

SWKROA

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

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Testimony in **Opposition** before the House Energy and Environment **House Bill No. 2132** – an act concerning oil and gas and the Rule of Capture

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Chairman Hedke and Members of the Committee:

My name is Erick Nordling. I am from Hugoton and serve as the Executive Secretary of SWKROA. I also am an attorney with the law firm of Kramer, Nordling, and Nordling, LLC. In my law practice, and as Secretary for the Association, I regularly advise mineral and royalty interest owners, as well as surface owners and farm tenants, with regard to issues relating to access to their lands for oil and gas operations and from damages resulting from such access and use of the land for oil and gas operations. Although we don't have many natural gas storage fields in southwest Kansas, my law firm and I have, from time to time, represented mineral and landowners in and around the Boehm storage field in Morton County.

I would like to submit written testimony on behalf of SWKROA **in opposition** to **House Bill No. 2132**.

The Bill would have a chilling effect on oil and gas leasing, development, and production.

One of the great American dreams is that there is always potential for oil or gas to be produced from underneath lands which you own. And in many parts of Kansas, that dream is a reality, and is especially a truism in areas where 'gas storage fields' are located since such gas storage fields are typically developed from areas in which the natural gas has already been depleted through production! House Bill No. 2132 can infringe on developing the dream for production from your lands.

Kansas and most other producing states adhere to the strict concept of the 'Rule of Capture.' This rule has been phrased as follows: "The owner of a tract of land acquires title to the oil and gas which he produces from wells drilled thereon, though it may be proved that part of such oil or gas migrated from adjoining lands." Hardwicke, "The Rule of Capture and Its Implications as Applied to Oil and Gas," 13Tex. L. Rev. 391 (1935). The rule provides incentives mineral owners and their oil and gas lessees to drill off-setting wells to prevent their lands from being drained by production on neighboring lands.

Kansas is one of the few states which already alters the Rule of Capture for stored gas which has migrated from a gas storage area into adjoining properties. **K.S.A. 55-1210, already includes protections for an injector to recover its gas which has migrated to adjoining**

property outside of the gas storage area. It seems that some gas storage companies have been having significant challenges keeping track of their stored gas, because House Bill No. 2132 appears drafted to significantly expand their right by: abolishing the Rule of Capture with respect to injected natural gas which is found outside of underground natural gas storage fields (Line 7, Page 1); allowance to retain ownership of gas which has migrated from the storage area; and to grant carte blanche authority to lay claim to injected gas which may be found outside the storage area regardless of when and “where such natural gas may be found.” (Line 27 on Page 1)

Apparently the Bill sponsors also didn’t like the negative connotation of the term that gas has ‘migrated’ to adjoining property, as the Bill proposes to remove such wording from the statute. We see no reason not to use that term, as it does a good job to imply that the injector hasn’t contained gas within the storage area boundaries.

If a gas storage company can claim rights to gas and formations underlying property located miles away from the storage field and without regard to when injected gas may have migrated to such properties, even if producers are already operating there, then producers will be unlikely to accept that additional risk of exploring for and developing oil and gas in Kansas, especially anywhere near a gas storage field.

Likewise, this legislation would have a chilling effect on owners of mineral interests who may want to lease their previously unleased mineral acreage for exploration and development because of the potential of a gas storage company claiming that any production from the mineral owner’s land could be gas which migrated from a storage field. Mineral owners can include both private individuals, as well as public entities like university foundations.

Surface owners, who may be different than the mineral owners, will also be significantly impacted by natural gas injectors who want to conduct tests on their lands to look for missing gas, even if their land may not be burdened by an oil and gas lease. Surface owners could sure differ on what they believe would be ‘reasonable notice’ than what the injector might have in mind. This needs to be much better defined, and compensation standards established for the trespass on the surface estate.

