

Oil Pipelines: State vs Federal Role

Included in this packet:

Press Advisory, 3/29/11, “Unearthed Federal Memo Confirms State’s Role Regulating Oil Pipelines”

TransCanada Transcript, 12/3/10, Nebraska Farmers Union Convention transcript of TransCanada confirming states do regulate pipeline routes and that they would abide by any regulations Nebraska puts in place

State’s Role in Oil Pipelines, 3/29/11, Background document compiled by various Nebraska groups providing evidence of state’s roles regarding oil pipelines

Cover Memo, 1/05/11, Groups held a rally and then dropped a usb with a cover memo and various documents and reports about the role and power state’s have in oil pipeline routing and safety, it went to Gov. Heineman, Att. Gen Bruning and key state senators

Pipeline Background Document, 2/09/11, Resource doc compiled by Bold Nebraska given to all members of the Natural Resources Committee at pipeline bill hearing

Congressional Research Memo, 9/20/10, Federal memo requested by Rep. Lee Terry (NE-2) on federal vs. state role in regards to oil pipelines

Other Notes:

We did NOT include the numerous quotes from Nebraska federal and state elected officials stating they have no role in regulating oil pipelines. The quotes have been numerous and if any members of the press need some quotes—or video clips—please contact Jane Kleeb.

Photos of previous rallies and pictures/video clips of landowners that can be used for broadcast are located at: http://boldnebraska.org/press_resources.

Press Advisory

Unearthed Federal Memo Confirms State's Role Regulating Oil Pipelines

Who: Nebraska non-profit and advocacy groups including Nebraska Farmers Union, Nebraska Sierra Club, League of Conservation Voters, Bold Nebraska and Nebraska Wildlife Federation

What: Press round-table and briefing to discuss newly uncovered memo that outlines federal vs state roles regarding oil pipelines.

When: Wed., March 30, 12:30pm

Where: 1141 H Street, 2nd Floor OR Via phone 1-800-615-2900, access code 359466

Why: To give press the newly uncovered memo and to discuss what this means for the TransCanada Keystone XL pipeline and the bills currently stalled in the Nebraska legislature.

Background: There continues to be confusion amongst state elected officials about their role regarding the financial responsibility, safety and routing of oil pipelines in Nebraska. Groups have tried to clear this up several times and hope this newly uncovered memo will finally answer the questions.

Additionally, recent movements in other states, including South Dakota, reinforce a state's role regulating oil pipelines within its borders.

All of this will be discussed at a roundtable for members of the press community led by John Hansen, President of the Nebraska Farmers Union. Other advocacy group leaders will be present to answer questions. A landowner in the pipeline route will also be present to discuss continued pressure from TransCanada.

Roundtable Speakers:

- John Hansen, President, Nebraska Farmers Union, 402-580-8815
- Randy Thompson, Landowner, 402-920-2759
- Ken Winston, Policy Director, Nebraska Sierra Club, 402-476-6583
- Duane Hovorka, Executive Director, Nebraska Wildlife Federation, 402-804-0033
- Jane Kleeb, Director, Bold Nebraska, 402-705-3622
- Cara Brenner, Director, Nebraska League of Conservation Voters, 817-729-2666

TransCanada Transcript

Audio clip from Nebraska Farmers Union available at:
http://boldnebraska.org/press_resources

NEFU President John Hansen: “How does that work with states that do have state regulations? And as you go through those states versus states that don’t, is that a positive thing for folks in a state to want to best represent all the competing public interests in this sort of an activity?”

TransCanada Spokesperson Jeff Rauh: “First of all just to briefly address the question, there are a number of states that have siting, and at least as many that do not. Nebraska does not, Kansas does not, Missouri does not, Texas does not in terms of states that we’ve gone through. Montana has a process that parallels the federal process and if the state of Nebraska cares to create such a process, then that is certainly something that we as a pipeline company would follow. With that thanks again for your time, glad to be here. Thanks John.”

State's Role in Regulating Oil Pipelines

Information below was gathered by Nebraska advocacy groups and pipeline expert Paul Blackburn, paul@paulblackburn.net, 605-675-9268.

What can Nebraska do when it comes to the route of the TransCanada Keystone XL as well as other regulatory areas of oil pipelines?

Nebraska can pass and implement a routing statute that TransCanada's Keystone XL, and any other future oil pipelines, must abide.

