

Judge rules that Keystone XL pipeline lawsuit can proceed

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LINCOLN — A district judge ruled Monday that the heart of a lawsuit seeking to nullify the state's review of the controversial Keystone XL pipeline can proceed.

Lancaster County District Judge Stephanie Stacy left intact all but one allegation raised by three landowners who are affected by the high-pressure, crude-oil pipeline project. The judge rejected a request by the State of Nebraska to dismiss the entire case.

The landowners — Randy Thompson, Susan Luebbe and Susan Dunavan — are among the leading opponents of the pipeline. They claim that a law passed last spring by the Nebraska Legislature, allowing an expedited environmental review by the state, is unconstitutional.

One of the main claims is that the law improperly delegates authority over such pipelines to the governor, when the State Public Service Commission is authorized to regulate such projects. Another is that the law, Legislative Bill 1161, is unconstitutional "special legislation" because it was passed to benefit only one entity, pipeline developer TransCanada Inc.

The law authorized a review by the Nebraska Department of Environmental Quality, which is supposed to conclude its work soon, possibly as early as this week.

Gov. Dave Heineman, who has voiced support for the project, then will have 30 days to decide whether to OK or deny the pipeline's route across Nebraska. Ultimately, the U.S. State Department will decide whether the project, which extends from Canada to Texas, will proceed.

[Brian Jorde](#), an Omaha attorney who represents the landowners, said that given the uncertainty over LB 1161, the governor should wait to make a final decision on the pipeline route until the judge rules on the lawsuit, which could take several months.

"I don't see how the governor would want to go forward," Jorde said.

The governor's decision, he said, would be rendered moot if Judge Stacy rules in favor of the landowners.

The governor did not respond to a request Monday for comment.

Shannon Kingery, a spokeswoman for the Nebraska Attorney General's Office, which is representing the state, said lawyers in the office were still reviewing Monday's ruling.

Shawn Howard, a spokesman for TransCanada, said the company is not commenting because the lawsuit is an action against the state and its officers, not the oil pipeline corporation.

A leading opponent of the pipeline, Jane Kleeb of the environmental advocacy group Bold Nebraska, called the ruling a “big New Year’s toast for the citizens of Nebraska.”

While it doesn’t represent a final decision on the lawsuit, Kleeb said it should put a “kink” in plans to continue with the state agency’s review.

The Keystone XL pipeline, a 36-inch pipe buried 4 feet in the ground, is designed to link the oil sand deposits of western Canada with oil refineries on the U.S. Gulf Coast. But approval of the project has become entangled in broader issues of global warming, destruction of wilderness areas in Canada and continued reliance on fossil fuels.

Proponents reject the environmental concerns and say the pipeline will enhance the nation’s energy security and provide much-needed construction jobs on the \$7 billion project.

Opponents say that much of the oil is destined to be exported and that leaks from the pipeline would threaten groundwater, including water used for drinking and livestock contained in the vast Ogallala Aquifer.

Judge Stacy agreed with only one request made by the state: that the allegations that LB 1161 violated the equal protection clause of the Constitution should be immediately dismissed. The judge gave the landowners 14 days to amend their lawsuit in an attempt to resurrect that claim.

Jorde said he guessed that a final ruling on the rest of the lawsuit’s claims should take less than a year. He said he was “thrilled” that the main arguments of the lawsuit remain intact.

TransCanada has said it expects final approval of the project in the first quarter of 2013.

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