

Awaiting approval for pipeline, TransCanada sweetens the pot for Nebraska landowners

By [Joe Duggan](#) / World-Herald staff writer
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Susan Dunavan and her husband own 80 acres of land near York, Neb., in the path of the Keystone XL pipeline. They have received four easement agreements from TransCanada but have refused the offers. "TransCanada can offer whatever they want," she said. "I will not take it."
JAMES R. BURNETT / THE WORLD-HERALD

YORK, Neb. — Sam Fischer didn't care about the money. He wanted the oil pipeline routed to the other side of his well.

So he used the only leverage he had and refused to sign an agreement with the Canadian company building the pipeline. In response, the company invoked the power of eminent domain, and a judge condemned Fischer's land.

In the end, the 56-year-old farmer near Leigh, Neb., got \$3,325 for an easement. The company got to bury its pipeline in his cornfield without moving the route.

The year was 2009, the company was TransCanada and the pipeline was the first Keystone project through Nebraska.

Now the same company is trying to reach agreements with hundreds of Nebraska landowners as it seeks federal approval to build the Keystone XL pipeline. But as controversy over

the second project has grown, so have the monetary incentives for landowners.

Recently, TransCanada offered bonuses of \$45,000 per mile of right of way for landowners who signed agreements within 30 days. Combine the bonuses with payments for right of way, temporary construction space and crop losses, and some landowners are seeing offer sheets well in excess of \$100,000.

"We'd rather pay extra money than drag the process out because honestly, the only ones who win in that case are lawyers," said Shawn Howard, the company's spokesman.

Opponents of the pipeline, however, say the "sign now" incentives are a sign the company is struggling to secure landowner cooperation since the pipeline was officially rerouted in January.

[Brian Jorde](#) with the [Domina Law Group](#) in Omaha is representing landowners who have sued the state over the pipeline route.

"They're trying to put pressure on people by waving more money," Jorde said. "People are holding out, so they're going to keep upping the prices."

The 36-inch pipeline would carry 830,000 barrels of diluted bitumen oil daily from the tar sands of western Canada to refineries on the Texas Gulf Coast. The underground pipeline, which would run about 275 miles through Nebraska, requires a permit from the U.S. State Department because it crosses an international border.

The State Department is considering the pipeline's second proposed route. The first route was altered in Nebraska to avoid the environmentally sensitive Sand Hills.

On the initial route, the company said it had secured voluntary agreements with 90 percent of landowners. When

the route was changed, it crossed the properties of more landowners, Howard said.

The company started contacting those property holders about easement agreements in late January and early February, shortly after Gov. Dave Heineman approved the second route.

Howard declined to say how many landowners on the second route have signed agreements. Nor would he reveal the total number of properties crossed by the route, other than to say there are hundreds.

“We are pleased where we are at in terms of discussions with landowners,” Howard said. “We are going to continue to take our time.”

The Domina law firm also represents an organization called Nebraska Easement Action Team, whose members include about 200 landowners on the pipeline route. The membership's goal is to negotiate a master agreement with the company only if and when the project receives federal approval.

Jorde, along with other opponents of the pipeline, estimated that as many as 60 percent of landowners have not signed agreements with TransCanada. In other states along the pipeline route, the company has reportedly secured agreements with up to 90 percent of landowners.

The company has the ability to use eminent domain to obtain easements when negotiations with landowners fail. In such cases, certified appraisals of the property are conducted, and county judges decide the easement payment. Landowners can then appeal the determinations to district court.

Howard said TransCanada typically reaches voluntary agreements with about 98 percent of landowners. Of the roughly 573 landowners on the first Keystone project, the company went through the full condemnation process with nine, according to the company's records. That translates to about 1.6 percent.

Those who go through eminent domain usually receive less money than the company offered for a voluntary agreement, Howard said.

Fisher, the farmer from Leigh, said the \$3,200 he received after his court hearing was roughly the same amount the company had offered him.

While his cornfield has been restored to its former condition, he said the experience taught him a landowner's rights to his own land have limits.

“This got shoved through this area so fast people didn't have time to organize,” he said.

As for the current pipeline proposal, TransCanada has not wasted a postage stamp on Susan Dunavan in more than two years.

Between 2008 and 2011, however, TransCanada mailed her four easement agreements and two letters warning of eminent domain. The proposed route for the Keystone XL pipeline runs through Dunavan's 80-acre prairie south of York.

In response, Dunavan joined a landowners lawsuit challenging the state law that enabled the pipeline route. The lawsuit is scheduled for trial in late September in Lincoln.

On Friday, Dunavan stood on a piece of pasture where she believes the pipeline would go if ultimately wins federal approval. She and her husband, Bill, raised five children on the property. Now it's a wonderland for their six grandchildren.

“TransCanada can offer whatever they want,” she said. “I will not take it.”