If the state does not pass a routing statute, a Nebraska county can also pass a routing ordinance. A model county ordinance drafted for South Dakota is available upon request.

States DO HAVE routing authority of oil pipelines. States and counties also have the authority to regulate:

- Siting and routing of oil pipelines
- Easement and eminent domain process and terms
- Easement abandonment
- Emergency response planning
- Liability for spills
- Bonding for road construction and/or repair
- Regulation of neighboring land uses

Some states that have laws on the books include MT, ND, SD, MN and IA. Specific examples include:

- *South Dakota* has routing of oil pipelines on the books and just passed an additional 50 conditions on top of federal regulations, <http://tiny.cc/967au>
- *Montana Annotated Code*, Chapter 75-20, and specifically §75-20-211(1)(a)(iii). Contents of applications for pipeline and electric transmission lines includes alternative locations and § 75-20-301(1) which gives approval of alternatives to proposed pipeline and electric transmission line projects.
- *Mont. Power Co. v. Fondren*, 226 M 500, 737 P2d 1138, 44 St. Rep. 850 (1987). Montana Board of Environmental Review sets route for facilities defined under Montana Annotated Code § 75-20-104(8); although this decision is for an electric transmission line, the same routing requirements apply to large crude oil pipelines.

What role does the federal government have in oil pipeline routes?

Unlike natural gas pipelines subject to the Natural Gas Act and regulated by FERC, Congress ***has not passed any law that authorizes a federal agency to generally route a crude oil pipeline.***

What about the permit Sec. Clinton and President Obama have to issue for the TransCanada pipeline to start construction?

The President's authority in the Presidential Permit process, under Executive Order 13337, is limited to actions related to the President's Constitutional foreign affairs powers, specifically to determining the location and size of the border crossing for the pipeline.

The President's authority to regulate foreign affairs ***does not extend to determining pipeline location within the borders of the United States***, because Congress has not authorized the President to route or site crude oil pipelines. Since Congress has passed no law authorizing a federal agency to route crude oil pipelines, this authority remains with the states and is the reason that Montana (and other states) can route crude oil pipelines.

Cover Memo

(document given to Gov. Heineman, Att. Gen. Bruning and key state senators)

Jan. 5, 2011

Dear State Senators, Attorney General Bruning and Governor Heineman,

Today, we are representing over 800 Nebraskans and ten non-profit organizations that signed a petition with a clear message—you, as state elected officials, have a role in protecting our homes, land and water from the risky TransCanada pipelines and we are counting on you.

While the federal government is responsible for granting or denying a permit to TransCanada to build a second pipeline across our state, this time crossing the fragile ecosystem, of the Sandhills and the precious Ogallala Aquifer, you have a role in other key areas.

As state elected officials, ***you have a role*** in:

- Siting and routing of pipelines
- Eminent domain process and terms
- Easement abandonment of unused/out of service pipe
- Emergency response planning
- Liability for spills
- Regulation of neighboring land uses

The current pipeline, called Keystone I, was approved by the Bush administration and cuts across the eastern part of our state. Keystone I was TransCanada's FIRST tarsands pipeline they have ever built. They are not oil pipeline experts.

The second pipeline TransCanda is proposing is called Keystone XL; this is the pipeline most reports focus on. Reports and experts agree, and TransCanada's VP Robert Jones admitted during the hearing held in Nebraska, that the pipelines could be re-permitted to carry liquids other than tarsands oil. This is a concern of citizens and landowners as well as some industry experts who think TransCanada has already over-promised what oil it can produce and will therefore fill the pipeline with other, yet to be named, liquids.

On the attached USB, we included various reports and information pages on the concerns of the TransCanada pipeline and the risks of tarsands oil, a mixture of oil and chemicals that can threaten our way of life and the heart of our economy—agriculture.

Reports and documents included on the USB:

- ***“The Great North Plains at Risk: Oil Spill Planning Deficiencies in Keystone Pipeline System,”*** a report issued in Nov. 2010 by Plains Justice documenting the inadequate TransCanada emergency response plans on the current pipeline in the ground in our state. The report also gives a good overview of the pipeline and the risky type of oil that would be spilled into our land and water.
- ***“Keystone XL Fact Sheet,”*** a two-page document outlining the basics on the proposed

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TransCanada pipeline, including an overview of tarsands oil and a map of the current Keystone I and proposed Keystone XL pipelines.

