

In court, landowners seek to hit reset on Keystone XL pipeline route

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Pipeline opponent Jane Kleeb of Hastings ties on an armband on Allen Schreiber of Lincoln at a rally outside Pershing Auditorium in 2011.

LINCOLN — An attorney for landowners suing to stop the Keystone XL oil pipeline told a judge Friday that the state has illegally allowed a Canadian company to condemn private land for the project.

As the proposed pipeline awaits a decision on federal approval, the legal battle that played out Friday could spell more delays for a project that seeks to move heavy Canadian crude oil to refineries on the U.S. Gulf Coast.

After about 35 minutes of arguments, Lancaster County District Judge Stephanie Stacy told attorneys for both sides that she will issue a written opinion at an unspecified future date.

Before the hearing, several dozen people who view the project as an environmental threat lined up on the courthouse steps and held signs with anti-pipeline slogans. The same opponents filled most of the 50 seats in the courtroom, and others were turned away.

Attorneys retained by Trans-Canada Corp., the company that wants to build the pipeline, also attended. Supporters of the project argue that it will create needed construction jobs while bringing more oil to the United States from a friendly trading partner.

But inside the courtroom, the familiar debate gave way to technical legal arguments over the constitutionality of a 2012 law used to reroute the pipeline.

The 2012 pipeline routing law, known as Legislative Bill 1161, created two ways for a pipeline company to seek state routing approval. It could submit an application with the Public Service Commission or with the governor.

State officials wanted the original route changed to avoid the Sand Hills, where the pipeline was seen as a threat to the sandy soil and shallow groundwater table. Using the 2012 law, TransCanada had its second route reviewed by the Nebraska Department of Environmental Quality. The department then sent its review to Gov. Dave Heineman, who approved the new route early this year.

The pipeline law violates the Nebraska Constitution on several fronts, said Omaha attorney [David Domina](#), who represents the landowners. By taking responsibility for pipeline review away from the Public Service Commission, he said, lawmakers improperly delegated their responsibility to the governor.

Domina said the Legislature also violated the state constitution by giving authority over eminent domain to the governor. Although TransCanada has not used condemnation to secure easements for the project, it has that authority.

“The Legislature simply violated that supreme law of the state when it adopted LB 1161,” Domina said.

Deputy Attorney General Katherine Spohn told the judge that nothing in LB 1161 changed the state's eminent domain law. Long before senators passed the new law, pipeline companies were able to use the power of eminent domain when they could not reach agreement with private landowners.

She also argued that a provision of the state constitution allows the Legislature to designate certain classes of pipeline carriers for reviews outside the Public Service Commission. That's what LB 1161 did by establishing route approval through the governor's office.

Regardless of what the judge decides, appeals are likely. TransCanada has been waiting for five years for approval by the U.S. State Department.

TransCanada wants to build a pipeline that would carry up to 830,000 barrels of oil sands crude daily. The 1,700-mile pipeline would run 4 feet underground through parts of six states, including Nebraska.

President Barack Obama denied the original permit application in 2012 after congressional supporters tried to impose a deadline for a decision.