

York County landowner among three suing state

By Melanie Wilkinson News Editor | Posted: Saturday, September 28, 2013 12:00 am

LINCOLN – Susan Dunavan of rural York County stood with two other Nebraska landowners, Friday, in the first court hearing regarding their lawsuit against the governor, the director of the DEQ and the state treasurer in reference to the controversial Keystone XL pipeline.

Dunavan, along with Randy Thompson (a landowner from Lancaster County), Susan Luebbe (of Holt County), say Nebraska lawmakers cut an illegal deal with TransCanada in 2012.

They appeared in the Lancaster County District Court where their attorney, [David Domina](#) of Omaha, argued that lawmakers illegally handed over their authority to the governor, allowing him to decide a matter of public importance on a “whim.”

The Nebraska landowners sued last year over the law that permitted the state to conduct its own environmental review of the Keystone XL. After that review concluded that the pipeline represented little threat to water resources, Gov. Dave Heineman approved the route.

Heineman and other elected officials had supported the oil pipeline but opposed its original pathway because it would have cut through the state’s environmentally sensitive Sand Hills and run above shallow portions of the Ogallala Aquifer.

So in late 2011, the governor called a special session of the Legislature to address the issue. Lawmakers passed a bill that gave pipeline siting authority to the Public Service Commission.

But the Legislature also allowed the Keystone XL to bypass the PSC and instead receive an expedited review by the State Department of Environmental Quality and the governor.

In January, 2012, President Obama denied the Keystone XL application, which required pipeline TransCanada to file a second federal application. In response, lawmakers passed Legislative Bill 1161, which put the Nebraska route on the fast track for approval.

Dunavan, Luebbe and Thompson are asking the judge to strike down the law and declare the pipeline’s route void.

In a legal brief, their attorney argues that LB 1161 violates the Nebraska Constitution on several grounds:

- Senators created special legislation for TransCanada. The state constitution prohibits laws that benefit a “closed” class.
- The Legislature improperly gave the governor the authority to regulate pipelines and grant the power of eminent domain to third parties, in violation of the constitution’s separation of powers among the three branches of government.
- The law failed to provide standards for deciding a pipeline’s safety and did not allow judicial review for those who disagreed with the governor’s decision. The constitution requires due process for parties who are affected by the law.

“No one in the state of Nebraska should be threatened by a corporation, foreign or domestic,” Dunavan said. “This lawsuit will ensure that our landowner’s rights are upheld and our state constitution followed. Eminent domain must not be used for private gain.”

Assistant Attorney General Katherine Spohn, who is defending the state, filed a brief countering the plaintiffs’ stance. She said that since 1963, pipeline companies have had the ability to use eminent domain under Nebraska law and the Legislature has the authority to delegate review of certain types of pipelines to an agency other than the PSC.

Spohn also noted that before LB 1161 and the underlying law it amended, pipeline companies could build projects in Nebraska without oversight.

Presiding over Friday’s hearing was Lancaster County District Judge Stephanie Stacy, who has twice refused the state’s motions to dismiss the lawsuit. If Judge Stacy strikes down the law, the Keystone XL project may have to start over for a second time in Nebraska.

“If we are successful in our lawsuit, TransCanada will have to start the Keystone XL siting process over again through the Nebraska Public Service Commission, so it would be premature for the State Department to issue a final EIS when the route across Nebraska remains very much in question,” Thompson says. “As citizens, we are asking the State Department to respect the legal process and our state’s constitution.”

“This lawsuit has given hope to scores of landowners who have refused to negotiate easements with TransCanada,” Dunavan says.

“Landowners’ rights have been taken from us by delegating eminent domain authority to the governor. No one in the state of Nebraska should be threatened by a corporation, foreign or domestic. This lawsuit will ensure that our landowners’ rights are upheld and our state constitution followed. This pipeline is not for Nebraska. It is not for the United States. It is solely for the benefit of Canada and the oil industry.”

The three landowners did not stand alone on Friday – as more than 100 people gathered outside the courthouse in support of them.

“This law is unconstitutional and violates landowner rights,” said Jane Kleeb, director of Bold Nebraska. “Thankfully, these landowners have backbones of steel.”

Ken Winston from the Sierra Club agreed.

“I am proud to be here. I stand in support of their efforts. The main thing to remember – we shouldn’t have to be here. If the legislature had listened to the people, we wouldn’t have to be here. But here we are, and I’m proud to be here, supporting our citizens.”

“Laws should protect the citizens, our land and water,” Dunavan told the crowd. “And it shouldn’t violate our rights.”

“When the legislature passed LB 1161, they declared open season on the landowners,” Thompson told the crowd of his supporters.

“TransCanada just got their hunting permit. They gave out the power of eminent domain and I sure as hell don’t like it.”

(with contributions by World Herald Bureau)