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To: House Committee on Energy and Environment
Representative Dennis Hedke, Chair

From: Tucker A. Stewart, Associate Counsel

Re: Testimony as an opponent and suggesting an amendment to **HB 2132**, a bill concerning oil and gas; relating to natural gas injection wells, ownership, rule of capture; amending K.S.A. 55-1210 and repealing the existing section

Date: February 2, 2015

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

Thank you, Chairman Hedke, and members of the Committee, my name is Tucker Stewart and I am with the Kansas Livestock Association (KLA). KLA appears today as an opponent to HB 2132 in its current form unless certain steps are taken to protect surface estate owners and possessors.

We have many members that are farmers, ranchers, and landowners who operate on or near gas storage reservoirs in Kansas. Protecting the private property rights of a surface estate is a primary concern of the KLA. In addition, many KLA members own and lease mineral rights.

Under current law, injectors only have the right to conduct tests on existing wells that are above or on land adjacent to natural gas storage fields. HB 2132 would expand that right and allow injectors to test any well regardless of location to determine if such well is producing gas previously stored by the injector. Furthermore, ambiguous language could allow injectors to enter property with little or no notice to the surface estate.

Understanding that case law has established the surface as being the servient estate, the only way to protect surface estate proprietors is through the legislative process. Oil and gas operations can frequently disrupt and cause damage to the surface estate without compensation and without adequate notification to landowners.

While, this bill establishes "reasonable notice," it fails to indicate to whom notice is due, fails to define what amount of time is reasonable, and the circumstances under which entry onto the surface estate is justified. KLA asks the committee to amend the bill to clarify that notice is not only due to the mineral owner/lessee, but also to the surface proprietor or possessor.

Secondly, the committee should require injectors to petition the Kansas Corporation Commission for permission to test wells prior to entry on the surface estate. The petition should articulate facts that suggest injected gas is being pumped from a particular well. The petition should establish a time the injector would like to begin monitoring and testing a well and the location of that well. The committee should give Commission authority to review the petition and the discretion to issue an order allowing the

injector to enter the property at a certain time only after the Commission finds that the evidence presented by the injectors is more likely than not, accurate and that sufficient notice was offered to the surface and mineral estate to participate in the KCC petition process. This would create a level of protection to landowners from any potential injector from abusing the statute.

Finally, current law provides the surface estate with damages caused by an injector testing wells on land adjoining a natural gas storage field. The bill would expand those damages to any well being tested. However, KLA asks this committee to take a step further and require injectors to post a bond to help pay for any damages to the surface estate or loss of production to the mineral estate that may occur during the testing by the injector. The bond could be held by the Commission to assure that money is available if damage were to occur. The bond would also only be released after an affidavit from both the mineral owner/lessee and surface estate holder indicates no damage has occurred. However, such affidavit should not preclude a lawsuit if damages aren't readily apparent.

Landowners are often disadvantaged when faced with damage to the surface estate by well-capitalized gas companies that have the funds to draw out damage claims in court. Given the expansive nature of testing authority in this bill, a bond would be a prudent tool to help level the playing field when it comes to damage to the surface estate.

Thank you for the opportunity to submit testimony, KLA asks that the Committee seriously considers our suggested amendments to protect surface estate proprietors or vote in opposition.