

To: House Committee on Energy and Environment, Rep. Hedke, Chair

From: Richard Felts, President of Kansas Farm Bureau

Date: February 2, 2015

Re: HB 2132 – Injected Natural Gas and Property Rights

Chairman Hedke and Members of the Committee

My name is Richard Felts. I am the President of Kansas Farm Bureau. Thank you for this opportunity to provide comments on House Bill 2132.

We stand in **opposition** to HB 2132. I am appearing before you today on behalf of Kansas Farm Bureau and its 40,000 farmer and rancher members.

This bill would abolish the “rule of capture” for natural gas that is injected into underground storage facilities. In essence, no matter how far the gas migrated underground it would remain under the ownership of the injector.

The rule of capture doctrine states that the first person to capture a natural resource owns that resource. The system has been applied in the Kansas Courts for years to help landowners determine the ownership of natural resources like oil and gas.

There are exceptions to the rule, which are set in place statutorily. For instance, well spacing laws may require set-backs from property lines and there are a number of administrative regulations which provide exceptions to this rule.

But the most important exception was established in K.S.A. 55-1210. It deals with underground storage facilities. The injected gas remains the property of the injecting party unless it migrates beyond the storage field boundaries.

This statute was heavily litigated several years ago in *Northern Natural Gas Company v. Oneok Field Services Company, et al.* In 2010, the state court ruled that Northern lost title to the storage gas when it migrated more than one mile from the field's boundaries, irrespective of evidence indicating the gas migrated because of third-party activities.

The state Supreme Court in 2013 upheld the lower court ruling, saying the district court properly concluded that to the extent Northern's injected storage gas migrated beyond property adjoining the certificated boundaries of its storage field, it was subject to a “rule of capture.” In essence, the entity that stores the natural gas loses title to any gas that escapes or migrates from the property past the statutory boundaries.

Therefore, we oppose the concept of unfettered migration of natural gas from underground storage facilities without consequence, based on four arguments. They are: protection of private property rights, public safety concerns, defined buffer zones, and takings.

- **Private Property Rights:** It has been common law in this state for years that free ranging gas has always been under the rule of capture doctrine. Now the injector want free rein to capture gas at whatever distance they deem appropriate. This leaves little or no protection to the landowners.

- **Public Safety:** Safety concerns justify a reporting requirement when an entity storing natural gas learns of migrating gas, especially if it harms adjacent landowners. In addition, the Kansas Corporation Commission would have insufficient power to regulate the storage industry based upon any concerns of safety.
- **Buffer Zone:** The current statutorily defined buffer zone around a certificated storage field is an attractive provision because of its simplicity. This buffer zone effectively quantifies the location of the storage field, limiting the area of potential conflict of how far the migration of natural gas can occur. Buffer zones place the burden firmly on the entity that stores the gas to identify the nature of the produced gas and not transfer it to the surrounding landowners.
- **Takings:** We should be encouraging delineation of storage field boundaries, not further litigation. The landowners, the mineral owner, and the owner of the surface property should be eligible for compensation for any natural gas outside of the buffer zone or stated storage boundaries.

Members of the Committee, we ask you deny this bill. The current law places the responsibility for preventing or determining migrating gas squarely on the entity that stores natural gas. This bill will simply allow an entity that stores the natural gas to undermine property rights of surrounding landowners.

Thank you for this opportunity to provide testimony. I am available to answer questions at the appropriate time.