House Bill No. 2132 has the perhaps unintended consequence of abolishing the Rule of Capture for all oil and gas development, not just for abolishing the rule for recovering lost gas from gas storage fields because it could apply to stratum above or below the storage zone, as well as same zone as the storage field (Line 1, Page 2). The Bill is overbroad and should not be approved.

House Bill No. 2132 is the latest in a series of longstanding and bitterly fought disputes between mineral owners and their oil and gas lessees who have drilled producing wells many

miles from Northern Natural Gas Company's Cunningham Gas Storage Field located in Pratt County. The proposed legislation is Northern's attempt for the Kansas Legislature to reverse the Kansas Supreme Court's ruling that Northern lost its right to any injected gas that migrated horizontally beyond property adjoining the certificated boundaries of its storage field, and under the Rule of Capture, well operators that first produced the migrated gas took title to it, regardless of whether Northern intended to abandon the gas. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 2013, 296 Kan. 906, cert. denied 134 S.Ct. 162.

As mentioned above, depleted natural gas fields are one of the principal attributes for determining a location for natural gas storage areas. Through an analysis of the location of the historical producing wells and other data, an injector can identify the geographical boundaries for an area to be used as a storage formation, and they must obtain authority to operate the storage field within a specified geographical area and formation or zone. As part of the development of the storage area, the storage company should identify if there remains any native gas in the storage formation, and to compensate the mineral owner for such native gas in place. The storage field allows the storage company, which is often a gas transportation company, to inject gas into and withdraw gas from the storage field to meet market demands. It is their sole obligation to maintain control over their injected gas.

However, history has shown that some injectors have a poor track record of maintaining control over their injected natural gas. House Bill No. 2132 would reward mismanagement and wave a wand over gas which has migrated from the storage area, for whatever reason, which could include over pressurization of the storage field and poor determinations of the confines of the authorized storage area, and would allow the injector to chase the leaked gas to wherever or whenever it is claimed to be found.

It is often a classic case of 'David and Goliath,' where the deep pockets of Goliath, as the storage company, can quickly exhaust efforts and finances of landowners, mineral owners, producers, and even county governments to challenge the claims of a storage company to capture and reclaim migrated gas from their lands, leaseholds, and taxes which have been collected on produced gas. This is true even if David wins, Goliath will find another avenue to exhaust them further.

At the time a storage field is established, the storage company may have little or no data on nature and quantity of native gas which may be in place in zones which are outside the storage formation. Accordingly, disputes can certainly arise when there is a claim stored gas migrated outside of a storage field. Even under the present statute, injectors should be required to chemically tag the injected gas to help differentiate it from native gases, and to identify unequivocally identify storage gas.

Much of the discussion today is due to gas supposedly migrating from storage reservoirs. If we assume that is occurring, beyond the obvious question of why it is migrating, your committee should also consider that if gas can leave the storage area, then gas which was originally outside the storage field might get pulled back into the storage zones when the storage company has a demand to sell more gas from the storage reservoir. This creates the classic dichotomy of ‘having your cake and eating it too’ by claiming that the Rule of Capture is abolished for gas escaping a storage area, but fully applying the Rule of Capture to take title to gas which may have migrated back into the formation. This seems very unjust and unfair.

The whole concept of storing gas in an underground storage area is precisely that, the gas should be stored for later use and sale. Current statutes provide that the underground stratum or formation must be suitable for the underground storage of natural gas. Injected gas should not be migrating outside the ‘known’ storage area, which seems to defeat the goal of having an area to store gas for later uses and sale. There should be stronger penalties for storage companies which mismanage the storage field by over-pressuring the storage formation, which encourages stored gas to escape. If there are not sufficient penalties in place, what would be their incentive to manage the reservoir better?

House Bill No. 2132 seems to reward a storage companies, and harm many others such as surface and mineral owners, oil and gas companies operating outside a storage field, and county governments, and we respectfully urge you reject House Bill No. 2132.

Respectfully submitted,

Erick E. Nordling
Executive Secretary, SWKROA