

## Judge to hear arguments Friday in Keystone XL pipeline suit

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By [Joe Duggan](#) / World-Herald Bureau

LINCOLN — Three landowners say Nebraska lawmakers cut an illegal deal with a Canadian pipeline company in 2012.

The state's attorneys couldn't disagree more. They say the law created to route the Keystone XL oil pipeline through Nebraska is constitutionally solid.

On Friday, a judge will finally hear their arguments so she can decide who is right. If she strikes down the law, the \$7 billion Keystone XL project may have to start over for a second time in Nebraska.

Lancaster County District Judge Stephanie Stacy, who has twice refused the state's motions to dismiss the lawsuit, will most likely issue a ruling at a later date.

A project that would carry 830,000 barrels of oil sands crude daily from Canada to the U.S. Gulf Coast is still awaiting a federal permit to begin construction on the northern portion of the route. President Barack Obama may not issue a decision until next year.

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

Landowners Susan Dunavan, Susan Luebbe and Randy 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 a law.

Omaha attorney [David Domina](#), who represents the landowners, argues that lawmakers illegally handed over their authority to the governor, allowing him to decide a matter of huge public importance on a “whim.”

“No checks. No balances. No scrutiny. No questions. And, no constitutional compliance,” Domina wrote.

Assistant Attorney General Katherine Spohn, who is defending the state, filed a brief that said the plaintiffs are wrong on every count.

Since 1963, pipeline companies have had the ability to use eminent domain under Nebraska law, she says in her brief. Spohn also argues that the Legislature has the authority to delegate review of certain types of pipelines to an agency other than the Public Service Commission.

Before LB 1161 and the underlying law it amended, pipeline companies could build projects in Nebraska without oversight.

“It is plaintiffs, along with all Nebraskans, who benefit from the Legislature's decision to provide state oversight of pipeline routing decisions in Nebraska,” Spohn argues. “The courts should not provide standing to plaintiffs simply because they disagree with the policy choices of the Nebraska Legislature.”

Omaha Sen. Jim Smith, who sponsored LB 1161, said Tuesday that he and others worked hard not to create legislation that benefited one company. He said other major oil pipelines that also trigger federal environmental review can bypass the Public Service Commission in Nebraska.

“We really took great efforts to avoid the appearance of special legislation,” he said.

Since the Legislature passed the disputed bill, no other interstate pipelines have applied for routing in Nebraska, said Laura Demman, a Public Service Commission staff member.

Friday's hearing in Lincoln is scheduled for 90 minutes starting at 3:30 p.m. Attorneys for both sides can submit evidence and make oral arguments, but witnesses will not be called to testify.