks.

route in Nebraska.

TransCanada began contacting landowners in early 2010, Jorde says.

Of concern to members are the responsibilities that aren’t made clear in the company’s easement agreement, he says. “This is a perpetual easement in which the company will earn big profits, while Nebraska farmers are taking most of the risks. It’s about what landowners can and cannot or will be afraid to do on their property.”

In the proposed agreement, landowners receive a one-time, up-front payment, but Jorde believes landowners should have the opportunity to renew the payment provision at some point down the road.

Jorde, who spoke on behalf of NEAT at an April pipeline public hearing in Grand Island, stresses that the group is not necessarily organized to fight the pipeline. “We are about getting landowners organized and getting the best easement terms we can get if the project moves ahead. You can’t go up against a company like TransCanada in one-on-one negotiations.”

Getting best terms

Jorde says most of NEAT’s members are dead set against the pipeline, while others may not like it but are focused on getting the best terms they can get if the project is approved.

TransCanada’s easement contract is broadly worded with liability language not well defined, he says, leaving landowners fearful of doing anything on their own property and worried how this will affect

their legacy, he adds.

The perpetual easement involves a 50-foot-wide swath on a property, with the actual pipeline 4 feet below the surface, according to Jorde. However, during construction, a temporary easement on another 60 feet would be required.

“What farmers and ranchers can and cannot do on or within the easement is a big issue,” Jorde says. “Will it allow irrigation pipe to be installed? Will it interfere with a center pivot? Will it restrict ‘heavy equipment’ crossing the line? These are all big unknowns.”

“We also know some landowners who signed early did not fully understand all the details. What matters are the terms in the contract, not glossy advertisements.”

Threat of eminent domain

At the onset, TransCanada was aggressive in contacting landowners, according to Jorde, often leaving them fearful of eminent domain being used to condemn property if they didn’t sign. A number of landowners say they have been threatened with eminent domain.

The Canadian company does have eminent domain authority, according to Jorde. Prior to 2006, Nebraska law allowed companies transporting crude oil across Nebraska to have eminent domain authority. That law was altered in the 2006 Legislature to deny eminent domain powers for projects built primarily for economic development. But the law contained a provision exempting private pipelines. Once Gov. Dave Heineman approved the reroute last winter, the eminent domain authority kicked in, according to Jorde.

“Our purpose in a ‘Nebraska easement’ is eliminating the chance of future disputes and the liability burden on landowners by clearly defining the rights of landowners and the responsibilities of both parties now. Nebraska can’t afford to leave anything to chance,” he says.

NewsWatch

TransCanada says negotiations 'on track'

WHETHER the Keystone XL pipeline is built depends on final approval by the Obama administration. Without that "presidential approval," construction can't begin.

However, land management staff for TransCanada is continuing to contact landowners, seeking their signatures on perpetual easement agreements. It's unclear how many of the landowners in the path of the proposed pipeline have voluntarily signed those agreements.

Andy Craig, manager of land for the company on the Keystone XL pipeline project, says the company reached agreements with 94% of landowners along the originally proposed route before a reroute that took it away from a portion of the Nebraska Sandhills. He says he's not certain of the percentage of the landowners affected by the reroute that have signed agreements, but adds that the negotiation process "is on track."

"If a landowner tells us 'no,' that they don't want any part of the easement, our land team turns the process over to company attorneys to work with the landowner's attorney," Craig says.

Many landowners who have been contacted and negotiated with TransCanada over terms of the agreement have concerns about the language, including what they can and can't do over the easement right-of-way.

Craig says there are two basic restrictions: Landowners are prevented from constructing a building or any structure with a foundation over the pipeline, and impounding water in any way over it.

He says landowners can cross the buried line with "any typical farm vehicle or implement."

However, Brian Jorde, an Omaha at-

torney representing landowners in their negotiations with TransCanada, says the company's easement agreement language, in fact, does not refer to the two restrictions pointed out by Craig. And, Jorde adds, the agreement does indicate landowners may have to seek permission to cross the pipeline right-of-way with "unusually heavy equipment."

Another major issue with landowners is the right of eminent domain held by TransCanada and what they say are "threats" by the company to use that authority in its negotiations.

Under Nebraska eminent domain law, a company transporting crude oil across Nebraska seeking right-of-way has eminent domain authority (see story on Page 8).

Craig says TransCanada's letters to landowners do refer to its condemnation authority, "not to create a sense of fear or power, but to inform them that if we are not successful in the negotiations we have, as a last resort, that authority. It is perceived as a threat by some landowners. I have not talked about eminent domain when personally visiting with landowners."

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Liability risks create worries

JIM Tarnick's major fear is what happens if the Keystone XL pipeline would leak the tar sands oil it carries through his property southeast of Fullerton. Tarnick says his understanding of TransCanada's "sample easement" is that most of the liability would fall on his shoulders and the shoulders of other Nebraska landowners along the proposed route.

He didn't sign the easement contract when TransCanada first approached him a year ago. He claims the company threatened to use eminent domain if he didn't sign.

"The big concern is that very little of the liability would fall on the company," he says. "There's even an 'act of God' provision in which a lightning strike that damaged the pipeline, for instance, would still be the responsibility of the landowner."

He says the TransCanada agreement offers few specifics on spill responsibilities.

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