- ***“Tarsands Pipelines: Presenting Unaddressed Hazards to Public Safety,”*** a report issued in Dec. 2010 by the Natural Resources Defense Council on the difference between tarsands oil being transported by TransCanada and traditional crude oil.
- ***“TransCanada Exaggerating Job Claims for Keystone XL,”*** a two-page overview issued by National Wildlife Federation documenting the exaggeration of job numbers by TransCanada with the first pipeline built by TransCanada, only 12% of the jobs went to Nebraskans.
- ***“Keystone XL Pipeline Not Needed, Too Expensive, Better Solutions,”*** a policy briefing issued by Plains Justice on the economic impacts of the pipeline and why tarsands production will increase prices at the pump.
- ***“Toxic Tarsands: Profiles from the Front Lines,”*** a report told in the words of landowners, rural and urban citizens, native tribes and others who are living with the dangers and worries of tarsands. The report was issued by Sierra Club and profiles a Nebraskan with other Americans.
- ***“Tarsands Oil Means High Gas Prices,”*** an additional study, by Corporate Ethics International, on why the TransCanada pipeline will result in higher gas prices.
- ***“Request for Investigation of Possible Use of Substandard Steel in the Keystone Pipeline,”*** a letter and report sent by Plains Justice requesting an investigation of the type of steel used in the pipeline currently in the ground in Nebraska, these concerns were heightened by the recent “anomalies” under investigation.
- ***“Staying Hooked on Dirty Fuel,”*** a report issued by the National Wildlife Federation that is a comprehensive overview of tarsands oil, TransCanada and the impact on wildlife.
- ***“Keystone XL: Local Options and National Need,”*** a Powerpoint presentation given to the Nebraska Farmers Union by Plains Justice filled with information on what states can do to help keep land and water safe.
- ***Pipeline Poll,*** last year groups conducted a statewide poll that found 84% of Nebraskans want elected leaders, especially Governor Heineman and State Senators, to be asking questions about the pipeline. The summary of the polling memo is attached.
- ***Folder of Official Comments,*** these letters, from Nebraska groups and leaders, were submitted to the Department of State over the Summer and Fall on the draft Environmental Impact Study regarding TransCanada’s Keystone XL pipeline.
- ***Nebraska Wildlife Federation letter to Sec. Clinton*** in Dec. 2010 asking for a supplemental study on the impact of tarsands oil and construction in the Sandhills and Ogallala aquifer, the letter cites the concerns about the pipeline. This letter was in addition to their original letter to Clinton and was sent because of new concerns.

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- ***Stop the TransCanada Pipeline Petition***, groups gathered signatures from Nebraskans to express concern over the proposed pipeline, over 800 citizens signed the petition. Citizens addressed both federal and state elected officials in their comments.
- ***Transcript of Nebraska Legislative Hearing***, the full copy of the transcript of the hearing that took place in December 2010.
- ***Image of the “Stop the TransCanada Pipeline” billboard***, that will be up in Lincoln in mid-February as a reminder that our state leaders can help protect our homes and water.

In addition to the documents on the USB, we keep an updated resource page online, including letters that Senators Nelson and Johanns sent to Sec. Clinton, at:
<http://www.boldnebraska.org/pipeline-background-resources>

If you have any questions or would like to talk about possible legislation, please contact any of us. We are here with ideas but also an open mind on what can be accomplished with your leadership on this very critical issue facing our state.

Thank you,

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Pipeline Background Document

(document given to Nat. Res. Committee)

TransCanada Pipeline

Key Points:

Nebraskans want to see the state have a clear role in state-based regulations and do not want to rely solely on the federal government. In fact, 74% of Nebraskans across party lines want to see state leaders regulate the pipeline in areas such as safety, emergency response eminent domain and the siting of the pipeline. (see attached poll conducted on Jan 31-Feb 3, 2011)

While oil is necessary, there are too many questions around safety of tarsands oil as well as construction in the Sandhills and through Ogallala Aquifer not to put safeguards in place now.

Tarsands oil is inconsistent with where the United States and Nebraska is heading in terms of a clean-energy and “made in America” energy economy.

We do not want to wait until a large accident or oil spill happens. It will be too late to reclaim our precious land and water. We are asking for safeguards and financial responsibility to protect our landowners, economic activity and our water.

