

KVNO News

Judge's decision may delay Keystone XL pipeline

By Fred Knapp, NET News

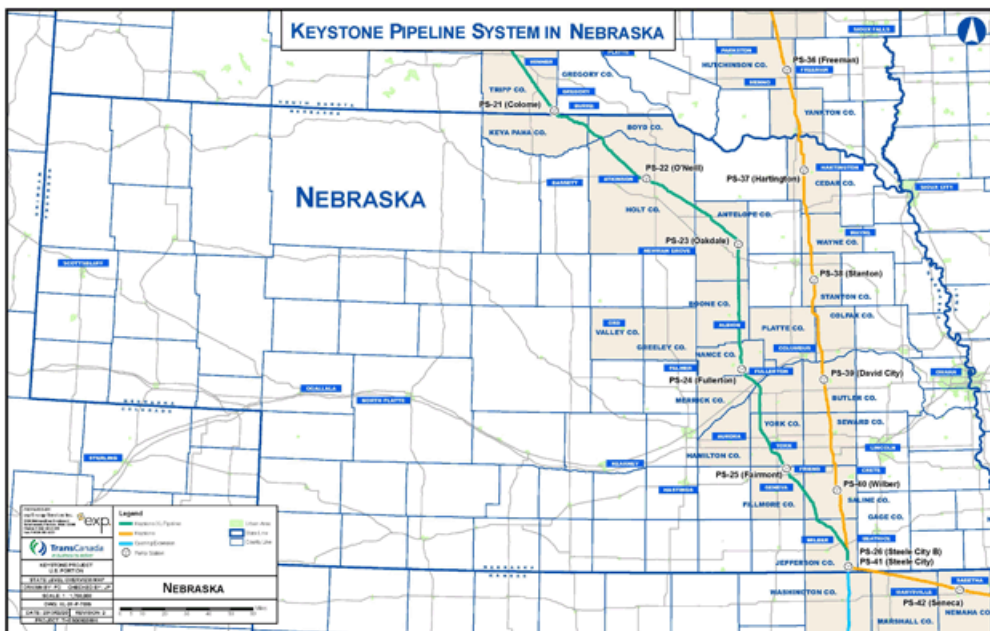
September 30th, 2013

Lincoln, NE — The fate of Nebraska's oil pipeline siting law is now in the hands of a judge, whose decision may have a big impact on TransCanada's controversial Keystone XL pipeline.

[HEAR AUDIO OF THE TRIAL](#)

The trial Friday in Lancaster County District Court lasted only about half an hour. But the effects of Judge Stephanie Stacy's decision could last for years. At stake is Nebraska's pipeline siting law. Opponents of the pipeline, which would carry oil from the tar sands of Alberta to refineries in Texas, have said the law violates the Nebraska Constitution.

Lawyer [David Domina](#) said among its problems, the law allows the governor to approve a route, without allowing judicial review of that decision. Domina argued that violates the separation of powers.



Opponents of the pipeline, which would carry oil from the tar sands of Alberta to refineries in Texas, have said the law violates the Nebraska Constitution. (Map Courtesy TransCanada)

“In its most fundamental sense, the Legislature gives the law, the executive enforces the law, and the court referees whether each of them did what they were supposed to do, in accordance with the law that governs how they do it,” Domina said. “But this bill would allow the governor to make a decision that the Legislature is supposed to make, and permit no judicial oversight of that decision.”

Assistant Attorney General Katie Spohn, defending the law for the state, did not respond to the separation of powers argument in court. But in its briefs, the attorney general's office has argued that the Department of Environmental Quality reviewed the proposed pipeline route, with input from the public.

In court, Spohn did attack another of the pipeline opponent's major arguments: that the Nebraska Constitution gives the Public Service Commission jurisdiction over pipeline routes.

“If the Public Service Commission had had authority to regulate routes of pipelines, then why did the governor have to call a special session in the fall of 2011 to create the Major Oil Pipeline Siting Act, which was designed to regulate routes of future pipelines,” Spohn said.

The law that's being challenged changed the Major Oil Pipeline Siting Act to give companies the choice of going to the Public Service Commission or seeking approval from the governor first.

Judge Stacy gave no indication of how long she would take before issuing a decision. Meanwhile, the State Department said it does not anticipate the federal review process on the pipeline will be affected by the Nebraska lawsuit. A decision in that federal process could come early next year. A TransCanada spokesman said Gov. Dave Heineman's approval stands, and declined to speculate about what would happen if the judge overturns the law. But [Brian Jorde](#), another lawyer for pipeline opponents, predicted one side or the other will appeal any decision, which could leave the issue unresolved for several more years.