



Critics challenge pipeline review law

By Paul Hammel

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LINCOLN — Opponents of the Keystone XL pipeline went to court Wednesday, seeking to nullify a new state law that allowed a state environmental review of the controversial project to resume.

The legal action injects a new note of uncertainty and possible delay into a pipeline project that failed to win an initial approval from the Obama administration in January.

The lawsuits claim that a law passed by the Nebraska Legislature this spring was unconstitutional because, among other things, it unlawfully transfers powers to regulate crude-oil pipelines to the governor and the Nebraska Department of Environmental Quality, and it benefits only one entity, pipeline developer TransCanada Inc.

“The Nebraska state motto is ‘Equality Before the Law’ but our Legislature and governor gave special favors to a foreign corporation, but did not even listen to their own Nebraska constituents,” said Susan Dunavan of rural York, one of three landowners who brought the lawsuit.

But the lawmaker who introduced the pipeline bill this spring, State Sen. Jim Smith of Papillion, said the legislation addressed Nebraskan's main concern with the project — that it avoid the groundwater-rich Sand Hills region — and that a lawsuit was inevitable, regardless of how the new law was worded.

“The opponents have made it clear they're not just opposed to the pipeline but fossil fuel production,” Smith said.

The lawsuit is being financially backed by the Sierra Club of Nebraska and Bold Nebraska, two environmental advocacy groups that have led the opposition to the 36-inch, high-pressure crude-oil pipeline.

State leaders, including U.S. Sen. Mike Johanns and Gov. Dave Heineman, objected to the pipeline route because it originally would have passed through the Sand Hills.

That led to a special session of the Legislature last fall to adopt the state's first-ever laws to regulate pipeline routing. The session ended with a compromise — if TransCanada avoided the Sand Hills, Nebraska would agree to an expedited environmental review so the project could move forward.

The review had been halted after the federal decision in January.

That action prompted the Legislature this spring to pass a revised pipeline review law that is the subject of Wednesday's lawsuits, filed with the Nebraska Supreme Court and Lancaster County District Court.

Legislative Bill 1161 allows the DEQ to conduct the environmental review, rather than the agency picked during the special session, the elected Nebraska Public Service Commission.

Heineman would have the final say on the project.

The review is expected to take six to nine months, a much quicker pace than if the U.S. State Department were conducting the study.

The lawsuit claims the bill is unconstitutional in four respects: It unlawfully delegates authority to regulate crude-oil pipelines from the Public Service Commission; it provides no guidance to the governor or Public Service Commission; it does not allow legal challenges of the governor's final decision; and it is unlawful “special legislation” designed to benefit only one entity, TransCanada.

The company has been seeking federal and state permission for more than three years to build a pipeline to carry synthetic crude oil from Canada's tar-sands region to oil refineries on the U.S. Gulf Coast.

Officials with the DEQ, Governor's Office and the Attorney General's Office, which will defend the state, all declined to comment, saying they hadn't had time to review the lawsuit.

A spokesman for TransCanada, which isn't a defendant in the lawsuit, said any further delay in the multi-billion project would “not allow Americans to realize the benefits of a stable, secure

supply of oil from U.S. fields and from Canada, instead of relying on conflict oil from Venezuela and Iran.”

Spokesman James Millar said any delay would block the construction jobs generated by the project.

Omaha attorney David Domina, who is handling the lawsuit for the pipeline opponents, said the pipeline siting bill adopted in the special session was “far less political” than LB 1161.

He said DEQ officials, at recent public meetings, have acknowledged that LB 1161 didn't provide specific directions for the environmental review.

If the Nebraska Supreme Court declines to hear the lawsuit, it would be heard in Lancaster County District Court.

Domina said the state's environmental review could be completed before either court rules.

If the lawsuit is successful, it will nullify LB 1161. That would leave in place the law passed in the special session to guide the pipeline review, which would take several more months to complete.

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