Background:

The pipeline has been in limbo since last July, when the U.S. Environmental Protection Agency described a draft environmental study of the project as “inadequate” — raising concerns about greenhouse gas emissions and the potential threat to sensitive ecosystems of a spill.*

The U.S. State Department is now weighing whether to conduct a supplemental eco-study providing more detail on Keystone's emergency response plans, the chemical composition of the oilsands bitumen and potential damage to groundwater from pipeline leaks or spills.*

Tarsands crude oil is not traditional oil and has increased risks of spills and damage to communities. The tarsands oil is mixed with diluted bitumen or “DilBit”—a highly corrosive, acidic, and potentially unstable blend of thick raw bitumen and volatile natural gas liquid condensate.

Both US Senators—Nelson and Johanns—as well as almost half of the state senators have requested that Sec. Clinton conduct more studies on the Sandhills and Ogallala Aquifer before deciding on TransCanada's permit request.

Additionally, several groups are asking TransCanada to revise their inadequate emergency-response plans and to release the chemical composition of the oilsands bitumen which has potential damage to groundwater from pipeline leaks or spills.

If the Keystone XL pipeline gets approved, almost 1 million barrels of oil will be traveling through Nebraska's Sandhills, Ogallala Aquifer and the eastern part of our state.

While TransCanada says they can detect a spill within 3 minutes, other studies show the response time to be more like 18 minutes.

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In TransCanada's emergency response plan, it is documented that a leak in their pipeline could spill 27,329 barrels or 1,147,818 gallons of Tarsands oil and chemicals into the ground and water.

The sensors and technology that TransCanada is using have been cited to give false readings of spills because of the consistency of the tarsands oil (its heavier, mixed with much more chemicals).

There have been documented spills already in Nebraska and other states by TransCanada's first pipeline (i.e. Keystone).

Three areas of TransCanada's first pipeline had to be dug up because of "anomalies" found in the steel where it was expanding beyond allowable size. The results of those tests have not been shared with the public yet.

Only 12% of the jobs went to Nebraskans and that is what is estimated for the Keystone XL pipeline as well. This will translate to about 94-120 jobs for Nebraskans that are short-term and put at-risk stable, state-based jobs in new-energy fields such as ethanol.

The first tarsands oil pipeline built in Nebraska was TransCanada's first oil pipeline. They are experts in gas pipelines, but are very new to oil pipelines.

The tarsands pipeline is not innovative, its not clean and it does nothing to make America energy independent.

Money invested in our state for clean, renewable, made-in-Nebraska energy (\$300 million just in the last two years) dwarfs the promises made by TransCanada of local taxes over the lifespan on the pipeline (\$150 million over 50 years).

The financial risks towns along the pipeline face on oil spills, road construction/repairs, pipe abandonment, etc. will far outweigh any local tax dollars they generate from the pipeline.

Excerpts with a "*" are pulled from the story below, all other facts come from the research over the past year:

<http://www.canada.com/business/Oilsands+development+slippery+topic+Harper+Obama/4220238/story.html#ixzz1D0LgNBBB>

Additional Links/Resources:

Main pipeline resource page:

<http://boldnebraska.org/pipeline-background-resources>

Links to the pipeline bills, info on the hearing and who to write/call to show support of the bills:

<http://boldnebraska.org/hearings-scheduled>

Letter from NE state senators to Sec. Clinton:

<http://boldnebraska.org/nesenators/>

Two NE landowners featured in a national blog post:

<http://blog.nwf.org/wildlifepromise/2011/02/nebraska-farmers-oppose-keystone-xl-pipeline/>

Department of Energy report on TransCanada pipeline:

http://journalstar.com/news/state-and-regional/nebraska/article_a8e6fe29-fdae-5dd1-ba75-63d17074609a.html

<http://bit.ly/fir3fY>

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Oil spill in Michigan and the fight to get the oil pipeline company to pay for damages, two articles describing the problems landowners are facing:

<http://detnews.com/article/20110131/METRO/101310348/Enbridge-spill-has-some-crying-foul>

<http://michiganmessenger.com/46106/enbridge-denies-responsibility-for-oil-spill>

OK family takes TransCanada to court over eminent domain:

<http://www.benzinga.com/pressreleases/11/01/m784028/tar-sands-u-s-legal-challenge-to-eminent-domain-for-transcanadas-keyston>